SENATE—*Tuesday, August 3, 1982*

(Legislative day of Monday, July 12, 1982)

The Senate met a 10 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 C. Halverson. LL.D., D.D., offered the following prayer:

Gracious Father in Heaven, we thank Thee for our amazing Nation—for its industry, its productivity, its prosperity. We thank Thee for the abundance which has been lavished upon us as a people. Forgive our inclination to take this abundance for granted. Help us, dear God, not to have to lose it before we appreciate it.

Help us to take seriously our stewardship and to be grateful for the fact we have more than enough of everything. Save us from indifference to the many who never have enough of anything. Deliver us from greed—from the "cares of this world, the deceitfulness of riches, and the lust of other things," which Jesus said choke the word of God in our hearts. Liberate us from the relentless pursuit of "more" and give us compassion for the needy, and grace to share with them our abundance.

Loving God, receive our thanks, we pray, in the name of Him whose love is unconditional, impartial and sacrificial. Amen.

RECOGNITION OF THE MAJORITY LEADER

The PRESIDENT pro tempore. The majority leader is recognized.

THE JOURNAL

Mr. BAKER. 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.

THE SENATE SCHEDULE

Mr. BAKER. Mr. President, I will state the schedule for today.

Mr. President, after the time for the recognition of the two leaders has expired, the Senator from Georgia (Mr. NUNN) will be recognized on a special order not to exceed 15 minutes, after which there will be a period for the transaction of routine morning business in which Senators may speak for not more than 2 minutes, to extend not past the hour of 10:50 a.m.

At 10:50 a.m., the Senate will turn once again to the consideration of the Dodd amendment, No. 2009, to Senate Joint Resolution 58. There is a time limitation of 10 minutes to be equally divided on that amendment. At 11 a.m. a rollcall vote will occur on or in respect to that amendment. The rollcall has already been ordered.

After the conclusion of that rollcall, Mr. President, there will be four votes back-to-back on amendments as follows: The Mathias-Baucus amendment, No. 1931, the Moynihan amendment, No. 1928, as modified, a Cranston amendment No. 1996, and another Cranston amendment numbered 1989. Rollcall votes are ordered. The succeeding votes after the first vote will be 10 minutes in length instead of the standard 15 minutes, according to the order entered last evening.

After the conclusion of the consideration of the second Cranston amendment, it is anticipated the Senate will return to the consideration of the Armstrong-Boren amendment numbered 2010, which was temporarily laid aside last evening in order to permit the principals and the managers to consult and confer on how to proceed on that matter.

I do wish, Mr. President, to deal with that matter immediately before we proceed to another amendment.

Mr. President, I urge Senators to come to the floor and offer their amendments today. There are 20 specified amendments that have not yet been dealt with. I am prepared to ask the Senate to remain in late today in order to complete all the amendments that may be called up before we go out this evening so that when we convene tomorrow the remaining amendment will be the Cranston amendment, which I understand is the wish of the minority, and general debate, with a final vote to occur at 12 noon.

Mr. President, I understand there may be a request for consent for committees to transact business, that is, to report certain nominations at 3 p.m. I will not now make that request pending the consideration of that possible request by the minority leader.

ORDER FOR RECESS TODAY UNTIL 9:30 A.M. TOMORROW

Mr. BAKER. Mr. President, is there an order for the Senate to convene tomorrow?

The PRESIDING OFFICER (Mr. MATHIAS). There is no order at the present time.

Mr. BAKER. I thank the Chair.

Mr. President, I ask unanimous consent that, when the Senate completes its business today, it stand in recess until the hour of 9:30 a.m. tomorrow.

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

Mr. BAKER. Mr. President, I yield any time I have remaining under the standing order to the minority leader.

Mr. ROBERT C. BYRD. Mr. President, I thank the distinguished majority leader.

RECOGNITION OF THE MINORITY LEADER

The PRESIDING OFFICER. The minority leader is recognized.

Mr. ROBERT C. BYRD. Mr. President, I yield to Mr. PROXMIRE 3 minutes or more. Following him, I yield the remainder of my time to Mr. NUNN if he should need it. If he does not, the time can be turned back.

The PRESIDING OFFICER. The Senator from Wisconsin is recognized.

Mr. PROXMIRE. Mr. President, I thank the distinguished minority leader.

GENOCIDE CONVENTION USURPS NO DOMESTIC AUTHORITY

Mr. PROXMIRE. Mr. President, as a result of the Holocaust against the Jews in Germany during the Second World War, the United Nations General Assembly, on December 11, 1946, unanimously passed a resolution declaring genocide an international crime. U.S. representatives played an important role in drafting the treaty which resulted from the resolution, and this treaty was approved by the General Assembly in 1948. The treaty defined genocide as the systematic destruction of any rational, ethnical, racial or religious group. The United States has not ratified the Genocide Treaty despite its initial support and despite the overwhelming support and ratification by 88 other countries.

Opponents of the treaty argue that the Genocide Convention usurps the constitutionally prescribed methods of legislating new law by allowing a treaty rather than Congress to establish domestic criminal law. But the convention itself is not self-executing and does not require that the crime of genocide be placed in our Federal Criminal Code. Rather, the Genocide Convention requires that the treaty be

implemented by Members of Congress through the constitutional process of amending the Federal Criminal Code to include the crime of genocide. Opponents of the treaty who argue that the treaty usurps the lawmaking powers of the Congress are simply wrong, as the treaty is only effective if Congress passes the proper legislation to enact the purposes of the treaty.

In addition to being mistaken about the implementation of the treaty, opponents of the treaty are also incorrect in assuming that the issue of genocide is a domestic concern that should not be dealt with in an international treaty. The crime of genocide involves the systematic destruction of a large ethnic or racial group. It is a crime worse than murder because of its sheer magnitude. Because genocide is usually carried out by national governments against a segment of their population, domestic criminal codes defining murder are ineffective in administering justice against those practicing genocide.

The only effective means of condemning and punishing those people who commit genocide is through an international agreement such as the Genocide Convention. Under the Genocide Convention, individuals charged with genocide can be tried by the State where the action was committed or by an international penal tribunal. Because genocide necessarily must be checked and punished by the international community rather than the domestic community, the U.N. Genocide Convention serves as the appropriate means to this end.

Mr. President, I ask the Senate to give its advice and consent for ratification of the Genocide Convention. We must overcome the rhetoric of opponents who argue that the convention would subordinate domestic law to the advantage of international treaties. The fears of those opponents are unsound when one examines the text of the convention and the practicalities of the situation.

TEST BANS; LIMITED, THRESHOLD, PEACEFUL, AND COMPREHENSIVE

Mr. PROXMIRE. Mr. President, the recent action by the administration to postpone negotiations on a Comprehensive Nuclear Test Ban has refocused public attention on this often neglected issue.

Prior to this decision, the Council for a Livable World published a background analysis of the Comprehensive Nuclear Test Ban, which explains the major issues and provides an excellent shorthand of the history of the negotiations leading to the 1963 and 1974 agreements. There tends to be some confusion over the various names used in describing the various test ban proposals. The Limited Test Ban of 1963 prohibited testing in the air, water, or outer space but did not curtail underground tests—some of which vent with regularity.

The Threshold Test Ban arose after the SALT negotiations in 1972 and culminated in a text by 1974 which placed a limit of 150 kilotons, or 10 times the power of the Hiroshima bomb, on all underground nuclear explosions.

In 1976, the United States and the U.S.S.R. agreed to another treaty called the Peaceful Nuclear Explosions Treaty, which bars nuclear explosions greater than 150 kilotons for peaceful purposes such as digging canals or mining.

The Threshold Test Ban and the Peaceful Nuclear Explosions Treaty have not been submitted to the Senate for ratification.

Mr. President, I ask unanimous consent that the Council for a Livable World analysis of the various test ban proposals and treaties be printed in the RECORD.

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

[From the Council for a Livable World fact sheet, May 1982]

COMPREHENSIVE NUCLEAR TEST BAN

Until recently the United States, the Soviet Union and Great Britain have been negotiating an agreement to bar all testing of nuclear weapons. Nuclear tests aboveground, underwater and in outer space are already banned by these three countries under a 1963 agreement that has also been signed by an additional 120 countries; a Comprehensive Test Ban (CTB) thus would end the extensive American and Soviet underground testing programs that have enabled the arms race to continue unimpeded. While 12 rounds of negotiations have taken place in Geneva, a final push to conclude a CTB treaty was postponed until the conclusion of the SALT II Treaty debate. With SALT II in limbo since 1979, a Comprehensive Test Ban is similarly in a suspended status.

The talks thus far have made substantial progress, with Soviet concessions on a number of key points. For example the Soviets wished to permit "peaceful" nuclear explosions (PNE). When the U.S. objected because of the difficulty in distinguishing peaceful fron: non-peaceful explosions, the Russians yielded. Later, after insisting that all five nuclear powers must ratify any treaty negotiated by the U.S., the U.S.S.R. and Great Britain, the Soviet accepted the U.S. stance which did not require ratification by France and China. Although the British balked, the Soviets agreed to ten monitoring stations (black boxes) on each other's territories and on-site inspection procedures in case of questionable occurrences.

Details on verifications, and other minor issues are still unresolved but the main stumbling block appears to be the U.S. government. During the negotiations, the Carter Administration proposed at various times a treaty of indefinite duration, then a 5 year limit, and finally three years, all changes designed to appease the opposition from the Joint Chiefs of Staff and the weapons laboratories. Their opposition continued, however, and may receive a sympathetic hearing from the Reagan Administration.

BACKGROUND: THE LIMITED TEST BAN OF 1963

The United States, the Union of Soviet Socialist Republics and the United Kingdom had by the end of 1958 conducted over 250 nuclear weapons tests. Rising public opposition to continued testing resulted in a moratorium on nuclear tests by the three countries which lasted from November 1958 to September 1961. The moratorium was ended by an extensive series of Soviet tests of hydrogen bombs, including one with an estimated yield of over 50 megatons: thereafter nuclear testing increased at a rapid pace by both countries until 1962 when President Kennedy, in the aftermath of the near nuclear confrontation during the Cuban missile crisis of October 1963, opened negotiations with Moscow and London. These negotiations quickly produced the Limited Test Ban Treaty of 1963 which prohibited the testing of nuclear weapons in the atmosphere, outer space and underwater. Underground tests, however, were not limited. By 1980, 123 countries had signed the Limited Test Ban Treaty; France and China refused to adhere, and China continues to conduct above-ground tests. India exploded a so-called "peaceful nuclear device" underground in 1974.

THRESHOLD TEST BAN AND PEACEFUL NUCLEAR EXPLOSIONS TREATIES

Although there was strong support in this country for an end to underground tests since the 1960's, the question of verification of such a testing halt was a technical obstacle difficult to overcome. At that time, there were disputes over the ability of seismological instruments to differentiate with sufficient confidence between small nuclear explosions and natural seismological disturbances.

After the ratification of the SALT I Treaty in 1972, the U.S. and the U.S.S.R. opened negotiations on the subject of limiting underground nuclear tests. These negotiations produced the text of the Threshold Test Ban Treaty (TTB) of 1974 which placed a limit of 150 kilotons (about 10 times the explosive power of the Hiroshima bomb) on all underground nuclear explosions. A subsequent treaty, the Peaceful Nuclear Explosions Treaty (PNE) was signed in May 1976 to bar nuclear explosions greater than 150 kilotons for "peaceful purposes" such as excavation or mining. Neither the TTB nor the PNE have been ratified by the U.S. Senate, primarily due to the feeling that neither treaty was more than a minimal extension of the 1963 treaty and the wish to encourage the President to continue negotiations in hopes of concluding a Comprehensive Test Ban. The 150 kiloton threshold was set to enable the continuation of planned nuclear tests; it would not have stopped testing by either the U.S. or the U.S.S.R. The separate PNE treaty implied that some testing—such as India's explosion—could indeed be for peaceful purposes, and could have provided India a convenient international rationale for their program.

ADVANTAGES OF A COMPREHENSIVE TEST BAN

1. Signing a CTB would provide new momentum for arms control negotiations. With the SALT II Treaty in limbo after the Senate's refusal to approve the accord, the successful conclusion of a Comprehensive Test Ban would provide a significant forward push to controlling the nuclear arms race. It

may be possible at this time to generate more support for a complete halt to nuclear testing than for an early resurrection of SALT II.

2. A halt to nuclear testing would restrict new generations of weapons. The end to testing would impose constraints on both the U.S. and the U.S.S.R. which should retard the development of future generations of nuclear weapons. However, weapons programs already underway in the U.S., including the MX missile, the Trident II missile, the cruise missile and the ABM are far enough past the development stage to have no further need of actual nuclear tests. As far as the U.S. is concerned, a total test ban would freeze in place our significant advantage in weapons technology.

3. A test ban would aid our efforts to stop the proliferation of nuclear weapons. The United States has been making a major effort to prevent other countries from joining the nuclear weapons club. These efforts have been undercut by the continuing unwillingness of the superpowers to live up to their obligations under Article VI of the Treaty on the Non-Proliferation of Nuclear Weapons of 1968 which committed the U.S. and the Soviet Union to "pursue negotiations in good faith on effective measures relating to cessation of the nuclear arms race at an early date." Some nations unwilling to sign the Non-Proliferation Treaty on the grounds that it discriminates against countries that have not developed nuclear weapons might sign a test ban which would limit both nuclear and non-nuclear powers. At least the hesitant nations would be susceptible to domestic pressure to stop testing. If non-nuclear nations did indeed agree not to test, any planned nuclear weapons development programs would not necessarily be halted; however, without testing these countries would have less confidence in any nuclear weapons they built and would be less likely to proceed with a large-scale nuclear weapons program.

4. An end to testing would reduce nuclear pollution. The continuing American nuclear tests, conducted in Nevada testing grounds, have resulted in nuclear pollution in a number of respects. Some underground tests have vented radioactive debris into the atmosphere that has drifted across Nevada and Utah. In addition, the tests produce substantial nuclear wastes; disposal of such wastes is a major problem facing this country. Finally, harmful radioactive material is left in the soil after each test. A bar to continued testing would reduce this nuclear debris that has adversely affected our environment.

5. The Treaty provides verification precedents useful for future negotiations. The agreement on the monitoring stations and on on-site inspection procedures provides building blocks for other arms control measures that will require verification.

OBJECTIONS RAISED TO A COMPLETE TEST BAN

A number of objections have been raised to concluding a Comprehensive Test Ban. Primary among these are the following:

1. Verification: Opponents of a full test ban argue that such an agreement would be unverifiable. However, with modern seismic capabilities for detecting and identifying underground nuclear explosions having improved vastly in recent years, no country could conduct clandestine tests except of small yield weapons of little military value. With the Soviet concession to allow seismic listening posts on its territory and to invite on-site inspection by United States personnel of suspicious seismic events, any and all significant seismic activity could be monitored with confidence. Satellite photography and other "national technical means" could supplement the seismic methods by providing evidence of suspicious activities or resolving the character of ambiguous seismic evidence. As one example, nuclear explosions in porous soil (which dampens seismic signals) often leaves subsidence craters which are plainly visible by satellite photography.

2. "Proof Testing": Opponents of a CTB have argued the need for continued "proof testing," or testing by actually firing existing nuclear weapons, in order to confirm the continued reliability of nuclear weapons and stockpiles. Proof testing, however, is not necessary to check out weapons systems, and in fact is one of the least used methods in the U.S. program for checking and confirming continued weapons performance. A U.S. lead over the Soviet Union in both hard and soft computer technology to check out our weapons by simulating weapons tests would be an advantage to the U.S. after a CTB. Moreover, there would be no inhibition to testing non-nuclear components of our weapons, and it is those components that are most susceptible to degradation over time. Finally, a partial loss of confidence in the reliability of nuclear weapons may actually result in greater stability in the strategic nuclear balance, as it would undermine the confidence of any country in its first-strike nuclear weapons capacity.

3. Maintain Competence in Weapons Technology: Opponents argue that a CTB would jeopardize the U.S. ability to maintain competence in nuclear weapons technology as well as having a detrimental effect on weapons labs. However, many opportunities exist short of nuclear testing to sustain and nourish U.S. weapons technology. The main use of nuclear tests is for refinement of existing nuclear weapons and adapting these to new types of delivery systems; one clear advantage of a CTB would be to slow development of new generations of weapons. Moreover, the effect of a test ban on weapons labs could be minimal. Most of the weapons labs' work on weapons development would not be stopped by a halt in testing; in addition, the labs' fusion power research into non-petroleum sources of energy would not be affected by the cessation of weapons tests. In fact, it is significant that most supporters and opponents of a CTB agree that experiments with magnetic and laser "pure fusion" processes which may provide electric power in the future should be inhibited, even though such experiments produce miniature nuclear explosions and involve weapons-related technologies.

4. Non-inclusive Treaty: Neither China nor France has entered into any nuclear negotiations nor have they signed any of the existing nuclear treaties. This refusal to cooperate by two members of the nuclear club will result in a noninclusive and thus less effective CTB. France and China have justified their refusal on the grounds that their nuclear weapons technology is much less advanced than that of the superpowers, and that continuing testing is important to their nuclear development. While the resulting CTB thus would be incompletely effective, it would be very important and very useful if three of the five nuclear weapons states stop testing. Moreover, once a treaty is signed, France and China would be open to greater public and economic pressure to adhere.

5. The Treaty Duration of Three Years is Too Short: While a treaty of unlimited duration would be preferable, a three year treaty is a start.

Mr. PROXMIRE. Mr. President, I yield the remainder of my time to the distinguished Senator from Georgia.

I yield the floor.

RECOGNITION OF SENATOR NUNN

The PRESIDING OFFICER. Under the previous order, the Senator from Georgia is recognized for not to exceed 15 minutes on his own time, then such additional time as he has been granted by the minority leader and the Senator from Wisconsin.

Mr. NUNN. I thank the Chair. I thank the Senator from Wisconsin. I inform the Chair that I shall probably not need all that time. Probably 5 minutes will be sufficient.

THE CRIME CONTROL ACT OF 1982 TITLE IV—HABEAS CORPUS REFORM

Mr. NUNN. Mr. President, Senator CHILES and I have emphasized again and again the long-awaited need for reform of the laws currently governing habeas corpus proceedings. Crime is a major problem that faces the daily lives of many Americans. Abuse of the writ of habeas corpus by career criminals complicate that problem by overtaxing our courts with needless and repetitive litigation.

This morning, I bring to the Senate's attention another blatant example of that abuse. Early in 1977, career criminals John Louis Evans and a codefendant named Ritter were paroled from an Indiana prison. Shortly thereafter, the two embarked upon a spree of more than three dozen violent crimes. One such crime was the robbery of a business in Mobile, Ala. Evans pulled a pistol on the store attendant, Mr. Nasser, deliberately murdering him in full view of his two young daughters. After robbing another establishment in Mobile, Evans and Ritter left the State of Alabama and continued their criminal venture in other States. After committing more robberies, some kidnapings, and other violent crimes, both men were finally captured by the FBI in Little Rock, Ark., in March of 1977. In confronting both legal authorities and the media, Evans always bragged of his criminal deeds, openly confessing to the killing of Mr. Nasser as well as three dozen other violent crimes.

Against the advice of his attorneys, Evans voluntarily appeared before the Mobile County grand jury and admitted murdering Mr. Nasser. The grand jury subsequently indicted Evans. At his arraignment, Evans pleaded guilty. In April of 1977, Evans went before the Mobile County circuit court. Evans filed a written motion to plead guilty,

then took the stand and testified against himself. Again, Evans clearly admitted his involvement in the crime of Nasser. Asking for the death sentence, he confessed that his whole life had centered and would continue to center around crime. The jury took less than 15 minutes to convict Evans. The judge sentenced him to death as he had requested so many times.

Evans' conviction and sentence were affirmed by the Alabama Court of Criminal Appeals in November of 1977 and by the Alabama Supreme Court in May of 1978. The U.S. Supreme Court denied a writ of certiorari in February of 1979. In April 1979, Evans filed a petition for a writ of habeas corpus in the U.S. District Court in Mobile. After a full and fair hearing on the merits of the petition, the district court denied the petition. Evans then appealed his case to the Fifth Circuit Court of Appeals.

Despite the factual findings below, the Fifth Circuit Court of Appeals granted Evans a new trial due to a recent Supreme Court decision. Evans received a new trial despite the State's argument that he had not raised the issue below and that there was no evidence to suggest that the Supreme Court decision applied to the facts of Evans' case. He was given a new trial despite the fact that Evans had openly admitted and confessed to his crime at every stage of the State proceedings.

Mr. President, it is extremely disturbing to see a dangerous criminal, having admitted to his guilt in more than three dozen violent crimes, receive a new trial from an appellate court despite the strong factual findings of the State courts. The law enforcement agencies and the State courts did their jobs and in a proper and thorough fashion. The conviction and sentence were properly affirmed by both levels of the State appellate courts. Five years after the crime, despite Evans' numerous admissions to his brutal acts and overwhelming evidence of his guilt, a Federal court, under current habeas corpus standards, grants a new trial on speculation that Evans may not have received a fair trial at the State level.

There is something wrong with a criminal justice system that encourages disregard for State court findings. Abuse of the writ of habeas corpus law renders our criminal justice system nearly incapable of producing swift and certain punishment, even for those whose guilt is established beyond doubt. S. 2543, the Crime Control Act of 1982, confronts this grave problem by requiring Federal courts to give increased deference to State court findings. The bill will also limit Federal habeas corpus relief to those cases brought within a 3-year statute of limitations. This measure will pave the way to a return to a credible and effective criminal justice system. Surely no one will dispute the importance of such a system to this Nation's continuing battle against violent crime.

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

ROUTINE MORNING BUSINESS

The PRESIDING OFFICER. Under the previous order, there will now be a period for the transaction of routine morning business for not to extend beyond the hour of 10:50 a.m., with statements therein limited to 2 minutes each.

FINANCING THE DEBT OF DEVELOPING COUNTRIES AND WORLD GROWTH

Mr. BRADLEY. Mr. President, last week I began a series of statements on the current risks to the international banking system. I have done this in order to initiate a discussion on the need for a contingency program, an emergency preparedness plan, if you will. Last week, I pointed out that in 1975, the central bankers of 11 industrial nations agreed informally that parent banks would be held responsible for losses of their foreign affiliates and, if necessary, the central bank to the parent bank would act as the lender of last resort for that bank's overseas affiliates.

Mr. President, little did I know that within 2 days of my speech there would be a very real example of the danger that lurks out there on the international banking horizon.

In my speech I called for making formal that informal agreement that I just described that was established in 1975 by which central banks took responsibility for their subsidiaries.

In the July 30 New York Times, there was an article written by Mr. Steven Rattner called "Banks Told Italy Is Not Liable."

I ask unanimous consent that this article be printed in the RECORD.

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

[From the New York Times, July 30, 1982]

BANKS TOLD ITALY IS NOT LIABLE

(By Steven Rattner)

LONDON, July 29.—International banks owed money by a Luxembourg subsidiary of Italy's troubled Banco Ambrosiano were offered no encouragement today by Italian authorities that their loans would be repaid. The subsidiary defaulted this month on $400 million in foreign loans.

Giovanni Arduino, one of three commissioners appointed by Italy to sort out Banco Ambrosiano's complex affairs, told 170 bankers attending a stormy meeting of creditors here that Italy's central bank had no obligation to support overseas subsidiaries.

"Non-Italian subsidiaries are not under control of the Bank of Italy nor under Italian law or practice," Mr. Arduino reportedly told the group. The Luxembourg subsidiary has 250 creditors.

According to several bankers who attended the closed session, Mr. Arduino appeared to place responsibility for the difficulties on Istituto per le Opre de Religione, the Vatican's bank which supported loans by Banco Ambrosiano.

In part, Mr. Arduino intimated, whether the banks that provided the loans got any money back would depend on whether the Vatican, which had close ties to Banco Ambrosiano, chose to make good on what did not appear to be a legal obligation.

[The Vatican's bank has refused to accept formal notices of possible legal action by Italy against its officers, Reuters reported from Rome Thursday, citing judicial sources. A Vatican spokesman declined to confirm or deny the report.]

Since the default, the operations of the Luxembourg subsidiary have been frozen and put under judicial control. Bankers pressed for today's meeting because of the prospect that these loans would become total losses.

Ambrosiano, Italy's largest private bank, has a total loan risk of up to $1.4 billion, of which $1.2 billion was lent by Ambrosiano's Latin American subsidiaries to Panamanian finance houses on the strength of letters of support from the Vatican bank.

BANKERS EXPRESS ANGER

The bankers expressed considerable anger that the Milan bank, which has received $700 million in support from the Bank of Italy and six major Italian commercial banks, would not accept responsibility for its subsidiaries.

The bankers said that a 1975 concordat, following the collapse of the Herstatt Bank, gave central banks a responsibility for the liquidity of foreign-based bank subsidiaries of their country's commercial banks. But the Luxembourg subsidiary is technically a holding company.

Officials from Banco Ambrosiano Overseas, the Bahamas' fifth-biggest bank, also met here with about 40 of its creditors. They were told that the bank, whose license was suspended July 19 for 30 days, has $150.7 million in exposure to its Luxembourg parent. Before the meeting, representatives of the lenders said that the Nassau bank was financially sound.

Mr. BRADLEY. Mr. President, this article—and I will not read it since it is submitted to the RECORD—simply states that a number of bankers have attempted to collect on their debts by ultimately holding the Central Bank of Italy responsible, and they were told:

Non-Italian subsidiaries are not under the control of the Bank of Italy nor under Italian law or practice.

This was a statement made by a Mr. Arduino, who was referring to the Luxembourg affiliate.

Mr. President, what clearly happened 2 days after this speech was a very real demonstration of the danger that lurks out there if we do not begin to have an emergency preparedness plan. It is like a string that you pull and unravel the whole blanket.

So, Mr. President, I argue once more that we do need to make formal the 1975 agreement which informally held central banks liable for their subsidiary banks abroad.

Mr. President, today I want to discuss private international bank financing in the developing world and call attention to its important role in sustaining development and growth throughout the world during the 1970's.

I also want to talk about the problem raised by the spiraling debt burden for the countries of the developing world and the increased likelihood that private banks will not continue to loan to them. In my next statement, I will discuss in more detail the financial conditions in developing countries which make it unlikely that Western bank credit to them can be sustained, much less grow.

After the first oil shock, private Western banks moved aggressively into business of financing the widening current account deficits of non-OPEC, nonoil-developing countries. Growing demand for energy and for capital goods to support their development made upwardly mobile countries into eager bank customers. It made them willing to pay high and variable interest rates to bankers who, though awash in petrodollar deposits, were finding fewer investment prospects in an industrialized world hit by recession. The formula for a new financing cycle was obvious: OPEC had pools of dollars which it could not spend; Western banks turned them into lending capital, for which they found faint demand at home; developing countries had bottomless appetites for credit to turn their backward economies into modern engines of industry; and official lending agencies found themselves in a sluggish developed world increasingly hard-pressed to raise enough concessionary funds for their development needs.

Under these circumstances, long-term lending to non-oil-developing countries by Western banks went from about $48 billion in 1973 to a projected $306 billion for 1982. And the share of total non-oil-developing country debt which is held by Western banks rose from about 50 percent in 1973 to nearly 70 percent today. The total long-term debt of non-oil-developing countries, including debt held by governments and official agencies, now comes to over $500 billion. This compares with only $97 billion in 1973. So, the nominal external debt of non-oil-developing countries has multiplied fivefold in 9 years.

Private bank lending to the developing world served a crucial function during the seventies. Private credits permitted growing countries to pay for the oil, capital goods, and services they needed to keep their economies moving. The developing nations were not the only ones to benefit. For the United States and other developed countries, it has been very important that developing economies kept moving. Their spending helped to stir our own economies during some notably low points.

As the markets of the developing world expanded and matured, they came to account for a growing share of U.S. exports. Today, the developing world takes about 40 percent of U.S. exports, more than the share taken by our trading partners on Western Europe and Japan combined. Further, our exports to the developing world over the last decade have risen at a more rapid rate than exports to the developed world—18 percent compared with 15 percent. This differs markedly from the export patterns, for example, of Germany, which exports by far the bulk of their goods to the developed world.

The plain reality is that the developing and developed worlds depend on one another for growth. Because of this interdependence, stagnation in the developing countries, due to a sudden drying up of their credit, would damage the growth prospects of developed economies. At the same time, a continuing escalation of expensive credit to them, especially to noncreditworthy countries or for noncreditworthy reasons, could shake the stability of our financial system. In short, the debt problem is a double-edged sword, and it will take a skilled parry, not a blunt strike, to protect the free world economies from deep gashes.

The debt of the non-oil developing world has grown fivefold in the last 9 years, but only in the last year has the burden for these countries been compounded by a rising real debt service burden. During the days of inflation, nominally rising rates of interest on new credit were offset by falling real payments on old debt. But between 1980 and now, the rise in real rates of interest increased the total real debt burden of developing countries.

Dr. William Cline, of the Institute of International Economics, estimated the real interest rate paid by developing countries as: The London Inter-Bank rate of interest, known as LIBOR, plus 1 percent, (a conservative spread) minus the U.S. wholesale price index. Using this formula, he found that real rates averaged minus 3.6 percent during 1973–75, 1 percent during 1976 to 1979, and then skyrocketed to 9.5 percent in 1981.

Developing countries have needed to borrow abroad, even at skyhigh real rates, because of the steeply rising deficit in their cumulative current account balance. This deficit rose from only $12 billion in 1973 to a projected $97 billion for 1982.

But, that debt service now accounts for 93 percent of the current account deficit of the non-oil-developing world, compared with only 46 percent in 1974. So more and more, developing countries are borrowing just to repay what they already owe. And without the burden of debt service, their cumulative current account would be in balance.

From 1973 to now, the export earnings of the non-oil-developing world have fallen behind their external debt. The ratio of total debt to earnings climbed from 89 percent in 1973 to an estimated 109 percent in 1982. More importantly, their debt service burden, which indicates their ability to sustain debt repayments without crowding out needed imports, has grown heavy. The ratio of debt service (interest plus amortization) to export earning rose from 14 to 21 between 1973 and 1981.

The current account problems of many of these countries has been worsened in recent years by low or fluctuating commodity prices and slow growth in the industrialized world to which they sell most of their products. Rising real interest rates have more than offset the dip in oil costs in the last year. As pointed out by Morgan Guaranty Trust Co. in its May 1981 "Word Financial Markets," "a 1 percentage point change in interest rates now causes more of a variance in LDC financing requirements than does a 1-percent change in oil prices."

The cruel irony of the softening oil prices for the developing world is that while falling prices reduce their trade deficits, shrinking OPEC surpluses dry up the petrodollar "savings" available for Third World lending.

Moreover, lower oil costs do not translate automatically into balanced external accounts for developing countries. Sales to the developed world, and their internal development demands, are equally important causes of their current account deficits.

A percent study indicates that a $1 billion decline in the OPEC surplus translates into only a $140 million fall in the deficits of nonoil developing countries. However, the current account deficit of the nonoil developing world would fall by $14 billion, not $140 million, but $14 billion if the OECD countries were to grow at a normal 3 percent rate next year, rather than the projected 1¼ percent rate. Further, the normal capital-importing needs of emerging economies probably will add another $32 billion to their aggregated deficit.

Low-income countries will face the additional blow of cutbacks in concessional aid. The President's budget anticipates a cut in U.S. contributions to the soft-loan windows of multilateral development banks, such as the World Bank, of nearly one-half billion dollars from fiscal year 1983 to fiscal year 1987. The news is worse when translated into real terms. In real terms, the U.S. contribution is likely to shrink by one-third to one-half. And these new cuts come on top of a fall in real U.S. aid of 11 percent between 1970–72 and 1979–80.

In recent years, OPEC concessional aid has made up part of the difference. But a shrinking OPEC surplus that is further eaten into by rising OPEC domestic consumption indicates that OPEC countries will be unwilling, or unable, to maintain recent rates of rising aid in contributions. Consequently, even low-income countries will be forced to seek alternative funds at high market rates.

Middle-income countries, some of whom are NICS (newly industrialized countries) now rely primarily on market rate lending by private creditors. Without new loans, their growth rates likely will suffer. Heavy external borrowing was needed to sustain growth rates of about 5.5 percent for them during the 1970's. Loans to these middle-income countries from the banks of the 10 major financial powers—known as the group of 10—grew from $67 billion at the end of 1979 to $195 billion by the end of 1980.

Let me repeat that

Loans to these middle-income countries, those that are succeeding, the newly industrialized countries, from banks of the 10 major financial powers grew from $67 billion at the end of 1979 to $195 billion by the end of 1980.

Chances are poor that bank lending to middle-income countries will continue to grow at this rate. Indeed, economic conditions, banking prudence, and country-lending limits could combine to bring about a contraction of private lending to them. In recent months, there have been fewer new loans to major Third World borrowers. Latin America, as well as Eastern bloc, nations are being completely shunned.

Western banks are considerably more exposed in developing countries today than they were in the early seventies, leaving them less room for expansion. Some banks already face regulatory limits on new loans to Brazil and Mexico because their ratio of Brazilian or Mexican loans to bank capital is near lending limits.

In a recent survey of American banks, only half said that their foreign lending was not constrained by outstanding loans to capital. Most likely, even more banks feel some constraint on the basis of their assessment of the creditworthiness of several potential overseas borrowers.

The combination of slow growth abroad, rising real debt burdens and sluggish non-oil commodity prices means that near-term growth prospects in the developing world as a whole are very dim. For example, in Latin America, gross domestic production last year fell from 5.8 percent to only 1.2 percent—below the rate of population growth in this region for the first time in over a decade. The regional figure was strongly affected by the drop in Brazil's growth from 8 percent to −3 percent, and in Argentina from 1 percent to −6 percent. Similar growth deceleration is expected for Mexico.

The economic hopes of the developing world are under attack. Drains on their reserves—which dropped as a ratio of imports from 32 percent in 1977 to an expected 17 percent in 1982—are forcing adjustments. Country after country is spending its savings (reserve) to stay afloat. Many countries are choosing, or being forced, to curtail growth, rather than borrow more. In the short-term, reduced borrowing could help Western banks rebuild their capital and the quality of their portfolios. But if credit is reduced too much or too abruptly, improved banks actions to improve their portfolios could come at the greater expense of danger to world growth and political stability in the developing world. The most likely threat to the world economy is not a series of sovereign defaults.

The most likely threat to the world economy, in my view, is not a series of sovereign defaults, as I discussed in the last speech, and as I raised some increased attention to by my comments about the Italian central bank's recent statement, but rather the most likely threat is that the fear of sovereign defaults will cause creditors to sharply contract capital flows to developing countries and that this will force these countries to severely curtail their growth, thereby depressing world growth even further.

How the developed, nonoil developing, OPEC countries work through this tremendous debt pressure on the developing world and on our financial institutions and how we asssure the minimum availability of reasonably priced capital for world growth will determine whether we have prosperity or panic.

No country can go to it alone; more than ever before the developing world depends on the leadership and judgment of the developed world and more than ever before the United States must see that a high interest rate policy not only pushes developing countries to the brink of bankruptcy but also threatens to pull down the developed world with them.

Mr. President, I yield the floor.

The PRESIDING OFFICER. Is there further morning business?

WE NEED A BALANCED TAX POLICY

Mr. BURDICK. Mr. President, today House and Senate conferees will try to fashion a final version of the tax increase measure that passed this body last month. I voted against the tax increase bill because I have grave reservations about it. However, there are some good provisions in the tax bill that I hope the conferees will maintain.

I want to make it clear that I think this bill takes an important first step in the right direction in reducing some of the excesses of the tax program enacted last year. Safe harbor leasing is clearly an excessive tax subsidy. It has not been fair and equitable, and I believe the record will show that it has hampered, rather than enhanced, the goals of Government policy. The changes in the tax bill that cut back on the subsidy through safe harbor leasing should be maintained by the conferees.

I have mixed views about the changes in the accelerated cost recovery system (ACRS). We have used investment tax credits for machinery and equipment and recently the rehabilitation of some structures, and we have altered depreciation schedules for business assets for many years to help shape investment. I have supported the use of investment tax credits and accelerated depreciation to enhance certain investment goals. I supported the increase in the investment tax credits from 7 to 10 percent in 1978, principally because I believed it to be a needed offset against inflation in the agriculture, transportation, and energy industries. I supported the so-called 10-5-3 accelerated depreciation proposal that was enacted in last year's tax program as the 15-10-5-3 program because I felt it was a more equitable approach to asset depreciation for our modernizing old line companies and our exciting new industries. This tax bill, though, alters the 1985-86 ACRS in such a manner as to impact light truck manufacturing and high technology companies according to the U.S. Chamber of Commerce. If we look at where our competitive advantages are greatest in the world marketplace, we will find it is food supply and high technology. Although I have reservations about these changes in the tax bill, I voted to sustain the Senate Finance Committee's position during floor debate on this issue, however, because of the continued existence of safe harbor leasing. I do want to make clear as well that I do not like the overall approach taken in this tax increase bill. It begins the shift in the tax burden in a manner that I do not believe is good tax policy. If we pass this measure we will have in place the largest peacetime tax increase in history that will end up affecting all but mostly middle- and low-income earners, small and independent businesses, high technology manufacturers, and rural areas. At the same time we will have in place the largest tax cut in history that favors high-income investors, large industrial corporations, and the superbanks and brokerage houses. I hope we do not do that. It is not only unfair, it is proving to be bad economic policy as well.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. The hour of 10:50 having arrived, time for morning business will be closed.

BALANCED BUDGET—TAX LIMITATION CONSTITUTIONAL AMENDMENT

The PRESIDING OFFICER. Under the previous order, the Senate will now resume consideration of the pending business, Senate Joint Resolution 58, which the clerk will state by title.

The assistant 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 resumed consideration of the joint resolution.

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)

The PRESIDING OFFICER. Who yields time?

Mr. THURMOND. The Senator from Connecticut I believe has 5 minutes and we have 5 minutes.

The PRESIDING OFFICER. The Senator from Connecticut is recognized.

Mr. DODD. Mr. President, the case for this amendment was made at full length yesterday in an extended debate with the distinguished Senator from South Carolina. I will not go over all the points made yesterday. This morning I simply want to lay out in brief compass what this amendment does and why I believe it makes sense to place the Federal budget on a pay-as-you-go basis.

First of all, my amendment requires that, from this point forward, Congress must provide a way to pay for any new spending it approves. If we are going to increase outlays over current levels, whether it be for military weapons, for urban infrastructure, for school lunches, whatever the case may be, we have to display the discipline and political courage to raise the tax dollars or make spending reductions in other areas in order to pay for the new priorities.

Similarly, Mr. President, when he submitted his budget proposal at the beginning of each year, would have to identify new spending and propose ways to finance it as well. So it is not just a congressional responsibility to pay as you go.

Congress could circumvent its obligation only if it deliberately decided to do so as a matter of policy by a two-thirds vote of both Houses.

The amendment does not set conditions on what Congress would determine as a reason for breaking the budget ceiling. It would be up to each individual Congress to make that decision.

Mr. President, I do not believe that this approach is radical or revolutionary. It is used in many States across the country. It says no more and no less than we will govern ourselves by a commonsense principle: We will pay for the things we decide to buy.

In deciding whether to substitute this approach for Senate Joint Resolution 58, it is useful, I believe, to ask ourselves four very simple questions:

First, do we need to do something about deficits promptly or can we act at leisure? Certainly the headlines this morning in the Washington Post with the Secretary of Commerce confirming the estimates of Alice Rivlin of the Congressional Budget Office that we will see a budget deficit hovering in the $160 billion area this year are evidence enough of the problem we face.

I do not think we need to ponder the question very closely. We have to do something about deficits. Not only are deficits already squeezing small business dry, placing homes and new autos out of the reach of the average citizen, and making hopes for general economic recovery futile, but they promise to get even worse. The CBO director has informed us that we will add almost $0.5 trillion to the national debt in 3 years.

The constitutional amendment before us would have no effect on these deficits. By the most generous estimate it might be in place by the end of the current decade. In contrast, the amendment I am offering this morning could be in place this year, and by 1985, according to the Congressional Budget Office, would have us in a budget surplus of somewhere around $27 billion.

Mr. President, I have a chart here on the floor for Members to peruse when they come in which evidences the kind of economic improvement we would see if we adopted the pay-as-you-go approach immediately.

The second question is whether we want a practicable, workable mechanism to fight deficits or whether we are more interested in making a grand but empty gesture.

The constitutional amendment we are contemplating falls, I am afraid, into the latter category. The distinguished majority leader of this body and the chairman of the Committee on Finance have both publicly cautioned us not to expect very much from this constitutional amendment. They acknowledge it is not going to do much. The loopholes that characterize the constitutional amendment approach, especially its standing invitation to plan unrealistic budgets with distorted surpluses, and then to accept continuing and worsening deficits, virtually guarantee that it will not work. In contrast, the pay-as-you-go approach not only fosters the goal of balancing the budget, but also provides a mechanism for achieving that goal and a way to enforce it. The mistakes that have undermined the past statutory attempts to eliminate deficits are present in Senate Joint Resolution 58, but not in the pay-as-you-go approach.

A third question to ask is whether the responsibility for bringing deficits to a close should be that of Congress alone or whether we should bring the President into the process as well. I believe the budget process should remain a shared function of the legislative and executive branches. It will make the task less difficult if Congress and the President are working by the same set of rules and not at cross-purposes. My amendment offers that approach. Senate Joint Resolution 58 does not.

Finally, Mr. President, we ought to consider seriously whether economic policy, as has been stated so many times on this floor in the last several weeks, belongs in the Constitution of the United States or in a statute. Frankly, we have spent the majority of our time on this issue debating constitutional law and not economic policy, and it is economic policy and how we deal with deficits most effectively that ought to be the subject of this debate. Instead, it has been a debate over the court's jursidiction, the division of powers between the legislative and executive branches, and how our present constitutional system will be impacted by this decision.

I hope we will understand that the debate ought to be on economic policy, how we ought to deal with deficits. A well-designed statute offers us the flexibility and specificity we need to make the fight against deficits successful. Trying to use the Constitution as a tool to achieve a budgetary goal neither produces the kind of result we all want, nor does any service to that vital document.

In conclusion, Mr. President, we have a choice to make this morning. It is between Senate Joint Resolution 58 which would establish a balanced budget goal sometime next decade but not tell us how to obtain it, on the one hand, or this statutory substitute, which would give us a surplus of $27.5 billion within 3 years. If we are serious, really serious, about ending the torrendous string of deficits that are ruining the American economy, we will vote to put the Federal budget on a pay-as-you-go basis.

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

Mr. DODD. I hope my colleagues will support my amendment.

The PRESIDING OFFICER. Who yields time?

Mr. THURMOND. Mr. President, I yield myself 2½ minutes.

89-059 O-86-19 (Pt. 14)

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. THURMOND. Mr. President, I just want to say again that this is an effort to substitute a statute for this constitutional amendment. I repeat that for the last 21 years the budget has not been balanced but one time. In the last 25 years the budget has been balanced only twice. Congress has not shown the restraint, they have not shown the fortitude, to resist spending and, therefore, it is going to take, in my opinion, a constitutional amendment to mandate the stopping of this spending.

We cannot keep on the way we are going. No individual can stay in business who does not balance his books but one time in 21 years. No corporation can stay in business that does it that way, and no government can continue in this fashion.

The constitutional amendment is the only way to do it. Congress has shown it will not do it. We have statutes, as we brought out yesterday. The distinguished Senator from Virginia was the author of a statute, he and the Senator from Iowa (Mr. GRASSLEY). Two statutes have been passed. They are not observed.

A constitutional amendment seems to be the only answer, and I hope the Senate will turn the amendment of the Senator from Connecticut down.

I now yield to the distinguished Senator from Arizona.

Mr. DECONCINI. Mr. President, the Senator from Connecticut has brought forth a proposal that to me is—and I say this with all due respect—a little bit novel from the standpoint of Government, but anything but novel from the standpoint of good commonsense as to how business operates and how I think Government should operate. I think the differences the Senator from Connecticut and the Senator from Arizona have is we have in the past week been debating a constitutional amendment. The Senator from Connecticut has offered an alternative to a constitutional amendment, and I believe any alternative to a constitutional amendment is to continue down the road of excessive deficits in years to come.

What we need to do with the proposal of the Senator from Connecticut, I think, is attempt to support it in committee, to hold hearings and to get it out on the floor, to have a vote and see if we could implement this proposal.

For future growth we would know, as the Senator has pointed out so ably, exactly what new expenditures will cost us, and exactly how this is going to hurt from the standpoint of new taxes. Finally it will put some sanity into the expense side of Government.

But today, and tomorrow up until noon, we have before us a constitutional amendment that would mandate a balanced budget, and this is not the time to consider legislative alternatives.

The Senator from Connecticut is well-meaning and well-intended, but his legislative proposal is not appropriate to be substituted here for our constitutional amendment, and that is why the Senator from Arizona would have to oppose it at this time.

We have moved many, many steps toward the passage of Senate Joint Resolution 58 with the necessary votes in this body to send it to the other house almost in hand. I believe the amendment is clear, concise and it has been put together through a broad consensus of what is in the best interest of sound fiscal policy. It does not hamstring or prevent the Government from functioning but indeed requires that priorities be set and that greater consideration be given before the deficit expenditures continue.

I yield back the remainder of my time to the Senator from South Carolina.

Mr. THURMOND. Mr. President, I yield to the distinguished Senator from Utah the remainder of the time.

Mr. HATCH. Mr. President, I have also found the amendment of the distinguished Senator from Connecticut to be novel, interesting and, from the statutory standpoint, maybe something that should be looked into in the future.

But we feel that there must be an external force within the Constitution itself in order to get Congress to live within its means.

Mr. President, I think it is significant that some Senators have said this amendment is too tough and others that this amendment is not tough enough. The fact is that the more we look at this amendment the more we realize that the amendment contains the answers we need to balance the budget.

VOTE ON AMENDMENT NO. 2009

The PRESIDING OFFICER. All time has expired. Under the previous order, the question is on agreeing to the amendment numbered 2009 offered by the Senator from Connecticut (Mr. DODD). The yeas and nays have been ordered and the clerk will call the roll.

The legislative clerk called the roll.

Mr. BAKER. I announce that the Senator from Missouri (Mr. DANFORTH), the Senator from Alaska (Mr. STEVENS), and the Senator from Connecticut (Mr. WEICKER), are necessarily absent.

Mr. CRANSTON. I announce that the Senator from Ohio (Mr. GLENN) and the Senator from Colorado (Mr. HART) are necessarily absent.

The PRESIDING OFFICER (Mr. MATTINGLY). Are there any other Senators in the Chamber wishing to vote?

The result was announced—yeas 25, nays 70, as follows:

[Rollcall Vote No. 272 Leg.]

YEAS—25

Baucus	Inouye	Moynihan
Biden	Jackson	Pell
Bradley	Kennedy	Randolph
Bumpers	Leahy	Riegle
Cranston	Levin	Sarbanes
Dodd	Mathias	Specter
Eagleton	Matsunaga	Tsongas
Ford	Metzenbaum	
Gorton	Mitchell	

NAYS—70

Abdnor	East	Melcher
Andrews	Exon	Murkowski
Armstrong	Garn	Nickles
Baker	Goldwater	Nunn
Bentsen	Grassley	Packwood
Boren	Hatch	Percy
Boschwitz	Hatfield	Pressler
Brady	Hawkins	Proxmire
Burdick	Hayakawa	Pryor
Byrd, Harry F., Jr.	Heflin	Quayle
	Heinz	Roth
Byrd, Robert C.	Helms	Rudman
Cannon	Hollings	Sasser
Chafee	Huddleston	Schmitt
Chiles	Humphrey	Simpson
Cochran	Jepsen	Stafford
Cohen	Johnston	Stennis
D'Amato	Kassebaum	Symms
DeConcini	Kasten	Thurmond
Denton	Laxalt	Tower
Dixon	Long	Wallop
Dole	Lugar	Warner
Domenici	Mattingly	Zorinsky
Durenberger	McClure	

NOT VOTING—5

Danforth	Hart	Weicker
Glenn	Stevens	

So Mr. DODD's amendment (No. 2009) was rejected.

Mr. THURMOND. I move to reconsider the vote by which the amendment was rejected.

Mr. DECONCINI. I move to lay that motion on the table. The motion to lay on the table was agreed to.

AMENDMENT NO. 1931

Mr. DOMENICI. Mr. President, I regret that I must oppose the amendment offered by the distinguished senior Senator from Maryland, Senator MATHIAS, and the distinguished junior Senator from Montana, Senator BAUCUS. This amendment would adopt the provisions of Senate Joint Resolution 58 as a statute rather than incorporate them into the Constitution.

The coauthors of this amendment have presented an important issue to the Senate: Should the provisions of the proposed constitutional amendment be put into the Constitution now? Or, should we instead incorporate these provisions into a statute and test them further before deciding whether to put them in the Constitution?

On July 13 I spoke at some length here on the Senate floor about "pitfalls" which could impede accomplishment of the objectives of this amendment. The basic message I was trying to convey was this: There are numerous ways in which this amendment's objectives of limited government and a balanced budget could be subverted. It will take a lot of political will power and a great deal of hard work to reach

the goals to which this constitutional amendment is directed.

I also stated my view that Congress should quickly develop and begin testing procedures to implement the constitutional amendment—without waiting for State ratification to be completed.

Senators MATHIAS and BAUCUS would have the testing occur before a decision is made on whether to amend the Constitution.

I have concluded that I cannot support the conversion of this constitutional amendment into a statutory change. I have studied the proposed constitutional amendment very carefully and I am persuaded that, with the changes I offered and the Senate approved unanimously on July 27, the amendment should be adopted and included now in the Constitution.

Why is the amendment justified? Because the past 25 years have shown conclusively that, under the old ground rules, the Federal Government will no longer live within its means. I am sure those of our colleagues who were here in 1957—25 years ago—would have considered more than slightly deranged anyone who suggested that Federal revenues would increase by almost 700 percent over the next 25 years, that national defense spending would fall from 53 percent to 25 percent of the total Federal budget, but that the Federal budget would be balanced in only 2 of those 25 years. But those things are precisely what happened. Indeed, the budget is now unbalanced to the largest extent ever during peacetime. We have had extraordinary growth in revenues and we have had a drop in defense spending relative to GNP and the rest of the Federal budget. But we have had stupendous increases in nondefense spending and we have deficit financed more and more of that spending.

The bottom line for me is the conclusion that the old disciplines that produced balanced Federal budgets except in wartime and during economic depressions are no longer effective. We need a new source of discipline. Constitutional restraints are a way to help provide that discipline.

For these reasons I intend to vote against the pending Mathias-Baucus amendment.

I want to tell the sponsors of the amendment, however, that I believe they have rendered an important service. They have given the Senate a look at some of the issues Congress will face as it translates the principles of this constitutional amendment into implementing legislation and procedures.

I want to assure my two colleagues that the Budget Committee will look closely at their proposal as we begin the vital work of developing legislation to implement the constitutional amendment. I feel strongly that an implementing statute must be adopted within the next few months and that it must provide interim rules for Congress and the President to live under while State ratification is awaited. The work done by the authors of this amendment will be a considerable help in development of the implementing statute.

Mr. President, before we complete consideration of the amendment offered by Senators MATHIAS and BAUCUS, I would like to engage in a brief colloquy with the distinguished chairman of the Rules Committee.

The amendment of the Senator from Maryland provides a statutory basis for a balanced budget and is in the form of an amendment to the Congressional Budget Act of 1974.

Section 306 of the Budget Act provides that—

> No bill or amendment . . . dealing with any matter which is within the jurisdiction of the Committee on the Budget of either House shall be considered in that House unless it . . . has been reported by the Committee on the Budget of that House . . ."

A special order approved by the Senate on August 4, 1977, established procedures under which both the Budget and Governmental Affairs Committees have the opportunity to report their views and recommendations on any legislation affecting the budget process before it is considered by the Senate.

On July 13, when Senator MATHIAS offered the Mathias-Baucus amendment to Senate Joint Resolution 58, he asked unanimous consent to waive section 306 of the Budget Act so that the amendment could be considered without referral to the Budget or Governmental Affairs Committee.

I certainly agree that the Mathias-Baucus amendment is a proper matter for consideration during the debate of Senate Joint Resolution 58. I would have done everything in my power as chairman of the Budget Committee to expedite consideration of the amendment had it been referred to the Budget Committee. However, waivers of any section of the Budget Act are of considerable interest to members of the Budget Committee. I want to emphasize my strong preference that all proposed waivers should be cleared with the committee.

As I said in my remarks on July 13, I intend to hold a series of hearings on implementing legislation for the balanced budget amendment and other possible changes in the Congressional Budget Act. I want to assure the Senator from Maryland that if his amendment is not accepted as an amendment to Senate Joint Resolution 58 it will be considered as part of these hearings. Indeed, I urge all Senators with ideas on how the budget process can best be changed to submit their suggestions to the Budget Committee.

Mr. MATHIAS. Mr. President, I appreciate the remarks of the distinguished chairman. My own preference is for orderly procedure. My request to waive the requirements of section 306 of the Budget Act was necessary to meet the needs of the Senate for comprehensive debate on the constitutional amendment. I assure the chairman of the Budget Committee that I do not believe that waivers of the Budget Act should be routine, and I recognize the chairman's strong interest in all matters relating to the budget process. For that reason I asked the Senate's permission to offer my amendment, rather than ignore the provisions of the Budget Act as other Senators have done. I can understand the chairman's desire to limit the grant of the Senate's consent in connection with section 306, and I am in accord with his position in the ordinary course of business. But amending the Constitution of the United States is not ordinary business.

In any case, I want to thank the chairman of the Budget Committee for his invitation to appear before his committee when it considers the legislation necessary to implement this constitutional amendment and make other changes in the Budget Act. As the distinguished chairman of the Budget Committee knows, Senator Baucus and I currently have S. 526, the Fiscal Responsibilities Act of 1981, pending before his committee. I look forward to discussing ideas contained in that bill and several other ideas I have on changing the budget process.

● Mr. GRASSLEY. Mr. President, during the course of the extensive floor debate in which the Senate has been engaged, numerous alternatives to Senate Joint Resolution 58 have been proposed. The common characteristic of these proposals is that they would mandate a balanced budget by statute rather than by constitutional amendment. The proponents of the statutory alternative claim that these measures would achieve virtually the same result as the constitutional approach, while avoiding the delay, difficulty and policy constraints inherent in the amendatory process.

On July 13, 1982, Mr. Mathias offered his statutory alternative to Senate Joint Resolution 58, a proposal which in substance practically replicates the pending resolution. In advocacy of his alternative, the Senator stated,

> Before we amend our organic law, the Constitution, in a manner that seems likely to fail, or at least to require adjustment and tuning, let us do what we can do in a way that we can adjust and tune.

The Senator went on to say that,

> as a general rule, we should resort to the amendment procedures prescribed under Article V only when all other means of achieving a desired goal have been exhaustively explored and rejected.

In the ensuing debate I joined with my distinguished colleague from Virginia, Mr. HARRY F. BYRD, to remind Senators MATHIAS and BAUCUS that the Congress had not just "exhaustively explored" such a statutory approach, but had in fact previously enacted such legislation, Public Law 95-435, section 7. That law, enacted in 1979 reads,

Beginning with fiscal year 1981, the total budget outlays of the Federal Government shall not exceed its receipts.

Unfortunately, as Senator MATHIAS now seems to advocate, the Congress chose to "adjust and tune" that statute for which Senator BYRD and I so earnestly endeavored. The Congress simply passed the next budget resolution lacking any balanced budget stipulations. Since the succeeding statute has precedence over what was previously enacted, the Byrd-Grassley amendment was "adjusted and tuned" out of existence.

This example illustrates the real inadequacy of any statutory proposal to mandate a balanced budget. No matter what is embodied in the substance of such proposals, whether it be a 60 percent vote waiver as provided in the Mathias-Baucus proposal or a 100 percent vote waiver, these statutes may be overturned and nullified by a 51-percent vote of both Houses of Congress. This was the fate of the Byrd-Grassley statute. I submit that all other statutes, no matter how well constructed, will suffer the same unfortunate fate.

Therefore, Mr. President, I would urge my colleagues to reject the Mathias-Baucus proposal, and any others which would substitute a statute for the constitutional amendment proposed in Senate Joint Resolution 58. Too many of us have worked for too long to see our hopes dashed upon the rocks of the statutory approach once again.

I would suggest to Senators MATHIAS and BAUCUS, that if they were to offer this proposal as a supplement rather than as a substitute for Senate Joint Resolution 58 to be used in the interim during the ratification process that it would have my support, and I believe the support of the principal sponsors of this resolution. The statutory implementation of the procedural mechanism provided for in Senate Joint Resolution 58 would allow Congress an opportunity to develop the appropriate legislation that will be so crucial to the success of this effort. The proposal offered by Senators MATHIAS and BAUCUS might be a very effective trial balloon for the Congress to adapt to the spending regimen embodied by Senate Joint Resolution 58. If it is not wholly circumvented it could be of great success in expediting the intended results of the constitutional approach.●

Mr. KENNEDY. Mr. President, I am pleased to support this amendment to substitute a legislative mandate to balance the Federal budget for the proposed balanced budget constitutional amendment.

We can all agree that this country is in an economic crisis. But the proposed constitutional amendment to mandate a balanced Federal budget is an inappropriate response to the growing nationwide concern over the deterioration of our economy. Our Constitution works well because it contains only the basic freedoms and procedures necessary for the survival of our Republic. The Founding Fathers wisely excluded from the Constitution rules governing the financing of day-to-day Government operations. Federal budgeting is a complex, subtle, and evolving process that cannot and should not be constrained by an inflexible formula embodied in the Constitution.

The inclusion of the balanced budget amendment in the Constitution will erode this sacred foundation of our democracy. The terms included in the constitutional amendment are undefined and subject to varied and changing interpretations. There is not even agreement as to what the "budget" is. For example, at different times agencies such as the Export-Import Bank, have moved off of and back onto the budget. "Outlays" and "receipts" are also fluid concepts. For example, the refundable earned income tax credit for individuals is treated as an increase in outlays, while the tax break for Safe Harbor Leasing—which is a refundable tax credit for corporations—is treated as a reduction in revenues. Net lending may or may not be considered to be an outlay, and loan guarantees are not outlays.

The constitutional amendment would limit growth in revenues to the rate of increase in "national income" in the prior fiscal year. But what is "national income?" The bill's sponsors have admitted that national income is anything Congress says it is. The eminent economist, Paul Samuelson, in his classic text "Economics" gives us several definitions to choose from, including "overall annual flow of goods and services in an economy," "national product," "net national product," or "gross national product."

These definitions can have a large effect on the amount of revenues allowable under the amendment. In 1981, gross national product was $2,925 billion, net national product was $2,604, and national product was $2,347 billion—a difference of nearly $600 billion between the largest and smallest. Balancing the budget under the proposed amendment will require little more than skillfully playing a shell game of minimizing outlays by moving more and more items off budget or into tax expenditures, while at the same time maximizing revenues by selecting the most expansive definition of national income.

Sponsors of the constitutional amendment argue that the major terms in the amendment are undefined because of the need for "flexibility." This "flexibility" extends to the point that Congress may vote to ignore the constitutional amendment altogether. This charade demeans the Constitution. The flexibility needed to manage the Federal budget is a persuasive argument for keeping Federal fiscal policy where it has been for over 200 years—in legislation. The Baucus-Mathias amendment would strengthen existing law to require a balanced budget, and I support their approach.

A specific formula for balancing the Federal budget does not belong in the Constitution. The Constitution was never intended to enact Ronald Reagan's trickle down economics. Perhaps the most persuasive argument against the balanced budget constitutional amendment is the structure of the amendment itself. The amendment purports to require a balanced Federal budget. However, the loopholes in the measure are large enough to drive a $110 billion deficit through. If there is a declaration of war, Congress may waive the balanced budget requirement. Revenues may not increase by more than the rate of growth in national income for the previous year, unless a majority of both Houses approves additional receipts. Congress may not adopt a budget statement in which total outlays exceed total receipts, unless by a three-fifths majority, Congress votes to approve a deficit. The string of waivers and exceptions which the sponsors have adopted in an effort to make the round peg of economic theory fit into the square hole of the Constitution have made this amendment look like a Rube Goldberg invention. The amendment's sponsors have proved that limitations on Federal spending and revenues are much more appropriately the subject of legislation such as the Mathias/Baucus substitute amendment.

A particularly important feature of the Mathias/Baucus substitute is the requirement that all budget estimates be Congressional Budget Office figures. Our experience with this administration demonstrates the hopelessness of trying to balance the budget using figures supplied by the administration. In 1981, the administration promised us a balanced budget by 1985. Currently even the administration expects deficits of $73 billion in 1985, but CBO puts the shortfall much higher, at $110 to $115 billion. The administration has a penchant for underestimating outlays and overestimating receipts. Any effort to balance the Federal budget must begin with realistic estimates such as CBO can provide.

The case against a balanced budget constitutional amendment was eloquently presented in testimony by Prof. Laurence Tribe to the Judiciary Committee, and I ask unanimous consent that his testimony may be printed in the RECORD. I also ask consent that a message from the Committee on Constitutional Integrity which appeared in the New York Times and Washington Post on June 22, 1982, and which was signed by a group of constitutional scholars, eminent economists, and labor leaders, may be printed in the RECORD.

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

TESTIMONY OF LAURENCE H. TRIBE

I am honored by this Committee's invitation that I appear before it to shed whatever light I can as a constitutional scholar on the proposed Balanced Budget Amendment. The topic I have been asked to address is, of course, not whether that proposal is wise or foolish as a matter of policy, but, rather, what its adoption would do to the constitutional framework under which our Nation has spent nearly two remarkably successful centuries.

Chief Justice John Marshall set the stage for all such analyses when he wrote, in *McCulloch* v. *Maryland*, 17 U.S. (4 Wheat.) 316 (1819), that "we must never forget it is a *constitution* we are expounding"—"a constitution intended to endure for ages to come." *Id.* at 412. The Members of Congress are surely aware of how much is thus at stake in this controversy. Senator Gorton echoed John Marshall when he reminded his colleagues, in a debate on this proposal several days ago, "[w]e must keep very much in the forefront of our thoughts that it is the Constitution we are writing here." Cong. Rec. S9393 (July 29, 1982). Indeed, as we "sail into [these] uncharted seas," *id.* 9395, even the Senate Judiciary Committee Report in favor of the pending proposal concedes that "a proposed amendment may be inconsistent with the purpose and spirit" of the Constitution in its "object," or in its "form or structure." Report on S.J. Res. 58 (hereinafter, "Senate Report") at 30-31 (July 10, 1981).

That Committee concluded that S.J. Res. 58 is *not* inconsistent with the Constitution's "purpose and spirit." The question before this body is whether the Senate Judiciary Committee was right or whether, carefully assessed, the proposed amendment should be found constitutionally defective—not "unconstitutional," of course, but nonetheless unfit to become part of our most basic legal charter.

My own conclusion, after much study and reflection, is that the proposed amendment is profoundly ill-suited for inclusion in our Constitution—and that its defects may be demonstrated by reference to criteria to which I believe all of us, including the amendment's sponsors, are deeply committed.

1. *The Constitution should embody only fundamental law, not economic policy.*

Justice Holmes observed long ago that a Constitution, if it is to serve people of fundamentally differing views, cannot "embody a particular economic theory" or policy. *Lochner* v. *New York*, 198 U.S. 45, 75 (1904) (dissenting opinion). He recognized, as had Chief Justice Marshall before him, that the Constitution would endure as our fundamental law only if it left to the political branches the choice of "means by which the powers it confers may be executed." *McCulloch* v. *Maryland* 7 U.S. 316, 407 (1819). Senator Hatch, a leading proponent of the Balanced Budget Amendment, approvingly quoted my own views to the same effect just a few days ago. *See* "Budget Rule: Yes—Politicians Need It," N.Y. Times, July 16, 1982, p. A27, col. 4. And the Senate Report in favor of this amendment likewise conceded that no constitutional provision should "mandate [a] particular economic policy." Senate Report at 31; *see also id.* at 30 (quoting my work on this subject).

The proposed amendment, despite its sponsors' disclaimers, would do just that. Based expressly on the thesis that "most of the economic problems suffered by the nation in recent years are caused, in major part, by excessive government spending," Senate Report at 4 (*see also id.* at 32, 38, 40-41), the amendment is candidly defended by its supporters at least in part as representing "responsible economic policy." *Id.* at 4; *see also id.* at 25. The question is not whether we agree or disagree that our economic ills will be healed if budget deficits were curbed by requiring supermajority approval; that a balance of receipts and outlays could be sought annually rather than over longer periods; that such a balance should be achieved by reducing outlays rather than closing tax loopholes (*see* Part 9 *infra*); and that the current ratio of Federal receipts to national income should not be allowed to grow without stepping on special brakes that are not applicable if the ratio should ever start to fall.

Those views may or may not be sound ones—today or in the year 2000. But that they *do* rest on quite specific theories about the economy, and *do* embody concrete policies for dealing with economic matters, cannot be doubted. By freezing these particular theories and policies into the Constitution, the Balanced Budget Amendment thus flouts the first and most basic axiom of constitutional suitability.

2. *The Constitution should not be imprisoned in a maze of calculations.*

Although a few constitutional amendments specify such details as the dates on which particular terms of office expire (e.g., Amendment XX), none has ever reduced our basic charter of government to an algebraic exercise. Yet Section 2 of the proposed Balanced Budget Amendment—which forbids receipts set forth for any fiscal year to "increase by a rate greater than the rate of increase in National income in the year or years ending not less than six months nor more than twelve months before such fiscal year" (absent a special contrary vote)—is necessarily explained by the Senate Judiciary Committee in terms of a set of mathematical formulas. *See* Senate Report at 48-49.

Perhaps the time will come when our children, or theirs, will be so immersed in the world of computers and of electronic wizardry that no one will be shocked to find differential equations in a poem or in a constitutional principle. But that day, happily, is not yet upon us; in the world *we* still inhabit, the Constitution is no place for quantitative formulas. To encumber it with such alien notions is to trivialize its majesty, reduce its ability to address *all* Americans, and take a sad step toward a less humane society.

3. *A constitutional amendment should be a last resort: effective, and essential.*

All are agreed, in principle, that preserving the Constitution's special role precludes resort to an amendment whenever some less drastic remedy might suffice.

Proponents of the Balanced Budget Amendment assert that no remedy short of a constitutional change can curb the alleged impulse to overspend (hence Section 1's limit on deficits) or the supposed tendency to let revenues automatically rise with inflation (hence Section 2's antidote to "tax bracket creep"—*see* Senate Report at 8-9). But a simple tax-indexing statute would completely solve the latter problem (if it *is* a problem).

And, as to the alleged impulse to overspend, the remarkable thing is that nothing in the proposed amendment would create any new method for resisting the precise pressures supposedly causing excessive appropriations. For one thing, the amendment's sponsors concede that none of its provisions requires Congress or the Executive to take any action if "actual receipts . . . fall below planned receipts," Senate Report at 48; *id.* at 75. The only safeguard against a budget that *looks* "balanced" solely because Congress adopts an unrealistically rosy estimate of receipts prior to the fiscal year (*see also* Part 4 *infra*) turns out to be Congress' posited desire "to act reasonably." *Id.* at 45. So much for the proponents' theory that this desire will "inexorably" be overcome by pressures from prospending groups! *See id.* at 3.

Equally telling, nothing in the Amendment puts Members of Congress under any new obligation to accompany specific votes for increased spending on particular programs with corresponding votes either to cut other spending programs or to impose increased taxes—the very obligation the amendment's sponsors suggest we *must* impose if we are ever to overcome the system's pro-spending bias. *See* Senate Report at 7-9, 28-31, 74. Although Section 1 insists that Congress and the President use their powers to "ensure that actual outlays" *for the fiscal year as a whole* "not exceed the outlays set forth in [the] statement" voted before the fiscal year began, this provision would not even be triggered until total outlays actually went over the top. And, even at that point, all the proposed amendment would require in order to make still further outlays lawful is enough votes in favor of a deficit—*not* votes that, according to the sponsor's own theory, will be deterred by incurring any disfavor among competing spending interests, or among taxpayers. *Id.* at 7.

No contitutional amendment is needed to require that those who favor deficits beyond a stated point go on record by voting to increase the statutory debt ceiling: it is not greater *accountability*, but a greater *substantive* tilt against deficits, that the three-fifths vote requirement seeks to impose. But that tilt, as will later be explained (*see* Part 5 *infra*), could well boomerang, and in any event has not been shown to require a *constitutional* change. By the sponsors' own admission, after all, a shared norm against deficit spending held the federal budget in satisfactory check from 1789 to 1932. *See* Senate Report at 19, 25-26, 32. If such an "unwritten Constitution," *id.*, sufficed for all those years, then the solution is to re-instill the attitudes that made it work—not to restructure our fundamental law as a shortcut substitute for such persuasion.

4. *The Constitution should not pretend to command what it cannot control.*

Reflecting its sponsors' belief that excessive spending and taxation trace to causes "sown in the nature of man," Senate Report

at 27, the proposed amendment decrees a norm of budgetary balance and of limited tax revenue growth as though deviations from that norm were attributable to defects of will power that "the new Constitution" could overcome with its special voting rules. *Id.* In fact, however, outlays may rise to unplanned levels because natural disasters, foreign crises, or domestic needs suddenly demand unexpected levels of federal resources; and revenues may either fall because of unexpected recessionary trends or rise because of equally unexpected economic improvements.

To the degree that currently irresistable pressures from constitutents are instead to blame for overspending and overtaxing, the Amendment in its current form not only fails to cope with the phenomenon's asserted cause (*see* Part 3 *supra*) but also invites uncontrolled circumvention—through congressional actions (a) "passing on new, unreimbursed costs to the States," Senate Report at 11; *id.* at 52 (asserting that a ban on any such pass-through, now deleted from the amendment, would be needed to plug this major loophole);[1] or (b) establishing new entities under federal charter with implicit taxing and spending powers, *id.* at 60; or (c) imposing new regulatory burdens on selected private, quasi-private, or quasi-public enterprises, *id.* at 77; or (d) using loan guarantees that do not count as "outlays" until a later year, *id.; cf. id.* at 7 (deferring the cost of spending measures seen as device for avoiding fiscal responsibility); or (e) simply overestimating receipts in order to include desired programs in the budget without *projecting* any deficit at the start of the fiscal year. *Id.* at 45. *See* part 3 *supra*.

Although some sophisticated readers of the Amendment will see through any pretense that it can actually deliver fiscal restraint in the face of all these forces and options, the Amendment's message to the general public—the only message that could account for its appeal—is a bogus promise of reduced spending and taxation, a promise the Amendment simply cannot keep.

5. *The Constitution should not empower minorities to block majority choices until satisfied with the majority's political or fiscal concessions.*

Our Constitution's deep commitment to majority rule has been abandoned in the past only to protect individual and minority *rights*, or to check the executive (as through requiring super-majority approval of treaties)—not to enhance the political leverage of the few over the many.

Yet the proposed amendment does just that when it empowers 41% of either House to block what may be crucial outlays. *See* Senate Report at 82 (Sen. Specter). The ironic result could well be *higher*, not lower, deficits. For the combined cost of all the pet programs that the majority may have to fund in order to win the minority votes needed in order to reach 60% approval of deficit spending could well be considerable—even greater, perhaps, than the size of the deficit for which the 60% vote was needed.

It is the worst sort of double-think to claim, as some of the Amendment's sponsors do, that such a scheme for giving minorities a lever with which to exact a fiscal premium from the majority would "make the budget process . . . more democratic." Senate Report at 28 (sic). In truth, and whatever motives would animate those in the minority who would be given this new leverage, the scheme is *the very antithesis of democracy*, and expresses instead a cynical mistrust of representative government.

6. *Constitutional provisions should not nurture an Imperial Executive.*

The amendment's sponsors seem united in their belief that their proposal would not resurrect the dreaded impoundment power asserted by several past Presidents. (*See, e.g.,* Cong. Rec. S9398 (Sen. Gorton), July 29, 1982; *Id.* at S9403 (Sen. Hatch); *id.* at S9406 (Sen. Thurmond)). *See also* Senate Report at 61.

Yet if outlays begin to exceed those projected at the start of the fiscal year, Section 1 requires, among other things, that "the President, . . . through exercise of [his] powers under [Art. II], ensure that actual outlays . . . not exceed" those projected. On the face of it, this constitutional command would seem to override any merely statutory limit on executive impoundment authority, such as that of the 1974 Impoundment Act. And if the President concludes that *only* impoundment, decreed pursuant to his Article II powers as Chief Executive, can meet this duties under the new Amendment, then such an act—involving a refusal to spend appropriated funds on *whichever programs the President chooses to designate as the causes of excessive total outlays*—could well be deemed authorized by the proposed Amendment. *See, e.g.,* Cong. Rec. S9398 (Sen. DeConcini).

Despite the sponsors' contrary wishes, therefore, the Amendment creates a grave risk of swelling executive power in ways all agree would be extremely dangerous.

7. *Constitutional provisions should not foster an Imperial Judiciary.*

Constitutional provisions affirmatively empowering government action, and those securing specified individual rights against government, may be judicially enforced without necessarily requiring assertions of judicial power to manage the fiscal operations of government. Judicial enforcement of the proposed Balanced Budget Amendment, in contrast, would necessarily plunge judges into the heart of the taxing, spending, and budgetary process. As Senator Gorton put it in the other chamber several days ago, this "threat that we are vastly increasing the power of the Judiciary—that we are inviting the Judiciary into the business of writing budgets for the people of the United States—is a threat [even] more grave than [that] of . . . Presidential impoundment . . .," Cong. Rec. S9393 (July 29, 1982). He noted the "paradox . . . that a number of Members who have most fiercely opposed the intervention of the judiciary into [busing, prayer, and other "social issues"] should not have proposed an amendment which is likely . . . to add to the legislative authority of the Federal courts." *Id.*

The Senate nonetheless defeated Senator Gorton's proposed limit on judicial review under the Balanced Budget Amendment—a narrow limit, at that [2]—by a vote of 51 to 45. Cong. Rec. S9407 (July 29, 1982). Before that vote, Senator Heflin had noted that not even the Gorton Amendment could keep "State courts from getting involved." *Id.* at S9400-01. Senator Hatch had expressed the view that, if "Congress itself ignores" the Balanced Budget Amendment, "Members of Congress would"—and should—"have standing [on the basis of] being foreclosed from performing their duties as Members of that body," leading to what "may [be] a justiciable issue." *Id.* at 9404.[3] Senator Hatch opposed the Gorton Amendment because it could change all that. Senator Thurmond had expressed fear that the Gorton Amendment could also "have the unfortunate effect of precluding a legitimate lawsuit by a citizen with judicial standing who wants to challenge the constitutionality of the failure to Congress to obey the provisions of Senate Joint Resolution 58." *Id.* at 9406. Without an explicit limit on judicial review, the Senate was reminded, would-be recipients of outlays halted pursuant to the Balanced Budget Amendment could surely go to court to challenge any such cut-off. *See* Cong. Rec. S9405 (Sen. Bumpers); and federal taxpayers claiming that Congress was raising and spending taxes in violation of the new Amendment's express restrictions on the spending and taxing powers of Congress could certainly obtain standing under *Flast* v. *Cohen*, 392 U.S. 83, 103-04 (1968). *See* Cong. Rec. at S9394 (Sen. Gorton). In the face of Senator Bumpers' unrebutted suggestion that defeat of the Gorton Amendment would virtually assure a degree of judicial intrusion well beyond that contemplated by the Senate Report (at 62-66), *see* Cong. Rec. at S9405, the Senate defeated the Gorton alternative.

The dilemma for the sponsors of the Balanced Budget Amendment is an enormous one. If it were indeed as "self-enforing and self-monitoring" as they assert, Senate Report at 66, then the need for it—a need premised entirely upon the supposed necessity of "external constraint," *id.* at 42, 75—would vanish. If, as seems more plausible, it is *not* meaningfully "self-enforicing," *see* Parts 3 & 4 *supra*, then there is no way to make it work without compelling the judiciary to take on the task of budget-master, creating evils at least as great as those the budget-balancers hope to solve.

8. *The Constitution should not be used to stack the political deck against identifiable groups.*

It is easy to see why the Senate Report in favor of the proposed amendment should have found it necessary to defend the proposal by asserting that it contains "nothing that would make it significantly more diffi-

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[1] Nothing in current constitutional law, of course, prevents federal regulations from imposing federally unreimbursed burdens on states and localities—whether indirectly, as in *Hodel* v. *Virginia Surface Mining & Reclamation Ass'n., Inc.*, 452 U.S. 214 (1981) (upholding "steep-slope" provisions of Surface Mining Control and Reclamation Act; *National League of Cities* v. *Usery*, 425 U.S. 833 (1976), inapplicable where private businesses being regulated), or directly, as in *Federal Energy Regulatory Comm'n.* v. *Mississippi*, 102 S.Ct. 126, 2141-42 n.30 (1982) (upholding federal Public Utility Regulatory Policies Act as applied to compel state public utility commissions to consider specific rate-making standards in accord with federally mandated procedures; *National League of Cities* leaves Congress free to impose any conditions it sees fit even on state regulation *as such* in a federally preemptible field); and on state or city-run enterprises, as in *United Transp. Union* v. *Long Island R. Co.*, 102 S.Ct. 1349 (1982) (upholding federal Railway Labor Act as applied to state-owned railroad; *National League of Cities* wholly inapplicable to such state enterprises). The Senate Report's reliance on prior Supreme Court cases to suggest the contrary *see* Senate Report at 52, is demonstrably incorrect.

[2] The limit would have stated: "The judicial power of the United States shall not extend to any case or controversy arising under this article, except for cases or controversies seeking to define the terms used herein, or directed exclusively at implementing legislation adopted pursuant to section 5."

[3] *See, e.g., Goldwater* v. *Carter*, 444 U.S. 996 (1979) (per curiam); *Coleman* v. *Miller*, 307 U.S. 433, 438, 441 (1939); *Kennedy* v. *Sampson*, 511 F. 2d 430 (D.C. Cir. 1974).

cult to *increase* expenditures or taxation than to *reduce* expenditures or taxation." Senate Report at 28 (emphasis added). With all respect, that *has* to be nonsense if the proposed amendment is to achieve anything at all. Its entire premise, after all, is that the existing system's asserted bias toward more spending and taxation than most people "really" want, *id.* at 4-6, 27-28, needs structural correction.

But even if one were to accept as true the claimed existence of some such bias, the Balance Budget Amendment would still be conspicuously *unbalanced* in choosing to address *that* "bias" while saying and doing absolutely nothing about the corresponding bias in the *opposite* direction—the bias against spending *enough* on interests that are themselves too dispersed, too inchoate, or too voiceless (future generations in need of current capital investment, for example) to compete effectively with the groups favoring tax and spending limits *now*.

This bias, and not that ostensibly addressed by the Balanced Budget Amendment, is the one that is most closely analogous to the skew introduced "by the existence of the poll tax or the inability of eighteen-year-olds to vote." Senate Report at 31. Particularly given Section 2's one-way ratchet against federal spending that grows *faster* than national income, but not against federal spending that grows *slower* than either national income *or* national needs, the Balanced Budget Amendment "necessarily means . . . a restriction on national social policies that protect the poor, the aged and the underrepresented." B. Marshall, "Budget Rule: No," N.Y. Times, July 16, 1982, p. A27, col. 2. *See also* Part 9 *infra*. Anything *but* "balanced," the Amendment's pretense at neutrality thus belies even its modest claim to making the "process . . . a more honest and open" one. Senate Report at 29.

9. *The Constitution should not be used to build tax shelters into the foundation of our legal system.*

Even within its own slanted ambit, and disregarding the way in which its very selection of problems to attack unfairly skews the political deck (*see* Part 8 *supra*), the Balanced Budget Amendment uniquely shelters the rich and powerful. For it conspicuously restrains only those amounts the Federal Government *collects* ("receipts"), and controls only the deficit gap between such amounts and the amounts the Federal Government *disburses* ("outlays"). *See* Senate Report at 45-48, 53-60.

Wholly excluded from this balance sheet are the tens (perhaps hundreds) of billions of dollars that never even *enter* the picture painted by the Amendment inasmuch as special tax loopholes, in the form of sheltered leasing arrangements or other indirect subsidies for the wealthy, have saved the rich even the trouble of rounding up annual votes in Congress for such implicit "outlays" in their favor. These groups evidently do not count as "spending interests," Senate Report at 6, that the Amendment's sponsors deem to be in need of restraint—but they are no less "intense and passionate," *id.*, and are no less successful in prescrving their prerogatives at the expense of the U.S. Treasury—and all the rest of us.

The Balanced Budget Amendment is not, of course, responsible for the original existence of such tax subsidies—which many classify as "tax expenditures." But the Amendment *would* be responsible for giving such subsidies a constitutionally privileged and deeply entrenched status. They would be uniquely exempt from the Amendment's obstacles to spending. And, difficult as such tax shelters are to dislodge *now*, imagine the difficulty of insisting that they be replaced with direct subsidies and then debated as such in the annual appropriations process once the Balanced Budget Amendment had made it clear that any such shift would suddenly transfer these tax subsidies into the Amendment's arena of mandated "competition among the spending interests," Senate Report at 9, an arena that tax subsidies and shelters could otherwise continue to avoid altogether.

Indeed, Section 2 of the proposed Amendment would directly limit all moves to close tax loopholes inasmuch as such efforts, of course, create added "receipts" for the Federal Government and would thus count toward Section 2's constraint on the rate at which such receipts may grow without a special vote of Congress. By arbitrarily treating the elimination of each tax shelter as causing an increase in receipts rather than a reduction in outlays (contrast the elimination of social programs), the Balanced Budget Amendment doubly handicaps all attempts to enhance tax equity as a means of simultaneously reducing deficits and increasing fairness. Whatever one may say of any such strategy as a matter of policy, it seems unthinkable that it should be enshrined in the Constitution.

Among its most pernicious and least noticed defects as a candidate for inclusion in the Constitution, therefore, is the Balanced Budget Amendment's unwarranted treatment of certain privileged beneficiaries of the Treasury as "more equal than others," and its hidden creation of a massive new disincentive to, and limit upon, effective tax reform.

10. *We must not "constitutionalize unto others" what we would not have them "constitutionalize unto us."*

One fair and final test of whether the proposed Amendment makes genuine sense, or is instead popular mostly because of the political benefits that come with being counted among its supporters, is whether those who favor the Amendment would be willing to subject themselves to the rigors it proclaims.

For the President and the Congess that are busily voting the highest deficits ever to go on record as favoring constitutional limits on similar conduct by their successors—starting "the second fiscal year" after the Amendment's ratification (Sec. 6)—at least suggests, in George Will's terms, that "current incumbents" are merely "strik[ing] a pose with an amendment that might be, in practice, 98 percent loophole" unless attitudes change so substantially as to make "the amendment . . . beside the point." Boston Globe, p. 83, col. 3 (July 25, 1982).

The refrain, "Stop me before I tax again!", reminds one of nothing quite so much as St. Augustine's famous prayer: "Oh Lord, save me from sin . . . but not just yet." If there were to be a Golden Rule of Constitutional Amendments, this proposed amendment, it seems, would violate it.

CONCLUSION

All ten criteria that a proposed amendment should surely have to meet—criteria of very general applicability with which I believe even this Amendment's sponsors could hardly disagree—therefore reveal the Balanced Budget Amendment to be unworthy of our Constitution.

Unless the Amendment's advocates show these criteria to be flawed—unless they successfully attack these "ten commandments" of the amendment process—their proposal can be accepted only if its failure to meet even *one* of these criteria can be convincingly refuted. Because it is our *Constitution* that we are, indeed, talking of amending, we simply cannot afford to proceed in the face of such grave, and thus far unanswered, constitutional objections.

[From the New York Times and Washington Post, June 22, 1982]

A CONSTITUTION SHOULD NOT EMBODY ECONOMIC THEORY

We, the undersigned, urge Congress to reject the proposed amendment to the Constitution which would require the federal budget to be balanced each year. We agree with the rule laid down decades ago by Justice Holmes, who said: "A constitution is not intended to embody a particular economic theory." Among our reasons for this position are these:

The proposed amendment would restrict the ability of the President and Congress to respond to a domestic economic crisis with an appropriate mix of fiscal and monetary policies.

The proposed amendment would leave little or no discretion for the President or Congress to increase spending for national security needs short of war.

The proposed amendment assumes that budget planning is an exact science when all recent experience shows that there are many uncontrollable forces which affect federal revenues and expenditures.

The proposed amendment would commit future Presidents and Congress to an economic policy which appears to be suitable at one particular time and may not be appropriate at another.

We agree on the goal of achieving a balanced budget, but this goal can be reached on the basis of economic cycles and not on the basis of an arbitrary, short time limit. This does not imply that we are in agreement on an appropriate level of federal spending or federal deficit at any particular time.

We urge all Americans to ask their senators and congressional representatives to oppose Senate Joint Resolution 58 and House Joint Resolution 350, which propose an amendment to the Constitution to require a balanced federal budget.

VOTE ON AMENDMENT NO. 1931

The PRESIDING OFFICER. The question now is on agreeing to the amendment of the Senator from Maryland (Mr. MATHIAS) numbered 1931. Under the previous order, there will be a 10-minute vote. The yeas and nays have been ordered. The clerk will call the roll.

The bill clerk called the roll.

Mr. BAKER. I announce that the Senator from Missouri (Mr. DANFORTH), the Senator from Alaska (Mr. STEVENS), and the Senator from Connecticut (Mr. WEICKER), are necessarily absent.

Mr. CRANSTON. I announce that the Senator from Ohio (Mr. GLENN), and the Senator from Colorado (Mr. HART), are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber wishing to vote?

The result was announced—yeas 28, nays 67 as follows:

[Rollcall Vote No. 273 Leg.]

YEAS—28

Baucus	Gorton	Mitchell
Biden	Inouye	Moynihan
Boschwitz	Jackson	Pell
Bradley	Kassebaum	Randolph
Bumpers	Kennedy	Rudman
Cohen	Leahy	Sarbanes
Cranston	Levin	Specter
Dodd	Mathias	Tsongas
Eagleton	Matsunaga	
Ford	Metzenbaum	

NAYS—67

Abdnor	Exon	Murkowski
Andrews	Garn	Nickles
Armstrong	Goldwater	Nunn
Baker	Grassley	Packwood
Bentsen	Hatch	Percy
Boren	Hatfield	Pressler
Brady	Hawkins	Proxmire
Burdick	Hayakawa	Pryor
Byrd, Harry F., Jr.	Heflin	Quayle
	Heinz	Riegle
Byrd, Robert C.	Helms	Roth
Cannon	Hollings	Sasser
Chafee	Huddleston	Schmitt
Chiles	Humphrey	Simpson
Cochran	Jepsen	Stafford
D'Amato	Johnston	Stennis
DeConcini	Kasten	Symms
Denton	Laxalt	Thurmond
Dixon	Long	Tower
Dole	Lugar	Wallop
Domenici	Mattingly	Warner
Durenberger	McClure	Zorinsky
East	Melcher	

NOT VOTING—5

Danforth	Hart	Weicker
Glenn	Stevens	

So the amendment (No. 1931) was rejected.

Mr. THURMOND. Mr. President, I move to reconsider the vote by which the amendment was rejected.

Mr. DECONCINI. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

VOTE ON AMENDMENT NO. 1928

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from New York (Mr. MOYNIHAN), No. 1928, as modified. On this question the yeas and nays have been ordered, and the clerk will call the roll. Under the previous order, this will be a 10-minute rollcall.

The legislative clerk called the roll.

Mr. BAKER. I announce that the Senator from Missouri (Mr. DANFORTH), the Senator from Alaska (Mr. STEVENS), and the Senator from Connecticut (Mr. WEICKER) are necessarily absent.

Mr. CRANSTON. I announce that the Senator from Ohio (Mr. GLENN) and the Senator from Colorado (Mr. HART) are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 12, nays 83, as follows:

[Rollcall Vote No. 274 Leg.]

YEAS—12

Byrd, Robert C.	Inouye	Moynihan
Cranston	Jackson	Pell
Dodd	Kennedy	Sarbanes
Eagleton	Matsunaga	Tsongas

NAYS—83

Abdnor	Exon	Melcher
Andrews	Ford	Metzenbaum
Armstrong	Garn	Mitchell
Baker	Goldwater	Murkowski
Baucus	Gorton	Nickles
Bentsen	Grassley	Nunn
Biden	Hatch	Packwood
Boren	Hatfield	Percy
Boschwitz	Hawkins	Pressler
Bradley	Hayakawa	Proxmire
Brady	Heflin	Pryor
Bumpers	Heinz	Quayle
Burdick	Helms	Randolph
Byrd, Harry F., Jr.	Hollings	Riegle
	Huddleston	Roth
Cannon	Humphrey	Rudman
Chafee	Jepsen	Sasser
Chiles	Johnston	Schmitt
Cochran	Kassebaum	Simpson
Cohen	Kasten	Specter
D'Amato	Laxalt	Stafford
DeConcini	Leahy	Stennis
Denton	Levin	Symms
Dixon	Long	Thurmond
Dole	Lugar	Tower
Domenici	Mathias	Wallop
Durenberger	Mattingly	Warner
East	McClure	Zorinsky

NOT VOTING—5

Danforth	Hart	Weicker
Glenn	Stevens	

So Mr. MOYNIHAN's amendment (No. 1928) as modified, was rejected.

Mr. THURMOND. Mr. President, I move to reconsider the vote by which the amendment was rejected.

Mr. BAKER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. BAKER. Mr. President, I ask unanimous consent to proceed for 15 seconds.

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

Mr. BAKER. Mr. President, if I could have the attention of Senators, these will be 10-minute rollcalls, and I urge Senators to remain on the floor. There are two more rollcalls back-to-back. After that we have caucuses on both sides of the aisle, so I urge Senators to remain on the floor so that we can do these next two rollcalls promptly.

VOTE ON AMENDMENT NO. 1996

The PRESIDING OFFICER. The question is on agreeing to the amendment (No. 1996) of the Senator from California (Mr. CRANSTON). This will also be a 10-minute rollcall. The yeas and nays have been ordered,

Mr. BAKER. I announce that the Senator from Missouri (Mr. DANFORTH), the Senator from Alaska (Mr. STEVENS). and the Senator from Connecticut (Mr. WEICKER), are necessarily absent.

Mr. CRANSTON. I announce that the Senator from Ohio (Mr. GLENN), the Senator from Colorado (Mr. HART), and the Senator from Mississippi (Mr. STENNIS), are necessarily absent.

The PRESIDING OFFICER (Mr. HAYAKAWA). Are there any other Senators in the Chamber wishing to vote?

The result was announced—yeas 36, nays 58, as follows:

[Rollcall Vote No. 275 Leg.]

YEAS—36

Andrews	Ford	Matsunaga
Bentsen	Heflin	Metzenbaum
Biden	Hollings	Mitchell
Bradley	Huddleston	Moynihan
Burdick	Inouye	Pell
Byrd, Robert C.	Jackson	Pryor
Cannon	Johnston	Randolph
Cranston	Kennedy	Riegle
Dixon	Leahy	Sarbanes
Dodd	Levin	Sasser
Eagleton	Long	Tsongas
Exon	Mathias	Zorinsky

NAYS—58

Abdnor	East	Murkowski
Armstrong	Garn	Nickles
Baker	Goldwater	Nunn
Baucus	Gorton	Packwood
Boren	Grassley	Percy
Boschwitz	Hatch	Pressler
Brady	Hatfield	Proxmire
Bumpers	Hawkins	Quayle
Byrd, Harry F., Jr.	Hayakawa	Roth
	Heinz	Rudman
Chafee	Helms	Schmitt
Chiles	Humphrey	Simpson
Cochran	Jepsen	Specter
Cohen	Kassebaum	Stafford
D'Amato	Kasten	Symms
DeConcini	Laxalt	Thurmond
Denton	Lugar	Tower
Dole	Mattingly	Wallop
Domenici	McClure	Warner
Durenberger	Melcher	

NOT VOTING—6

Danforth	Hart	Stevens
Glenn	Stennis	Weicker

So Mr. CRANSTON's amendment (No. 1996) was rejected.

Mr. THURMOND. Mr. President, I move to reconsider the vote by which the amendment was rejected.

Mr. DECONCINI. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

VOTE ON AMENDMENT NO. 1989

The PRESIDING OFFICER. The question is on agreeing to the Cranston amendment No. 1989. Under the previous order, this will be a 10-minute rollcall. The yeas and nays have been ordered and the clerk will call the roll.

The bill clerk called the roll.

Mr. BAKER. I announce that the Senator from Missouri (Mr. DANFORTH), the Senator from Alaska (Mr. STEVENS), and the Senator from Connecticut (Mr. WEICKER), are necessarily absent.

Mr. CRANSTON. I announce that the Senator from Ohio (Mr. GLENN), the Senator from Colorado (Mr. HART), and the Senator from Mississippi (Mr. STENNIS), are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 18, nays 76, as follows:

[Rollcall Vote No. 276 Leg.]

YEAS—18

Bradley	Jackson	Moynihan
Byrd, Robert C.	Kennedy	Pell
Chafee	Leahy	Randolph
Cranston	Levin	Riegle
Eagleton	Matsunaga	Sarbanes
Inouye	Mitchell	Tsongas

NAYS—76

Abdnor	East	McClure
Andrews	Exon	Melcher
Armstrong	Ford	Metzenbaum
Baker	Garn	Murkowski
Baucus	Goldwater	Nickles
Bentsen	Gorton	Nunn
Biden	Grassley	Packwood
Boren	Hatch	Percy
Boschwitz	Hatfield	Pressler
Brady	Hawkins	Proxmire
Bumpers	Hayakawa	Pryor
Burdick	Heflin	Quayle
Byrd, Harry F., Jr.	Heinz	Roth
	Helms	Rudman
Cannon	Hollings	Sasser
Chiles	Huddleston	Schmitt
Cochran	Humphrey	Simpson
Cohen	Jepsen	Specter
D'Amato	Johnston	Stafford
DeConcini	Kassebaum	Symms
Denton	Kasten	Thurmond
Dixon	Laxalt	Tower
Dodd	Long	Wallop
Dole	Lugar	Warner
Domenici	Mathias	Zorinsky
Durenberger	Mattingly	

NOT VOTING—6

Danforth	Hart	Stevens
Glenn	Stennis	Weicker

So Mr. CRANSTON's amendment (No. 1989) was rejected.

Mr. THURMOND. Mr. President, I move to reconsider the vote by which the amendment was rejected.

Mr. BAKER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. BAKER. Mr. President, am I correct in saying now that the Senate will resume consideration of the Armstrong amendment?

The PRESIDING OFFICER. The Senator is correct.

RECESS UNTIL 2 P.M.

Mr. BAKER. Mr. President, ordinarily, on Tuesday, the Senate has recessed from 12 o'clock until 2 o'clock in order to accommodate the requirement that Members on both sides of the aisle attend official caucuses. We have encroached on that by almost 30 minutes, but I have done so with the concurrence, I believe, of the minority leader.

Mr. President, I ask unanimous consent that the Senate stand in recess from this moment until 2 p.m. today.

There being no objection, the Senate, at 12:27 p.m., recessed until 2 p.m.; whereupon, the Senate reconvened when called to order by the Presiding Officer (Mr. HEINZ).

Mr. THURMOND. Mr. President, we are ready to proceed with anyone who has an amendment. I believe the Senator from Colorado was supposed to be up next. I do not see him in the Chamber. We are ready to go. I suggest he be notified so he can come to the Chamber.

In the meantime, I suggest the absence of a quorum until he gets here, the time to be charged equally.

The PRESIDING OFFICER. The Chair states that the Armstrong-Boren amendment is the pending business of the Senate.

Mr. THURMOND. Mr. President, I do not see the Senator in the Chamber now. I suggest the absence of a quorum to give him an opportunity to get here. I ask unanimous consent that the time be charged equally to both sides.

The PRESIDING OFFICER. Is there objection? The Chair hears none.

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. Does the Senator wish me to yield him time or does he have other arrangements,

Mr. HOLLINGS. Mr. President. I had arranged with the distinguished minority manager, the Senator from Arizona.

Mr. DECONCINI. Mr. President, I yield 15 minutes to the Senator from South Carolina.

Mr. HOLLINGS. I thank both of my distinguished colleagues.

Mr. President, I speak from experience. I have worked to balance the Federal budget—and in 1968 we succeeded. In a conference with George Mahon and the House Members in December of that year, we called Marvin Watson, received President Johnson's approval to cut $5 billion in spending, and obtained a balanced budget. At the State level as Governor, I wrestled with a constitutional provision (article 10, section 2, South Carolina constitution of 1895) which required that expenditures never exceed expected revenues. For many of the 50 years that this provision was in effect, the State of South Carolina's budget ran in the red. In 1949, I suggested a rule in the State house of representatives that on second reading, all appropriations bills should be accompanied with a certificate from the State auditor that expenditures were within the expected revenues or the bill would be automatically referred back to the committee. But the budgets continued in the red. When I took over as Governor in 1959, I submitted a proposal to increase taxes, pay the deficit, and stabilize our fiscal policy. The budget was balanced and for the first time, the bonds of South Carolina received a triple A credit rating.

We have maintained that rating since—not because of the constitution but because of the fiscal discipline reflected in our general assembly or legislative branch. Unless and until we can develop such a discipline in the National Congress, we will never balance our budget—the Constitution to the contrary notwithstanding. Perhaps the provision will assist in developing that discipline and for that reason, I shall vote for it. But it is misleading to think that it can supplant the discipline, or actually balance the budget. It is not a governor on the fiscal engine. It will not control the speed. The best that it can do is serve as a speedometer, a reminder, if you please, when we are speeding. But in no way can it control the speed.

As Senators and Congressmen, controlling the speed is our job. It always will be. It cannot be finessed. It cannot be blamed on the lack of a law. It can only be blamed on the lack of political will. As Felix Rohatyn, the distinguished financier who led the recovery of the city of New York stated, a similar provision in the city's charter "controlled nothing until the money ran out."

Most of the impassioned pleas on both sides are pure nonsense. The constitutional provision will accomplish neither what its proponents or opponents contend. It will not put algebra into the Constitution; it will not throw us into a depression. The article itself provides that a vote of 60 Senators can disregard it. Since January, we have voted 277 times in the U.S. Senate and 164 of those votes have been decided by majorities of 60 Senators or more.

The danger of this measure is one of false hope. We revere our Constitution. We feel that it can and must control. But as in the case of equal justice, economic balance will be difficult, and the bizarre appearance by the Nation's President on the Capitol steps inferring that this constitutional provision will require fiscal prudence is pure deception. The President comes about this honestly. He has been deceiving himself for years. The President tells us that for years we have been on a binge of tax and tax and spend and spend. He is right about the spending. But we started slowing down before he came to Washington. The fact is that the first spending cut or reconciliation bill was signed by President Carter. President Reagan is dead wrong about the taxes. In the 16 years that I have been in the Senate, I have never even had the opportunity of voting for a general tax increase until the Reagan-Dole proposal 2 weeks ago. In fact, prior to the Reagan revenue hemorrhage of last year, I voted for seven tax cuts amounting to a loss of revenue during the last decade of over $1 trillion. If the President had waited for the supply side tax cuts for business to take effect and then phased in the individual tax cuts—the way they did it in the 1960's—it might have worked. It was not mistakes of the past or problems that we inherited that got us into this trouble. It was the President's greedy grab of August last year.

He wanted too much all at once. The economic collapse that we are now experiencing was totally unnecessary. It was conceived by Kemp-Roth, passed

by Kemp-Roth and Reagan, and signed by President Reagan.

Last year, when the President presented his budget, he promised dramatic economic growth and a decline in budget deficits. In fiscal 1982, the budget deficit would be $45 billion. In fiscal 1983, the budget deficit would be $22.9 billion. In fiscal 1984, a virtual budget balance would be achieved. In fiscal 1985, the Nation would boast a budget surplus of $6.9 billion. Instead this past week, both the Congressional Budget Office and the Federal Reserve have predicted deficits of $150 billion for each of the next 3 years. Even Secretary Baldrige of Commerce agrees with this prediction. Last year, the President asked for $133.7 billion in spending cuts and the Congress gave him $135.1 billion. In August last year, the President asked for $750 billion in tax cuts and the Congress gave him $750 billion in tax cuts.

This year, the President astounded the Congress in February when he presented his budget calling for a $132 billion deficit for fiscal 1983. Senator LAXALT called the President's projected deficit "numbing." Senator ARMSTRONG, a Republican member of the Senate Budget Committee, stated, "We can't live with the deficits of the magnitude of those projected in the President's budget." Accordingly, the leaders of both Houses and both parties met as the "Gang of 17" to save us from fiscal disaster. But the negotiators were greeted at the door with a sign from President Reagan, "No Discussion of the Reagan-Kemp-Roth Tax Cut Wanted; No Defense Cut Allowed." Faced with an impossible task, the parties returned to their Houses where every Republican on the Senate Budget Committee joined every Democrat and unanimously rejected President Reagan's budget. But it was not long before the same budget was enacted by executive invasion. The distinguished Republican leadership of the Budget Committee that had been contending for truth in budgeting and a tourniquet on the Reagan revenue hemorrhage surrendered and joined the famous finagler Stockman—and finagled. To a contrived proposal in the Senate Budget Committee, all amendments were stonewalled. When the budget reached the floor, to make sure there were no escapees, the Republican leader corralled his sheep, holding the Senate in recess for 2 days. No Democrats were allowed. The TV that they have been crying for all year could not get past the two barred doors. After the White House budget had passed the Senate and House, the conference committee was presented another deception. It was late afternoon and we were told that a baseball game between Democrats and Republicans would not give us time to consider anything substantive. The conference adjourned but instead of playing ball, the Republicans again secured themselves in secret with David Stockman and the delay that we experienced the next morning when we reconvened was caused by Stockman "not having the papers ready". The White House budget was presented and again all amendments were stonewalled. The conference report was adopted, the invasion was complete, the White House declared victory. The President continues his self-deception when he cries, "Why don't you give us what we ask for." It is like Mae West crying for a life vest. Today, when the President talks about "spend and spend" one must realize that President Reagan has increased the size of Government spending from 23 percent of the GNP under President Carter to the present 24.1 percent. Moreover, having proclaimed in February that "we are not going to balance the budget on the backs of the taxpayers of America," the President now sets about balancing the budget on the backs of the taxpayers of America.

Adlai Stevenson, once asked whether he was conservative or liberal, replied:

That is not the important question—the important question is whether or not I am headed in the right direction."

On this score, there is reason for panic.

Since Lyndon Johnson left a surplus for Richard Nixon, each President has inherited a high deficit. Jimmy Carter inherited a $66 billion deficit from Gerald Ford. But during his term, he managed to cut it down to $27.7 billion. President Reagan inherited a $60 billion deficit but instead of heading us in the right direction, we are looking at a $140 billion deficit for this year and a $150 billion deficit for 1984 and 1985. Having killed the economy, the President begs for a constitutional amendment that cannot take effect until after his Presidency. And he begs for time. Time is what the President asked for last August. We were told that unemployment and business failures were the price we paid in getting inflation down. And that the economy would come roaring back in the spring. Now, after a year, with things getting worse, we realize that time is hurting rather than helping. What we need is action now. What we need is hope.

Let us pause for a minute and analyze the situation. The President has gotten everything he asked for. And he has had time. The financial officer of every company has believed in President Reagan. He has felt assured that deficits would be diminished and interest rates would go down. He rejoiced in the Reagan revenue hemorrhage for this practically eliminated the corporate tax and gave the best of investment credits, safe-harbor leasing, and depreciation allowance, all retroactively, commencing January 1981. But instead of the deficit lowering, it has doubled. Concerned, the financial officer is positive that in 2 or 3 years the deficits will surely be down. He hears the President call for more cuts in spending. He studies the Reagan budget closely. In 1985, defense will cost $300 billion, social security $200 billion, health $100 billion, veterans $25 billion. He understands that these will not be cut much if at all. Then he looks at the increased cost for interest on the national debt—it cannot be cut—$140 billion. We are bound to have $765 billion in spending in 1985 but the expected revenues are only $760 billion. Mercy. What is all this talk about cutting spending. Eliminating food stamps, the Agriculture Department, Commerce, Interior, the courts, the Congress, the FBI—eliminate the rest of Government—and there is still a deficit. The deficit projections all contemplate the $99 billion tax increase now before the Congress. The financial officer goes to the fine print to double check the revenues. He realizes that even with optimistic projections, the revenue hemorrhage of Reaganomics drains the budget $190 billion in 1985. The financial officer grabs the phone to talk to the chairman of the board. Panic has set in. Whatever plans for expansion or modernization the company has—stop, do not. He tells the chairman that the Government in the last two quarters of this year 1982 will borrow $100 billion and it will still be borrowing at this level or more in 1985. Interest rates are headed up over 20 percent. Do not invest in your own company. Put the money in money market funds and squat on your guaranteed profit. Accordingly, America's business goes into a freeze. Reagamortis has set into the economy. There is no plan in Washington to avoid the disaster of higher deficits and higher interest rates. The light at the end of the tunnel that the President talks about is a train on the track headed directly at us.

If the President and Congress fail to act this year, it is doubtful that American business will be able to tough it out in the time it takes for the next budget. For the new Congress to organize in January, the President to submit his budget in February, hearings and debate in both Houses, it will again be the 4th of July before any new budget or plan to lower the deficits can be adopted. This proposal for a constitutional amendment is intended deception between now and the election. Unfortunately, politics forbids any real accomplishment before the election. But this country needs hope; this country deserves hope. We could act right after the election. To do nothing the remainder of this year and half of next means another 11 months of bank failures, business bankruptcies, farms sold and millions

out of a job. But we can do something. We can enact the freeze that I proposed in February. This plan would have brought us a balanced budget—without a constitutional amendment—by fiscal 1985. With the time lost and the worsening conditions, the plan will not permit the budget to be balanced by 1985. But it will bring the projected deficit of $158 billion down to $38 billion. These are the main elements of my proposal:

It would impose a freeze on cost-of-living adjustments (COLA) in all Federal benefit programs with the exceptions of food stamps and SSI. The current benefit level for individuals would be frozen for 1 year, beginning January 1, 1983. For 1984 and 1985, a 3-percent COLA cap would be placed on the programs.

Beginning October 1, 1983, a 1-year freeze would be set on all Federal military and civilian pay. A 3-percent cap on pay increases would be in effect for 1984.

The plan would still permit 3 percent real growth in defense purchases.

Previously enacted tax indexing provisions would be repealed.

The scheduled July 1, 1983, 10-percent tax cut would be eliminated.

Together with lower debt service costs because of the smaller deficits produced by the plan, the 1985 deficit would be below $40 billion. I ask unanimous consent that a table highlighting the plan as estimated by CBO be included at this point in the RECORD.

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

HOLLINGS PROPOSAL TO REDUCE PROJECTED DEFICITS

	1983	1984	1985
CBO deficits (July 1982) [1]	142–152	145–160	143–158
Deficit reductions [1]—SPENDING:			
1. COLA's 1-year freeze beginning Jan. 1, 1983; 3 percent cap in 1984 and 1985 (exempt food stamps and SSI)	3	12	16
2. Federal pay—1-year freeze beginning Oct. 1, 1983; 3 percent cap in 1984 (includes all civilian and military)		2	5
3. Defense—3 percent real growth in BA purchases each year	6	13	26
4. Interest savings from lower deficits	1	6	14
Revenue:			
1. Repeal indexing			9
2. Eliminate July 1, 1983, 10 percent rate cut	7	32	35
Total deficit reduction	17	65	105
Remaining deficits	124–135	80–95	38–53

[1] Assumes enactment of all policies of the first budget resolution for fiscal year 1983 (Senate Concurrent Resolution 92).

Note.—Numbers are CBO estimates.

Mr. HOLLINGS. The plan I have offered is both fair and effective. It would not be a program without sacrifice, but it would set us on a reliable glide path to a balanced budget without the economic chaos and disruption of the Reagan program.

This plan carries with it a compelling reminder. If a balanced budget constitutional amendment is finally approved, we will still have to adopt changes like those I have outlined to make the amendment work. Instead of deferring the time to several years down the road, when the amendment would become the law of the land, we should begin now to move firmly toward a balanced budget.

Mr. President, all last year, we heard about the psychology of expectations—that the fiscal affairs of government need not be exactly in the black at the moment but the expectation that the deficit would be eliminated would cause businesses to invest because they would feel sure that interest rates would be coming down. Today business feels sure they are going up. And they cannot make sense out of this President and this Congress. We have reached an impasse.

We all see joblessness, failures, and suffering. Yet we do not do anything about it. We can do for the single interest, but we cannot do for the common good. We can respond for the social security recipient, the defense contractor, the civil service retiree—but we cannot respond for the Nation as a whole. The realization that we are going to have to respond for the social security recipient come November or January either way ought to move us. The social security fund is busted. We are borrowing from the health insurance fund right this minute. We have a New York City disaster on our hands on a national basis.

The city of New York recovered by all parties and all levels sacrificing and working together for the common good. We can do it. We can do it in a special session immediately after the election. Not a session of polemics and fiddle-faddling over $4 billion, as we did last fall, but an honest-to-goodness program led by the President to get us off the track of high deficits and high interest rates and back on the track of America moving again. Such an approach as I have suggested would allow Reaganomics to work. If the President realizes this and leads the way, fine. But under no circumstances should we have a session to "cut discretionary, nondefense spending."

Mr. President, we need to freeze defense spending, we need to freeze entitlement spending, we need to freeze tax spending. This way we do not increase taxes. This way, we do not cut spending. This way, we save $187 billion that need not be spent. This way, we give the Nation hope today. Mr. President, Little Orphan Annie might have the luxury of dreaming about "Tomorrow" but we have the responsibility of doing something about the economy today.

I thank my distinguished colleague for yielding the necessary time.

I yield the floor.

Mr. CRANSTON. Mr. President, will the Senator from South Carolina yield time to me, please?

Mr. THURMOND. From the bill?

Mr. CRANSTON. Yes, Mr. President.

Mr. THURMOND. Mr. President, I ask unanimous consent that I may yield to the Senator from California with the understanding that it will be charged to his side.

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

The Senator from California.

Mr. CRANSTON. Mr. President, I urge Senators and other observers to take note of the fact that, despite the conventional wisdom, it is by no means preordained that this constitutional amendment will be approved by the Senate. I suppose the odds are that it will be approved, but there are rising doubts among Senators who have hitherto been inclined to vote for this amendment as they listen to the debate, as they hear the points made by those who have sincere and serious doubts about the wisdom of the proposed constitutional amendment, and as editorials, commentaries, and economists are heard from from all across the country.

I personally know of at least six sponsors of the resolution on both sides of the aisle who, now, are not absolutely certain that they will vote for the constitutional amendment. Sponsorship does not mean an absolute commitment to vote for a measure.

Once upon a time in this body, there was pending the Bricker amendment to the Constitution relating to foreign policy matters. It had 80 cosponsors, but it wound up failing to pass the Senate. So I urge Senators to consider carefully the arguments that are being made and the various amendments and two substitutes that will be offered.

I shall offer tomorrow a substitute balanced budget constitutional amendment to give Senators an intellectually honest alternative to the administration's political monstrosity. Senator BUMPERS of Arkansas, this afternoon, will offer another alternative constitutional amendment relating to a balanced budget. If Senators want a balanced budget amendment to vote for from their private conviction or to demonstrate to their constituents their commitment to a balanced budget, we shall give them a choice of good amendments to vote for.

Personally, I would prefer that we balance the budget as soon as we can, without throwing the country into a depression, without a constitutional amendment. I believe we should balance the budget as fast as we can, too, without enshrining an economic document into the Constitution, and without putting the country into a straitjacket.

I believe that we can balance the budget by our normal processes, unless we hit a severe depression or some

international or national emergency, faster than it would take the States, in any case, to ratify a balanced budget amendment.

I predict that the States will not ratify the amendment now pending, even should it be passed by the Senate, which is not certain, and passed by the House, which is not certain. The States are becoming aware, for example, of a Wharton study indicating that State taxes would go up 38 percent if this constitutional amendment were adopted. The alternative would be a total disruption of present services in the States.

What will happen to revenue sharing? What will happen to block grants? What will happen to other aid to the States? What will happen as a result of new federalism, where more and more responsibilities will be given to the local governments and the States, but without the resources or the revenues needed to finance those responsibilities?

I predict that amendment will never become a part of the Constitution, even should it get through Congress, which is by no means certain.

Because of the momentary popularity of an amendment to require a balanced budget, a number of Senators are reluctant to vote against one because they are afraid they will be perceived as against a balanced budget. The substitute we are offering, mine and that to be offered by Senator BUMPERS, provides an opportunity to make plain that Senators are for a constitutional amendment, that they have supported a constitutional amendment, but that they have supported a sound and thoughtful one. The substitute that I shall offer faces economic and political reality, thus is far more likely to be observed than the amendment that is now pending, which will put the country into such a straitjacket that I expect it will be found necessary to find ways around it under certain circumstances. To do that is to demean the Constitution, but to do otherwise is to threaten the welfare of the country.

Charles Schultze, former Director of the Budget, has provided a memorandum which indicates various ways the amendment now pending could be circumvented if it was necessary. He suggests these ways:

1. Under the amendment it is quite possible to have a deficit in the budget without a specific vote of the Congress so long as neither the Congress nor the Executive tell anybody about it in advance.

2. Section 2 allows total receipts to grow no faster than the growth of national income in the prior calendar year, but the definition of "national income" as set forth in the Judiciary Committee report allows a wide scope for juggling the numbers.

3. The amendment over the years will clearly encourage the Executive and Congress to convert spending programs to regulations which mandate what ought to be governmental activities on private firms and individuals.

4. The limitation on revenue growth contained in section 2 will stimulate much greater use of tax expenditures.

There are other suggested ways to get around the constitutional amendment if it becomes necessary. We should not have to get around the constitutional amendment. We should not create a situation where that may be necessary.

I, therefore, urge that we either reject the pending constitutional amendment or adopt one of the substitutes, mine or that of Senator BUMPERS, that will provide a much more rational approach to this problem.

Mr. HART. Mr. President, will the Senator yield for 30 seconds?

Mr. CRANSTON. Certainly.

Mr. HART. Mr. President, I ask unanimous consent that two documents in opposition to the pending resolution to amend the Constitution be printed in the RECORD: One, a letter to all Senators dated August 3, 1982, from Archibald Cox, chairman of Common Cause and distinguished legal and constitutional scholar all of his life, and the testimony of Laurence Tribe, professor of constitutional law at Harvard University, delivered today to the House Committee on the Judiciary, documenting this eminent scholar's opposition to the constitutional amendment.

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

COMMON CAUSE,
WASHINGTON, D.C., AUGUST 3, 1982.

DEAR SENATOR: The Senate is expected to vote shortly on the proposed constitutional amendment to balance the budget. As one who has devoted his life to study and defense of the Constitution, I urge you to oppose this amendment not on fiscal grounds but because its adoption would greatly damage the Constitution under which we have lived for almost two hundred years.

The amendment would damage the Constitution by inserting an inappropriate fiscal declaration irrelevant to the Constitution's basic purposes. The Constitution has two great functions. First, it establishes the structure of government, including the division of powers among the three branches and between the nation and the states. Second, it protects the fundamental human rights of individuals. This amendment does not serve either of these purposes.

The proposed amendment would further damage the Constitution by trivializing it for purely political purposes. The primary purpose of rushing to propose this amendment to the states apparently is to offset by a rather meaningless declaration of budgetary restraint any political reprisals for the huge deficit. To use the Constitution for such a purpose would not only trivialize it by an irrelevancy but in the long run would reduce the respect for, and therefore the effectiveness of, our bulwark of liberty.

The issue which faces the Senate therefore is not a question of fiscal restraint. The question is whether we damage the Constitution. I urge you to reject this politically expedient proposal, to vote against the balanced budget amendment, and to protect the Constitution.

Sincerely,

ARCHIBALD COX,
Chairman.

TESTIMONY OF LAURENCE H. TRIBE

I am honored by this Committee's invitation that I appear before it to shed whatever light I can as a constitutional scholar on the proposed Balanced Budget Amendment. The topic I have been asked to address is, of course, not whether that proposal is wise or foolish as a matter of policy, but, rather, what its adoption would do to the constitutional framework under which our Nation has spent nearly two remarkably successful centuries.

Chief Justice John Marshall set the stage for all such analyses when he wrote, in *McCullouch v. Maryland*, 17 U.S. (4 Wheat.) 316 (1819), that "we must never forget it is a *constitution* we are expounding"—*"a constitution intended to endure for ages to come." Id.* at 412. The Members of Congress are surely aware of how much is thus at stake in this controversy. Senator Gorton echoed John Marshall when he reminded his colleagues, in a debate on this proposal several days ago, "[w]e must keep very much in the forefront of our thoughts that it is the Constitution we are writing here." Cong. Rec. S 9393 (July 29, 1982). Indeed, as we "sail [] into [these] uncharted seas," *id.* 9395, even the Senate Judiciary Committee Report in favor of the pending proposal concedes that "a proposed amendment may be inconsistent with the purpose and spirit" of the Constitution in its "object," or in its "form or structure." Report on S.J. Res. 58 (hereinafter, "Senate Report") at 30-31 (July 10, 1981).

That Committee concluded that S.J. Res. 58 is not inconsistent with the Constitution's "purpose and spirit." The question before this body is whether the Senate Judiciary Committee was right or whether, carefully assessed, the proposed amendment should be found constitutionally defective—not "unconstitutional," of course, but nonetheless unfit to become part of our most basic legal charter.

My own conclusion, after much study and reflection, is that the proposed amendment is profoundly ill-suited for inclusion in our Constitution—and that its defects may be demonstrated by reference to criteria to which I believe all of us, including the amendment's sponsors, are deeply committed.

1. The Constitution should embody only fundamental law, not economic policy.

Justice Holmes observed long ago that a Constitution, if it is to serve people of fundamentally differing views, cannot "embody a particular economic theory" or policy. *Lochner* v. *New York*, 198 U.S. 45, 75 (1904) (dissenting opinion). He recognized, as had Chief Justice Marshall before him, that the Constitution would endure as our fundamental law only if it left to the political branches the choice of "means by which the powers it confers may be executed." *McCulloch* v. *Maryland* 7 U.S. 316, 407 (1819). Senator Hatch, a leading proponent of the Balanced Budget Amendment, approvingly quoted my own views to the same effect just a few days ago. See "Budget Rule: Yes—Politicians Need It," N.Y. Times, July 16, 1982, p. A27, col. 4. And the Senate Report in favor of this amendment likewise conceded that no constitutional provision should "mandate [a] particular economic policy."

Senate Report at 31; see also id. at 30 (quoting my work on this subject).

The proposed amendment, despite its sponsors' disclaimers, would do just that. Based expressly on the thesis that "most of the economic problems suffered by the nation in recent years are caused, in major part, by excessive government spending," Senate Report at 4 (*see also id.* at 32, 38, 40-41), the amendment is candidly defended by its supporters at least in part as representing "responsible economic policy." *Id.* at 4; *see also id.* at 25. The question is not whether we agree or disagree that our economic ills would be healed if budget deficits were curbed by requiring supermajority approval; that a balance of receipts and outlays should be thought annually rather than over longer periods; that such a balance should be achieved by reducing outlays rather than closing tax loopholes (*see* Part 9 *infra*); and that the current ratio of federal receipts to national income should not be allowed to grow without stepping on special brakes that are not applicable if the ratio should ever start to fall.

Those views may or may not be sound ones—today or in the year 2000. But that they *do* rest on quite specific theories about the economy, and *do* embody concrete policies for dealing with economic matters, cannot be doubted. By freezing these particular theories and policies into the Constitution, the Balanced Budget Amendment thus flouts the first and most basic axiom of constitutional suitability.

2. The Constitution should not be imprisoned in a maze of calculations.

Although a few constitutional amendments specify such details as the dates on which particular terms of office expire (e.g., Amendment XX), none has ever reduced our basic charter of government to an algebraic exercise. Yet Section 2 of the proposed Balanced Budget Amendment—which forbids receipts set forth for any fiscal year to "increase by a rate greater than the rate of increase in National income in the year or years ending not less than six months nor more than twelve months before such fiscal year" (absent a special contrary vote)—is necessarily explained by the Senate Judiciary Committee in terms of a set of mathematical formulas. *See* Senate Report at 48-49.

Perhaps the time will come when our children, or theirs, will be so immersed in the world of computers and of electronic wizardry that no one will be shocked to find differential equations in a poem or in a constitutional principle. But that day, happily, is not yet upon us; in the world *we* still inhabit, the Constitution is no place for quantitative formulas. To encumber it with such alien notions is to trivialize its majesty, reduce its ability to address *all* Americans, and take a sad step toward a less humane society.

3. A constitutional amendment should be a last resort: effective, and essential.

All are agreed, in principle, that preserving the Constitution's special role precludes resort to an amendment whenever some less drastic remedy might suffice.

Proponents of the Balanced Budget Amendment assert that no remedy short of a constitutional change can curb the alleged impulse to overspend (hence Section 1's limit on deficits) or the supposed tendency to let revenues automatically rise with inflation (hence Section 2's antidote to "tax bracket creep"—*see* Senate Report at 8-9). But a simple tax-indexing statute would completely solve the latter problem (if it *is* a problem).

And, as to the alleged impulse to overspend, the remarkable thing is that nothing in the proposed amendment would create any new method for resisting the precise pressures supposedly causing excessive appropriations. For one thing, the amendment's sponsors concede that none of its provisions requires Congress or the Executive to take any action if "actual receipts . . . fall below planned receipts," Senate Report at 48; *id.* at 75. The only safeguard against a budget that *looks* "balanced" solely because Congress adopts an unrealistically rosy estimate of receipts prior to the fiscal year (*see also* Part 4 *infra*) turns out to be Congress' posited desire "to act reasonably." *Id.* at 45. So much for the proponents' theory that this desire will "inexorably" be overcome by pressures from prospending groups! *See id.* at 3.

Equally telling, nothing in the Amendment puts Members of Congress under any new obligation to accompany specific votes for increased spending on particular programs with corresponding votes either to cut other spending programs or to impose increased taxes—the very obligation the amendment's sponsors suggest we *must* impose if we are ever to overcome the system's pro-spending bias. *See* Senate Report at 7-9, 28-31, 74. Although Section 1 insists that Congress and the President use their powers to "ensure that actual outlays" *for the fiscal year as a whole* "not exceed the outlays set forth in [the] statement" voted before the fiscal year began, this provision would not even be triggered until total outlays actually went over the top. And, even at that point, all the proposed amendment would require in order to make still further outlays lawful is enough vote in favor of a deficit—*not* votes that, according to the sponsors' own theory, will be deterred by incurring any disfavor among competing spending interests, or among taxpayers. *Id.* at 7.

No constitutional amendment is needed to require that those who favor deficits beyond a stated point go on record by voting to increase the statutory debt ceiling: it is no greater *accountability*, but a greater *substantive* tilt against deficits, that the three-fifths vote requirement seeks to impose. But that tilt, as will later be explained (*see* Part 5 *infra*), could well boomerang, and in any event has not been shown to require a *constitutional* change. By the sponsors' own admission, after all, a shared norm against deficit spending held the federal budget in satisfactory check from 1789 to 1932. *See* Senate Report at 19, 25-26, 32. If such an "unwritten Constitution," *id.*, sufficed for all those years, then the solution is to re-instill the attitudes that made it work—not to restructure our fundamental law as a shortcut substitute for such persuasion.

4. The Constitution should not pretend to command what it cannot control.

Reflecting its sponsors' belief that excessive spending and taxation trace to causes "sown in the nature of man," Senate Report at 27, the proposed amendment decrees a norm of budgetary balance and of limited tax revenue growth as though deviations from that norm were attributable to defects of will power that "the new Constitution" could overcome with its special voting rule. *Id.* In fact, however, outlays may rise to unplanned levels because natural disasters, foreign crises, or domestic needs suddenly demand unexpected levels of federal resources; and revenues may either fall because of unexpected recessionary trends or rise because of equally unexpected economic improvements.

To the degree that currently irresistable pressures from constituents are instead to blame for overspending and overtaxing, the Amendment in its current form not only fails to cope with the phenomenon's asserted cause (*see* Part 3 *supra*) but also invites uncontrolled circumvention—through congressional actions (a) "passing on new, unreimbursed costs to the States," Senate Report at 11; *id.* at 52 (asserting that a ban on any such pass-through, now deleted from the amendment, would be needed to plug this major loophole);[1] or (b) establishing new entities under federal charter with implicit taxing and spending powers, *id.* at 60; or (c) imposing new regulatory burdens on selected private, quasi-private, or quasi-public enterprises, *id.* at 77; or (d) using loan guarantees that do not count as "outlays" until a later year, *id.; cf. id.* at 7 (deferring the cost of spending measures seen as device for avoiding fiscal responsibility); or (e) simply overestimating receipts in order to include desired programs in the budget without *projecting* any deficit at the start of the fiscal year. *Id.* at 45. *See* Part 3 *supra*.

Although some sophisticated readers of the Amendment will see through any pretense that it can actually deliver fiscal restraint in the face of all these forces and options, the Amendment's message to the general public—the only message that could account for its appeal—is a bogus promise of reduced spending and taxation, a promise the Amendment simply cannot keep.

5. The Constitution should not empower minorities to block majority choices until satisfied with the majority's political or fiscal concessions.

Our Constitution's deep commitment to majority rule has been abandoned in the past only to protect individual and minority rights, or to check the executive—as through requiring super-majority approval of treaties—not to enhance the political leverage of the few over the many.

Yet the proposed amendment does just that when it empowers 41 percent of either House to block what may be crucial outlays. See Senate Report at 82 (Sen. Specter). The ironic result could well be higher, not lower, deficits. For the combined cost of all the pet programs that the majority may have to fund in order to win the minority votes needed in order to reach 60 percent approval of deficit spending could well be considerable—even greater, perhaps, than the size of

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[1] Nothing in current constitutional law, of course, prevents federal regulations from imposing federally unreimbursed burdens on states and localities—whether indirectly, as in *Hodel* v. *Virginia Surface Mining & Reclamation Ass'n., Inc.*, 452 U.S. 214 (1981) (upholding "steep-slope" provisions of Surface Mining Control and Reclamation Act; *National League of Cities* v. *Usery*, 425 U.S. 833 (1976), inapplicable where private businesses being regulated), or directly, as in *Federal Energy Regulatory Comm'n. v.* Mississippi, 102 S.Ct. 126, 2141-42 n.30 (1982) (upholding federal Public Utility Regulatory Policies Act as applied to compel state public utility commissions to consider specific rate-making standards in accord with federally mandated procedures; *National League of Cities* leaves Congress free to impose any conditions it sees fit even on state regulation *as such* in a federally preemptible field); and on state or city-run enterprises, as in *United Transp. Union* v. *Long Island R. Co.*, 102 S.Ct. 1349 (1982) (upholding federal Railway Labor Act as applied to state-owned railroad; *National League of Cities* wholly inapplicable to such state enterprises). The Senate Report's reliance on prior Supreme Court cases to suggest the contrary, *see* Senate Report at 52, is demonstrably incorrect.

the deficit for which the 60 percent vote was needed.

It is the worst sort of double-think to claim, as some of the Amendment's sponsors do, that such a scheme for giving minorities a lever with which to exact a fiscal premium from the majority would "make the budget process . . . more democratic." Senate Report at 28 (sic). In truth, and whatever motives would animate those in the minority who would be given this new leverage, the scheme is the very antithesis of democracy, and expresses instead a cynical mistrust of representative government.

6. Constitutional provisions should not nurture an Imperial Executive.

The amendment's sponsors seem united in their belief that their proposal would not resurrect the dreaded impoundment power asserted by several past Presidents. (*See, e.g.*, Cong. Rec. 18495 (Sen. Gorton), July 29, 1982; *id.* at 18501 (Sen. Hatch); *id.* at 18593 (Sen. Thurmond)). *See also* Senate Report at 61.

Yet if outlays begin to exceed those projected at the start of the fiscal year, Section 1 requires, among other things, that "the President, . . . through exercise of [his] powers under [Art. II], ensure that actual outlays . . . not exceed" those projected. On the face of it, this constitutional command would seem to override any merely statutory limit on executive impoundment authority, such as that of the 1974 Impoundment Act. And if the President concludes that *only* impoundment, decreed pursuant to his Article II powers as Chief Executive, can meet his duties under the new Amendment, then such an act—involving a refusal to spend appropriated funds on *whichever programs the President chooses to designate as the causes of excessive total outlays*—could well be deemed authorized by the proposed Amendment. *See, e.g.*, Cong. Rec. 18495 (Sen. DeConcini).

Despite the sponsors' contrary wishes, therefore, the Amendment creates a grave risk of swelling executive power in ways all agree would be extremely dangerous.

7. Constitutional provisions should not foster an Imperial Judiciary.

Constitutional provisions affirmatively empowering government action, and those securing specified individual rights against government, may be judicially enforced without necessarily requiring assertions of judicial power to manage the fiscal operations of government. Judicial enforcement of the proposed Balanced Budget Amendment, in contrast, would necessarily plunge judges into the heart of the taxing, spending, and budgetary process. As Senator Gorton put it in the other chamber several days ago, this "threat that we are vastly increasing the power of the judiciary—that we are inviting the Judiciary into the business of writing budgets for the people of the United States—is a threat [even] more grave than [that] of . . . Presidential impoundment . . .," Cong. Rec. 18490 (July 29, 1982). He noted the "paradox . . . that a number of Members who have most fiercely opposed the intervention of the judiciary into [busing, prayer, and other "social issues"] should not have proposed an amendment which is likely . . . to add to the legislative authority of the Federal courts." Id.

The Senate nonetheless defeated Senator Gorton's proposed limit on judicial review under the Balanced Budget Amendment—a narrow limit, at that [2]—by a vote of 51 to 45. Cong. Rec. 18505 (July 29, 1982). Before that vote, Senator Heflin had noted that not even the Gorton Amendment could keep "State courts from getting involved." *Id.* at S9400-01. Senator Hatch had expressed the view that, if "Congress itself ignores" the Balanced Budget Amendment, "Members of Congress would"—and should—"have standing [on the basis of] being foreclosed from performing their duties as Members of that body," leading to what "may [be] a justiciable issue." *Id.* at 9404.[3] Senator Hatch opposed the Gorton Amendment because it could change all that. Senator Thurmond had expressed fear that the Gorton Amendment could also "have the unfortunate effect of precluding a legitimate lawsuit by a citizen with judicial standing who wants to challenge the constitutionality of the failure to Congress to obey the provisions of Senate Joint Resolution 58." *Id.* at 9406. Without an explicit limit on judicial review, the Senate was reminded, would-be recipients of outlays halted pursuant to the Balanced Budget Amendment could surely go to court to challenge any such cut-off, *see* Cong. Rec. 18502 (Sen. Bumpers); and federal taxpayers claiming that Congress was raising and spending taxes in violation of the new Amendment's express restrictions on the spending and taxing powers of Congress could certainly obtain standing under *Flast* v. *Cohen*, 392 U.S. 83, 103-04 (1968). *See* Cong. Rec. 18490 (Sen. Gorton). In the face of Senator Bumpers' unrebutted suggestion that defeat of the Gorton Amendment would virtually assure a degree of judicial intrusion well beyond that contemplated by the Senate Report (at 62-66), *see* Cong. Rec. at S9405, the Senate defeated the Gorton alternative.

The dilemma for the sponsors of the Balanced Budget Amendment is an enormous one. If it were indeed as "self-enforcing and self-monitoring" as they assert, Senate Report at 66, then the need for it—a need premised entirely upon the supposed necessity of "external constraint," *id.* at 42, 75—would vanish. If, as seems more plausible, it is *not* meaningfully "self-enforcing," *see* Parts 3 & 4 *supra*, then there is no way to make it work without compelling the judiciary to take on the task of budget-master, creating evils at least as great as those the budget-balancers hope to solve.

8. The Constitution should not be used to stack the political deck against identifiable groups.

It is easy to see why the Senate Report in favor of the proposed amendment should have found it necessary to defend the proposal by asserting that it contains "nothing that would make it significantly more difficult to *increase* expenditures or taxation than to *reduce* expenditures or taxation." Senate Report at 28 (emphasis added). With all respect, that *has* to be nonsense if the proposed amendment is to achieve anything at all. Its entire premise, after all, is that the existing system's asserted bias toward more spending and taxation than most people "really" want, *id.* at 4-6, 27-28, needs structural correction.

But even if one were to accept as true the claimed existence of some such bias, the Balanced Budget Amendment would still be conspicously *unbalanced* in choosing to address *that* "bias" while saying and doing absolutely nothing about the corresponding bias in the *opposite* direction—the bias against spending *enough* on interests that are themselves too dispersed, too inchoate, or too voiceless (future generations in need of current capital investment, for example) to compete effectively with the groups favoring tax and spending limits *now*.

This bias, and not that ostensibly addressed by the Balanced Budget Amendment, is the one that is most closely analogous to the skew introduced "by the existence of the poll tax or the inability of eighteenn-year-olds to vote." Senate Report at 31. Particularly given Section 2's one-way ratchet against federal spending that grows *faster* than national income, but not against federal spending that grows *slower* than either national income *or* national needs, the Balanced Budget Amendment "necessarily means . . . a restriction on national social policies that protect the poor, the aged and the underrepresented." B. Marshall, "Budget Rule: No," N.Y. Times, July 16, 1982, p. A27, col. 2. *See also* Part 9 *infra*. Anything *but* "balanced," the Amendment's pretense at neutrality thus belies even its modest claim to making the "process . . . a more honest and open" one. Senate Report at 29.

9. The Constitution should not be used to build tax shelters into the foundation of our legal system.

Even within its own slanted ambit, and disregarding the way in which its very selection of problems to attack unfairly skews the political deck (*see* Part 8 *supra*), the Balanced Budget Amendment uniquely shelters the rich and powerful. For it conspicuously restrains only those amounts the Federal Government *collects* ("receipts"), and controls only the deficit gap between such amounts and the amounts the Federal Government *disburses* ("outlays"). *See* Senate Report at 45-48, 53-60.

Wholly excluded from this balance sheet are the tens (perhaps hundreds) of billions of dollars that never even *enter* the picture painted by the Amendment inasmuch as special tax loopholes, in the form of sheltered leasing arrangements or other indirect subsidies for the wealthy, have saved the rich even the trouble of rounding up annual votes in Congress for such implicit "outlays" in their favor. These groups evidently do not count as "spending interests," Senate Report at 6, that the Amendment's sponsors deem to be in need of restraint—but they are no less "intense and passionate," *id.*, and are no less successful in preserving their prerogatives at the expense of the U.S. Treasury—and all the rest of us.

The Balanced Budget Amendment is not, of course, responsible for the original existence of such tax subsidies—which many classify as "tax expenditures." But the Amendment *would* be responsible for giving such subsidies a constitutionally privileged and deeply entrenched status. They would be uniquely exempt from the Amendment's obstacles to spending. And, difficult as such tax shelters are to dislodge *now*, imagine the difficulty of insisting that they be replaced with direct subsidies and then debated as such in the annual appropriations process once the Balanced Budget Amendment had made it clear that any such shift would suddenly transfer these tax subsidies into the Amendment's arena of mandated

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[2] The limit would have stated: "The judicial power of the United States shall not extend to any case or controversy arising under this article, except for cases or controversies seeking to define the terms used herein, or directed exclusively at implementing legislation adopted pursuant to section 5."

[3] *See, e.g., Goldwater* v. *Carter*, 444 U.S. 996 (1979) (per curiam); *Coleman* v. *Miller*, 307 U.S. 433, 438, 441 (1939); *Kennedy* v. *Sampson*, 511 F.2d 430 (D.C. Cir. 1974).

"competition among the spending interests," Senate Report at 9, an arena that tax subsidies and shelters could otherwise continue to avoid altogether.

Indeed, Section 2 of the proposed Amendment would *directly* limit all moves to close tax loopholes inasmuch as such efforts, of course, create added "receipts" for the Federal Government and would thus count toward Section 2's constraint on the rate at which such receipts may grow without a special vote of Congress. By arbitrarily treating the elimination of each tax shelter as causing an increase in receipts rather than a reduction in outlays (contrast the elimination of social programs), the Balanced Budget Amendment doubly handicaps all attempts to enhance tax equity as a means of simultaneously reducing deficits and increasing fairness. Whatever one may say of any such strategy as a matter of policy, it seems unthinkable that it should be enshrined in the Constitution.

Among its most pernicious and least noticed defects as a candidate for inclusion in the Constitution, therefore, is the Balanced Budget Amendment's unwarranted treatment of certain previleged beneficiaries of the Treasury as "more equal than others," and its hidden creation of a massive new disincentive to, and limit upon, effective tax reform.

10. We must not "constitutionalize unto others" what we would not have them "constitutionalize unto us."

One fair and final test of whether the proposed Amendment makes genuine sense, or is instead popular mostly because of the political benefits that come with being counted among its supporters, is whether those who favor the Amendment would be willing to subject themselves to the rigors it proclaims.

For the President and the Congress that are busily voting the highest deficits ever to go on record as favoring constitutional limits on similar conduct by their successors—starting "the second fiscal year" after the Amendment's ratification (Sec. 6)—at least suggests, in George Will's terms, that "current incumbents" are merely "strik[ing] a pose with an amendment that might be, in practice, 98 percent loophole" unless attitudes change so substantially as to make "the amendment . . . beside the point." Boston Globe, p. 83, col. 3 (July 25, 1982).

The refrain, "Stop me before I tax again!", reminds one of nothing quite so much as St. Augustine's famous prayer: "Oh Lord, save me from sin . . . but not just yet." If there were to be a Golden Rule of Constitutional Amendments, this proposed amendment, it seems, would violate it.

CONCLUSION

All ten criteria that a proposed amendment should surely have to meet—criteria of very general applicability with which I believe even this Amendment's sponsors could hardly disagree—therefore reveal the Balanced Budget Amendment to be unworthy of our Constitution.

Unless the Amendment's advocates show these criteria to be flawed—unless they successfully attack these "ten commandments" of the amendment process—their proposal can be accepted only if its failure to meet even *one* of these criteria can be convincingly refuted. Because it is our *Constitution* that we are, indeed, talking of amending, we simply cannot afford to proceed in the face of such grave, and thus far unanswered, constitutional objections.

Mr. HART. I thank the Chair and I thank the Senator from California.

Mr. ARMSTRONG addressed the Chair.

The PRESIDING OFFICER. The Senator from Colorado.

AMENDMENT NO. 2010

Mr. ARMSTRONG. I believe the pending business is the Armstrong-Boren amendment.

I ask unanimous consent that the Senator from Indiana (Mr. QUAYLE) and the Senator from South Carolina (Mr. HOLLINGS) be added as cosponsors of the amendment.

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

Mr. ARMSTRONG. Then it would be my purpose to 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. ARMSTRONG. Then, Mr. President, I will simply take about a minute to sum up where I think we are, and then I am ready to go to a vote.

I urge all Senators, those in the Chamber and those in their offices, to read the discussion which occurred last night——

Mr. THURMOND. Mr. President, how does the time stand?

The PRESIDING OFFICER. Who yields time?

All time has expired.

Mr. ARMSTRONG. Mr. President, does time remain on the bill?

Mr. THURMOND. Mr. President, time has expired on the amendment, as I understand it.

I ask unanimous consent that 5 additional minutes be allotted to the proposer of the amendment and equal time, 5 minutes, be allotted to our side off the bill.

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

Mr. ARMSTRONG. Mr. President, I am grateful to the distinguished chairman for his courtesy.

As far as I am concerned, the issue is very simple. The amendment which Senators BOREN, QUAYLE, HOLLINGS, and I bring to the Senate this afternoon is a friendly amendment. Certainly there is no Member of the Senate that is more interested in the underlying cause of a balanced budget constitutional amendment than I.

If Senators feel, as I do, that this amendment adds a degree of clarity and precision, that it creates a specific threshold at which the public, Members of Congress and, if need be, a court can determine whether or not the Constitution is being violated, if Senators feel that this amendment responds, at least in part, to the criticism that the amendment is at present not sufficiently precise for public understanding, and if Senators feel, as I do, that having this amendment as a part of the fundamental proposal will improve the opportunity for passing it in this Chamber and in the other body and obtaining ratification of the requisite number of States, then I hope Senators support it.

Unless there are questions, I reserve the remainder of my time. I see the distinguished cosponsor from Oklahoma is present.

I yield to him or other Senators.

Mr. BOREN. I thank my colleague from Colorado. I will just briefly reiterate what he has stated.

I think that this amendment will strengthen the proposal before us. I think it is a friendly amendment. It simply says that we cannot increase the national debt level in effect at the time of the adoption or ratification of the constitutional amendment except by three-fifths vote. This merely provides us with an enforcing mechanism. The current proposal is a proposal that I support. It has been sold to me and sold to the American people by explaining that it would not allow an unbalanced Federal budget unless three-fifths of the membership of both Houses of Congress voted for a budget that was not balanced; that it would require some kind of emergency conditions to justify a three-fifths vote by both Houses.

That is what the American people think that this amendment does. It is what I have always felt that this amendment does. If, indeed, that is what we are trying to do, how could anyone who supports the concept of not having an unbalanced Federal budget except by three-fifths vote of both Houses be opposed to saying that we are not going to increase the debt level except by three-fifths vote of both Houses? If we have a balanced budget, there will be no need to increase the debt level because no new debt will be generated.

The problem is this: we have had estimates in the past, estimates that have been off, in the 4 years that I have been a Member of this body, by billions of dollars each year. Estimates in terms of receipts and outlays have been overly optimistic in every year, and I am concerned, as is the Senator from Colorado, that under the amendment as now drawn we could have a mistake in the estimates. We could overestimate the amount of the receipts because of being too optimistic about economic conditions. We could then find ourselves with a budget that is in deficit, 20 or 30—I believe this current year $50 billion off in terms of the estimates.

Then what would the amendment be, if it simply required us to adopt estimates at the beginning of the year that were in balance if, in fact, they were wrong, if, in fact, they resulted in deficits. There must be an enforcement mechanism. The ideal enforcement mechanism to insure that the only way we could have an unbalanced Federal budget would be by three-

fifths vote of both Houses of Congress is to tie it to this requirement being applied to any increase in the national debt limit.

I think it strengthens the amendment. I think it answers the argument of those who say that there is a loophole, that we are simply legislating and we have to come up with nice estimates that are in balance and that there is nothing in the amendment to protect us if those estimates prove to be wrong. It will do exactly what we told the people we are trying to do in this constitutional amendment, that we must have a balanced Federal budget every year in fact, not an estimate but in fact, unless three-fifths of the membership of both Houses of Congress deem otherwise.

That is all it says. That is what we have been telling the American people that this amendment says, and I think it will simply assure that the amendment will end up doing what we have been telling the people it would do all along.

Mr. THURMOND. Mr. President, I now yield 5 minutes to the distinguished Senator from Utah on the bill.

Mr. HATCH. Mr. President, the proponents of this amendment seem to be saying that this will strengthen the amendment and that the amendment should be an absolute balanced budget amendment. In fact, this amendment could strengthen this constitutional amendment to death. It may be something we can win on the Senate floor, but I think the amendment will make it more difficult than ever to win in the House.

When I approached BARBER CONABLE this morning about this subject—and he knew exactly what the amendment was—he said, "We can't do that because that will increase the bias in favor of increasing taxes."

That is precisely what this amendment does.

It is uneconomic, as it tries to make a flexible constitutional amendment into an inflexible, must-balance-the-budget at all costs amendment.

So, Mr. President, I rise in strong opposition to the present amendment. This amendment would require that a three-fifths vote be secured in order to raise the national debt limit. It also institutionalizes the national debt at over $1.1 trillion, or whatever it is right now, instead of the $400 billion which is the acceptable limit.

In any event, this amendment would undermine much of the flexibility of the proposed constitutional amendment. It would render it totally inconsistent with sound and responsible countercyclical economic policy and require taxes to be raised in the face of a recession or a depression.

Under the proposed constitutional amendment, there are two permissible form of deficit: (a) Congress by a 3-to-5 vote can choose to plan a deficit budget; or (b) an unexpected revenue shortfall could lead to a deficit budget following a planned balanced budget. The proposed Armstrong amendment would prohibit the second kind of deficit by requiring a 3 to 5 vote to raise the national debt ceiling if such a deficit arose. The result would be to require Congress to raise taxes in response to the economic circumstances of a recession or depression. No economist—of whatever economic philosophy—would recommend this as a normal response to a recession or depression.

Under the proposed amendment, we would be substituting an absolute and invariable requirement of an actual balanced budget in place of the present approach which recognizes that, under limited circumstances, a budget deficit arising from unexpectedly low levels of receipts ought to be tolerated. While the present amendment is consistent with sound countercyclical economic policy, the Armstrong amendment would substitute an economic policy totally at odds with this policy.

Mr. President, the Senator from Colorado (Mr. ARMSTRONG), I observe, made several inquiries yesterday with respect to the significance of the statement level of receipts, given the fact that this level was not ultimately binding upon Congress. I respond to him by observing that the level of receipts set forth in the statement required in section 1 is most important insofar as it defines the maximum permissible level of outlays under section 1 as well. Under the proposed amendment, there is an absolute obligation upon Congress and the President to conform actual levels of outlays with planned levels of outlays. In this respect, the present constitutional amendment is primarily a spending limitation, in that the spending level established in the constitutional amendment is one that cannot be breached without an extraordinary vote by Congress. The establishment of the maximum permissible level of receipts is most critical in its definition of the maximum permissible level of receipts.

The level of receipts set in the statement—which is to be set forth as a good faith estimate—thus would not be absolutely binding upon Congress if actual receipts developed at a different pace. This differing treatment of receipts and outlays is necessitated by the differing levels of influence that Congress has over the actual flow of these indicators. While it has great influence—indeed, total constitutional influence under article I, section 7 of the Constitution—over actual flow of outlays, it has relatively little influence over actual levels of receipts. The present amendment recognizes those facts of fiscal life.

Mr. President, the Armstrong amendment would transform the present amendment from one that is flexible in allowing Congress to respond to serious economic exigencies into one constantly requiring extraordinary 3-to-5 votes in order not to exacerbate recessions. I strongly urge opposition to this amendment.

I also note the difficulties of attempting to define the national debt limit in the constitutional amendment, as well as the questionable policy of writing into the proposed amendment a particular statute. Would the new section be repealed if this statute was repealed? I sympathize with the sincere efforts of the Senator from Colorado to strengthen the present amendment. I must, however, suggest that these efforts will unfortunately do precisley the opposite.

The PRESIDING OFFICER. The additional time has expired. Who yields time?

Mr. THURMOND. I yield the Senator 1 additional minute on the bill.

Mr. HATCH. Mr. President, under the present Senate Joint Resolution 58, we have three alternatives which are coequal. We can either lift the debt ceiling by a simple majority, we can cut programs if we wish by a simple majority, or we can add taxes by a simple majority.

If the Armstrong amendment is adopted, then Congress really has only one choice, and that is to increase taxes, because it will take three-fifths of the membership of both Houses to lift the debt ceiling.

No. 2, cutting programs during a recession has never been considered wise economic policy, so Congress will probably not choose to do that.

No. 3, adding taxes is not wise economic policy, either, but it is the only way, since it will take a simple majority to resolve the issue.

Consequently, the Armstrong-Boren amendment actually creates more difficulties and, in essence, undermines the total tax limitation approach that this flexible constitutional amendment is providing.

I hope all our colleagues will vote down this amendment, so that we can get about passing Senate Joint Resolution 58 and sending it to the House, where they will hopefully pass it as well.

The PRESIDING OFFICER. All time on the amendment has expired.

The question is on agreeing to the amendment. On this question the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. BAKER. I announce that the Senator from Missouri (Mr. DANFORTH), the Senator from Alaska (Mr. STEVENS), the Senator from Connecticut (Mr. WEICKER), are necessarily absent.

I further announce that, if present and voting, the Senator from Alaska (Mr. STEVENS) would vote "yea."

Mr. CRANSTON. I announce that the Senator from Ohio (Mr. GLENN), is necessarily absent.

The PRESIDING OFFICER. Are there other Senators in the Chamber wishing to be recorded?

The result was announced—yeas 51, nays 45, as follows:

[Rollcall Vote No. 277 Leg.]

YEAS—51

Andrews	Exon	Mitchell
Armstrong	Ford	Moynihan
Baker	Gorton	Nickles
Baucus	Hart	Nunn
Bentsen	Heflin	Packwood
Biden	Helms	Pell
Boren	Hollings	Proxmire
Brady	Huddleston	Quayle
Bumpers	Humphrey	Randolph
Burdick	Jackson	Riegle
Byrd, Harry F., Jr.	Jepsen	Rudman
	Kassebaum	Sarbanes
Byrd, Robert C.	Kasten	Sasser
Cannon	Kennedy	Simpson
Chiles	Leahy	Warner
Cohen	Long	Zorinsky
D'Amato	Mathias	
East	Metzenbaum	

NAYS—45

Abdnor	Goldwater	Melcher
Boschwitz	Grassley	Murkowski
Bradley	Hatch	Percy
Chafee	Hatfield	Pressler
Cochran	Hawkins	Pryor
Cranston	Hayakawa	Roth
DeConcini	Heinz	Schmitt
Denton	Inouye	Specter
Dixon	Johnston	Stafford
Dodd	Laxalt	Stennis
Dole	Levin	Symms
Domenici	Lugar	Thurmond
Durenberger	Matsunaga	Tower
Eagleton	Mattingly	Tsongas
Garn	McClure	Wallop

NOT VOTING—4

Danforth	Stevens	Weicker
Glenn		

So the amendment (No. 2010) was agreed to.

Mr. BAKER. Mr. President, I move to reconsider the vote by which the amendment was agreed to and I ask for the yeas and nays.

Mr. METZENBAUM. Mr. President, I move to lay that motion on the table.

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

The yeas and nays were ordered.

Mr. METZENBAUM. Mr. President, I move to lay that motion on the table.

The PRESIDING OFFICER. A motion to lay on the table is not in order until the time expires. If Senators will be in order, there is 20 minutes on the motion.

The majority leader is recognized.

Mr. BAKER. Mr. President, I am prepared to yield back my time on a motion to reconsider.

Mr. ARMSTRONG. Mr. President, I do not know how the time is controlled, but I would like to be heard on the pending motion if whoever controls time will yield to me.

Mr. BAKER. Will the Chair state how the time is controlled?

The PRESIDING OFFICER. The time is controlled between the mover of the motion and the manager of the bill.

Mr. BAKER. Mr. President, I have no objection to the manager of the bill delegating to the Senator from Colorado the time in opposition to the motion.

Mr. THURMOND. I am glad to yield the time in opposition to the motion.

Mr. ARMSTRONG. Is the time 20 minutes equally divided?

The PRESIDING OFFICER. The Senator is correct.

Mr. ARMSTRONG. I thank the Chair.

Mr. President, I will be quite brief. We have seen quite a remarkable rollcall in which a number of people, quite a large number of Senators, who in fact believe in the substance and concept of the amendment we have just adopted nonetheless for tactical reasons have voted against it.

We have also seen a number of Senators who are not unsympathetic to the underlying purposes of the amendment who have nonetheless voted for it. I would like to urge all Senators as they consider the motion to reconsider, which I hope will be defeated, to vote not on the tactics of it but on what they think puts this amendment in its proper form for consideration and final passage.

It is my conviction that on substance we need some kind of provision which is definite. As the amendment came to us from the committee, it is tied to estimates—an estimate of outlays, an estimate of revenues, an estimate of the national income. I think for heaven's sake if we are going to put something in our Constitution we ought to have some point of definite reference. The national debt is by no means an ideal point of reference but as least it is definite, it is a number, it is a fact. It is something a court can determine.

More important, it is something the Senate can determine; something the people of this country can determine.

My friends, under the amendment as it came to us from committee, it would be perfectly possible for Senators to adopt a statement of receipts and outlays which is in balance and then through a series of good faith incremental actions proceed to undermine the balanced budget, and yet at no definite point would we cross the threshold, at no definite point would the Constitution be violated. But the cumulative effect would be to undo what we so piously did at the outset. Is that a far-fetched or a remote fear?

My friends, you know that it is not because that is exactly what we have done year after year. We have estimated receipts and outlays and then proven to be $20 billion, $30 billion, $40 billion, $50 billion at variance in the end.

I am not saying this amendment which we have adopted is a cure-all but I do say that it provides a valuable control on the increase of the national debt and a point of definite reference.

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

Mr. ARMSTRONG. In 1 minute I will be glad to yield to the Senator.

It provides a way by which we know where we are going. While it does not solve all problems, it certainly is a good point to start.

In my opinion, to simply say that you have to have a three-fifths vote to increase the national debt enhances the passage of this amendment through the Senate, the House, and through the country. I know there are Senators at least who have told me that absent some provision of this kind they do not intend to support this amendment on final passage. I would beg the attention of the majority leader and the managers of this bill. Let me repeat, this is not an unfriendly amendment. It is an amendment intended to enhance the prospect for passage of the constitutional amendment. Senators have said to me they do not intend to vote for final passage unless there is some provision of this kind contained in it. There may be some Senator who will say the opposite, but I want to make it clear that I am not trying to scuttle this constitutional proposal. It is near and dear to my heart.

I see the majority leader has risen. I would be pleased to yield to him or the Senator from Oklahoma.

Mr. BAKER. Mr. President, if I could say a word, I would like to yield control of the time on this important motion to the distinguished Senator from Arizona (Mr. DECONCINI). Having done that, I will ask him if he will yield me 2 minutes.

Mr. DECONCINI. I yield the majority leader 2 minutes.

Mr. BAKER. Mr. President, I have the highest regard for the Senator from Colorado. I am often impressed by his arguments and frequently conviced. But, Mr. President, in this case I must say that I am afraid that we are headed in a direction that will substantially impair the prospects that a constitutional amendment will be adopted.

It is not just on pure logic and reasoning that we address issues in this body. It is on this basis as well of what the prospects are for congressional action, in this case, final ratification by several States.

Mr. President, I am convinced that we will have difficulty in getting this resolution before the House of Representatives. I am convinced that it will be necessary to go the discharge route in order to accomplish that. I am convinced that it will be very difficult under House proceedings to modify

the bill where it now resides in the House Judiciary Committee. I have stayed in close contact with the distinguished ranking minority members of the House Judiciary Committee and the Ways and Means Committee to ascertain how different amendments will affect the prospect for final congressional action on this resolution and its ultimate submission to the States for their ratification or rejection.

The answer invariably has come back, "Do as little with it as you can." Some of these amendents are meritorious standing alone, some are not. But do as little as you can if we really are serious about trying to get this constitutional amendment through the Congress and ratified by the States.

It does not bother me at all or smack of cynicism to say that I am attracted to the amendment of the Senator from Colorado, but not on this resolution. I think it will substantially detract, Mr. President, from the prospects that this will become the law of the land as a generic part of our fundamental charter.

One final remark, Mr. President, if I might. I have jousted with my friend from Colorado on the debt limit, and so on. We have had some real go-rounds occasionally. He has taken me to the mat almost a time or two. We have not lost one yet but we have hung on by the skin of our teeth.

The Senator from Colorado is well known for his tenacity on this issue and for his insistence that we make it less convenient to increase the debt limit or even to prevent the increase of the debt limit of the Government of the United States. I am sympathetic.

This is no disparagement of my friend, but, Mr. President, I am reminded of the old adage of locking the barn after the horse gets out. We are not talking about what we are going to spend. We are not talking about the restraint that will be placed on ourselves with respect to appropriations. We are talking about whether we pay the bills or not. We are talking about what we do after the fact. We are talking about having two choices, as we say in Tennessee, and one is to pay the bill and the other is to beat them out of it.

Mr. President, I do not think we can do that. I think in the final analysis the debt limit now and in the future must accommodate to the business of paying the bills after we have spent the money. It is unpleasant, it is undesirable, but it is a fact of life that if we spend more than we take in, we have to borrow the money to pay for it. No amount of restraint on the debt limit is going to accomplish that purpose.

Mr. President, I anticipate that there will be a motion to table the motion to reconsider. I urge that, if that is the case, the motion to table be defeated.

The PRESIDING OFFICER. Who yields time?

Mr. ROBERT C. BYRD. Mr. President, will the Senator yield to me?

Mr. BAKER. I yield to the minority leader, if I may.

Mr. ROBERT C. BYRD. Mr. President, I hope there will not be a motion to table. I urge my colleagues on this side not to move to table. I think we should vote up or down.

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

The PRESIDING OFFICER. The Senator from Arizona has 7 minutes remaining.

Mr. DECONCINI. I yield 3 minutes to the Senator from New York.

Mr. MOYNIHAN. Mr. President, I congratulate the Senator from Colorado for having made abundantly clear that the only means, the only mechanism, the only technique to balance the Federal budget resides in the political courage and willingness of this body of Senators, freely elected, freely voting, to do it. In this way, he has clarified the profoundly impractical character of the amendment before us.

Mr. President, this very morning, the Director of the Office of Management and Budget, David Stockman, appeared before the Senate Committee on the Budget, on which I serve. He was in a state of some perplexity, which would be the most generous term to describe his demeanor.

Last Friday, the administration released its midsession review of the economy and the Federal budget, its latest economic and deficit projections. Administration spokesman, claiming public anonymity, promptly disowned the validity of the projections.

This morning, the Secretary of Commerce has said, in the Washington Post, that the administration's new 1983 deficit projection is at least $20 billion to $30 billion too low. The Director of the Office of Management and Budget—trying to explain, or explain away, all this—said, "Well, you see, these are guesses here and uncertainties there, and events from outside our borders which we cannot control, here and there."

I ask, why will the projections under a balanced budget constitutional mandate be more reliable? But now they will constitute a constitutional offense.

The consequence of a constitutional amendment without the Armstrong amendment—which is, on its face, rigid and all those other things which the majority leader has said—is subterfuge on our part. And this will be dishonorable. The only alternative will be to turn the fiscal affairs of the United States over to the courts to determine which would confound our constitutional order as surely as anything I have yet heard proposed.

Mr. President, I am happy that the Senator from Colorado has shown us what a sham this amendment is and what a shame this debate has been for these last 10 days.

Mr. DECONCINI. Mr. President, I yield 2 minutes to the Senator from Delaware.

Mr. DOMENICI. Will the Senator yield to me to ask a question of the Senator from New York?

Mr. THURMOND. Mr. President, I yield for that purpose.

Mr. DOMENICI. Is the distinguished Senator for or against the amendment? I have heard him now for 2 or 3 minutes.

Mr. MOYNIHAN. I voted for the amendment.

Mr. DOMENICI. The Senator just urged the Senate to do something. What was it he urged the Senate to do?

Mr. MOYNIHAN. Examine your conscience.

Mr. DOMENICI. I thank the Senator.

Mr. BIDEN. Mr. President, that is what I have been doing for some time, examining my conscience. This is the first time I have spoken on this matter—not that that is of any great import to anybody except to me. I have voted on all of the amendments so, to that extent, I have spoken to them.

I have been seeking a rationale that would allow me to vote for what is obviously a politically very popular thing to do, to balance the budget. It is philosophically compatible with the way I think, that we should have some means of keeping a lid on what we do, because obviously, we are unable to discipline ourselves by ourselves thus far. We are all looking for mechanical devices to force us to do what is very difficult to do; that is, tell interest groups no, whether they be defense or social programs or whatever they happen to be.

So, for those two reasons, it is a very, very tempting thing to go out and support this. I said to my constituents at home that I would support the amendment if, in fact, there were some way, other than a declaration of war, to be able to work with the supermajority requirement. But we keep coming back to the point—at least, I keep coming back to the point—that the Senator from Colorado so accurately raised. I quote him:

> There is no definite point of reference.

He hit the nail right on the head. There is none. I do not know how, short of some mechanism like this one, and it is not very perfect; there is no point of reference.

The PRESIDING OFFICER. The 2 minutes of the Senator from Delaware have expired.

Mr. DECONCINI. I yield 1 more minute.

Mr. BIDEN. With the additional minute I have to speak to this amendment, let me say that we really are at a point where we all know—I believe most of us know—even those who strongly support this amendment, that there is a bit of subterfuge here. We know that there is no way of knowing for sure, even with this amendment, if we can balance a budget because of estimates and because of the way the budget process works. So we are going to pass this amendment.

We are going to make a good-faith effort to balance the budget once it gets through the States, that meets the constitutional requirement. Then we are going to be back in times of difficulty and we are going to be jerry-rigging the numbers just as the administration is doing today. The administration is saying flat out, "We do not want to upset the Congress now in their process." We are going to do the same thing. The little faith we have in this is going to be gone and we are going to be in trouble.

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

The PRESIDING OFFICER. Two minutes and forty-five seconds.

Mr. DECONCINI. I yield 2 minutes out of the bill to the Senator from New Mexico.

Mr. DOMENICI. Mr. President, I rise in opposition to the Armstrong amendment. I do not think there is anyone here who is more concerned about balancing the budget than I am. But I think it is a mistake to adopt the Armstrong amendment. I hope I can explain quickly why I believe the amendment should be defeated.

If there is anything this constitutional amendment, as it comes before the Senate, does, it reverses two biases. It reverses the bias in favor of spending and it reverses the bias against taxation. That does not mean it puts spending or tax levels into some kind of concrete. It does not mean we shall get a balanced budget the week after we have this constitutional amendment as the organic law of the land. But it does those two things, reduce the bias in favor of overcommitting and overspending and reduces the bias against overtaxation.

The problem with the Armstrong amendment is it takes one of those biases and reverses it, the opposite way. I shall tell my colleagues why: In this constitutional amendment, one vote more than 50 percent is necessary in order to raise taxes. Under the Armstrong amendment, three-fifths of the Members of each body, would have to vote to increase the debt limit. I shall tell my colleagues what that is going to do. If that is built into the organic law, we are going to raise taxes every time, because we are not going to get the three-fifths vote to raise the debt limit. So we will do the easier thing; we will vote to raise taxes.

The idea that the Armstrong amendment would get rid of estimating problems is absolute baloney. You are going to be estimating, and making decisions based on estimates, as long as there is a Republic called the United States of America, as long as there is a Government.

Do my colleagues want to know what we are really going to do? We are going to get right down to the last month of fiscal years when there is no way to get around the latest estimate. Then we are not going to bankrupt the Government; we are going to increase taxes. That only takes a majority. We will not find three-fifths for the debt limit increase.

The Armstrong amendment has not been adequately thought through. Those who advocate this amendment say there is no point of reference unless it is adopted. I disagree. There is a point of reference. We shall have budgets every year, using the best estimates we can come up with, and then we shall look at actual experience and try to improve as we move along. I seriously doubt that any process much better than that is ever going to come around—whether or not the Armstrong amendment passes.

We can wish the estimating problems would go away, but they are not going to go away. It seems to me the Judiciary Committee and those who helped put the constitutional amendment together did an admirable job on one simple proposition, in behalf of the people of this country. They developed an amendment that, through the Constitution, would tell Congress, "Don't spend so much, don't commit so much." Now those who support the Armstrong amendment want something automatic. Senator ARMSTRONG says it will all work well because three-fifths are going to have to vote for a debt limit if it increases. I urge that we not do this.

Mr. BIDEN. Will the Senator from Arizona yield 1 minute on the bill for a question?

Mr. DECONCINI. I yield 1 minute to the Senator from Delaware.

Mr. BIDEN. Mr. President, I am asking the Senator from New Mexico a question: Is not the bias in this amendment supposed to be to balance the budget? It is not about taxes, it is not about spending, it is to balance the budget.

The Senator has just made a very compelling argument. He has said if this amendment passes, we are going to have to raise taxes in order to meet the requirements of the balanced budget. I thought that is what we were about. Is that not what we are about, balancing the budget?

Mr. DOMENICI. Mr. President, the Senator from Delaware may think we are about that. That is not what we are about. This Senator is not. This Senator is about balancing the budget at the lowest level of taxation that will get the job done.

Mr. BIDEN. I see.

Mr. DOMENICI. That is what this constitutional amendment proposes as a new national commitment——

Mr. BIDEN. Maybe we should say that.

Mr. DOMENICI [continuing]. As contrasted with the bias in favor of larger government and unbalanced budgets.

Mr. BIDEN. Should not the Constitution be fairly precise? What we should say is, what we are doing here, folks, is not looking at a balanced budget; we are looking at a balanced budget at the lowest level we can.

That is what we are here for, so everybody understands. That is what this amendment really means when we pass it. It is a nice way to define it. I am glad to have that legislative history.

That is ridiculous.

Mr. DOMENICI. The Senator can read the amendment and he will not need any constitutional interpretation because that is what it says. It limits the growth of revenues and it calls for balanced budgets.

Mr. BIDEN. It does not say that lowest amount. It says balance the budget.

The PRESIDING OFFICER. The time of the Senator has expired. Who yields time?

Mr. ARMSTRONG addressed the Chair.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. ARMSTRONG. I believe that there remains under my control 6 minutes and 37 seconds.

The PRESIDING OFFICER. The Senator is correct.

Mr. ARMSTRONG. I yield 2 minutes to the Senator from Oklahoma (Mr. BOREN), 2 minutes to the Senator from Indiana (Mr. QUAYLE), and reserve the remainder of the time to close the debate.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. BOREN. Mr. President, I thank the Senator from Colorado. Let us not get confused about the issue here. I thought we were debating the question when we started several days ago of an amendment which would require us to have balanced budgets constitutionally, unless three-fifths of both Houses of Congress said to the contrary. I have been going home and telling the people of Oklahoma I support that. I believe in balanced budgets. I do not believe it should be easy to unbalance the budget. In fact, I have been somewhat concerned that three-fifths might be too easy a task, and yet while we have been discussing this amemdment I have heard some who favor it say,

Oh, no, this is not an amendment that requires a balanced budget unless three-fifths of both Houses vote to unbalance it. It requires us to adopt some estimates. Let us keep it all flexible and if those estimates turn out to be wrong, let us let the budget be unbalanced $30 billion, or $40 billion, or $50 billion. For goodness sakes, do not put anything in this amendment that makes it definite that it will require a three-fifths vote of both Houses before we can have unbalanced budgets.

Mr. MOYNIHAN. Will the Senator yield?

Mr. BOREN. I thought that is what we were about, Mr. President. I thought that is what we were about.

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

Mr. BOREN. I want an amendment that can only be vitiated by three-fifths vote of both Houses. It should not depend upon estimates. It should not depend upon technicians. There should have to be a balanced budget in fact unless three-fifths of both Houses say otherwise. The way to enforce that and to assure that that happens is to require that you cannot increase the national debt limit except by three-fifths vote of both Houses. If we have balanced budgets, there will not be another dollar added to the national debt after the passage of this amendment, in theory at least, unless three-fifths of both Houses so approve. We are simply making this amendment do what we have told the American people all along that we were proposing to do.

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

The PRESIDING OFFICER. The 2 minutes of the Senator have expired. The Senator from Indiana (Mr. QUAYLE) is recognized for 2 minutes.

Mr. QUAYLE. Thank you, Mr. President.

First of all, I want to point out that the Judiciary Committee has done a splendid job. The problem with the Armstrong amendment is that it happens to be a good amendment. It happens to enhance the prospects to restore the bias that everybody is talking about back into the Constitution, away from spending. But even though it is a good amendment, no, no, no, we cannot vote for it. We cannot vote for a good amendment on this floor. We cannot vote for it because every once in a while a little, mythical messenger from the House of Representatives comes over here, picks up the phone and says,

Do not touch that amendment because it will not get through the House of Representatives, cannot pass the House of Representatives if we change it at all, so do not change this amendment, do not change the resolution.

Even though the Armstrong amendment is a good amendment. How many times do people come up and say privately, "Yea, it is probably a good amendment."

I am absolutely appalled, Mr. President, that a disproportionate amount of this debate on this particular amendment is on tactics, political tactics. If we all want to just give our proxies to the majority and minority leader and go home and let them vote, fine. But if we want to abide by the Constitution, which says we have got to be 30 years of age to be in this place, then we ought to have the capacity to discuss on a substantive basis whether the amendment is a good amendment or not a good amendment and vote it up or down and quit horsing around, saying we cannot do it for political reasons.

The Judiciary Committee has done a good job. This is a good amendment and we ought to vote our conscience. I hope that Senators vote on this on the merits and not for some political rationale or political reason.

Mr. MOYNIHAN addressed the Chair.

The PRESIDING OFFICER. The Senator from Colorado is recognized.

Mr. ARMSTRONG. Mr. President, I see another Senator seeking recognition. I will be glad to defer to him and save my remarks.

The PRESIDING OFFICER. The Senator has 3 minutes and 5 seconds remaining on his time and the other side has 2 minutes and 18 seconds. Who yields time?

Mr. MOYNIHAN. Will the Senator from Arizona yield to me?

Mr. DECONCINI addressed the chair.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. DECONCINI. I yield 1 minute to the Senator from New York and reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from New York.

Mr. MOYNIHAN. Mr. President, this afternoon continues to be illuminating in surprising ways. We have heard the Senator from Colorado cogently explain why under this amendment none of the fiscal numbers produced will be reliable, and therefore some further standard is required. Then we heard the Senator from New Mexico say the amendment has two overall objectives: one is to end the bias in favor of spending in this body, and, the second is to end the bias against taxing. This is an amendment to rid our system of that old bias we have been laboring under against raising taxes. This bias has been with us, exerting its prejudice, since the Boston Tea Party, and the sponsors of the amendment say now we can get rid of it. Taxes can go up, and up, and up, and up, and we will be free at long last to act like George III was acting when we had that unfortunate misunderstanding—which was said to be something about taxation with representation for the people who pay the taxes. Now we know what we can do—tax and tax, if not spend and spend.

The PRESIDING OFFICER. The time of the Senator has expired. Who yields time?

Mr. THURMOND. Mr. President, I yield 3 minutes to the distinguished Senator from New Mexico.

The PRESIDING OFFICER. The Senator can yield time on the bill.

Mr. THURMOND. I yield the rest off the bill.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Mr. President, I say to my good friend from New York, if I said that, then I was in error in some kind of improper use of double negatives, so let me try again. And if I prompt him to say something in rebuttal, I will try to see that he is given some time to respond.

Let me see if I can put it to the Senate as I understand it. The purpose of the constitutional amendment as I view it is to change two biases: both a bias toward overspending and a bias toward overtaxation. If Senators read the amendment carefully, they will find that basically the theme is moving toward a balanced budget, but with growth of tax receipts also restrained. I said, and I repeat, that if you take the Armstrong amendment and tack it on the end and you make the debt limit subject to three-fifths vote, while this constitutional amendment says you can raise taxes with 51 Senators voting for it, I say you have turned the two new biases that you thought you were creating at least halfway on their head because now you reinject a bias toward taxation, because it is easier to raise taxes than it is to reduce the excess spending because that requires a three-fifths vote. I think that is right, and I hope anybody that thinks to the contrary will look at it, study it. I think I am right.

However, the other thing that the Senator from Colorado is saying that really we have to understand is that we will not have to estimate any more if we have his amendment; that in some way the flaws of estimating will disappear.

They will not, my friends. They will be there when you vote for that debt limit 15 years from now just like they are today. And you are going to have to know what the bases for estimates are, and what the arguments are before you can vote intelligently on debt limits. Otherwise you would risk putting the whole Government out of business while you got some accountants to figure out whose estimate of GNP growth for the last 2 weeks of the fiscal year was right so that you can vote on the level of national debt that was precisely right.

I think we can implement a budget process with more realistic estimating and move toward a balanced budget

more directly and with less confusion than would be possible if the Armstrong amendment were adopted. I urge that we reject it.

Mr. MOYNIHAN. Will the Senator yield me 30 seconds just to acknowledge his very gracious statement?

Mr. DOMENICI. Indeed.

Mr. MOYNIHAN. I think the Senator will find that he did say what I related his having said. He has explained his slightly different judgment, but I do point out to him that he just used the words that this amendment in its total will "reinject the bias for taxation."

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

Mr. DOMENICI. I am saying this one, this one.

The PRESIDING OFFICER. Who yields time?

Mr. THURMOND. Mr. President, has time expired?

The PRESIDING OFFICER. The 3 minutes yielded by the Senator from South Carolina have expired.

Mr. THURMOND. Mr. President, will the Chair state the question before the Senate?

The PRESIDING OFFICER. There is time remaining on the motion. There are 3 minutes and 5 seconds for the proponent of the amendment and 1 minute and 18 seconds under the control of the Senator from Arizona.

Mr. DECONCINI. Mr. President, I am going to yield in 30 seconds to the Senator from Delaware.

We are today witnessing a subterfuge. We look at the votes on the last issue, and there are those who are trying to make it tougher, and I like it tougher, but others who supported the Armstrong-Boren amendment in the hope that its adoption would hinder final adoption of Senate Joint Resolution 58.

This is not the ideal amendment I wanted to see considered by the Senate, but in order to obtain passage, we put together a concensus amendment. Those who voted for Armstrong-Boren, but who oppose Senate Joint Resolution 58 are engaging in a subterfuge in order to kill Senate Joint Resolution 58. It rests with those who want to go down that road to live with themselves and explain their motives to their constituents. I urge my colleagues to vote on the merits of Armstrong-Boren and not with the purpose of possible ulterior tactical advantage.

I yield to the Senator from Delaware.

Mr. BIDEN. Mr. President, I say to the Senator from New Mexico, who is still in the Chamber, that I challenge him to find in this constitutional amendment any reference to taxes, any reference to the word "taxes" and/or spending. What it says this amendment is all about is that Congress may amend such statement, provided revised outlays are no greater than revised receipts.

This is about a balanced budget. That is what Senator ARMSTRONG forces us to have to consider, and that is the very serious tragedy of this.

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

The Senator from Colorado.

Mr. ARMSTRONG. Mr. President, I should like to respond briefly to the issues that have been raised. I think I can sum it up very quickly.

I do not claim, as has been stated, that the adoption of this amendment will in any way eliminate problems arising from estimates. Estimates are a problem before or after this amendment.

However, the national debt is not an estimate. That is a known amount, and the limit of it is a known amount. Other estimating problems remain, but at least in this one narrowly defined, specific issue, the amount of the national debt is a known number. We raise it or we do not. We do it by a majority vote or a three-fifths vote. I think three-fifths is reasonable.

Second, there is a little implication running through the debate that somehow the form of this amendment, which the Senator from Oklahoma, the Senator from Indiana, the Senator from South Carolina, and I have brought forth is something we have brought up overnight. That is not so. It follows closely the language which appears in many State constitutions. I have not read recently the 38 State constitutions which contain some spending limit, although at one time a few years ago I did, and I do not recall that even one contained any reference to a statement of estimated receipts and outlays; but in many of them you will see almost the identical language which is the subject of the Armstrong-Boren-Quayle-Hollings amendment. Far from being new or untried or off-the-wall language, we have tried a very moderate, low-key, well-tested approach to the problem.

Third, I want to reemphasize the point Senator BOREN has made—that is, if we are serious about what we are doing, we should put some teeth into this amendment.

Mr. President, is the Senate in order?

The PRESIDING OFFICER (Mr. COCHRAN). Reasonably good order. [Laughter.]

The Senate will please come to better order. The Senator has a right to be heard.

Mr. ARMSTRONG. I thank the Chair.

The question is, Are we really serious about this? Do we really intend to put binding language in the Constitution which says either the budget will be balanced or, if not balanced, it requires a three-fifths vote? I have no doubt about how I feel about that, and all Senators can simply vote on that basis. This is a reasonable amendment to support.

Finally, I agree with those who have suggested that there not be a tabling motion, that there should be an up-and-down vote. The issue is clear. I sincerely hope the motion to reconsider will be defeated.

The PRESIDING OFFICER. Does the Senator yield back the remainder of his time?

Mr. ARMSTRONG. I do.

The PRESIDING OFFICER. The question is on agreeing to the motion to reconsider the vote by which the Armstrong amendment was agreed to. On this question the yeas and nays have been ordered, and the clerk will call the roll.

Mr. THURMOND. Those who favor reconsidering will vote "aye"; those who oppose will vote "no." Is that correct?

The PRESIDING OFFICER. The Senator is correct.

The legislative clerk called the roll.

Mr. BAKER. I announce that the Senator from Missouri (Mr. DANFORTH), the Senator from Alaska (Mr. STEVENS), and the Senator from Connecticut (Mr. WEICKER) are necessarily absent.

Mr. CRANSTON. I announce that the Senator from Ohio (Mr. GLENN), is necessarily absent.

The PRESIDING OFFICER (Mr. CHAFEE). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 40, nays 56, as follows:

[Rollcall Vote No. 278 Leg.]

YEAS—40

Abdnor	Hatfield	Pressler
Baker	Hawkins	Pryor
Boschwitz	Hayakawa	Roth
Chiles	Heinz	Schmitt
Cochran	Johnston	Simpson
DeConcini	Laxalt	Specter
Denton	Levin	Stafford
Dole	Lugar	Stennis
Domenici	Matsunaga	Symms
Durenberger	Mattingly	Thurmond
Garn	McClure	Tower
Goldwater	Melcher	Wallop
Grassley	Murkowski	
Hatch	Percy	

NAYS—56

Andrews	Dodd	Long
Armstrong	Eagleton	Mathias
Baucus	East	Metzenbaum
Bentsen	Exon	Mitchell
Biden	Ford	Moynihan
Boren	Gorton	Nickles
Bradley	Hart	Nunn
Brady	Heflin	Packwood
Bumpers	Helms	Pell
Burdick	Hollings	Proxmire
Byrd, Harry F., Jr.	Huddleston	Quayle
	Humphrey	Randolph
Byrd, Robert C.	Inouye	Riegle
Cannon	Jackson	Rudman
Chafee	Jepsen	Sarbanes
Cohen	Kassebaum	Sasser
Cranston	Kasten	Tsongas
D'Amato	Kennedy	Warner
Dixon	Leahy	Zorinsky

NOT VOTING—4

Danforth	Stevens	Weicker
Glenn		

So the motion to reconsider the vote by which amendment No. 2010 was agreed to was rejected.

Mr. BAKER addressed the Chair.

The PRESIDING OFFICER. The majority leader is recognized.

Mr. BAKER. Mr. President, before we proceed with the next amendment, I have been asked by the chairman of the Appropriations Committee to announce——

The PRESIDING OFFICER. Will the majority leader withhold? Could we please have quiet in the Chamber so we can hear the majority leader? Will Senators please take their seats? Will those Senators who are standing please take your seats?

The majority leader.

Mr. BAKER. Mr. President, I have been asked by the chairman of the Appropriations Committee, Senator HATFIELD, to announce that the markup on the supplemental appropriations bill will continue in room 1114 of the Dirksen Building. He asks that members of the Appropriations Committee present themselves there now so they can finish that markup and we can try to get the bill up yet this week.

Mr. President, I congratulate the Senator from Colorado for his success, his victory, on this amendment.

Mr. President, I yield the floor.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Maine.

Mr. ARMSTRONG. Mr. President, will the Senator yield to me for 30 seconds?

Mr. COHEN. I yield to the Senator from Colorado.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. ARMSTRONG. Mr. President, I would just like to acknowledge the gracious observations of the majority leader and thank him for his friendship and his kindness. I am sorry that we did not, at the outset, see this issue eye to eye. We are both striving for the same objective which is to get rid of the deficit and get spending in the Federal Government under control, not through some abstract reasoning but because it is important to the economic future of our country. He has been a leader in that field and I am sorry that we could not see this particular amendment eye to eye. But I am convinced that it will ultimately help us obtain the passage of the joint resolution in this Chamber and in the other body and in the country. To that end, I am absolutely dedicated, as I know he is, as well.

Several Senators addressed the Chair.

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

Mr. BAKER. Mr. President, will the Senator withhold just for a moment while I take care of one other detail?

First of all, I express my deep appreciation to the Senator from Colorado. I can say from personal observation that no man in the Senate is more dedicated to those purposes than is he, I admire his work and I admire what he has done here. He won fair and square and I congratulate him.

Mr. President, I have one housekeeping matter. I ask unanimous consent that I may proceed for 1 minute on the subject of a message from the House of Representatives.

The PRESIDING OFFICER. Is there objection? Hearing none, it is so ordered.

Mr. BAKER. Mr. President, I understand this has been cleared on both sides.

DEPARTMENT OF DEFENSE AUTHORIZATION

Mr. BAKER. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 2248, the Department of Defense authorization bill for 1983.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the House insist upon its amendments to the bill (S. 2248) entitled "An act 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", and ask a conference with the Senate on the disagreeing votes of the two Houses thereon.

Mr. BAKER. Mr. President, I move that the Senate disagree with the House amendments and agree to the conference requested by the House on the disagreeing votes of the two Houses and that the Chair be authorized to appoint conferees on the part of the Senate.

The motion was agreed to; and the Presiding Officer (Mr. CHAFEE) appointed Mr. TOWER, Mr. THURMOND, Mr. GOLDWATER, Mr. WARNER, Mr. HUMPHREY, Mr. COHEN, Mr. JEPSEN, Mr. QUAYLE, Mr. DENTON, Mr. BRADY, Mr. STENNIS, Mr. JACKSON, Mr. CANNON, Mr. HARRY F. BYRD, JR., Mr. NUNN, Mr. HART, Mr. EXON, and Mr. LEVIN conferees on the part of the Senate; and additional conferees for the consideration of section 1122 pertaining to the inspector general section of the bill, Mr. ROTH and Mr. EAGLETON.

BALANCED BUDGET—TAX LIMITATION CONSTITUTIONAL AMENDMENT

The Senate continued with the consideration of the joint resolution.

Mr. THURMOND. Mr. President, I ask unanimous consent that after the Senator from Maine offers his amendment that the Senator from Nebraska, Senator EXON, follow him.

The PRESIDING OFFICER. The Senator from Nebraska will be next.

UP AMENDMENT NO. 1170

(Purpose: To provide for standing and judicial review under this article)

Mr. COHEN. 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 Maine (Mr. Cohen) proposes an unprinted amendment numbered 1170.

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

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

The amendment is as follows:

On page 4, between lines 8 and 9, insert the following:

"Section 4. The judicial power of the United States courts shall extend to any case or controversy arising under this article.

"Section 5. Any person may commence an action for appropriate redress in any federal court of competent jurisdiction.

On page 4, line 9, strike out "4" and insert in lieu thereof "6".

On page 4, line 13, strike out "5" and insert in lieu thereof "7".

Mr. COHEN. Mr. President, unlike my colleague from Colorado, I send to the desk what might be characterized as an unfriendly amendment. It is rather simple in its wording, but I would assure you it is pernicious and it is calculated to serve as what one author has called a recipe for lawlessness and paralysis.

The amendment I am offering would add a new section to Senate Joint Resolution 58 expressly conferring standing on individual citizens, including Members of Congress, to bring suits for redress for violations and to enforce the provisions of the proposed constitutional amendment.

My offering this amendment might come as a surprise to some of those who noted that I was one of the more vigorous supporters of the Gorton-Rudman amendment offered last week to limit the Federal court's exercise of judicial review on the budget created by Senate Joint Resolution 58.

I offer this amendment not as an advocate of the court's involvement in the process but to be sure that the Senate's position on this issue is clear and unequivocal.

If Senate Joint Resolution 58 is adopted by the Congress and ratified by the States, the U.S. Constitution for the first time will include some specific provisions regulating the con-

gressional budget process. While the judicial branch has never been involved in the budget-making process, and I do not think it should be, the language of the proposed constitutional amendment threatens to result in the unprecedented intrusion of the judiciary in matters clearly within the power and authority of Congress.

The Gorton-Rudman amendment, which I believe the Senate unwisely defeated last week, was designed to maintain the status quo and to maintain the current separation of powers between the three branches of Government. Without this limiting language, I think we face the prospect of suits brought by individual taxpayers, perhaps even Members of Congress, challenging congressional budgetary decisions.

Budget matters are clearly the prerogative of the legislative and executive branches, and the constitutional amendment before us I believe is bound to alter this allocation of power and to insert the judiciary into the budget process in the role of an arbiter.

The sponsors of this resolution agree that the Federal judiciary should not become involved in the writing of budgets, and they argue the doctrines of justiciability, standing, and political questions are all going to insure that this will not occur.

Moreover, they say that the Judiciary Committee report on the resolution and the record of the Senate debate to date make it clear that the role of the courts in enforcing this amendment is intended to be restricted.

I note they use the word "restricted" but not "prohibited."

I believe the flaws in these arguments have been adequately detailed by Senators GORTON, RUDMAN, and others in the debate last week.

The threat of judicial involvement in the budget process in my judgment is very real. The report language, and statements made on the Senate floor last week asserting the unlikelihood of such action and the intention that there will be no extension of authority to the judicial branch, is not an adequate substitute for specifics in constitutional language what will limit the powers of the courts.

I would take my colleagues' time for a moment to go back to a case cited by Senator GORTON, *Flast* v. *Cohen* (392 U.S. 83 (1968)). Let me read the language where the Court said:

> We hold that a taxpayer will have standing consistent with article III to invoke Federal judicial power when he alleges that congressional action under the taxing and spending clause is in derogation of those contitutional provisions which operate to restrict the exercise of the taxing and spending power. The taxpayer's allegations in such cases would be that his tax money is being extracted and spent in violation of specific constitutional protections against such abuses of legislative power.

It seems to me, Mr. President, that by the rejection of the Gorton amendment, which I think was a reasoned and balanced approach to try and limit judicial involvement, at the same time protecting the court's authority to define constitutional language and to imterpret and determine the constitutionality of the so-called implementing language, I am concerned that the Senate's rejection of that amendment may be interpreted as an endorsement of taxpayer-initiated lawsuits and judicial intrusion on the budget-making process itself.

Therefore, I am offering this amendment to provide the Senate with the opportunity to affirmatively establish in the record its position on the potential expansion of the judiciary's role in the budget process and on the issue of standing of individual citizens to bring suits under the proposed constitutional amendment to enforce its provisions.

There is one other section that I want to cite. That is the committee's own report. The report language begins on page 66. I would cite this for my colleagues who feel that the courts simply are not going to get involved in this.

> 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.

"A significant role for the judiciary branch."

It seems to me what we have done by rejecting the Gorton-Rudman amendment is that we have invited such lawsuits in the future. We have invited the taxpayer to say, "My rights have been violated under this new constitutional amendment because you have an off-budget item, maybe a guaranteed loan in Wilmington, Del., or in Bangor, Maine, which ought to be in the budget. If that is in the budget, you will be out of balance and, therefore, you have violated the Constitution and violated my right as an individual citizen to have that constitutional amendment enforced."

Those are the constitutional questions that we are opening this up to.

Just as nature abhors a vacuum, I think I can fairly say that our Federal courts will welcome ambiguity as an invitation for intervention in areas where politicians are supposed to tread.

It has been pointed out again and again, in the reapportionment cases, in busing, in abortion, and in prayer. Senator RUDMAN talked last week about the court's supervision of the State mental institutions, how many toilets are required in prisons, or mandating the wearing of hair nets in kitchens. If they are going to assume jurisdiction to dictate hair nets and toilet facilities because it affects the individual rights of a prisoner, is there anybody in this Chamber, particularly those who have fought so strenuously to deprive the courts of jurisdiction, whether it be busing, prayer, or any other issue, who believes the courts will be discouraged from entertaining a Senator's, a Congressman's, or a taxpayer's lawsuit that insists that those loan guarantees and other off-budget items should be included as liabilities?

I know it has been said that there are some who see the court, by virtue of future appointments, becoming much more conservative in the years ahead. That may be for the next 2, 3, 4, or 5 years. But what we are doing is writing a constitution for a 100 years, not just for tomorrow. Perhaps the court cannot be packed by 1984. The forces of conservatism may not prevail if our economic problems continue to persist. But I submit to you the unpredictability of the future, economically or electorally, is precisely the point I am trying to make.

We are writing this Constitution not for a party or a philosophy or ideology but for all time.

I submit to the Senators that those who support the intervention of the Federal courts in the budget process should vote for this amendment. Those opposed to any expansion of the judiciary in this area ought to vote for its defeat.

I am urging the defeat of my own amendment, and I hope it will be a unanimous vote.

I would like to caution my colleagues that the defeat of this amendment will not cure the essential deficiency in the constitutional amendment as currently written. It will only return us to the same state of ambiguity which existed before the defeat of the Gorton amendment. It will return us to Flast against Cohen, to page 66 of the Judiciary Committee report, the position of neutrality where the courts will decide on the traditional basis whether standing and justiciability exist for individuals under the proposed constitutional amendment.

For those who resent the expansion of judicial power, this is not a happy prospect.

With that, Mr. President, I would urge my colleagues to defeat the amendment that I offer for the express purpose of putting the Senate on record as being fundamentally opposed to the judiciary intruding and extending itself into case and controversy issues which are otherwise, and have been heretofore at least, considered to be political issues and solely within the exclusive domain of Congress itself.

I reserve the remainder of my time.

Mr. GORTON. Will the Senator yield?

Mr. COHEN. I yield to the Senator from Washington.

Mr. GORTON. I thank the Senator from Maine, and I commend him on a thoughtful and imaginative attempt to repair the very considerable damage done to the concept contained in this resolution by the defeat of the amendment proposed by the Senator from New Hampshire and myself on Thursday last.

Unfortunately, while I believe that some repairs will be accomplished by the defeat of the amendment of the Senator from Maine, it will take more than simply its defeat to return to the status quo ante. That is the case because, before my amendment was proposed, we had before us as legislative history only the page or so contained in the Judiciary Committee report, the thrust of which was that standard concepts of justiciability, standing, and political question would either prohibit or very severely limit the judicial review of actions taken or not taken by Congress pursuant to the resolution. During the course of the debate, however, its proponents—the Senator from Utah, the very distinguished President pro tempore, and others—not only argued the lack of necessity for my amendment, but argued rather eloquently in favor of the activist judiciary to enforce it and, thus, have created a legislative history which, even after the defeat of this amendment, will, at best, be highly ambiguous.

I hope that, with the Senator from South Carolina and the Senator from Utah responding to the amendment before us now, would correct that misapprehension to the maximum possible extent. In any event, it is highly accurate to say that the shift in the separation of powers away from Congress and in favor of the courts, which will be almost inevitable as the result of the legislative history of this resolution as it stands before us now, may be repaired in part by the defeat of the amendment proposed by the Senator from Maine and that this becomes a highly useful debate on that ground alone.

Suffice it to say, Mr. President, that that kind of shift of the separation of powers would be highly undesirable. As a matter of fact, even if the resolution itself does have a positive effect on arresting the growth in spending, we may nevertheless be substituting for one evil an evil which is even greater.

I agree with everything the Senator from Maine has said. I agree with his conclusion. Members, unless they believe in judicial activism in this field, should vote against his amendment. I hope it will have some positive impact on the issue which he has described.

Mr. COHEN. Mr. President, I yield to the distinguished Senator from Delaware.

Mr. BIDEN. Mr. President, I congratulate the Senator in his very sincere attempt to remedy what I consider to be a serious defect in this amendment. The Senator quoted from page 66 of our Judiciary Committee report, where the proponents of the amendment state—by inference at least—that there is a significant role for the judiciary.

Mr. President, the Senator from the State of Washington and the Senator from the State of Maine have spoken about judicial activism. Let me speak very briefly to the other side of that coin. Let us assume that the judiciary does not desire to be an activist judiciary. Let us assume that the judiciary merely is doing what, under the Constitution, it is required to do: that is, consider the case. It may conclude, when it gets to the Supreme Court, that it is something it should not be involved in. But can the Senator imagine what is going to happen when, in fact, every year we go through the tortuous process of arguing whether or not we spend $6.8 billion to buy two big carriers or x billion dollars on four small carriers, or whether or not we project deficits based on economic growth at 3.4 or 5.5 percent of GNP?

It seems to me that, at a minimum, we would have—even if the judiciary does not want to be involved, shuns involvement, when involved takes the most conservative course possible—we still are going to have a circumstance where the Government and the Congress, in this case, will be in court on a regular and, I assume, time consuming basis.

Mr. COHEN. If the Senator will yield—for example, a serious example was given this year on the question of taking social security off the budget. Does the Senator recall that?

Mr. BIDEN. Yes, I do, Mr. President.

Mr. COHEN. It was seriously suggested by some people who said, "Look, it is really not the budget; it is money we put in long ago for our retirement and therefore, we should take it off."

What would happen under this proposed amendment if, in fact, a resolution or an amendment were introduced to take it off the budget and a disgruntled citizen says, "Wait a minute. If you take that off, the budget is out of balance and I want the budget balanced as the Constitution requires." It seems to me the citizen would be right. He could bring a lawsuit and that reluctant court could have no alternative but to take it under its consideration.

Mr. BIDEN. I agree with the Senator. I make one final point. It really speaks to the central issue the Senator is addressing. That is whether or not the courts can, should be, or would be involved in economic policy in this country.

My comment really goes farther back to the original amendment of the Senator from Washington. A number of my colleagues viewed voting for the amendment of the Senator from Washington as a court-stripping vote. I have a problem with that notion, because I do not think they looked very closely at it.

How do you strip the court of something they have no authority to deal with at this point? It is a question of whether or not we confer authority upon them that they do not have. Constant analogies were being made on the floor, which were lost on me and, I think, quite frankly, were made by people who misunderstood the issue, that this is synonymous with the attack—I see my friend from Alabama, who was chief spokesman for the position against the amendment—this is synonymous with stripping the court of jurisidiction over cases and controversies and other areas. Some of my liberal friends, which is not the Senator from Alabama, stood up and said this is like stripping the court of jurisdiction over busing, prayer, and every other thing we talked about.

I respectfully suggest it is none of that at all. It does not have anything to do with that. It says that we have to find a mechanism by which we can discipline ourselves to keep the budget in balance, keep control of the purse strings in a practical way. But when we do that, if we decide the only way to do that is through a constitutional process to change the biases, as the phrase was used by the Senator from New Mexico and others earlier, we do not want to go further than saying that this is a mechanism to discipline ourselves and say this is also a delegation to another branch of Government of constitutional responsibility we now hold.

We are, really and truly, unbalancing the balance if this constitutional amendment passes in the form it is now, because right now, there is a delicate balance among the three branches of Government. What we are doing here is not only passing an amendment that would in fact constrain us and help us in bringing the economy under control by forcing us to do certain things, but we are delegating, in the alternative, that power to the court. That is what was lost on everyone.

The Senator is making a serious attempt to at least bring it back to a position of ambiguity, because now, there is no question, those of you who remember our third-year course in legislation in law school, how, in fact, the courts look at legislative history in interpreting what they do. It is clear from the vote on the well-intended amendment of the Senator from

Washington that, strangely enough, he may have dealt a serious blow to the issue of whether or not the courts should be more involved; that is, because now, the Senate is on record as saying the courts can and should be involved even beyond what was anticipated in what is a very damaging report as it relates to the role of the court.

I really do not think—this is a phrase with which I shall end in a minute and I thank the Senator for his indulgence. The phrase is often used, "What the American people want." That is awfully presumptuous of the Senator from Delaware to suggest what the American people want.

But I suggest that what it appears the American people want is not a delegation of the budget process to the Supreme Court of the United States of America. They want us to run the country like they have to run their households. They want us not to spend more than we take in. I do not think they are saying to us, "What you really should do if you all can't figure that out, folks, we would rather have the Supreme Court making the judgment for us, or the district court or any other court."

I commend the Senator on what I must acknowledge is an attempt to cure a problem I am not sure is curable but at least is better than leaving things as they are now.

I intend to support the Senator by voting against his amendment. I thank him for his time.

Mr. COHEN. I thank the Senator for his comments, and I would like to make it again as clear as I can. This amendment will not cure the deficiency. The deficiency is still going to remain because it just puts us back prior to the time of the rejection of the amendment offered by the Senator from Washington and the Senator from New Hampshire. It puts us back to the case of Flast against Cohen. It puts us back to page 66 of the Judiciary Committee's report which says that there, in fact, is a significant role for the judicial branch if Congress cannot resolve its difficulties or cannot enforce its own amendment under the Constitution.

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

Mr. THURMOND addressed the Chair.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. THURMOND. Mr. President, I rise in opposition to the amendment. The amendment provides that the judicial power of the U.S. courts shall extend to any case or controversy arising under this article. I, for one, certainly do not favor that, and I do not believe a majority of this Senate will.

This amendment would open up Senate Joint Resolution 58 to unlimited judicial review. We have rejected amendments to prohibit the courts from being in the position to enter the budgetmaking process. We should not now move in the other direction.

Mr. President, the distinguished Senator from Washington State offered an amendment to prohibit the courts from coming in. We rejected that amendment. Now, this amendment more or less invites the courts to come in, and we oppose this amendment.

What we have tried to do is to leave the courts just where we found them. In others words, not inject the courts into the matter either way.

There is no language in Senate Joint Resolution 58 one way or the other on the questions of standing, justiciability, or political questions. We leave those questions as they now stand.

Mr. President, we think that is all that is necessary. We again repeat that we oppose this amendment and hope the Senate will defeat it.

Mr. HEFLIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. HEFLIN. Mr. President——

The PRESIDING OFFICER. Who yields time?

Mr. THURMOND. Mr. President, in the absence of the distinguished Senator from Arizona, who is handling that side, I will take the liberty of yielding the Senator time to be charged to——

The PRESIDING OFFICER. Time charged to the Senator from Arizona.

The Senator from Arizona has no time.

Mr. THURMOND. Mr. President, is the Senator going to argue against it?

Mr. HEFLIN. I am with the Senator.

Mr. THURMOND. Mr. President, I yield to the Senator from Alabama and ask that the time be charged to me.

The PRESIDING OFFICER. Time will be charged to the Senator from South Carolina.

The Senator from Alabama.

Mr. HEFLIN. Mr. President, in looking at the two sentences of this proposed amendment, in my opinion they will do tremendous violence to other provisions in the Constitution of the United States. They deal with budgetary matters, but yet every phase of the Government is tied to appropriations and to budgetary matters.

The language in section 4 says, "The judicial power of the United States shall extend to any case or controversy arising under this article." If you have a threshold issue of budget, what does it do to the related matters?

Let us look at the Constitution under article III. Section 1 says, "The judicial power of the United States shall be vested in one Supreme Court and in such inferior courts as the Congress may from time to time ordain and establish."

This, in effect, freezes the present structure of the U.S. court system as it would apply to budgetary matters. It means that it would be in the Constitution that budgetary matters and those matters that are linked to budgetary matters are within the breast of the court.

There are those—and I merely point it out to show the implications and the violence that can be done here—who would like to restrict the jurisdiction of the U.S. district courts, U.S. circuit courts of appeals, in certain social issues. If this is adopted, if it has a threshold entry into the court system dealing with budgetary matters, there is serious question for those advocates of diminishing the jurisdiction of the district courts and the circuit courts of appeals whether or not they could prevail by statutory language, or by statutory enactments.

I think it is a matter that, in a desire to push a point that does violence to other sections and to other matters, has not been thoroughly considered.

Section 2 says, "Any person may commence an action for appropriate redress in any Federal court of competent jurisdiction."

Now, again, that gives standing to anyone. It in effect goes toward those people who would restrict the remedies and restrict the jurisidiction of the U.S. courts, mainly the jurisdiction in the trial court and in the court of appeals. It would give them standing to start in any Federal court of competent jurisdiction on matters pertaining to the budget. If there are related matters, then it has an implication and raises other serious questions.

Now, as our court system has developed there has been a restraint on the part of the Federal courts in dealing with the internal workings of Congress. The courts have been reluctant to get into the internal workings of Congress and have developed certain theories such as a political restraint issue, so that when there they are matters that are political in nature, the courts have restrained themselves and have not taken jurisdiction of those cases.

Standing in court has been a very important issue. The expansion of standing, as this amendment would do, would violate many, many of the decisions that have held that you cannot get into court pertaining to these matters.

The justiciable controversy or the justiciability of it is another theory. I think we will have to look at the language here, see what it does to other sections of the Constitution and what it does to our practice as we know it today.

I feel that it is an unwise amendment, and I urge that it be defeated.

Mr. THURMOND. Mr. President, I wonder if anyone else wishes to speak on this amendment, pro or con. If not, we are willing to yield back our time, if

the Senator from Maine is willing to yield back his time.

Mr. COHEN. Mr. President, I should like to make a few concluding comments.

I find it somewhat interesting that the Senator from Alabama is talking about the violence that is being done by this amendment. There is violence being done by this amendment. Intentionally so. I opened by saying that it is a pernicious amendment. It is one that is calculated to produce paralysis and confusion. I stated in my opening statement what the purpose of this amendment is: So that we will all know what was done last week. What was done was exactly what the Senator from Alabama is suggesting: We have opened the door to the judiciary into areas where they have yet to tread.

If the history of law has not been logic but experience, let us see what has happened with the courts. Whoever thought they would get into reapportionment? It was once considered a political thicket into which the courts would not intrude or venture. But they ventured. So now they are rewriting all our reapportionment cases. They are supervising the busing of students. They are supervising the conditions in our mental institutions. They are mandating health codes.

There is virtually no area in our society in which the courts have not taken jurisdiction. Why? Principally because of our failure. Principally because of our political cowardice, that we have not dealt with those social issues and, by indifference, no, by timidity, we have let the courts assume jurisdiction. Now Members of the Senate have decided that we should reduce that jurisdiction, remove the jurisdiction from the Supreme Court and other courts.

I understand the violence. I am trying to prevent further violence in the political system. Budgetary matters should be off grounds for the Federal courts.

What I am concerned about is that the way the Gorton-Rudman amendment was defeated last week, we have opened those doors a little, at least, for the courts to intrude—that coupled with the Judiciary Committee's own report. I do not know what it means, but perhaps somebody on the committee can tell me what it means:

> 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.

What does that mean? You anticipate a significant role for the judicial branch.

What the Gorton-Rudman amendment tried to do was to say that there would be no significant role for the judiciary, and the Senate voted that down because we do not want to mess up the constitutional balance. Well, the Senate has upset the constitutional balance by rejecting the Gorton-Rudman amendment.

This amendment, which I hope is defeated—I am joining the Senator from Alabama in his condemnation of this amendment because I am trying to make explicit what is implicit in the Senate's action. What I am trying to do is to put us back at least to the point prior to the Gorton-Rudman amendment. It will not cure the deficiency. It will not cure what has been written into this amendment by the committee's report and by the case cited by the Senator from Washington, Flast against Cohen, which stated, I repeat so there will be no misunderstanding.

> [W]e hold that a taxpayer will have standing consistent with article III, to invoke federal judicial power when he alleges that congressional action under the taxing and spending clause is in derogation of those constitutional provisions which operate to restrict the exercise of the taxing and spending power. The taxpayer's allegation in such cases would be that his tax money is being extracted and spent in violation of specific constitional protections against such abuses of legislative power.

Well, we are about to create an amendment which invites that very kind of lawsuit. So if we want to return to ambiguity, this amendment will help us get back there.

I would prefer to have the amendment of the Senator from Washington accepted, to tell the courts, "This is one area you shall not intrude." It is for our constituents to make the judgment as to whether or not we have lived up to the constitutional mandate we impose upon ourselves.

For whom is this constitutional amendment? Is this for individual citizens? Obviously, the answer is no. The Senator from Alabama has said we do not want an individual bringing lawsuits. This constitutional amendment is not for any of the people back home. It is for us. It is a constitutional amendment that we are adopting for us. Why? Because we do not have the political courage to make the decision for prudently planning our spending and our taxing policies. We do not have the political courage to say that we cannot afford a $100 billion deficit. We are going to narrow it down to zero. Not one of us here is prepared to do that.

I recall that during the debate on the budget last spring an amendment was offered calling for a balanced budget by 1985, 22 Senators voted "aye" for the amendment.

So we are now considering the passage of an amendment not to protect the individual rights of the citizens of this country but to protect, I suppose, our citizens against ourselves.

Ultimately, in the final analysis, we are using the Constitution as a coverup. We are using it as a coverup because it is a cloak for our naked cowardice and our trembling reluctance to make the cuts and increase the taxes that are going to be necessary to balance the budget. If it is passed, it will allow us to say that we are fiscal conservatives, but not today, and not tomorrow—maybe by 1985, 1986, or 1987.

It reminds me of what Saint Augustine said: "Lord, give me chastity and continence, but not just now."

I urge the defeat of my amendment.

Mr. THURMOND. Mr. President, I am very pleased to join the distinguished Senator from Maine in voting against his amendment, as he has requested.

I yield back the remainder of my time.

Mr. COHEN. 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.

Mr. HEFLIN. Mr. President, I move to table the amendment.

Mr. BUMPERS. Mr. President, I ask unanimous consent that I be granted 30 seconds to plead with the Senator from Alabama to withdraw his motion to table. This would be the first tabling motion.

The PRESIDING OFFICER. Is there objection?

Mr. HEFLIN. Yes, I object.

Mr. BUMPERS. The Senator objects to the 30 seconds?

Mr. HEFLIN. No.

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

The Senator may proceed.

Mr. BUMPERS. Mr. President, this is deadly serious business. We are talking about a constitutional amendment on which the Senators, I believe, would like to vote up and down on every one of these amendments. To my knowledge, there has not been one tabling motion since we began debate on this amendment, and I earnestly plead with the Senator from Alabama to withdraw his request and to let Senators have an up-and-down vote.

Mr. COHEN addressed the Chair.

The PRESIDING OFFICER. The Senator from Maine has yielded back his time.

Mr. COHEN. I ask unanimous consent to proceed for 1 minute.

The PRESIDING OFFICER. Is there objection?

Mr. HEFLIN. Mr. President, I am willing to withdraw my motion to table, but I do state this: There is a longstanding rule of interpretation of legislative history that the negating of an amendment does not carry with it all the legislative history which would imply that certain things were the in-

tention. There are many reasons why one votes "no" on an amendment.

Therefore, I think I should put into the debate the principle that has been decided by the courts on many occasions, that a negative vote on an amendment can go to many aspects of why you vote "no," rather than the specific language of the amendment.

Therefore, I withdraw my motion to table.

The PRESIDING OFFICER. The Senator has a right to withdraw his motion to table.

Mr. COHEN addressed the Chair.

The PRESIDING OFFICER. The Senator has yielded back his time.

Mr. COHEN. I requested 1 minute.

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

Mr. COHEN. Mr. President, so that the record will be clear, I say to my friend from Alabama that the purpose of offering the amendment was to say that individual citizens have the right to bring suit. I should like to have that rejected, because the record as it stands today is not clear, under the deliberations of this body, as to whether or not citizens could bring lawsuits. I am offering this amendment to try to restore some sense of balance to what I think was done last week.

So I should like to have the amendment voted down—as the Senator from Alabama does—to send a message to the Federal courts of this country that the Senate is on record as fundamentally and, I hope, unanimously opposed to the Cohen amendment.

Mr. HEFLIN. Mr. President, I think if the Senator looks at the decisions he will find that he is wishful thinking in that regard.

SEVERAL SENATORS. Vote.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Maine.

On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. BAKER. I annouce that the Senator from Missouri (Mr. DANFORTH), the Senator from Alaska (Mr. STEVENS), the Senator from Connecticut and (Mr. WEICKER) are necessarily absent.

Mr. CRANSTON. I announce that the Senator from Ohio (Mr. GLENN) is necessarily absent.

The PRESIDING OFFICER (Mr. EAST). Are there any other Senators in the Chamber wishing to vote?

The result was announced—yeas 0, nays 96, as follows:

[Rollcall Vote No. 279 Leg.]

NAYS—96

Abdnor	Bentsen	Brady
Andrews	Biden	Bumpers
Armstrong	Boren	Burdick
Baker	Boschwitz	Byrd,
Baucus	Bradley	Harry F., Jr.
Byrd, Robert C.	Heflin	Nunn
Cannon	Heinz	Packwood
Chafee	Helms	Pell
Chiles	Hollings	Percy
Cochran	Huddleston	Pressler
Cohen	Humphrey	Proxmire
Cranston	Inouye	Pryor
D'Amato	Jackson	Quayle
DeConcini	Jepsen	Randolph
Denton	Johnston	Riegle
Dixon	Kassebaum	Roth
Dodd	Kasten	Rudman
Dole	Kennedy	Sarbanes
Domenici	Laxalt	Sasser
Durenberger	Leahy	Schmitt
Eagleton	Levin	Simpson
East	Long	Specter
Exon	Lugar	Stafford
Ford	Mathias	Stennis
Garn	Matsunaga	Symms
Goldwater	Mattingly	Thurmond
Gorton	McClure	Tower
Grassley	Melcher	Tsongas
Hart	Metzenbaum	Wallop
Hatch	Mitchell	Warner
Hatfield	Moynihan	Zorinsky
Hawkins	Murkowski	
Hayakawa	Nickles	

NOT VOTING—4

Danforth	Stevens	Weicker
Glenn		

So Mr. COHEN's amendment (UP No. 1170) was rejected.

Mr. THURMOND. Mr. President, I move to reconsider the vote by which the amendment was rejected.

Mr. DECONCINI. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Nebraska is recognized.

Mr. EXON. Mr. President, if I could have the attention of my colleagues for a moment and ask them, if possible, to remain—could we have order in the Senate?

The PRESIDING OFFICER. The Senator is correct. May we have order in the Chamber? If we could have order in the Senate, the Senator from Nebraska has the floor and is entitled to be heard.

The Senator will proceed.

Mr. EXON. I thank the Chair.

I am disappointed that I could not get my point across. I was trying to ask my colleagues to remain on the floor, but they disappeared before I had the chance to get the message across. The reason for that, Mr. President, is, I am trying to be helpful in expediting the work of the Senate. I was simply trying to suggest that if the Senators could remain on the floor, we could probably dispose of the amendment that I am about to offer and have a rollcall vote in 10 to 12 minutes, if things work out as we have anticipated.

UP AMENDMENT NO. 1171

(Purpose: To require the President to submit an advisory statement of receipts and outlays for each fiscal year to the Congress.)

Mr. EXON. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Nebraska (Mr. EXON) proposes an unprinted amendment numbered 1171.

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.

Renumber the succeeding sections accordingly.

Mr. EXON. Mr. President, for those who would be interested, I refer them to page S9575 of the CONGRESSIONAL RECORD that lays on our desk from yesterday's debate, wherein I outlined the amendment yesterday in hopes that someone would take a look at it and inform themselves as to what this Senator is trying to do.

Mr. President, I think the debate can be restricted on this so we can move along, because essentially the issue before us has been debated previously. In fact, it has been voted on previously.

What this amendment does is simply to make it possible for the constitutional amendment that we are considering to involve the President of the United States in balancing the Federal budget. The measure was debated at some length previously with a similar amendment offered by my friend, Senator FORD, from Kentucky. The amendment that I am offering has been "cleaned up" to lay aside some of the objections that were stated on the floor of the Senate when the Ford amendment was offered. Those objections were that if the Ford amendment had been accepted, it was believed that we would be giving the President of the United States some additional power that he does not have with regard to the budget process.

Those who will take time to read the amendment that I have offered will agree that it makes it very clear that we are not giving the President of the United States any more power or control over the budget. It simply says that he shall give us a balanced budget or tell us why he cannot submit a balanced budget. And it clearly says, also, Mr. President, that the recommendation of the President of the United States simply is advisory, because I think we all recognize and realize that the setting of the budget is essentially the responsibility of the Congress under the Constitution.

Why it is that the prime sponsors of the constitutional budget amendment, of which this Senator is an active cosponsor, why it is that those people

want to accept no amendments—it is very strange to this Senator.

Indeed, Mr. President, within the hour, we accepted a very controversial, a very meaningful amendment, offered by the Senator from Colorado. I think, therefore, we have essentially shattered, Mr. President, the argument that this amendment is not going to go anywhere unless we adopt the amendment exactly as reported out of the committee.

This is an amendment, Mr. President, that will obviously strengthen the chances of the passage of this constitutional amendment in the Senate and in the House since it will effectively bring together both the Congress and the President in their separate but parallel roles in meeting the stated goals of the balanced budget amendment.

Mr. President, I simply say that if we are sincere in trying to make this amendment meaningful and workable, I think it should be said once again that we are never going to have what we seek in this amendment unless we have the cooperation and the understanding of both the President of the United States, whoever he is and whenever that is, and the Congress of the United States, whoever serves in the Congress and whenever they serve.

The constitutional amendment for a balanced budget, even under the most optimistic timetable, could not be effected before 1986 or 1987 and would go on from there if passed here and ratified by the States. Therefore, I think it is unrealistic to say that we should not involve the President of the United States in the constitutional amendment provision with regard to balancing the budget.

We are taking a very unique step because of the fact that the national debt of the United States, indeed the budget of the United States, obviously has gotten completely out of hand.

Now it did not get out of hand completely, in the opinion of this Senator, in the last 40 years because no one cared. It did not get out of hand in the last 1½ years because no one cared. But the facts of the matter are that it is, in the opinion of this Senator, pretty much out of hand. It is out of control. And I am hopeful that we can do something, even if it is only a tiny step in the right direction, to get it back under control.

There is a necessity for the Chief Executive Officer of the Government to be involved in the Federal budget. Unless we have something like this, it seems to me some President at some time in the future could send over a budget that he knows is not balanced, or that he might concede is not balanced, for the reason that he might not want to take the stands, to make the hard decisions, for making the reductions in certain areas or raising revenue on the other hand to make the budget balance.

It seems to me that we may have a situation some time in the future when the President of the United States will simply say to the Congress, "Here is an unbalanced budget. Under the constitutional amendment that is in effect, it is your responsibility to balance that and not mine."

It seems to me, Mr. President, that this is not a revolutionary amendment. I have seen no reason why it should not be accepted, although I am willing to listen once again to those who may feel differently about the amendment offered by the Senator from Nebraska.

I will simply emphasize once again that I personally visited with the President of the United States about this. President Ronald Reagan is for the amendment that I am offering. He recognizes and realizes that he or some other President in the future has just as much responsibility to cooperate with the Congress toward the end that this constitutional amendment is supposed to address.

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

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. THURMOND. Mr. President, we have acted on amendments similar to this one during the discussion of this constitutional amendment. I do not feel it is necessary to take but just a moment or two of our time.

Section 1 of Senate Joint Resolution 58 clearly includes the President in the budget statement to be adopted each year by Congress. "The Congress and the President shall"—those are the words of the amendment—"ensure that actual outlays do not exceed the outlays set forth in such statement."

We have rejected similar amendments on this point which have previously been offered and we do not see the need to take any more time now to further discuss this matter. We hope the Senate will reject this amendment.

Mr. BUMPERS. Will the Senator yield?

Mr. EXON. I yield such time as he may desire to the Senator from Arkansas.

Mr. BUMPERS. Mr. President, the Senator from South Carolina has correctly pointed out that this amendment has been debated before. It is obvious to me that there is a lot of concern about a constitutional amendment putting the onus on the Congress to balance the budget when the President is the man who is the most powerful man in the Nation on spending matters. He has the most powerful weapon at his disposal, namely the veto. He brought this body to its knees less than 3 weeks ago with two successive vetoes to get a supplemental appropriations bill down to the level he wanted.

Yet, with all of that power that he is given by the American people and by the Constitution, this constitutional amendment has deliberately left the President out, as though Ronald Reagan were going to be President forever.

One of the strong objections I have to this amendment right now is the timing of it. It is very difficult for me to believe that a President who has submitted almost a half trillion dollars in deficits to this Congress for his 4-year term can honestly believe that a constitutional amendment for a balanced budget is a desirable thing.

What he is doing is saying, in effect, "Stop me, I am out of control." He is saying, "I promised the American people when I ran in 1980 that I would balance the budget."

I remember hearing him say one night on television during the campaign, "Jimmy Carter, if you cannot balance the budget by 1984, move over. I can."

Well, it is one thing to campaign for the Office, and it is another thing to get elected and keep your commitments.

The rest is history. We know what the deficit is for 1982. We know what it is going to be for 1983. We know what Alice Rivlin said it will be for 1984 and 1985. We are talking about a half-trillion dollars.

Well, if the President of the United States cannot balance the budget, is it fair for him to be holding press conferences, either on the steps of the Capitol or over in the East Room of the White House, telling the American people, "What is wrong with this country is, we need a constitutional amendment to balance the budget." It is cynicism of the rankest sort.

Mr. DECONCINI. Will the Senator yield?

Mr. BUMPERS. I am happy to yield.

Mr. DECONCINI. I just want to say to the Senator from Arkansas that I agree with the Senator, that for the President to indicate that this is the only answer is some cynicism. There is no question about it. It only underscores in this Senator's mind the fact that it is out of control.

Getting away for just a moment from the amendment of the Senator from Nebraska, there is no question that this administration has failed. They failed on their promise for a balanced budget. The President said the night before last, it is the Democrats, the Congress, that did not give him what he wanted. That is a lot of baloney and we know it. We gave him what he wanted. The problem is the program did not work.

The motives, to me, are not the best. The objective is still good. In my judgment, the objective to get a balanced budget by a constitutional amendment is where we ought to keep our focus.

Mr. BUMPERS. I think that is another story on the argument of whether we ought to incorporate economic formulas in the organic law of this Nation and alter the fundamental law in such a very radical and dramatic way. That is to chisel an economic formula in stone in the fundamental law of this country.

The reason I am debating this now is not to be partisan, but to say that I do find a great deal of cynicism for the President of the United States to say, "Not only can I not balance the budget, but I promised the American people if they would elect me I would, and now that I am President I not only cannot balance the budget, but I am offering you three times bigger deficits than have ever been incurred in this country in its history."

What he is saying is, "I cannot do it, but I do not want my successor to have any latitude in the matter. He must do it."

Well, I just think that this constitutional amendment that we have been debating here now for a week is fatally flawed because the leader of the Nation, the man who is really responsible to the American people for a balanced budget, is not a player.

I have heard debate on this floor saying, "We have only balanced the budget one time in the last 20 years and that was the Lyndon Johnson budget."

You hear people talk about in 1975 we had the biggest deficit we have ever had, under Gerald Ford. Now we say President Reagan is offering us a half trillion dollars in deficits.

That is what the man on the street in America says.

I will ask Senators, have they ever heard anyone sit around the coffee shop saying, "The last time we balanced the budget was in the 82d, the 85th, or the 86th Congress," or "The biggest deficit we ever incurred was in the 94th Congress." Of course not. The President of the United States is the one who gets the blame or the glory, not the Congress.

If we balance the budget next year, if this Congress suddenly broke out in a spate of responsibility and commonsense and decided to do something about entitlement programs, decided to do something about defense, decided to undo a part of the gargantuan tax giveaway we passed last year, and balance the budget next year, I guarantee you the President of the United States would be on the plane the next day going all over the country saying, "I balanced the budget."

Mr. DECONCINI. Will the Senator yield?

Mr. BUMPERS. Yes.

Mr. DECONCINI. I agree with the Senator. There is no reason we need to put this amendment of the Senator from Nebraska into the constitutional amendment. It is going to continue like that. Twenty or thirty or fifty years from now, there is going to be an administration. The President has the right or authority to present a budget if he wants to. He carries the burden. Administrations are going to carry the burden in the future just as they have in the past.

Mr. BUMPERS. Mr. President, we all know that old saying, "no guts, no glory." I do not think the President should get all the glory here if he is not going to have the guts to balance the budget.

Mr. DECONCINI. I think the Senator from Arkansas has pointed out clearly that all the glory is going to go home to this administration for the highest deficits ever, and rightly so. We are trying to save future administrations. This one cannot balance the budget. We are trying to provide a vehicle so some administration, some Congress, in some short period of time, maybe, will balance the budget.

Mr. FORD. Will the Senator yield?

Mr. BUMPERS. If I may, first, let me ask the Senator one question:

The President of the United States has, since the memory of man runneth not, offered a budget in January to the U.S. Congress; certainly, he has every year since I have been here. I see the distinguished Senator from Louisiana sitting over there. He has been here a lot longer than I have and I am sure he will verify this. Every January or February, I forget the date, we line up there in that center aisle, we march over to the House of Representatives, and everybody stands up when the President walks in and applauds. He walks up there and says, "Here is my budget for next year."

President Reagan did it; Gerald Ford did it; Jimmy Carter did it; they have all done it. Now, something he has been doing for 100 years, we do not even give him the opportunity to do under this amendment.

Are we saying here he cannot make that speech any more?

Mr. DECONCINI. Of course not. He can continue doing exactly what he has done in the past. I submit to the Senator from Arkansas that is exactly what he is going to do. This does not prohibit him from offering a budget.

Mr. BUMPERS. Why should he offer a budget? If he is not going to take some of the responsibility, I do not care what he thinks about the budget.

Mr. DECONCINI. For the very reason the Senator pointed out, the President of the United States is a very powerful office and he should present a budget. But this President and past Presidents have not balanced the budget. They have not come up with it.

Mr. BUMPERS. We are locking the Congress in. Let us lock the President in, too. Let us say to the President, "Use your veto power. Require us to override it with a two-thirds vote, not 60 votes as this amendment provides."

Let us say to the President, "You submit us a budget and if we do not hew the line, if it is not balanced, if we try to spend more than we take in, if we violate section 2 of this amendment, you veto it. Then 67 votes would be required, not 60, to unbalance the budget."

Mr. DECONCINI. If the Senator will yield, my final statement is that this amendment does not change at all what the President has done in the past and can do in the future. The only debate is really whether or not we want to put something in a constitutional amendment that would require it. I do not see the need for it. He already has the authority to offer any budget he wants. He has in the past and is going to in the future.

The question is whether or not it ought to be in the amendment itself. The amendment of the Senator from Nebraska makes it advisory. I do not think it is necessary to put it in the Constitution. That is where the Senator from Arizona differs from the Senator from Arkansas.

Mr. BUMPERS. If the Senator will yield, why on Earth does this amendment leave out, with a great deal of deliberation, the most powerful man in the United States?

Mr. DECONCINI. The framers of this amendment believe the President has the authority and will continue to have the authority to offer any budget or not to offer a budget. Under the Budget Act, I am advised that he is supposed to offer a budget and does. He is going to continue to do that. What is the reason to put it in? The reason to put it in is some people here feel strongly he ought to be a part of the constitutional amendment. Others do not feel it is necessary. I happen to come down on the side of those who feel that it is not necessary. He has all that authority.

Mr. EXON. Mr. President, I yield to the Senator from Kentucky, then I shall yield to the Senator from Colorado. I yield 3 minutes to the Senator from Kentucky.

Mr. FORD. I thank my distinguished friend from Nebraska, Mr. President.

Basically, this is the amendment or is similar to the amendments I have offered earlier. I want to make two observations.

One, we have seen here now, for days, that we do not want any amendment, we want it as it is, we want to have World War III before we can have an unbalanced budget. We are going to get an opportunity to vote on something different from that.

As the distinguished Senator from Arkansas said, we are excluding the most powerful individual in this country and his input in having a balanced

budget. The Senator from Arizona says the President can or cannot. If we do not have a partnership, I am not certain that we shall ever get to that balanced budget, because if we continue to get bad budgets, and I say bad budgets are huge deficits, from the Oval Office and he comes down here with all his ability and says, "I want this budget," he is going to force us to vote three-fifths to have a deficit budget and we are right back where we started from. He ought to submit a balanced budget.

Mr. President, I have heard too much in the last 24 hours from those who are stonewalling this amendment, any amendment, to the constitutional amendment, "I like your amendment," or "I like his amendment, I like what it says, I think it is the right direction. My conscience tells me that that is a good amendment and my conscience tells me to vote for it."

But they do not want any amendments. You go up and say, "Can you take an amendment?"

"Well, how do you feel about voting against all amendments, just all amendments, then voting for this amendment?"

"I am not sure."

"Well, we cannot take yours, then, We cannot touch yours."

Mr. President, you know what is going to happen when this amendment finally passes Congress? It is going to be the biggest political show this country has ever seen. It is going to come right out of the Oval Office. We are going to see it every time they can have a press conference on prime time at 8 o'clock so that everybody can hear that they are for it, to keep us from remembering that we already have a projected half-trillion dollar deficit now.

The call, I think, is important. The problem, I think, is severe. If both ends of Pennsylvania Avenue are not going in the same direction, the constituents of this country are in a great deal of trouble.

I thank the distinguished Senator from Nebraska for allowing me a little time. I hope this amendment passes and I hope the majority leader does not sit on the edge of the table with his foot headed west.

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

The PRESIDING OFFICER. The Senator from Nebraska has 7 minutes remaining.

Mr. EXON. I yield 2 minutes to the Senator from Colorado.

Mr. HART. I thank the Senator from Nebraska.

Mr. President, I wonder if the Senator from Arizona would be so gracious as to let me phrase a question that the Senator from Arkansas was asking one more time. I listened to most of the debate on the amendment offered by Senator FORD and I have listened to almost all the debate on this modification of that amendment and I have listened to the exchange. I must say to the distinguished sponsor of this resolution, I still do not understand why the President is not included.

I hear it said over and over again, he can or cannot offer a balanced budget. I understand that. What I want to know is, in the 4½ years it took to draft this, what decision was made that the President should not be required to offer a balanced budget? I still do not understand that simple fact.

Mr. DECONCINI. If the Senator will yield, I only restate to my distinguished friend from Colorado that it was the feeling of this member of the committee that helped draft the bill that that is an inherent power with the President now and that under the Budget Act, he has that authority statutorily and it was not necessary. I think that is what we are debating.

Mr. HART. But the Congress has that authority, too. It has the statutory authority to balance the budget.

Mr. DECONCINI. We have seen what the Congress has done.

Mr. HART. We have seen what the President has done.

Mr. DECONCINI. I do not know of any law telling the President to balance the budget. The only law I know is the Byrd amendment that tells the Congress to balance the budget.

Mr. HART. Why should the President of the United States not be required to balance the budget?

Mr. DECONCINI. In answer to the Senator from Colorado, I believe the President has whatever is necessary now, that power that we talk about, to offer a budget.

Mr. HART. It is not a power, it is a responsibility.

Mr. DECONCINI. I think he has a responsibility. I just do not see the need of putting it in a constitutional amendment. I think that is where the disagreement is.

Mr. HART. Why put it in the Congress? Why are we more out of control than the President of the United States? That is the question. Why is the Congress more out of control than a series of Presidents?

Mr. DECONCINI. I think, in reality, we are both out of control.

Mr. HART. Then why should not the President be in this amendment?

Mr. DECONCINI. As I mentioned just previously, it seems to me that this amendment is drawn in a fashion that does not get into the Executive authority, and I see no reason to put that in the constitutional amendment.

I realize the Senator from Arkansas, the Senator from Kentucky, the Senator from Colorado, and the Senator from Nebraska feel differently. I am just giving them this Senator's point of view on it. That is how I come down on the subject matter.

The PRESIDING OFFICER. The Chair wishes to advise that the 2 minutes of the Senator from Colorado have expired.

Mr. EXON. Mr. President, if I may just take a couple of minutes to try and summarize, then I will be glad to yield back. If the other side is ready to yield back, we can go ahead with a vote.

This discussion would leave anyone amazed, I think, at the reasoning for not including the President of the United States. The Senator from Arizona says the President can send up any budget he wants. That is the reason that we feel that the President should be required to send up a balanced budget, or in lieu thereof explain why he cannot and give the advice to us here who have the final responsibility.

The Senator from Arizona said there is no reason to include the amendment offered by the Senator from Nebraska.

I suggest, Mr. President, that there is every reason to include the amendment offered by the Senator from Nebraska if indeed we are sincere about reaching a balanced budget and simly not have a sham.

I am prepared to yield back the remainder of my time. I call for the yeas and nays on the amendment.

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

The yeas and nays were ordered.

Mr. EXON. I am prepared to yield back my time, Mr. President, if the opponents are prepared to yield back their time.

Mr. DeCONCINI. We yield back our time.

Mr. THURMOND addressed the Chair.

The PRESIDING OFFICER. The Senator from South Carolina is recognized.

Mr. THURMOND. Mr. President, I just want to say a word. If all the political and campaign talk is over now, I think we are ready to vote.

We have considered this question before. We have already acted upon it, but again I say that the amendment is clear in section 1 that the Congress and the President—not just the Congress, the Congress and the President—shall insure that actual outlays do not exceed the outlays set forth in such statement.

The President is a party to this part, a very important party. I want to make that point clear.

Now I am ready to yield back my time, if the able Senator from Nebraska is.

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

Mr. THURMOND. Mr. President, we ask for the yeas and nays if they have not been ordered.

The PRESIDING OFFICER. They have already been requested.

All time having been yielded back, the question is on agreeing to the amendment of the Senator from Nebraska. The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. STEVENS. I announce that the Senator from Missouri (Mr. DANFORTH) and the Senator from Minnesota (Mr. DURENBERGER) are necessarily absent.

Mr. CRANSTON. I announce that the Senator from Ohio (Mr. GLENN) is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 45, nays 52, as follows:

[Rollcall Vote No. 280 Leg.]

YEAS—45

Andrews	Exon	Matsunaga
Baucus	Ford	Metzenbaum
Bentsen	Hart	Mitchell
Biden	Heflin	Moynihan
Boren	Heinz	Nunn
Bradley	Hollings	Pell
Bumpers	Huddleston	Proxmire
Burdick	Inouye	Pryor
Byrd, Robert C.	Jackson	Randolph
Cannon	Johnston	Riegle
Chiles	Kennedy	Sarbanes
Cranston	Leahy	Sasser
Dixon	Levin	Specter
Dodd	Long	Tsongas
Eagleton	Mathias	Zorinsky

NAYS—52

Abdnor	Gorton	Packwood
Armstrong	Grassley	Percy
Baker	Hatch	Pressler
Boschwitz	Hatfield	Quayle
Brady	Hawkins	Roth
Byrd, Harry F., Jr.	Hayakawa	Rudman
Chafee	Helms	Schmitt
Cochran	Humphrey	Simpson
Cohen	Jepsen	Stafford
D'Amato	Kassebaum	Stennis
DeConcini	Kasten	Stevens
Denton	Laxalt	Symms
Dole	Lugar	Thurmond
Domenici	Mattingly	Tower
East	McClure	Wallop
Garn	Melcher	Warner
Goldwater	Murkowski	Weicker
	Nickles	

NOT VOTING—3

Danforth	Durenberger	Glenn

So Mr. Exon's amendment (UP No. 1171) was rejected.

Mr. THURMOND. Mr. President, I move to reconsider the vote by which the amendment was rejected.

Mr. DECONCINI. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. BAKER. Mr. President, will the distinguished manager of the bill yield 1 minute to me?

Mr. THURMOND. Mr. President, I yield to the able majority leader.

Mr. BAKER. Mr. President, if I may have the attention of the Senate for a moment, I wish to propound a unanimous-consent request.

Mr. President, it is clear that we are going to be here a while. It is almost imperative, I suppose, that we do all the amendments we can or that are going to be debated tonight because tomorrow we are going to have no time for that.

I expect that the Cranston amendment tomorrow plus general debate on the resolution will take us up until noon.

Therefore, I am prepared to stay as late as necessary to accommodate debate requirements of Senators.

I know of six other amendments that must be dealt with. I am not going to shop for a reduction in time on any of those, but I do urge Senators to consider it will take a long time to get through six amendments particularly with rollcalls on six amendments.

Mr. President, the Appropriations Committee is now in markup. A number of Senators have commitments that will take them away from the Hill for a little while this evening.

I have discussed this matter with the minority leader and he is agreeable, I believe, with the arrangement that I am about to propose.

(Mrs. KASSEBAUM assumed the Chair.)

ORDER STACKING VOTES TO BEGIN AT 7:45 P.M. TONIGHT

Mr. BAKER. Madam President, I ask unanimous consent that any votes that are ordered between now and 7:30 p.m. be stacked and occur in the sequence in which they are ordered beginning at 7:30, the first vote to be 15 minutes and any subsequent votes which are ordered back to back be 10 minutes each.

Mr. BOSCHWITZ. Madam President, reserving the right to object, and I shall not object, this gives me an opportunity to do something that I did not realize I would be able to do. Could we make that 7:40 or 7:45 p.m.?

Mr. BAKER. Madam President, I am afraid if I do not quickly agree to this request, there will be further bargaining. I urge the Chair to grant the request as soon as possible. I amend the request and so ask unanimous consent to make it 7:45 p.m.

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

Mr. BAKER. The Chair was very prompt, and I am grateful to the Chair and all Senators.

AMENDMENT NO. 1940, AS MODIFIED

(Purpose: To provide a statutory basis for a capital expenditures and operating expenditures budget)

Mr. HART. Madam President, I send to the desk an amendment and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Colorado (Mr. HART) proposes an amendment numbered 1940, as modified.

Mr. HART. Madam President, I ask unanimous consent that further reading of the amendment be dispensed with. May we have order in the Senate?

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 following line 14 on page 4 and insert the following:

Resolved by the Senate and the House of Representatives of the United States of America in Congress assembled, That this joint resolution may be cited as the "Responsible Budgeting Act of 1982".

SEC. 2. The Congress finds that—

(1) a significant proportion of total Federal outlays are capital expenditures, which represent long-term investments in our Nation's future;

(2) it is sound and customary business practice to borrow funds to finance capital expenditures;

(3) except in extraordinary circumstances, the Federal Government should not engage in deficit spending to finance operating expenditures, because it is basically unfair and financially unwise to obligate future generations to pay for current consumption; and

(4) a budget of the United States Government which distinguishes between capital and operating expenditures is needed to inform the American public of the nature and extent of capital investments by the Federal Government.

SEC. 3. (a) Section 3 of the Congressional Budget and Impoundment Control Act of 1974 is amended by adding at the end thereof the following new paragraphs:

"(6) The term 'capital expenditure' means a budget outlay which is used by the Federal Government or by a State or local government or an agency or subdivision thereof, or a business or nonprofit organization, which receives such outlay from the Federal Government, for—

"(A) the construction, acquisition, or rehabilitation of a physical asset with a useful life of more than one year;

"(B) research and development, including basic research;

"(C) education, training, or vocational rehabilitation;

"(D) international development; or

"(E) financial investments, including loans for terms of greater than one year.

"(7) The term 'operating expenditure' means a budget outlay which is not a capital expenditure.

"(8) The term 'annual capital benefit cost' means the amount determined to represent the portion of the total capital expenditures incurred in a fiscal year and in all fiscal years preceding that fiscal year which is properly allocated to that fiscal year".

(b)(1) Section 202(a) of such Act is amended by striking out "and (3)" and inserting in lieu thereof "(3) information with respect to capital expenditures, operating expenditures, and annual capital benefit cost, and (4)".

(2) Section 202(f)(1) of such Act is amended—

(A) by striking out "and" after "total new budget authority," in the first sentence;

(B) by inserting a comma and "capital expenditures, operating expenditures, and annual capital benefit cost" after "total outlays" in such sentence;

(C) by striking out "and" after "budget authority" in the second sentence and inserting in lieu thereof a comma; and

(D) by inserting a comma and "capital expenditures, operating expenditures, and

annual capital benefit cost" after "budget outlays" in such sentence. (c)(1) Section 301(a) of such Act is amended—

(A) by redesignating paragraphs (6) and (7) as paragraphs (8) and (9), respectively, and

(B) by inserting after paragraph (5) the following new paragraphs:

"(6) the appropriate level of total capital expenditures, total operating expenditures, and the annual capital benefit cost;

"(7) an estimate of capital expenditures, operating expenditures, and the annual capital benefit cost for each major functional category, for contingencies, and for undistributed governmental transactions, based on allocations of the appropriate level of total capital expenditures and total operating expenditures;".

(2) Section 301(d) of such Act is amended—

(A) by striking out "and" after "total budget outlays" the first place it appears in paragraph (2) and inserting in lieu thereof a comma;

(B) by inserting "total capital expenditures, total operating expenditures, and annual capital benefit cost" after "total new budget authority," in such paragraph;

(C) by inserting a comma and "total capital expenditures, total operating expenditures, and annual capital benefit cost" after "total budget outlays" the second place it appears in such paragraph;

(D) by inserting a comma and "capital expenditures, operating expenditures, and annual capital benefit cost" after "budget outlays" the first place it appears in paragraph (3);

(E) by striking out "the estimate" in such paragraph and inserting in lieu thereof "the estimates"; and

(F) by inserting "total capital expenditures, total operating expenditures, annual capital benefit cost" after "total new budget authority," in paragraph (6).

(d)(1) Title III of such Act is amended by inserting after section 301 the following new section:

"LIMITATION ON EXPENDITURES

"SEC. 301A. (a) SPECIFICATION OF LIMITATION.—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, 1985, 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 the sum of the appropriate level of operating expenditures and the appropriate level of the annual capital benefit cost set forth 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.

"(b) WAIVER.—The provisions of subsection (a) may be waived in the Senate or the House of Representatives with respect to the consideration of any concurrent resolution on the budget or any amendment thereto or any conference report thereon if, by a roll call vote, a majority of the Members of the Senate or the House of Representatives, as the case may be, present and voting, determines that the waiver of such provisions is necessary to ensure the national security or to provide remedies for an economic recession or depression.".

(2) The table of contents in section 1(b) of such Act is amended by inserting after the item relating to section 301 the following new item:

"Sec. 301A. Limitation on expenditures.".

(3) Section 904(b) of such Act is amended by inserting "(except section 301A" after "or IV".

SEC. 4. (a) Section 201(a) of the Budget and Accounting Act, 1921, is amended—

(1) by striking out "and" after the semicolon at the end of paragraph (12);

(2) by striking out the period at the end of paragraph (13) and inserting in lieu thereof a semicolon and "and"; and

(3) by inserting after paragraph (4) the following:

"(14) estimated capital expenditures and operating expeditures and the estimated annual capital benefit cost for the ensuing fiscal year and projections of such expenditures and cost for each of the four fiscal years immediately following the ensuing fiscal year.".

(b) Section 201(d) of such Act is amended by striking out "section 301(a)(1)-(5)" and inserting in lieu thereof "section 301(a)(1)-(7)".

(c) Section 201 of such Act is further amended by adding at the end thereof the following new subsections:

"(k) Notwithstanding any other provision of law or of this Act, the budget transmitted pursuant to subsection (a) of this section, any supplemental summary submitted pursuant to subsection (b) of this section, or any statement of amendments or revisions submitted pursuant to subsection (g) of this section, shall not contain any request for budget authority that would result in operating expenditures or capital expenditures for a fiscal year if the sum of operating expenditures and the annual capital benefit cost for such fiscal year will exceed the estimated receipts set forth for such fiscal year in such budget, summary, or statement, as the case may be, except that the President may transmit a budget, summary, or statement containing a request for budget authority that would cause the sum of operating expenditures and the capital benefit cost for such fiscal year to exceed estimated receipts if such budget, summary, or statement contains a recommendation that the provisions of subsection (a) of section 301A of the Congressional Budget Act of 1974 be waived in accordance with subsection (b) of such section.

"(l) The budget transmitted pursuant to subsection (a) of this section shall include a statement describing the obligations for capital expenditures that will be incurred during the ensuing fiscal year and plans for the payment of such obligations during the ensuing fiscal year and succeeding fiscal years. Such plans shall be consistent with sound principles of financial planning.

"(m) For purposes of this section—

"(1) the term 'capital expenditure' has the same meaning as in section 3(6) of the Congressional Budget and Impoundment Control Act of 1974;

"(2) the term 'operating expenditure' has the same meaning as in section 3(7) of such Act; and

"(3) the term 'annual capital benefit cost' has the same meaning as in section 3(8) of such Act.".

SEC. 5. Within two years after the date of enactment of this Act, the President shall prepare and transmit to the Congress a plan for the implementation of the amendments made by subsections (a) and (c) of section 4, and the Director of the Congressional Budget Office shall transmit to the Congress a plan for the implementation of the amendments made by section 3 with respect to annual capital benefit costs.

SEC. 6. (a) The provisions of this Act and the amendments made by this Act shall take effect on the date of enactment of this Act, except that the amendments made by sections 3(d) and 4(c) shall apply only with respect to fiscal years beginning on or after September 30, 1985.

(b) Notwithstanding the amendments made by sections 3 and 4 of this Act—

(1) the President and the Director of the Congressional Budget Office are not required to transmit to the Congress any information with respect to the annual capital benefit cost for any fiscal year beginning before October 1, 1985;

(2) the Congress is not required to include an appropriate level of an annual capital benefit cost in any concurrent resolution on the budget for any fiscal year beginning before October 1, 1985, or estimates of such cost for each major functional category in any such concurrent resolution on the budget; and

(3) the Committees on the Budget of the Senate and the House of Representatives are not required to include any information with respect to annual capital benefit costs in the reports required to accompany a concurrent resolution on the budget under section 301(d) of the Congressional Budget Act of 1974 for any fiscal year beginning before October 1, 1985.

Amend the title so as to read: "Joint resolution to amend the Congressional Budget and Impoundment Control Act of 1974 to provide for a capital and operating budget, and for other purposes.".

Mr. THURMOND. Madam President, will the Senator yield for a unanimous-consent request?

Mr. HART. Yes.

Mr. THURMOND. The distinguished Senator from California (Mr. HAYAKAWA) has been waiting around for several hours just to speak for 7 minutes. I wonder if the Senator will agree that he may speak and not count the time against the Senator's time?

Mr. HART. Certainly.

Mr. THURMOND. Madam President, I ask unanimous consent that the distinguished Senator from California be allotted 8 minutes against my time on this amendment. I wish to thank the distinguished Senator from Colorado for his courtesy.

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

Mr. HAYAKAWA. The Senator from California is very grateful to the Senator from Colorado for yielding.

Madam President, I am not introducing an amendment, I am simply giving a speech in support of what we are doing, namely the resolution which we are debating today, which is so important for the future of our Nation. Senate Joint Resolution 58 not only requires the Congress to approve a Federal budget whereby outlays do not exceed revenues, but does so by means of an amendment to the Constitution. For me the distinction between statute and Constitutional amendment

is as important as the subject matter itself.

The Constitution of the United States is the guiding document for the conduct of our national Government. It provides a framework for the structure, responsibilities, and limits of the three branches of the Federal Government, and has been amended to outline basic rights of the citizenry. The Constitution has served as the foundation of our American Government for 195 years, and will endure for many more, I hope. It has survived because its provisions are the absolute basis upon which the machinery of government is built; it is timeless. Amendments to the Constitution, therefore, should address the foundation of government; all other matters should be dealt with by statute.

Criteria for subjects that are appropriately addressed in the Constitution are few: the structure of each House of Congress, the relationship between them, the responsibilities thereof, and the limits on congressional authority; the powers and responsibilities of the executive and the judicial branches of Government, and the rules governing the relationship among all the branches; basic rights and responsibilities of U.S. citizens; and, finally, matters which concern the very fabric of our Nation. Twenty-five of the twenty-six current amendments to the Constitution are, I believe, appropriate to the document. The one exception is a glaring example of the kind of damage that can be done to the integrity of our fundamentals of government.

The 18th amendment, prohibiting the sale and transportation of alcoholic beverages, was an inappropriate subject for the Constitution to address. It failed to meet even one of the criteria enumerated earlier. It was the rash result of a contemporary social concern, that could easily have been dealt with by statute. After 20 years the country realized its mistake, and repealed it with the 21st amendment. We learned a lesson 50 years ago, and we must take great care not to repeat our mistake.

Senate Joint Resolution 58 provides that the Congress shall agree to a statement of receipts and outlays for the following fiscal year in which outlays to not exceed receipts. With a three-fifths majority vote of each House, the requirement may be waived. Further, any tax increases must be voted on by each House.

The provisions of the resolution are clear, meet the criteria I have laid out for amendments appropriate to the Constitution, and respond to an urgent need.

The Constitution empowers the Congress to raise revenue by laying taxes and make appropriations, but makes no provision for any association between the two, except to require that, "a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time." I contend that, because Senate Joint Resolution 58 requires the Congress to act, and limits its authority with respect to a matter previously discussed in the Constitution, this resolution is indeed an appropriate subject for an amendment to the Constitution. This conclusion is, perhaps, the most important obstacle to overcome in judging the merits of this resolution. Remaining is to demonstrate need and effectiveness.

In my mind, there is no question of the need for a balanced Federal budget, and for some guidance to be provided for the Congress. Beginning in 1931, the Federal Government has consistently incurred deficits. Since that time, revenues have increased 19,232 percent and outlays have increased 18,373 percent. Yet the Federal budget has seen balance or surplus only seven times since then—seven times in 51 years. Clearly there has either been a conscientious effort to overspend revenues, or Congress has been unable to manage a budget.

If there were no adverse effects of such a policy—or lack thereof—there would be no need for remedial and compulsory action. However, during those last 50 years, and especially in the last 5 years when deficit spending has been at its worst, inflation has deprived Americans of their earning capacity, unemployment has crushed the ambitions of millions of Americans, and high interest rates are forcing businesses to close. The correlations between deficit spending and economic stagnation are too clear to deny.

I, personally, believe that the Federal Government has taxed Americans too heavily, has invaded too many markets and economies, and has provided too many services. I believe that a reduction in spending is absolutely necessary to encourage economic growth. This resolution provides a mechanism for that effort. But there are many who believe that the Government has not been engaged in too many activities. To those people I point out that this resolution does not require a reduction in spending. It merely establishes that it is the fundamental policy of the Federal Government that the budget will be balanced. While there is disagreement on the degree of spending activity, I think everyone will agree that spending should be financed through levies rather than by debt. Thus, this resolution will not force a specific socioeconomic policy on the Government through the Constitution. However, it will force the Congress to act in a responsible manner.

Once the Congress balances the budget, and maintains it in balance except for emergencies, I believe the economy will improve and stabilize. If we fail to balance the budget, there is a little hope for either economic recovery or stability.

Thus, it is important that the mechanism for establishing balanced budgets as national policy be one that mandates action. The only effective tool in guiding the Congress is the Constitution. By constitutional amendment, Congress would be directed to pursue a policy, and be restricted in the breach of that policy. We have seen that no other means is sufficient to carry out that mission: in 1978, the distinguished Senator from Virginia, Senator BYRD, offered an amendment, which was approved by the Congress and signed by the President, to require a balanced budget by statute. Obviously, although the effort was in earnest, a statutory requirement was not sufficient to bind the Congress. Only a constitutional amendment will have sufficient gravity to force action on our legislative bodies.

Yet, I should reiterate that this resolution, while requiring under normal circumstances a balanced budget, also anticipates situations which require deficit spending. By allowing a three-fifths majority of both Houses to approve budget resolutions with outlays exceeding receipts, a mechanism for extraordinary circumstances is provided.

It is equally important that, in addition to mandating a balanced budget, this resolution requires the Congress to vote on any revenue increases. Because of inflation, the incomes of Americans have risen over the years, pushing them into higher tax brackets, taking a bigger tax bite out of their paychecks, and increasing Federal revenues without the Congress having to vote on these increases. This "bracket creep" has allowed Members to be valiant benefactors of special interests, while being blameless for the ever-growing taxation of Americans.

Section 2 of the proposed amendment will act to inhibit additional spending unless its justification outweighs the negative impact of tax increases. In this way Members will be responsible and straightforward in their proposals to increase spending. When an increase in spending is warranted, the Congress is free to act, but it must also act to increase taxes. In my opinion, nothing could be more fair.

To conclude, Madam President, I believe we must establish that a balanced Federal budget is national policy. The only means of establishing that policy and carrying it through is an amendment to the Constitution. Finally, I am satisfied that Senate Joint Resolution 58 has been crafted in such a way as to provide limitations on the Congress, but allow deficit spending in extraordinary circumstances. I am proud to be a cosponsor of this resolution and urge its adoption.

89-059 O-86-20 (Pt. 14)

The PRESIDING OFFICER. Who yields time?

Mr. HART addressed the Chair.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. HART. Parliamentary inquiry. What is the status of the pending business at this point?

The PRESIDING OFFICER. The question is on the amendment of the Senator from Colorado.

Mr. HART. I thank the Chair. How much time remains on the amendment?

The PRESIDING OFFICER. There are 152 minutes controlled by the Senator from Colorado.

Mr. HART. I thank the Chair.

Madam President, among the many faults of this amendment is the fact that it will discriminate very heavily, perhaps fatally, against one of the highest priorities that this country must face through the eighties and nineties, and that is the need to invest in the facilities, the capital infrastructure, of America's future.

At least two-thirds of the States in this Union and, for all practical purposes, all municipalities and local governments and all businesses in this country have capital budgets or capital expenditure budgets.

It is the United States of America, almost uniquely among governmental entities, perhaps among private and public entities together, that does not distinguish between investment in the long-term capital assets, if you will, the infrastructure of this Nation, and spending that one might call in the business sense the operating expenses of Government.

The amendment that I have offered is in the nature of a substitute to the constitutional amendment and is in the nature of a statutory substitute to take into account not only the fatal flaws in the resolution to amend the Constitution but also the desperate need that this country is beginning to face to invest in the long-term assets of our Nation.

Madam President, let me begin by outlining as briefly as I can what this amendment provides, if you will, in mechanical terms, and then summarize as best I can the arguments in its favor.

First of all, this amendment provides, beginning immediately, that is to say in fiscal 1984, that budgets transmitted by the President and adopted by the Congress must distinguish between capital expenditures and operating expenditures. This will, of course, allow decisionmakers and the public to begin to evaluate what our national capital expenditure priorities are in relation to each other and in relation to other Government spending.

Further, this amendment would define "capital expenditure" as a budget outlay used for the construction, acquisition, or rehabilitation of a fiscal asset with a useful life of more than 1 year. It would include research and development. It would include basic research, education, training, or vocational rehabilitation. It would include international development investment, or financial investments, including loans for terms greater than 1 year.

In addition, 2 years after enactment of this substitute, the President and the Director of the Congressional Budget Office are each required to report to the Congress on how the act's capital budgeting requirements should be implemented.

Then, starting in fiscal 1986, 2 years after the operative date of this proposal, a new budget process would go into effect. The President would be required, under law, to transmit and the Congress would be required to adopt a budget in which total operating expenditures plus what the act calls the "annual capital benefit cost,"—those two items together could not exceed total revenues. This would bring about a balanced budget—unless the President certifies, or a majority of both Houses of Congress find, that a budget deficit is necessary to insure the national security or to provide remedies for an economic recession or depression. The "annual capital benefit cost" is the cost in present dollars of financing the year's capital expenditures over their useful lives. The annual capital benefit cost is the true cost of all capital expenditures made during a year after taking into account the fact that capital expenditures provide benefits over a long period of time.

Then, finally, Madam President, each year the budget would be required to include a statement describing the new capital expenditures to be made during the fiscal year and setting forth how such capital expenditures would be paid for in a manner consistent with sound principles of financial planning. This capital budget statement would compel the President and the Congress to set capital expenditure priorities and to plan for the payment for capital expenditures over their useful lives.

Thus, Madam President, beginning with fiscal 1986—long before the constitutional amendment would become effective—the Responsible Budgeting Act, which is what the title of this proposal is, would require the Federal Government to have a fiscally responsible balanced budget. In addition, unlike the pending resolution that would amend the Constitution, this act would require the President to transmit a balanced budget to Congress. The President has at his disposal all of the information necessary to prepare such a budget. It is only fair that the responsibility for making the hard decisions that are necessary to bring about a balanced budget be shared between the President and the Congress.

In earlier colloquy with the Senator from Arizona, a leading proponent of the constitutional resolution, he seemed to me unable to answer the direct question why the President of the United States should not be required to share in this responsibility. He only responded, in response to that direct question, several times, that "The President presently has the power." The issue is not the Presidential power. The issue is Presidential responsibility.

Madam President, this Responsible Budgeting Act, which I am proposing, would require that, for the first time, the Federal Government prepare a capital budget—something done by virtually all of the municipalities and a large majority of the States, almost all of the States in the Union.

I would cite to my colleagues a statement in the August 1 New York Times by Treasury Secretary Donald Regan who said that:

> Perhaps the Federal Government should have (a capital budget) whether it has a balanced budget amendment or not.

Like most Americans, I believe that it is basically unfair and financially unwise to require future generations to pay for goods and services that are consumed by their predecessors. And it is equally unsound financial practice for this Government to treat long-term investments, including some of our most sophisticated weapons systems, such as aircraft carriers, submarines, and missile systems, as well as our transportation systems, our waste treatment facilities, the infrastructure of our cities and interstate transportation systems, to treat those as if they were fully consumed in the year in which their cost was incurred.

We all know, as a simple matter of fact, that these so-called capital investments in our country are enjoyed for 5 or 10 sometimes even 30 or 40 years. It is just fundamental fallacy and unwise financial practice to continue to pay for those under, in effect a current expense account, which is what the Federal Government does today and one of the reasons why it is so difficult to bring this budget into balance.

But, Madam President, if the Federal Government is to help rebuild the decaying infrastructure of this country and prepare our country for its future, it must have flexibility to finance capital expenditures in the same fiscally responsible manner used by America's businesses and by our States and local governments, that is, by financing capital expenditures on a pay-as-you-use basis. And this amendment will give the Federal Government that flexibility while still requiring a balanced budget.

Let me just say a word about the need for the capability to invest in this country's long-term future. This Nation's infrastructure—our roads, our bridges, our dams, our prisons, our rail and mass transit systems—are in a terrible state of decay.

In its cover story last week, Newsweek reported that "America's infrastructure . . . is heading toward collapse."

Our infrastructure is deteriorating for two major reasons. First, captial expenditures by our governments, by all levels of government but particularly our Federal Government, have dropped 30 percent since 1965.

In effect, we have been living off the fat of the land. We have not been reinvesting in that infrastructure and, therefore, it is decaying and falling apart. We are now beginning to see the cost to our Nation across the board in letting that decay continue.

Second, the Federal Government has no mechanism for setting priorities for capital spending and for determining how capital expenditures should be financed. This amendment is directed toward establishing that process for the first time. It is, by the way, a process that I have been advocating for some 4 or 5 years.

In a recent column in the Washington Post, David J. Mahoney, the chairman of the board of Norton Simon, Inc., cited estimates that it will cost between $2.5 and $3 trillion over the next decade just to maintain the current level of public services and infrastructure.

That says nothing about building and investing in the future and expanding the infrastructure in this country for economic growth. That, by the way, is a number verified and I think supported by studies carried out by the Joint Economic Committee and other committees of Congress.

Meanwhile, while all of this is going on, 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. The Federal Government's commitment to research and development and to teacher training and aid to education have dropped sharply since the 1960's the great burst of investment in public education in the post-sputnik era.

Unfortunately, the proposed balanced budget constitutional amendment, Senate Joint Resolution 58, will drastically impair the ability of the Federal Government to play its central role in rebuilding the public infrastucture and preparing our country for the future. By requiring all capital expenditures to be financed on a "cash" basis, Senate Joint Resolution 58 will prevent the Federal Government from doing what virtually all of America's businesses and most of America's State and local governments do routinely: finance capital expenditures on a "pay-as-you-use" basis, paying for capital assets over their useful lives.

The resolution to amend the Constitution will drastically affect the Government's ability to play its central role in rebuilding the public infrastructure and preparing for our future.

If America's families were required to pay cash for their capital investments, few would be able to purchase a car or a house. If America's businesses were forbidden from borrowing to finance capital expenditures, they could not purchase the heavy equipment and new technologies they need to compete in today's markets.

To allow the Federal Government to finance the capital expenditures that this Nation will so desperately need in the 1980's and 1990's, we must prepare for that investment, and this amendment introduced as a statutory substitute for the pending resolution, the Responsible Budgeting Act of 1982 will permit us to do that.

This substitute, Madam President, is a statute because there is nothing wrong with the budget process created by our Constitution. Our country's failure to adopt the balanced budget in 20 of the last 21 years is attributable to a failure of our national leadership and a shortage of political courage, not in a shortcoming in our national charter.

Madam President, I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

The Senator from South Carolina.

Mr. THURMOND. Madam President, this is just another statutory proposal to the pending constitutional amendment. We have had several of those to come up. We have opposed them all because we feel if we are going to get results, we need a constitutional amendment and not another statute. A constitutional amendment is the only way, in our opinion, to achieve a balanced budget. We hope the Senate will not consider this amendment because it is proposed as a statutory procedure.

If we adopt this amendment, we will be changing in a fundamental way the Federal budget as structured. Maybe it is a good idea, but it should not be made part of this constitutional amendment.

We feel if the Senator wishes to offer this proposal, it should be in the form of a statute brought before the Senate at an appropriate time, but do not attempt to append it onto this constitutional amendment. We will have to oppose this, Madam President, as we have opposed other statutory approaches or attempts to substitute statutes for the constitutional amendment. We hope the Senate will defeat this amendment.

Mr. HART. Madam President, at such time as there are other Senators available, I intend to ask for the yeas and nays on the amendment. I guess that will not occur for another hour or so.

In order for the Senator from Massachusetts to be able to offer his amendment, I will ask unanimous consent that it be in order to set my amendment temporarily aside and proceed to the amendment of the Senator from Massachusetts.

Madam President, let me ask for the yeas and nays on my amendment.

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

The yeas and nays were ordered.

Mr. HART. Madam President, I ask unanimous consent to temporarily set my amendment aside.

Mr. THURMOND. I cannot hear the Senator.

Mr. HART. I ask unanimous consent that it be in order to set my amendment temporarily aside and proceed to the amendment of the Senator from Massachusetts.

Mr. THURMOND. The Senator does not want to finish the argument on this amendment?

Mr. HART. I have no further argument.

Mr. THURMOND. I am willing to yield back the remainder of my time if the Senator is willing to yield back his time.

Mr. HART. I would like to yield back the remainder at the time the vote is scheduled.

Mr. THURMOND. The vote is scheduled for 7:45.

Mr. HART. That is right, and it would be my intention at that time to yield back the remainder of my time.

Mr. THURMOND. Madam President, if he intends to yield back his time at 7:45 I will yield back my time then, too. I think it would be simpler if we got through with one amendment that we yield back our remaining time and proceed to another amendment.

Mr. HATCH. If the Senator will yield, would it be acceptable to the Senators to have a unanimous-consent agreement to yield back their time and have his amendment voted up or down at 7:45?

Mr. HART. I think that will be the case in any event. All I am trying to do is protect my time in case a Senator comes on the floor and wants to ask a question about this amendment, that I would have time to respond to the question. If there are no questions at 7:45, I will yield back my remaining time.

The PRESIDING OFFICER. Without objection, the amendment is laid aside.

AMENDMENT NO. 1985

(Purpose: To require the President to submit a balanced budget for fiscal year 1984 and succeeding fiscal years.)

Mr. TSONGAS. Madam President, my amendment is very similar to that of the Senator from Colorado. I thought it might be appropriate to make the arguments together and have the votes occur subsequently.

Madam President, this amendment was in the RECORD. Do I assume that the clerk has a copy?

The PRESIDING OFFICER. Amendment No. 1985?

Mr. TSONGAS. Yes.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Massachusetts (Mr. TSONGAS) proposes an amendment numbered 1985.

Mr. TSONGAS. Madam President, I ask unanimous consent that further reading of the amendment be disposed with.

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

The amendment is as follows:

On page 2, beginning with line 1, strike out all through the matter following 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) section 202 of the Budget and Accounting Act, 1921, is amended to read as follows:

" 'SEC. 202. (a) Estimated expenditures for the ensuing fiscal year contained in the Budget submitted by the President pursuant to subsection (a) of section 201 may not exceed the sum of—

" '(1) the estimated receipts for such ensuing fiscal year contained in such Budget, and

" '(2) the estimated amounts in the Treasury at the close of the fiscal year in progress which will be available for expenditure during such ensuing fiscal year.

" '(b) If, on the basis of laws existing at the time the Budget for the ensuing fiscal year is transmitted pursuant to subsection (a) of section 201, the sum of—

" '(1) the estimated receipts for such ensuing fiscal year, and

" '(2) the estimated amounts in the Treasury at the close of the fiscal year in progress which are available for expenditure in such ensuing fiscal year,

will be less than the estimated expenditures for such ensuing fiscal year, the President shall include with such Budget recommendations for changes in such laws to ensure that the estimated expenditures for such ensuing fiscal year will not exceed the sum of the estimated receipts for such ensuing fiscal year and estimated amounts in the Treasury at the close of the fiscal year in progress which will be available for expenditure during such ensuing fiscal year.

" '(c) For purposes of this section—

" '(1) The term "estimated receipts" means all receipts of the Government during a fiscal year, other than receipts from the sale of Government obligations.

" '(2) The term "estimated expenditures" means all outlays of the Government during a fiscal year, other than capital expenditures and expenditures for payment of the national debt (exclusive of interest).

" '(3) The term "capital expenditure" means an expenditure which—

" '(A) is made in a fiscal year,

" '(B) adds a fixed asset or adds to an existing fixed asset during such fiscal year, and

" '(C) provides benefits in a future fiscal year by means of such addition.

" '(4) The term "fixed asset" means a physical asset (as determined by the Comptroller General of the United States).'.

"(b) The amendment made by this Act shall apply with respect to fiscal years beginning after September 30, 1983.".

Amend the title so as to read: "Joint resolution requiring the President to submit a balanced budget for fiscal year 1984 and succeeding fiscal years.".

Mr. TSONGAS. Madam President, I am offering an amendment that would substitute two statutory changes for the constitutional language of Senate Joint Resolution 58. My proposal revises the Budget and Accounting Act of 1921 in two ways:

It calls upon the President to submit a balanced budget beginning in fiscal year 1984.

My amendment excludes expenditures for capital assets from the balanced budget requirement. A capital asset is a physical asset like a building, or equipment with a useful life of at least a year.

I believe these two simple changes offer several advantages over the proposed constitutional amendment:

My amendment will move toward a balanced budget now, not at some indeterminate point in the future.

The constitutional amendment was offered ostensibly to show how strongly some people felt about reducing Federal deficits. Some have argued that a constitutional amendment is the strongest action that can be taken; that Senate Joint Resolution 58 is the best that can be done. I think we can do better. Why do we have to wait 2 fiscal years after all the States ratify this provision to achieve a balanced budget? I am not willing to wait. The cost to the economy is too great. Our economy needs strong medicine and needs it fast. The unemployment rate stands at 9.5 percent. More than 10 million Americans are out of work in an economy that lies dead in the water. Interest rates remain stubbornly high, producing a rising toll of corporate and personal bankruptcies. Business bankruptcies are averaging one every 5 minutes of every business day. My amendment calls upon the President to submit a balanced budget in January for fiscal year 1984. That is 5 months away; we need wait no longer. I favor a 5-month wait to an indefinite delay. With this amendment, we can create a budget process that bears fruit quickly.

My amendment protects the integrity of the Constitution.

My basic objection to Senate Joint Resolution 58, as it now stands, was aptly summed up in a Washington Post editorial:

It is grotesque for Senators and a President who cannot get their deficits under a $100 billion to support, piously, Constitutional language putting it at zero.

My colleague and friend, Senator MATHIAS, stated the point candidly:

I do not think we should use the Constitution as a fig leaf to cover our embarassment over that deficit.

I concur with that sentiment wholeheartedly. Voting for the balanced budget amendment answers none of the difficult questions that so perplexed this body a few weeks ago when it voted for a budget resolution with deficits now estimated to exceed $140 billion. Such constitutional language will constrain none of the budgetary leeway in this Chamber until long past 1984, a couple of elections away. From a politician's perspective, an election away is as good as forever. Two elections away is a point in the stratosphere. A constitutional amendment would advertise our commitment to fiscal restraint without forcing us to face the tough choices. The Constitution is the wrong place for such advertising. I believe we need substantive change instead.

My amendment is enforceable. Serious questions have been raised over the ability of the courts to adjudicate the provisions of this constitutional amendment. Proponents argue that previous statutory efforts to achieve a balanced budget have proved unenforceable, however, and all that is left to try is a constitutional amendment. I believe a statutory approach can be enforceable—we ostensibly pass enforceable laws every day. I believe previous statutory efforts failed for a particular reason. The statutory language of the Byrd-Grassley amendment, which became Public Law 95-435 requiring a balanced budget for fiscal year 1981, failed to specify who was responsible for producing a balanced budget. It mandated an outcome rather than a specific action by a specific party. This amendment makes it very clear what action is to be taken—the President is to submit a balanced budget in January. If he fails to do so, he is in violation of the law.

With responsibility so clearly specified, this statutory language is actually more enforceable than the constitutional amendment being offered. It is not clear what action the courts could take to enforce the constitutional amendment. The courts clearly could be used to force the President to abide by this statutory language.

Developing a capital budget and a balanced operating budget is good economics. The balanced budget constitutional amendment is bad business practice. Offered in the name of fiscal responsibility, it contains a budgetary rule that no family, corporation, or government can profitably live by. Simply put, the balanced budget

amendment says to the Federal Government, "You should not invest."

It does this by prohibiting borrowing through its restriction on deficits. Such a prohibition is anti-investment. What if families had no chance to borrow? If they could not borrow to buy a car or home, or to pay college tuition, they would give up most hope of improving their standard of living. If businesses did not borrow, there would be almost no new plant and equipment purchased, and no hope for business expansion.

If government cannot borrow, its ability to provide the public investments necessary for economic development is sharply impaired. Government cannot build and maintain the roads, the water and sewer systems, or other utilities that make up the so-called public infrastructure. This infrastructure supports all economic activity. It is governmental investment in public infrastructure that makes private enterprise feasible.

The balanced budget amendment simply ignores the demands for public investment. Criticism of Government debt has swirled around issues like the validity of Keynesian macroeconomic analysis and the appropriateness of deficit spending in providing economic stability. Right or wrong, this discussion ignores the fact that borrowing is an important part in creating and maintaining our public systems. Prof. Richard Musgrave of Harvard, perhaps the country's foremost expert in public finance, indicates the shortcomings of the balanced budget view contained in the proposed constitutional amendment:

> . . . taxes should equal outlays, i.e., the budget should be balanced. Such at least is the case regarding the financing of current public services. Capital expenditures (like those for public infrastructure) on the other hand, are appropriately loan-financed, with the debt thus incurred amortized over the life of the asset.

In other words, prohibiting borrowing for public investment makes no economic sense. A prudent investment generates future income sufficient to meet the expense of repaying the debt. Prohibiting such investment simply restricts that future economic prosperity.

Capital budgeting is good budget management.

It has been argued that the balanced budget amendment calls upon the Federal Government to do no more than State governments already do. Thirty-nine States are cited as having constitutional provisions limiting their ability to incur budget deficits. An additional eight States have similar statutory restraints. Fortunately for the residents of these States, virtually all of these State governments have provided themselves the authority to borrow to cover expenditures on some capital assets like roads, schools, and utilities. A description of the varying frameworks that permit States to finance capital assets without violating their constitutional and statutory covenants is contained in a report of the Congressional Reference Service that I shall submit for the RECORD, along with other materials as an attachment to my statement. Additional materials from the Congressional Reference Service and from the Census Bureau show the magnitude of financing these alternate structures allowed the States. The average State debt burden as a percentage of general expenditures is over 9 percent. This means that States fortunately continue to be active borrowers in the credit markets, and active investors in public infrastructure.

Capital budgeting will highlight the alarming condition of our public infrastructure.

The balanced budget constitutional amendment creates an obstacle to investing in our public infrastructure at a time when the need is greatest. The cover of Newsweek, and the front page of the New York Times have focused national attention on the alarming deterioration of our roads, bridges, sewers, and rails. Dr. Pat Choate, in a report for the Council of State Planning Agencies, has estimated the capital needs of rebuilding our public systems to be a mind-boggling $3 trillion—an amount approximately equal to our entire GNP. One-quarter of our Interstate Highway System is worn out and needs resurfacing. One-half of Conrail's rail and roadbed is deficient. Half of our local communities have water systems with strained or insufficient capacity. Twenty percent of this country's bridges are so dangerously deficient they are either restricted or closed.

Economic recovery and long-term prosperity will require public investment. All will agree, I think, that the failure of the balanced budget amendment to distinguish between Government investment and current operations will seriously hamper capital expenditures at a time of critical need within our national infrastructure. What do we get in return for the sacrifice of our roads and utilities? We get a fig leaf to cover our embarrassment over the high deficits that are a part of our current budgets. I, for one, am not willing to make that trade.

My amendment will produce lower deficits. My amendment excludes capital expenditures because it makes good economic sense to exclude them. It is not a loophole simply to avoid real spending control. It will not diminish the need to reduce the Federal deficits. The definition of capital expenditures used in this amendment is restricted to physical assets with a life of greater than 1 year—a standard accounting practice followed by businesses and many State governments. A preliminary estimate of the fiscal year 1983 budget submitted by the President suggests that $105 billion in expenditures would have been classified as capital expenditures under this definition. That original budget carried an implicit deficit of over $180 billion. A great deal of pressure remains to control Federal spending—about $75 billion of pressure.

CONCLUSION

For those who believe my amendment still leaves too much budgetary leeway, I say tighten it. But I urge my colleagues to adopt a standard we can live by beginning today. The public is demanding more than fig leaves to cover embarrassment over high deficits and magic elixirs that promise cure-alls for our economic woes. We must respond quickly, wisely, and in good faith.

Madam President, the amendment I have filed is similar to that filed by the Senator from Colorado in that it goes into the issue of how you calculate the budgets and whether, indeed, you have a separate category for capital expenditures. Let me explain what the differences are between the two. They are not that great, but they are significant enough that I wanted to have a separate vote on this one.

In terms of how you define capital expenditures, the Hart amendment would include items like research and development and education. I chose to use a different definition than that which is the standard operating procedure in accounting that would basically go into those categories that one is likely to find in the business world, State government, that kind of thing. It would be a more standard approach as to what would be included under capital expenditures.

The second difference is the question of the role of the President. Under Senator HART'S amendment, the President should submit a balanced budget by 1986, with the accounting procedures going into effect immediately, and the President being given a waiver provision by making a statement as to current economic conditions.

Under my amendment, the balanced budget would have to be submitted by the President in fiscal year 1984, without any of the 2-year time period delay. So I start off by suggesting what the differences are.

The thrust is very much the same. it seems to me that the arguments on this issue have been made ad nauseam, and I do not want to go into it in any great detail. What I am trying to establish is the fact that if the President of the United States is going to make such a to-do about supporting a balanced budget, we shall give him the chance to do it next year. I find it somewhat hypocritical for any public official to get up and say, "We want this to be done as soon as I am out of

office." It does not ring with credibility.

I am sure that if this thing is going to be taken seriously, there is a requirement that what we say have a ring of truth to it, not a ring of expediency. So the amendment would call upon the President to submit a balanced budget beginning in fiscal year 1984. I think it is fair to say that we all will look forward with anticipation to what exactly that will look like.

The second part of the amendment is that which has been referred to by the Senator from Colorado. It really is rather ironic that an issue like this should be in dispute, since, if we go into the various States and municipalities and businesses in this country, the difference between operating expenditure and capital expenditure is given. It is not a great, radical idea. Yet, for some reason, it is treated like that here.

One of the problems with the balanced budget amendment process stems from just exactly how people are reacting to that situation. When I was a member of the Lowell City Council, we tried to establish a flat rate on taxation so the tax rate would not be increased. What we did was accomplish that by taking the money out of capital expenditures. It was a rather successful, short-term political accomplishment, but over the long term, it did very little good for the city; in fact, I think it did the city a disservice. What I am trying to do is keep us from doing the same thing at the Federal level. If we get into a crunch, if we fail to achieve a balanced budget, the first thing that is likely to go is the capital expenditure category. That may be fine for any given year, but dooms the viability of the Nation's economy over the long term.

A capital asset is a physical asset like a building or equipment, whose useful life extends over more than a year, and the accounting procedures should recognize that reality. The argument can be made that the amendment is statutory but is not an amendment to the Constitution. I think that is to the good. I do not think our Constitution was meant to be marred by these accounting practices, especially by a Congress which is going to pass the highest deficit in history. That is hardly the kind of statesmanship our Founding Fathers would have approved of.

So, in essence, the argument of making a distinction between a capital budget and operating budget is that it is standard, it is good economics, it happens just about every place else. We should take the same attitude.

Madam President, I ask unanimous consent to have printed the report from the Congressional Research Service I referred to earlier, along with other materials from the Congressional Research Service and the Census Bureau. In addition to that, Madam President, there are two op-ed articles, both of them from the New York Times, which I ask unanimous consent to have printed in the RECORD.

There being no objection, the materials were ordered to be printed in the RECORD, as follows:

[Attachment 1]

THE LIBRARY OF CONGRESS,
CONGRESSIONAL RESEARCH SERVICE,
Washington, D.C., October 10, 1978.

From: Economics Division.
Subject: State Instrumentalities Issuing "Non-Guaranteed Debt."

Legislative authority to contract long-term debt without requiring an amendment to the State constitution is granted in Seventeen states. In eleven of these—Connecticut, Delaware, Illinois, Louisiana, Maryland, Massachusetts, Minnesota, Montana, New Hampshire, Tennessee, and Vermont—there is no restriction on the amount to be borrowed but extraordinary legislative majorities are required for passage; while in six—Georgia, Hawaii, Mississippi, Pennsylvania, South Carolina, and Wisconsin—limitations exist on the amount to be borrowed.[1] This memorandum brings together selected references which describe the legal devices used by the States to issue indebtedness which the courts have held does not contravene the constitutional prohibition on the use of the State's "full faith and credit" pledge for repayment.

All of the 50 States have issued some form of non-guaranteed debt as of June 30, 1980, either through State dependent agencies or separately organized activities (e.g. highway toll facilities and auxiliary enterprises at State institutions) or by State created special district-governmental entities. A tabulation in 1976 listed 677 such agencies in all the 50 States excepting Wyoming (see table 1). For the most part, the non-guaranteed debt has been issued for such traditional State functions as transportation facilities, educational facilities, and hospitals. The compilation in Table 2 illustrates the type of State activity for other than these traditional functions.

The following materials are appended following the above-mentioned tables:

1. An explanation of the Census method of classifying State debt using New York as an example. (From the First Boston Special Report on State Debt Burden, May 1977, pp. 11-14.)

2. "The Future of Moral Obligation Bonds as a Method of Government Finance in Texas" by Richard M. Jones in Texas Law Review, v. 54 (January 1976) pp. 314-335. See in particular the section on "Methods of Avoiding the Debt Limits" beginning on page 320.

3. "Public Authority Bond Issues: The Need for Legislative Reform" by S. Hochberg and K. Taylor in the New York Law Forum, volume 21 (Fall 1975) pp. 133-207.

4. See in particular the State authorities and agencies involved in State financial assistance for industry and in the issuance of industrial revenue bonds, and in financing pollution control programs. The 12th Annual Report in Industrial Development, January-February 1978, pp. 2-8.

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[1] CRS memorandum of December 1, 1977, "Constitutional limitations on State spending and size of State debt in the 50 States", by Lillian Rymarowicz, p. 4.

TABLE 1.—SEPARATELY CONSTITUTED FUNCTIONS OF STATE GOVERNMENTS

	Dependent agencies	Dependent activities	Special district governments
Total, 50 States	446	105	[1] 126
Alabama	30	4	2
Alaska	9	4	0
Arizona	2	5	1
Arkansas	7	2	0
California	8	0	4
Colorado	0	1	4
Connecticut	11	3	1
Delaware	6	0	1
Florida	13	1	2
Georgia	15	6	6
Hawaii	5	0	0
Idaho	3	1	0
Illinois	13	3	17
Indiana	7	1	1
Iowa	0	4	3
Kansas	3	1	2
Kentucky	18	2	2
Louisiana	51	8	12
Maine	12	1	2
Maryland	6	4	3
Massachusetts	21	0	2
Michigan	12	1	0
Minnesota	3	2	2
Mississippi	8	3	2
Missouri	4	0	7
Montana	3	0	0
Nebraska	2	0	0
Nevada	1	1	0
New Hampshire	5	1	1
New Jersey	15	3	6
New Mexico	4	0	2
New York	28	9	6
North Carolina	7	3	0
North Dakota	3	0	1
Ohio	13	6	2
Oklahoma	11	3	0
Oregon	2	2	0
Pennsylvania	12	3	5
Rhode Island	10	3	0
South Carolina	18	4	0
South Dakota	5	2	0
Tennessee	5	1	3
Texas	3	1	18
Utah	2	1	1
Vermont	7	3	1
Virginia	9	1	11
Washington	5	0	0
West Virginia	8	1	2
Wisconsin	7	0	0
Wyoming	0	0	0

[1] Multistate agencies have been counted only once in the total but appear in each State that is a party to the compact.

Source: Compiled by the Congressional Research Service from unpublished sources of the U.S. Bureau of the Census.

TABLE 2—STATE NON-GUARANTEED DEBT ISSUED FOR PURPOSES OTHER THAN HIGHWAYS, EDUCATION, HOSPITALS, AND WATER TRANSPORT, AS OF DECEMBER 1975

Alabama—State building authority lease purchase arrangements ($12.2 million); Industrial Development Authority ($13.2 million); and Pollution Control Finance Authority ($4.9 million).

Alaska—State housing agencies ($86.5 million); international airports ($31.2 million); and the State Development Corporation ($18.0 million).

Arizona—Coliseum and Exposition Center Board ($5.9 million).

Arkansas—State building authority lease purchase arrangements ($8.5 million); park system revenue bonds ($6.5 million); and Department of Pollution Control and Ecology ($1.4 million).

California—Department of Water Resources ($380.0 million); State Exposition and Fair ($13.0 million); and Mount San Jancinto Water Park Authority ($8.2 million).

Colorado—Department of Social Services-states nursing home ($1.4 million).

Connecticut—Housing Finance Authority ($150.8 million); and Department of Commerce-development authority ($15.0 million).

Delaware—Community Affairs and Economic Development ($19.7 million).

Florida—Lease purchase agreements ($21.5 million); Recreational Council ($18.3 million); and Key Aqueduct Authority ($11.3 million).

Georgia—State building authorities lease purchase agreements ($24.5 million); and State parks ($26.5 million).

Hawaii—Airports Division, Department of Transportation ($227.5 million).

Idaho—(None except by universities).

Illinois—Building Authority ($429.3 million) for university, hospitals, and other State facilities; Housing Development Authority ($182.0 million); Health Facilities Authority ($9.7 million); and Armory Board ($.7 million).

Indiana—State Law Enforcement Academy Building Commission ($3.2 million); Indiana State Fair Board and other lease purchase arrangements ($5.8 million).

Iowa—(None except by universities).

Kansas—Armory Board ($.4 million); and State Board of Health ($1.3 million).

Kentucky—State Property and Buildings Commission ($99.1 million); and Pollution Abatement Authority ($23.8 million).

Louisiana—State building authorities lease purchase arrangements ($53.4 million); and the Louisiana Stadium and Exposition District ($128.7 million).

Maine—State Housing Authority ($48.7 million); Municipal Bond Bank ($10.4 million); and Evergreen Valley Development Corporation ($4.5 million). (The totals reported by Moody's is $33.7 million higher than the amount shown by the Census Bureau).

Maryland—(None except as specified in the table).

Massachusetts—Housing Finance Agency ($104.5 million); Health and Educational Facilities Authority ($189.3 million); and Wood Hole, Martha's Vineyard and Nantucket Steamship Authority ($14.4. million).

Michigan—Hospital Finance Authority ($22.5 million); Housing Development Authority ($308.4); and State Natural Resources Commission ($11.7 million).

Minnesota—Housing Finance Agency ($30 million).

Mississippi—(Data not available on portion of bonds issued for port facilities which are not backed by the full faith and credit of the State).

Missouri—Board of Public Buildings ($18.7 million); and Park Board ($1.4 million).

Montana—(Data not available on obligations other than those issued by the colleges and university).

Nebraska—(None except as specified in table).

Nevada—(None except specified in table).

New Hampshire—Higher Education and Health Facility Authority ($16.6 million); and Water Resources Board ($2.6 million).

New Jersey—Health Care Facilities Financing Authority ($33.9 million); Housing Finance Agency ($155.3 million); Mortgage Finance Agency ($384.1 million); and New Jersey Sports and Exposition Authority ($302.0 million). (The last two agencies appear not to be included in the Census Bureau tabulation).

New Mexico—(Data not available on obligations other than those issued by the educational institutions).

New York—New York State Power Authority ($1,215.3 million); Urban Development Corporation ($761.5 million); State Mortgage Agency ($156.3 million); Atomic and Space Development Authority ($9.8 million); Job Development Authority ($68.8 million); Battery Park City Authority ($247.4 million); New York City Housing Development Corporation ($51.2 million); and New York City Educational Construction Fund ($63.6 million).

North Carolina—(None except as specified in table).

North Dakota—(None except as specified in table).

Ohio—Water Development Authority ($151.5 million); Department of Natural Resources ($8.9 million); and Public Facilities Commission ($408.9 million).

Oklahoma—Capitol Improvement Authority—lease purchase—($31.0 million); Industries Authority ($89.4 million); and Railroad Maintenance Authority ($6.0 million).

Oregon—(Has no non-guaranteed debt).

Pennsylvania—General State Authority ($767.5 million); State Public School Building ($667.2 million); and Higher Educational Facilities Corporation ($141.3 million). (As of June 30, 1974, no debt has been contracted by three newly created State agencies-Industrial Development Authority, Housing Finance Agency and Nursing Home Loan Agency).

Rhode Island—Health and Educational Building Corporation ($33.8 million); Industrial Building Authority ($33.6 million); and Housing and Mortgage Finance Agency ($67.1 million).

South Carolina—Public Service Authority ($383.9 million).

South Dakota—Building Authority ($6.9 million); Health and Educational Facilities Authority ($3.1 million); and Housing Development Authority ($27.0 million).

Tennessee—Housing Development Agency ($32.9 million).

Texas—The Census Bureau does not classify the following agencies as State agencies: Canadian River Municipal Water Authority ($84.8 million); Lower Colorado River Authority ($103.1 million); Trinity River Authority ($78.8 million); and Coastal Industrial Water Development ($170.0 million). The Armory Board indebtedness ($2.5 million) is included.

Utah—(None except by universities).

Vermont—Educational and Health Buildings Financing Agency ($20.3 million); Housing Finance Agency ($13.8 million); and Vermont Municipal Bond Bank ($115.5 million).

Virginia—Public School Authority ($106.8 million); and Housing Development Corporation ($52.5 million).

Washington—Columbia Storage Power Exchange ($265.9 million); and Public Power System ($319.3 million).

West Virginia—State Building Commission-lease purchase ($33.6 million); State Parks Commission ($2.2 million); Armory Board ($5.8 million); and Housing Development Fund ($29.2 million).

Wisconsin—State Agencies Building Corporation ($130.0 million educational, $170.0 million all other purposes); State Public Building ($13.1 million); and Housing Finance Agency ($37.6 million).

Wyoming—Capitol Building Commission ($4.2 million).

(Source: Moddy's Municipal and Government Manual, 1975 (2 volumes).)

TABLE 6.—STATE EXPENDITURE FOR DEBT SERVICE (I.E. DEBT REDEMPTION AND INTEREST) IN MILLIONS OF DOLLARS AND AS A PERCENT OF GENERAL REVENUES FROM THE STATE'S OWN SOURCES, FISCAL YEAR 1977

	General revenues	Total debt service	Debt redemption	Interest	Total debt service as a percent of State general revenues
Totals	121,190.6	12,011.1	6,874.8	5,136.3	9.91
Alabama	1,752.6	105.5	55.1	50.4	6.02
Alaska	946.2	106.9	57.7	49.2	11.30
Arizona	1,364.1	6.7	2.3	4.4	0.49
Arkansas	929.5	13.0	6.1	6.9	1.40
California	14,343.2	603.4	316.6	286.8	4.21
Colorado	1,388.8	16.9	9.2	7.7	1.22
Connecticut	1,782.8	441.7	280.8	160.9	24.78
Delaware	500.2	98.0	64.6	33.4	19.59
Florida	3,697.6	156.9	57.4	99.5	4.24
Georgia	2,192.8	133.6	69.2	64.4	6.09
Hawaii	877.7	132.9	56.8	76.1	15.14
Idaho	433.1	3.8	1.3	2.5	0.88
Illinois	6,034.3	377.6	178.8	198.8	6.26
Indiana	2,666.9	55.2	27.1	28.1	2.07
Iowa	1,558.7	10.6	4.8	5.8	0.68
Kansas	1,168.4	35.6	22.8	12.8	3.05
Kentucky	1,877.2	215.9	120.5	95.4	11.50
Louisiana	2,235.6	143.4	69.6	73.8	6.41
Maine	580.8	61.2	33.4	27.8	10.54
Maryland	2,662.4	290.9	148.1	142.8	10.92
Massachusetts	3,477.3	666.7	364.9	301.8	19.17
Michigan	5,763.5	255.3	150.2	105.1	4.43
Minnesota	2,916.0	162.1	107.3	54.8	5.56
Mississippi	1,168.7	74.0	33.7	40.3	6.33
Missouri	1,840.2	83.3	62.7	20.6	4.53
Montana	399.0	8.6	5.1	3.5	2.16
Nebraska	748.5	7.6	4.8	2.8	1.02
Nevada	378.6	5.2	2.7	2.5	1.37
New Hampshire	292.7	53.1	36.7	16.4	18.14
New Jersey	3,865.0	542.0	306.2	235.8	14.02
New Mexico	877.6	18.5	12.0	6.5	2.11
New York	12,927.7	4,787.4	3,183.7	[1] 1,603.7	37.03
North Carolina	2,794.8	112.8	51.8	61.0	4.04
North Dakota	451.7	6.3	2.8	3.5	1.39
Ohio	4,359.4	310.6	137.2	173.4	7.12
Oklahoma	1,503.8	71.2	25.6	45.6	4.73
Oregon	1,340.3	156.1	49.4	106.7	11.65
Pennsylvania	6,276.4	584.6	193.0	391.6	9.31
Rhode Island	588.0	69.7	45.0	24.7	11.85
South Carolina	1,501.5	110.8	61.8	49.0	7.38
South Dakota	302.2	12.5	2.0	10.5	4.14
Tennessee	1,792.2	102.2	48.4	53.8	5.70
Texas	6,007.6	198.7	85.4	113.3	3.31
Utah	688.2	13.9	6.8	7.1	2.02
Vermont	302.3	49.2	26.8	22.4	16.28
Virginia	2,611.8	88.9	43.8	45.1	3.40
Washington	2,492.7	123.2	57.3	65.9	4.94
West Virginia	1,048.4	144.7	81.2	63.5	13.80
Wisconsin	3,178.5	176.2	102.2	74.0	5.54
Wyoming	303.2	6.0	2.1	3.9	1.98

[1] Includes $285.8 million of interest payment for Municipal Assistance Corporation Debt and $267.3 million interest payments on State Housing Finance Agency Debt.

Source: State Government Finances in 1977.

TABLE 7.—DEBT SERVICE PAYMENTS AS A PERCENT OF GENERAL REVENUES FROM STATE SOURCES, FISCAL YEAR 1977

[In Descending Order]

Percent and number of States	States [1]
15 to 37 (7)	New York (37.0), Connecticut (24.8), Delaware (19.6), Massachusetts (19.2), New Hampshire (18.1), Vermont (16.3), and Hawaii (15.1).
10 to 14.9 (8)	New Jersey (14.0), West Virginia (13.8), Rhode Island (11.9), Oregon (11.7), Kentucky (11.5), Alaska (11.3), Maryland (10.9), and Maine (10.5).
5 to 9.9[2] 11	Pennsylvania (9.3), South Carolina (7.4), Ohio (7.2), Louisiana (6.4), Mississippi (6.3), Illinois (6.3), Georgia (6.1), Alabama (6.0), Tennessee (5.7), Minnesota (5.6), and Wisconsin (5.5).
2.5 to 4.9 11	Washington (4.9), Oklahoma (4.7), Missouri (4.5), Michigan (4.4), Florida (4.2), California (4.2), South Dakota (4.1), North Carolina (4.0), Virginia (3.4), Texas (3.3), and Kansas (3.1).
0.5 to 2.4 13	Montana (2.2), New Mexico (2.1), Indiana (2.1), Utah (2.0), Wyoming (2.0), Arkansas (1.4), North Dakota (1.4), Nevada (1.4), Colorado (1.2), Nebraska (1.0), Idaho (0.9), Iowa (0.7), and Arizona (0.5).
9.91 50	National Average. [2]

[1] Rankings are based on four digit decimals.
[2] National average.

Source: Computations by CRS from data in State Government Finances in 1977 issued by the U.S. Bureau of the Census.

DEFICITS AND DEFICITS

(By Robert L. Heilbroner)

Alarmed at the size of the mounting deficit, President Reagan has come out for a constitutional amendment to enforce a balanced Federal budget. After the amendment is ratified, the Government will be allowed to spend only what it takes in as taxes. No more borrowing, with its horrendous consequences. Financial virtue will have been restored.

I have a suggestion to make. Why not strengthen the fight against profligacy by widening the amendment to include deficits of all kinds? Specifically, why not make it unconstitutional for businesses to spend more money than *they* take in as their normal revenues?

There is, of course, a very good reason, small matters of constitutionality aside. It is that a prohibition on business "deficits" would bring an end to much economic expansion. When A.T.&T. wants to build a satellite, it doesn't normally pay for it from the revenues generated by your telephone calls. It goes out and borrows the money for its new capital investment, or issues new stock. So does Exxon and I.B.M. and the rest of the Fortune 500.

Of course, corporate borrowing and spending isn't called a "deficit." It's called business investment. Nor are the corporate bonds or new stocks looked on as evidence of profligacy. They simply indicate that the process of capital formation has been going on, giving us productive assets that we can kick with our feet, and securities that we can put into safe-deposit boxes. As a result, when we discover that A.T.&T.'s long-term debt has gone up from $32 billion in 1975 to over $50 billion today, we don't talk about profligacy, we talk about growth.

But why isn't this also true of Government? If it is productive for A.T.&T. to borrow money to loft a satellite, why isn't it all right for the Government to do the same thing? If it is growth-producing for Ford or General Motors to borrow money or issue shares to modernize their plant and equipment, why isn't it growth-producing for the Government to modernize the road system so that we can drive the new models without breaking their axles? If it is praiseworthy for I.B.M. to go to the public for money to finance a new research facility, why isn't it equally praiseworthy for the Bureau of Standards or the National Institute of Mental Health to do the same thing? If it is good to build airplanes and apartment houses and steel plants on borrowed money, why is it bad to borrow money to build public transportation or public housing or public waste-reclamation plants?

But, it will be said, the capital expansion of private firms generates additional sales for them, out of which they will be able to pay the interest on their additional debt. True. And isn't it also true that the capital investment of the public sector generates additional gross national product out of which more tax revenues will arise to finance the added interest on the public debt?

Thus, the balanced-budget amendment may save us from profligacy, but it may also force us into poverty, exactly as if the amendment applied to the private sector. For the Government sector, like the private sector, builds for the future, as well as using up wealth in the present. When we spend our public income for arms or postal services, we are consuming our wealth, as we do when we spend our private incomes for sporting rifles or telegrams. To give the budget-balancers their due, perhaps we should limit our public consumption expenditures to the normal flow of tax incomes that the public sector enjoys. But when we spend money for harbors or dams, or for aid to P.S. 162, we are increasing our future capacity to produce, just as surely as when we spend it on machine tools or an Ivy League education. There is absolutely nothing to be said for limiting investment spending, which is growth-producing, to our normal incomes, whether these incomes are derived from sales or taxes.

Looking at the functions of Government as investment or consumption does not tell us whether or not the Government is making wise political or social decisions. It does not even give us a guide as to whether the Government is making intelligent *economic* decisions. It is possible to make very bad investment choices and very wasteful consumption expenditures. Washington has plenty of examples of both to show for its money. So do Pittsburgh, Detroit, and Middletown, U.S.A.

Nevertheless, breaking down the Government budget into investment and consumption does not help remove what I consider to be the single most serious impediment to the effective use of our economic potential. This is the tendency to think of all Government spending as *essentially* consumption, and usually wasteful consumption at that. Before we fasten ourselves into a balanced-budget straitjacket, we should remember that American economic growth depends just as crucially on borrowing and spending for investment in the public sector as it does in the private.

[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 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! If 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 not 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 a 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. TSONGAS. Madam President, at this juncture, I ask for the yeas and nays on the amendment.

The PRESIDING OFFICER. Is there a sufficient second? There appears to be a sufficient second.

The yeas and nays were ordered.

Mr. HATCH. Madam President, the Senator's amendment is an interesting one, one deserving of study. My first concern with this amendment is that it is once again, a simple statutory approach. We have considered a statutory approach many times in this discussion on the balanced budget amendment. There are at least three cases in history which I can cite where statutory bills have passed requiring balanced budgets and were readily acceptable by a majority vote thereafter. We all know that in spite of those statutes we continued to suffer from deficit spending. Instead of a simple statute I believe we need an external constraint upon Congress in order to get Congress to live within its means.

No. 2, a deficit is a deficit, no matter what you call it. There are the same economic problems and the same economic difficulties arising from borrowing for capital outlays as for operating outlays. So the amendment does not change that.

No. 3, Senate Joint Resolution 58 does not prohibit capital budgets. Assuming we pass this amendment tomorrow and can get it through the House of Representatives and then through three-quarters of the States, the Senator could propose a statute at that point to establish a capital budget.

What Senate Joint Resolution 58 simply does require is that such a budget be subject to the same constitutional restraint as operating budgets are subject to.

No. 4, 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.

Eighth, 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, Madam President, I oppose this amendment. It is clear to me that this amendment would only further delay our efforts to establish a balanced budget.

We are prepared to yield back our time and stack this vote immediately following Senator HART, if it is acceptable to the distinguished Senator from Massachusetts.

Mr. TSONGAS. Madam President, if I may state one point in rebuttal, I am disappointed that the Senator from Utah did not see the wisdom of my amendment. The way he rose with great enthusiasm, I thought maybe I had made my point successfully—apparently not.

I point out that in one of the addenda that I attached to the amendment is a listing of the various States—even if you can accept the fact that there is a difference between the private and public sectors, I do not happen to share that view since the accounting practice is one of longstanding in the private sector. But even if you accept that argument, one need look only at the various States to see that they have made the same differentiation. In the addenda that I have attached, I list not only the States but various agencies, port authorities, highway authorities, and others, where this kind of accounting not only is accepted but, indeed, has been in practice lo these many years.

Even, as I said, if one accepts the initial argument, it fails when one looks at what States have done in terms of their own practices.

I also yield back the time that has been allocated to me.

Do I assume correctly that this would follow immediately on the heels of the vote on the Hart amendment?

The PRESIDING OFFICER. The Senator is correct.

Mr. TSONGAS. I thank the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. HATCH. We are prepared to yield back the remainder of our time, if the Senator from Massachusetts is stacking this vote immediately following the Hart amendment.

If he yielded back his time; then we yield back our time and stack this vote.

The PRESIDING OFFICER. The Senator from Massachusetts yielded just the time he was using to speak. Senator HART was reserving time that he had remaining.

Mr. HATCH. That is correct. It is my understanding that the vote on the amendment of Senator HART will occur at 7:45, and the vote on the amendment of Senator TSONGAS will occur thereafter; that the Senator from Colorado yielded back such time to speak before the 7:45 voting time.

The PRESIDING OFFICER. The Senator is correct.

Mr. BAKER addressed the Chair.

The PRESIDING OFFICER. The majority leader.

Mr. BAKER. It appears that the Levin amendment is next. I understand that the Senator from Michigan is on the way to the floor. He has not yet arrived. I am prepared now to ask unanimous consent that it may be in order to suggest the absence of a quorum without charging it against either party.

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

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

UP AMENDMENT NO. 1172

(Purpose: To allow a majority of the Congress to vote for deficit spending legislation once three-fifths of the Congress has declared a national emergency)

Mr. LEVIN. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Michigan (Mr. LEVIN) proposes an unprinted amendment numbered 1172.

Mr. LEVIN. 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 4, after line 14 add the following new section:

"SEC. 6. Notwithstanding the foregoing sections, three-fifths of the whole number of both Houses of Congress may declare a national emergency for the purposes of suspending section 1 of this article, and once such an emergency is declared, a majority of both Houses of the Congress may enact legislation to deal with such emergency even if such legislation will result in outlays exceeding receipts for any fiscal year. Such emergency may not be in effect for longer than two years from the date of its declaration, unless Congress by three-fifths of the whole number of both Houses of Congress votes extensions of the declaration of such emergency, subject to two year limitations. This provision shall not affect the authority of Congress by majority vote to declare a national emergency for purposes other than suspending section 1 of this article."

The PRESIDING OFFICER. Without objection, the Hart amendment is laid aside.

Mr. LEVIN. Mr. President, this amendment provides that if Congress, by a three-fifths vote, declares that a national emergency exists, then the budget resolution itself may be adopted by a majority vote.

Unlike some of the other earlier national emergency amendments, this amendment keeps the three-fifths requirement, but it recognizes that it might be possible to get a three-fifths vote for a deficit in an emergency, while it may not be possible to get three-fifths of Congress to vote for any specific budget or for a specific budget resolution. Those are two different issues.

Mr. President, I am troubled by the fact that the measure before us lumps together the broad policy issue of whether we should have an unbalanced budget in a national emergency with the specifics of a budget to be voted upon. The pending resolution requires three-fifths to vote simultanelously on whether we should have an unbalanced budget and on the specific character of that budget.

While there is some logic behind the three-fifths requirement as it applies to the policy decision of whether or not a national emergency exists so as to require an unbalanced budget, I fail to see the necessity for imposing a supermajority requirement on the specific legislative issue of implementing that policy.

Three-fifths of the Members of Congress recognizing that the country is faced with a national emergency so as to require an unbalanced budget is not the same as having three-fifths of the Members of Congress agreeing on the specific solution necessary to deal with that emergency.

Previous votes on national emergency amendments were said by proponents of this constitutional amendment to contain too many loopholes. It has been argued that if we were to permit a majority to declare that a national emergency existed, it would be too big a loophole. This amendment cures that problem by requiring that two-thirds of Congress vote to declare that a national emergency exists.

Previous national emergency amendments were also defeated on the ground that the emergency could last forever, that there was no end to it; yet, part of the provisions of the language in the amendments offered, and particularly the Senator from Georgia (Mr. NUNN), pointed out that if we simply said that a national emergency could be declared without end, we could get into the situation we got into after the Korean war, when a national emergency lasted for seemingly decades. This amendment cures that problem by setting a limit of 2 years on the declaration of the national emergency which two-thirds of Congress would have to vote in order to adopt an unbalanced budget.

Mr. President, the national emergency issues haunts this debate. There is real concern on the part of many in this Chamber relative to the issue of what happens if we have a national economic emergency or if we have a national physical emergency involving our very survival. Do we want to give the life or death power to a minority of Congress? That is the question by which some of us are very troubled.

However, giving the majority the right to declare an emergency may be too big a loophole for the proponents. This amendment should not be too big a loophole for the proponents, because this amendment provides that the national emergency waiver must be by a three-fifths vote of Congress, just as the proponents contend it should be.

Here the Senator from Utah, for instance, has repeatedly said that where there is a national emergency, then there will be three-fifths vote. I hope that that would be true. I think that that would normally be true and this amendment preserves that approach by allowing that kind of an action by Congress in case of a national emergency.

This amendment actually does for the language in the resolution before us what many of us, including I believe a number of proponents, already believed that the language did, which is to provide for a waiver of the balanced budget requirement by a three-fifths vote of Congress.

Mr. President, in summary, one very troubling aspect of the resolution before us is the fact that it takes two separate and distinct issues, the decision to unbalance the budget and the decision about the specifics of the budget, and rolls them into one vote and imposes on that one vote a supermajority requirement.

Melting those two issues into one critical decision is a mistake. Situations may arise where a national emergency exists and we should respond by adopting an unbalanced budget. Three-fifths of us might agree that we are in dire straits and spending above Federal revenues is required to right that situation. Fine. We should then be able to agree that we will have an unbalanced budget. But the budget statement or resolution that will come before us will not ask if we think that an emergency requiring deficit spending exists. Rather, that statement, as provided for in the pending resolution, will require us to agree that we should deficit spend in the specific ways in that specific resolution or statement.

While I may agree on the need and the broad nature of the response required in an emergency, I may have problems with the specifics in the resolution and my problem may well be shared by others of our colleagues, the net result being that while three-fifths of us would agree that it is an emergency and that we should spend more than we take in, three-fifths of us might not agree on the specifics of the spending resolution before us.

While a supermajority agrees that we should act by adopting an unbalanced budget we would only have a majority agree on how we should act. And the net result in those circumstances would be that we could not act at all under the terms of the constitutional amendment before us.

By requiring one vote to serve two purposes, the broad decision to have an unbalanced budget to meet a national emergency and the specific decisions relative to its nature and extent, the language can put us in a bind, and when you recognize that that bind requires a three-fifths vote before the rope can be loosened the bind can quickly become a gordian knot.

The amendment I offer today is designed to break that knot while still preserving the three-fifths vote necessary for the threshold decision to have an unbalanced budget. It meets the concern of the proponents that a supermajority exists to unbalance the budget before it is in fact unbalanced, but it meets one of the number of concerns of those of us who oppose the

amendment or have not decided on the amendment or are concerned about some of its aspect that it will unduly endanger our fiscal or economic security but unduly hamstring us in a national emergency.

Again, this amendment differs from the national emergency amendment or some of them previously rejected in that the three-fifths requirement would still be in place under this amendment to declare an emergency exists which in turn would permit an unbalanced budget.

And only after such three-fifths action were taken would a majority rule on the specific budget resolution before Congress.

The amendment places a 2-year limit on the national emergency declaration with the option of its being extended if Congress should vote to do so.

The 2-year requirement, Mr. President, is an attempt to avoid the problem of indefinite national emergency declarations which Senator NUNN and others warned us against last week and at the same time leaving us a flexibility to move to a 2-year budget cycle sometime in the future.

Mr. President, I yield the floor, reserve the remainder of my time, and suggest the absence of a quorum.

The PRESIDING OFFICER. On whose time is the quorum call to be charged?

Mr. LEVIN. I ask unanimous consent that it be equally divided.

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

The clerk will call the roll.

The 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 rise in opposition to the Levin amendment. This amendment is another one which would allow a national emergency, other than a declaration of war, to be invoked and waive the effect of this constitutional amendment. We feel that this would be a mistake. If Congress clearly faces an emergency where deficits must be incurred to meet it under Senate Joint Resolution 58, Congress can already vote by three-fifths to incur deficits for that specific purpose. The constitutional amendment we are offering now does just that.

In my judgment, this amendment does not add anything to the proposed constitutional amendment. I am sure the amendment is well-intentioned, but we think it is unnecessary; therefore, we oppose the amendment.

The PRESIDING OFFICER. Who yields time?

Mr. LEVIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, what this amendment adds is the following: What if three-fifths of Congress agree that there is a national emergency so as to require an unbalanced budget but cannot agree by a three-fifths vote on the specifics of the unbalanced budget? That is what this amendment cures, this amendment cures that problem. That is a bind which this constitutional amendment could put the Congress in, and it is an unnecessary bind.

I think the proponents of this constitutional amendment were aiming at a three-fifths waiver, and my amendment preserves that waiver. It makes it clear that if three-fifths of the Congress votes that a national emergency exists so as to require an unbalanced budget, that is the hurdle that has to be met. Once this hurdle is covered, the specifics of the budget resolution should be adopted by the usual rules of Congress.

So I would respectfully disagree with my friend from South Carolina. This amendment does add a critical new feature, and that is that while preserving the three-fifths vote requirement in the constitutional amendment, while conceding for the purposes of this amendment the argument of the proponents that you want a supermajority before you unbalance the budget, what this amendment does is to solve the problem of what happens if you get three-fifths to agree that there is a national emergency so as to require the unbalanced budget but you cannot get three-fifths to vote for the specifics of the budget resolution or the statement itself. That is what this amendment adds without detracting from the purpose or the spirit of the constitutional amendment itself.

The PRESIDING OFFICER. Who yields time?

Mr. THURMOND. Mr. President, I think we will yield back our time if the Senator would like to yield back his time.

The PRESIDING OFFICER. Does the Senator from Michigan wish to yield back his time?

Mr. LEVIN. How much time does the Senator from Michigan have?

The PRESIDING OFFICER. Seventeen minutes thirty-four seconds.

Mr. LEVIN. Pardon?

The PRESIDING OFFICER. Seventeen minutes thirty-four seconds.

Mr. LEVIN. I would like to yield back all but 3 minutes of my time if that is agreeable to the floor manager.

Mr. THURMOND. I will yield back all but 3 minutes of my time. I was willing to yield it all back. I yield back all but 3 minutes, too.

The PRESIDING OFFICER. Who yields time?

Mr. THURMOND. I wonder if there is anybody else who wants to speak on this amendment pro or con? If not, Mr. President, we will just let the quorum run, and I suggest the absence of a quorum and let it run against this amendment equally divided.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. LEVIN. 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. LEVIN. Mr. President, I do not believe that there now is anybody else who wants to come over to speak on this, so I am now able to yield back the remainder of my time.

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

We are ready to go to another amendment. If anybody has an amendment to offer we are ready to proceed with another amendment.

The PRESIDING OFFICER. The Chair would point out that a rollcall vote has not been requested on this amendment.

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.

Mr. THURMOND. I believe a rollcall was requested on the other amendments since 6 o'clock, were they not?

The PRESIDING OFFICER. The Senator is correct. There will be no votes until 7:45 p.m.

Mr. THURMOND. Mr. President, I do not see anyone here now who wishes to offer an amendment.

Mr. COHEN. Mr. President, I would like to make a statement.

Mr. THURMOND. I yield to the Senator from Maine.

Mr. COHEN. I thank the Senator for yielding.

The Senate will shortly vote on whether to adopt or reject Senate Joint Resolution 58. This may be one of the most important votes cast by this body during this Congress. No one, I am confident, takes lightly the prospect of amending the U.S. Constitution.

The eloquence and the wisdom of our Constitution lies in its embodiment of the fundamental principles which have guided this Nation. Any move to amend it must be approached with great caution. We must define what it is we are trying to achieve and determine whether the Constitution is the appropriate vehicle to accomplish this purpose.

Senate Joint Resolution 58, the balanced budget-tax limitation constitutional amendment, is being offered by its proponents as a means of correcting a bias in the present political process toward ever-increasing levels of

Federal spending. It is not being offered to safeguard individual rights, to correct a weakness in the constitutional structure of Government, or to define or limit the exercise of congressional powers. It is offered to address a political problem. Its purpose is to provide a more conducive political environment for the adoption of more fiscally responsible budget policies.

The Federal budget is enormously complex. Many Members of Congress and certainly the majority of the American public are not familiar with all of the complexities and the intricacies of the entire budget and its workings. However, we are aware of the escalating growth in Federal spending during the past decades, the rising Federal deficit, and the staggering level of the national debt. We have also felt and seen the effects of a stagnant economy, high inflation, and growing unemployment.

All of these matters have been extensively written about, discussed, and debated both within Congress and across the country. It is not necessary for me to cite the facts and figures which already are well documented and well known.

The desirability of reducing the Federal deficit and balancing the Federal budget are not hotly disputed questions. There are no advocates of continuous deficit spending. No one is opposed to balancing the Federal budget. Therefore, the question, is: Why have we not achieved these widely supported goals? Who or what is responsible for this failure? Is Congress incapable of fiscal discipline and, if so, why?

There are those who argue that Congress, as an institution, is incapable of fiscal responsibility. Our system of representative government is inherently biased toward greater spending and is unable to discriminate between the competing interests for the limited resources of the Federal Government.

Certainly every Member of this body is subject to the continuous demands of a multitude of special interests—and of individual constituencies who seek Federal subsidies, tax breaks, grants, loans, regulations, relief from regulations, or some other form of assistance. Each one is confident of the validity of its claim on the Federal Treasury and on the superiority of its need above other claimants. Each one is convinced that it is our duty as their elected representatives to protect and further their interest.

Are these demands upon us unwarranted? Is it irresponsible or wrong for Members of Congress to comply with such demands? The answer must be, "Of course not." A basic principle of our system of government is that we are here to represent the interests of those who elected us. Those voters are simply the aggregate of hundreds of individuals and groups, each with its own special needs and problems. As their representatives, we have a duty to repond to those needs.

What is equally important, however, is that we have a commensurate responsibility to our constituents as a whole and to the Nation. The question is whether Congress is capable of weighing the merits of the individual demands, of setting priorities, and of saying "no" to those requests which, in light of limited Federal resources, cannot be granted.

Some would say that the answer to this question is "no." The political reality is that most of us will in the near future be seeking reelection. That reality requires that we succumb to those demands. Our success is predicated upon not how well we balance the competing interests in relation to national needs and goals but rather how well we respond to each individual interest brought before us.

If this is so, is it because the American public as individuals cannot look beyond their own self-interest or because they do not fully understand the difficult problems we face as a nation?

If the latter, is it not incumbent upon Congress, and do we not have a duty, to educate the public on these issues? Do we not often neglect this responsibility by resorting to partisan debate and simplistic arguments in an attempt to win political victories and place blame elsewhere instead of engaging in productive dialog?

The American public supports responsible Federal spending and, I believe, wants the Federal budget in balance. Do they not also have a responsibility to educate themselves on the serious problems before us and the difficult choices which must be made? As citizens, do they not have a responsibility to consider the needs of the Nation as well as their own?

The past two decades have seen a vast and disorderly growth of the Federal Government. Directly or indirectly, it now touches almost every aspect of American life. Today, that rapid growth has been slowed, and we are in a period of transition. We are engaged in a reevaluation, and perhaps a redefinition, of the proper role of the Federal Government. We are debating in what areas has the Government overstepped its proper role and in what areas has it not gone far enough. National priorities are being reevaluated and national goals reassessed.

Our Nation's past is a history of struggle, of diversity, and of competing ideas. Today is no different. Opposing philosophies on the role of the Government, on America's proper place in world affairs, and on the future direction of both domestic and foreign policy continue to do battle in our homes, our workplaces, our universities, and in the Halls of Congress.

This is our legacy, our heritage. From the competing ideas and vying philosophies, we have forged compromise and built consensus. Today, we are in the process of trying to build such a consensus.

Reducing the Federal deficit and balancing the Federal budget are common goals. While we speak of uncontrollable Federal outlays versus "controllable" outlays, discretionary versus nondiscretionary spending, in truth all Federal spending is clearly within the control of the Congress.

Yet, we have failed to exercise that control to achieve the universally shared goal of reducing the deficits. Why? Could we not sit down today and devise a plan which would bring the budget into balance next year or the year after? Is not our failure to do so based on our inability to reach a consensus on national priorities and the allocation of limited Federal resources?

Until we can reach such a consensus on how to balance national defense requirements versus social policy goals versus appropriate levels of taxation, we cannot succeed in achieving our goal, either with or without a constitutionally mandated budget process.

As both proponents and opponents of a constitutional amendment have stated, there is no substitute for fiscal discipline and responsible fiscal decisionmaking. Statutory or constitutional constraints may make it politically or practically more difficult to continue deficit spending, but if there is no consensus on how to allocate Federal resources, no structural impediment is going to succeed in achieving a balanced budget. Where statutory restraints on spending have failed, constitutional restraints will also fail. We will simply invent more creative methods for circumventing the constraints imposed, as we have in the past, or we will reach a stalemate. Both of these results will have the effect of making constitutional requirements meaningless.

The unsuitability of writing economic principles and budget procedures into the Constitution and the problems which could result have been amply described by constitutional scholars and economists. Despite these objections to amendments such as the one before us, I considered whether such an amendment was necessary as a last resort—a final desperate attempt to achieve fiscal discipline. I concluded that neither the Congress nor the American public are so lacking in discipline and in commitment to achieving responsible spending policies that our only hope lies in attempting to substitute constitutional restrictions for national will.

Even if such constitutional requirements offered the only solution to our current dilemma, I believe the specific language of Senate Joint Resolution 58 contains such serious flaws that it is both unworkable and could result in

harm greater than any benefit it might confer. For these reasons, I must oppose its passage.

I will not provide a lengthy analysis of the specific weaknesses of the proposed amendment. The record already contains several detailed descriptions of these flaws. I would, however, like to make a few general observations.

Federal fiscal policy must be flexible in order to adapt to changing economic conditions and budgetary goals. But adopting constitutional strictures, we are foreclosing options and innovations not only for this generation but for future generations. We are creating a mechanism that may prevent the exploration of alternative mechanisms which may improve the budget process or may be necessary to adapt to future constitutional or economic changes.

Under the provisions of the amendment, Congress is required to adopt a budget statement prior to each fiscal year. Our own experience during this session of Congress in writing budget resolutions has shown us the difficulty in forecasting meaningful figures in advance of a fiscal year. National and world events that affect business conditions, random happenings, and unpredictable natural disasters all affect the level of Federal revenues and the demands on the Federal Treasury during any given fiscal year.

Accepting the lack of certainty in economic projections, it would still be necessary to decide which economic assumptions to utilize. A range of options will be open to us, from the most optimistic and unrealistic of estimates to those assuming the worst economic conditions. If Congress is as cowardly and irresponsible as many believe, which options are we likely to choose? What role are political motivations likely to play in that choice?

If, during the course of the fiscal year, it is clear that actual revenues will be lower than the estimate contained in the budget statement, the amendment does not require further congressional action even if a deficit will result. If Congress is not capable of fiscal responsibility, will it not be tempted to adopt optimistic revenue projections to avoid making the spending reductions necessary to achieve a balanced budget?

Assuming, however, that Congress does not attempt to circumvent the intent of the amendment by using unrealistic revenue figures, what would happen if, during the fiscal year, congressional action was necessary to insure that actual outlays did not exceed the figure provided in the budget statement? If a majority of both Houses could not reach a consensus on spending reductions or revenue increases, and if three-fifths of both Houses could not agree on a specific level of deficit, we would face a deadlock with meaningless and unenforceable constitutional requirements.

I do not believe that Members of the Senate or the House of Representatives would willfully violate the Constitution. However, the amendment would create a structure that could lead to such a situation if no consensus could be reached.

One of the most serious flaws in the proposed constitutional amendment is its potential shift of power to the Federal courts. The judicial branch has never been involved in the budget process, and I believe it should not be. This amendment, however, threatens to result in the unprecedented intrusion of the judiciary into the budget-making process, matters currently within the power and authority of the Congress.

Senator GORTON's and Senator RUDMAN's amendment to address this concern offered a reasonable approach to limiting judicial involvement while protecting the traditional and legitimate functions of the courts. I regret that this amendment, which would have substantially improved Senate Joint Resolution 58, was rejected by the Senate.

The approval of this amendment will be an admission to the American public and to ourselves that the individual Members of the U.S. Senate are incapable of responsible decisionmaking and that, without constitutional constraints, the Congress is incapable of acting on Federal budgetary matters in the best interest of the Nation.

We will not only be admitting our own defeat but the failure of the American political process as well. A constitutional amendment is only warranted when the intended purpose cannot be adequately achieved through other means. The justification for this amendment must, in part, be based on the determination that Members of Congress are not sufficiently capable of exercising fiscal restraint and that the electoral process is incapable of choosing individuals able to weigh the needs of the Nation, to make the hard choices and to respond to the desires of the American electorate.

Perhaps the current Members of this body should acknowledge defeat. But are we prepared to admit the defeat of future Congresses as well? Are we also prepared to tell the people of this country that they too have failed and are incapable of electing responsible representatives to the Congress.

If at the conclusion of this debate, Senate Joint Resolution 58 is approved by the Senate and subsequently adopted by the House of Representatives, it will be put before the States. Even if it is ultimately ratified by the requisite number of States, it will be several years before its provisions become effective.

If, without the structural constraints contained in the amendment, Congress lacks the discipline and the ability to reduce Federal spending by discriminating between the competing interests for Federal dollars and is incapable of reaching a consensus on balancing national goals, the interim years before the amendment could become effective would appear to be bleak for this Nation. And, if the amendment fails to be ratified, do we face a future without any hope of achieving a responsible fiscal policy?

The American people and the American economy cannot wait 4 or 5 or 6 years for responsible and prudent Federal budgeting. The American public and the Congress must be willing to make the difficult choices now. Our goal is clear. The task before us is obvious. If this country is unwilling today to make the sacrifices which may be necessary to reach a consensus on national priorities, how can we expect to be able to do so 5 years from now? The opposing philosophies, the competing interests, and the different goals will still exist.

Senate Joint Resolution 58 offers each of us the opportunity to cast a symbolic and painless vote in support of a balanced budget. But we cannot afford to adopt an easy and immediate political solution to a difficult and long-term problem. We cannot afford to adopt this amendment if it will alleviate the pressure on Congress to act now. The temptation to postpone these decisions is great but the choices will only be more difficult, the sacrifices greater, and the decisions only more painful the longer we delay.

The Constitution was never intended to serve as a shield for Congress to hide behind. But that is exactly what we are doing, using the Constitution as a coverup—it is a cloak for our naked cowardice, our trembling reluctance to make the cuts or increase the taxes that would be necessary to balance the budget.

What this amendment does is to allow us to say we are fiscal conservatives but not today, not tomorrow—but maybe in 1985, 1986, or 1987.

It reminds me of what St. Augustine said, "Lord, give me chastity and continence but not just now."

In conclusion, Mr. President, let me recall the words of Justice Learned Hand:

> Liberty lies in the hearts of men and women; when it dies there no constitution, no law, no court can save it; no constitution, no law, no court can even do much to help it. While it lies there it needs no constitution, no law, no court to save it.

The same may be said for fiscal responsibility.

The PRESIDING OFFICER. Who yields time?

Mr. THURMOND. Mr. President, I suggest the absence of a quorum and I ask unanimous consent that the time be charged equally to both sides.

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

VOTE ON AMENDMENT NO. 1940, AS MODIFIED

Under the previous order, the question is on agreeing to the amendment of the Senator from Colorado, as modified. The yeas and nays have been ordered and the clerk will call the roll.

The legislative clerk called the roll.

Mr. STEVENS. I announce that the Senator from New Jersey (Mr. BRADY) and the Senator from Minnesota (Mr. DURENBERGER) are necessarily absent.

Mr. CRANSTON. I announce that the Senator from Ohio (Mr. GLENN) is necessarily absent.

The PRESIDING OFFICER (Mr. NICKLES). Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 23, nays 74, as follows:

[Rollcall Vote No. 281 Leg.]

YEAS—23

Bradley	Inouye	Mitchell
Bumpers	Jackson	Moynihan
Cranston	Kennedy	Pell
Dodd	Leahy	Randolph
Eagleton	Levin	Riegle
Ford	Mathias	Sarbanes
Hart	Matsunaga	Tsongas
Hollings	Metzenbaum	

NAYS—74

Abdnor	East	Murkowski
Andrews	Exon	Nickles
Armstrong	Garn	Nunn
Baker	Goldwater	Packwood
Baucus	Gorton	Percy
Bentsen	Grassley	Pressler
Biden	Hatch	Proxmire
Boren	Hatfield	Pryor
Boschwitz	Hawkins	Quayle
Burdick	Hayakawa	Roth
Byrd, Harry F., Jr.	Heflin	Rudman
	Heinz	Sasser
Byrd, Robert C.	Helms	Schmitt
Cannon	Huddleston	Simpson
Chafee	Humphrey	Specter
Chiles	Jepsen	Stafford
Cochran	Johnston	Stennis
Cohen	Kassebaum	Stevens
D'Amato	Kasten	Symms
Danforth	Laxalt	Thurmond
DeConcini	Long	Tower
Denton	Lugar	Wallop
Dixon	Mattingly	Warner
Dole	McClure	Weicker
Domenici	Melcher	Zorinsky

NOT VOTING—3

Brady	Durenberger	Glenn

So Mr. HART's amendment (No. 1940), as modified, was rejected.

Mr. THURMOND. Mr. President, I move to reconsider the vote by which the amendment was rejected.

Mr. BAKER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. BAKER addressed the Chair.

The PRESIDING OFFICER. The majority leader is recognized.

Mr. BAKER. I ask unanimous consent that I may proceed for 1 minute without it being charged against the bill, Mr. President.

Mr. MOYNIHAN. May we have order, Mr. President?

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

The majority leader is recognized.

Mr. BAKER. I thank the Chair.

ORDER OF PROCEDURE

Mr. BAKER. Mr. President, this measure will be completed tomorrow at noon. We still have three amendments to deal with that we know of, according to my count, other than the Cranston amendment. I hope that the Senate will remain in session tonight until we dispose of those three amendments, specifically the Bumpers amendment, the Biden amendment, and the Heflin amendment, and then go out. That will keep us here perhaps until 10 o'clock or maybe a little after, but there is no other way that we can do that and still have only the Cranston amendment tomorrow, plus final passage, by noontime.

Mr. President, after we finish this matter at noon, it is my hope that we will go to the reconciliation bill, as I indicated earlier. I have submitted a unanimous-consent request for the consideration of the minority leader, and I now state it for his consideration and that of other Senators.

ORDER TO PROCEED TO S. 2774 TOMORROW AND FINAL VOTE TO OCCUR THEREON NO LATER THAN 4 P.M. THURSDAY, AUGUST 5, 1982

Mr. BAKER. Mr. President, I ask unanimous consent that following the disposition of Senate Joint Resolution 58 on tomorrow, the Senate turn to the consideration of the second reconciliation bill, S. 2774; that the final vote occur on that bill no later than 4 p.m. on Thursday, August 5.

Before the Chair puts the question, Mr. President, may I say that it is my intention either by unanimous consent, if possible, or by motion to attempt to proceed to the consideration of the supplemental appropriations bill, if it is available—and I believe it will be—on Friday. However, it is not my intention to ask for rollcall votes on Friday or Monday. Indeed, later I will ask unanimous consent that if we do reach the supplemental appropriations bill on Friday, votes that may be ordered during Friday or Monday would be stacked to occur at a time certain beginning on Tuesday.

Mr. ROBERT C. BYRD. Mr. President, reserving the right to object, I will not object. In the first place, the majority leader does not need unanimous consent to proceed to the second reconciliation bill; it is covered by a 20-hour time limitation and no nongermane amendments are in order. So I would hope there would be no objection to that request.

The second part which the majority leader does not put in the form of a request is in fulfillment of the request on the part of various Senators, and it meets that request with respect to no votes being taken on Friday and Monday. As a matter of fact, although that is not a part of the unanimous-consent request, that is a factor in the agreement which the majority leader is seeking. I hope there will be no objection.

The PRESIDING OFFICER. Is there objection?

Mr. JOHNSTON. Mr. President, reserving the right to object—and I shall not object—as a matter of fact, my question really relates, if I may have the majority leader's attention, to the three amendments he spoke about to be debated tonight.

I do not mean to be impolitic, but I wonder if by chance the majority leader has probed the question of whether we might debate those tonight and vote back to back tomorrow. Would that be too much to ask?

Mr. BAKER. Mr. President, in reply to the Senator from Louisiana, at the risk of sounding—no risk at all. I simply say I do not care. We can do that, so far as I am concerned, so long as we have the 12 o'clock deadline for final passage tomorrow. That is something that should address itself to the Members who have amendments to be dealt with tonight.

I point out, however, that if we do that and stack those votes tomorrow, it will consume a good hour available for debate on the Cranston amendment and general debate on final passage.

Mr. JOHNSTON. May we come in a little earlier?

ORDER FOR RECESS UNTIL 9 A.M. TOMORROW

Mr. BAKER. Mr. President, may I say, also, that there is presently an order for convening at 9:30 in the morning. In order to accommodate what I have already described, I ask unanimous consent that the time for the Senate to convene tomorrow be changed from 9:30 to 9 o'clock.

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

Mr. BAKER. Mr. President, I urge that we not stack the votes tonight. If that is the will of the Senate, I will not object. But I point out that we will end up using a good share of the time between 9 and 12 tomorrow, which is otherwise available for debate, for rollcall votes. We are here and in good numbers, and I respectfully suggest that we go forward.

Mr. BUMPERS. I would object, anyway.

Mr. BAKER. I thank the Senator.

The PRESIDING OFFICER. Is there objection to the majority leader's request?

Mr. BOSCHWITZ. Mr. President, reserving the right to object, I say to the

majority leader that I expect to be quite active in the reconciliation matter, and I have not been consulted with respect to the time. I wonder whether we can talk about it during the next vote and the majority leader might renew his request after the next vote.

Mr. BAKER. Mr. President, this has been a matter of fairly extensive negotiations, and it has been submitted to the caucuses on both sides. I hope the Senator will not object at this time. I believe it was discussed in the Democratic caucus. I made a representation at our luncheon today that this request would be made.

Requests of this sort, especially for a time that is substantially better than the 20-hour time limitation—assuming normal working hours—are sometimes perishable.

I hope the Senator will not object to granting that request at this time.

Mr. BOSCHWITZ. Is the time 4 p.m. on Thursday?

Mr. BAKER. Not later than 4 p.m. on Thursday.

Mr. BOSCHWITZ. Does the majority leader feel that we will have adequate time tomorrow evening?

Mr. BAKER. Yes. I urge Senators to remain tomorrow as long as they wish to do so, in order to debate the reconciliation bill.

The PRESIDING OFFICER. Is there objection to the majority leader's request? The Chair hears none, and it is so ordered.

Mr. BAKER. I thank the Chair. I thank the Senator from Minnesota and the minority leader and all Senator for their cooperation.

VOTE ON AMENDMENT NO. 1985

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Massachusetts (Mr. TSONGAS), No. 1985. Under the previous order there will be a 10-minute vote. On this question the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. STEVENS. I announce that the Senator from New Jersey (Mr. BRADY), the Senator from Minnesota (Mr. DURENBERGER), the Senator from Utah (Mr. GARN), and the Senator from Pennsylvania (Mr. HEINZ) are necessarily absent.

Mr. CRANSTON. I announce that the Senator from Ohio (Mr. GLENN) is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 23, nays 72, as follows:

[Rollcall Vote No. 282 Leg.]

YEAS—23

Bradley	Cranston	Ford
Bumpers	Dodd	Hart
Cohen	Eagleton	Inouye
Jackson	Metzenbaum	Riegle
Kennedy	Mitchell	Sarbanes
Leahy	Moynihan	Sasser
Levin	Pell	Tsongas
Matsunaga	Randolph	

NAYS—72

Abdnor	Exon	Nickles
Andrews	Goldwater	Nunn
Armstrong	Gorton	Packwood
Baker	Grassley	Percy
Baucus	Hatch	Pressler
Bentsen	Hatfield	Proxmire
Biden	Hawkins	Pryor
Boren	Hayakawa	Quayle
Boschwitz	Heflin	Roth
Burdick	Helms	Rudman
Byrd, Harry F., Jr.	Hollings	Schmitt
Byrd, Robert C.	Huddleston	Simpson
Cannon	Humphrey	Specter
Chafee	Jepsen	Stafford
Chiles	Johnston	Stennis
Cochran	Kassebaum	Stevens
D'Amato	Kasten	Symms
Danforth	Laxalt	Thurmond
DeConcini	Long	Tower
Denton	Lugar	Wallop
Dixon	Mathias	Warner
Dole	Mattingly	Weicker
Domenici	McClure	Zorinsky
East	Melcher	
	Murkowski	

NOT VOTING—5

Brady	Garn	Heinz
Durenberger	Glenn	

So Mr. TSONGAS' amendment (No. 1985) was rejected.

Mr. THURMOND. Mr. President, I move to reconsider the vote by which the amendment was rejected.

Mr. BAKER. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

UP AMENDMENT NO. 1172

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Michigan (Mr. LEVIN), No. 1172. Under the previous order this will also be a 10-minute rollcall vote.

On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The bill clerk called the roll.

Mr. STEVENS. I announce that the Senator from New Jersey (Mr. BRADY) and the Senator from Minnesota (Mr. DURENBERGER) are necessarily absent.

Mr. CRANSTON. I announce that the Senator from Ohio (Mr. GLENN), is necessarily absent.

The PRESIDING OFFICER. Are there other Senators in the Chamber who desire to vote?

The result was announced—yeas 37, nays 60, as follows:

[Rollcall Vote No. 283 Leg.]

YEAS—37

Baucus	Exon	Metzenbaum
Biden	Hart	Moynihan
Bradley	Heinz	Nunn
Bumpers	Hollings	Pell
Burdick	Huddleston	Randolph
Byrd, Robert C.	Inouye	Riegle
Cannon	Jackson	Sarbanes
Chafee	Johnston	Sasser
Chiles	Kennedy	Specter
Cranston	Levin	Tsongas
Dixon	Long	Weicker
Dodd	Mathias	
Eagleton	Matsunaga	

NAYS—60

Abdnor	Gorton	Packwood
Andrews	Grassley	Percy
Armstrong	Hatch	Pressler
Baker	Hatfield	Proxmire
Bentsen	Hawkins	Pryor
Boren	Hayakawa	Quayle
Boschwitz	Heflin	Roth
Byrd, Harry F., Jr.	Helms	Rudman
Cochran	Humphrey	Schmitt
Cohen	Jepsen	Simpson
D'Amato	Kassebaum	Stafford
Danforth	Kasten	Stennis
DeConcini	Laxalt	Stevens
Denton	Leahy	Symms
Dole	Lugar	Thurmond
Domenici	Mattingly	Tower
East	McClure	Wallop
Ford	Melcher	Warner
Garn	Mitchell	Zorinsky
Goldwater	Murkowski	
	Nickles	

NOT VOTING—3

Brady	Durenberger	Glenn

So the amendment (UP No. 1172) was rejected.

Mr. THURMOND. Mr. President, I move to reconsider the vote by which the amendment was rejected.

Mr. DECONCINI. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. HEFLIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Alabama.

UP AMENDMENT NO. 1173

(Purpose: To permit additional outlays in the case of an unforeseen and imminent condition of military emergency)

Mr. HEFLIN. Mr. President, I send an amendment to the desk on behalf of myself and Mr. RANDOLPH.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Alabama (Mr. HEFLIN), for himself and Mr. RANDOLPH, proposes an unprinted amendment numbered 1173.

On page 3, line 21, insert before the period a comma and "except that if Congress, after the adoption of the statement of receipts and outlays, should find the Nation in an unforeseen and imminent condition of military emergency and so declare by a joint resolution adopted by a majority of the whole number of both Houses of Congress, the Congress may then, by a majority vote of the whole number of both Houses of Congress, provide for such additional outlays for the defense of the Nation as are necessary to finance the military response to the emergency which would cause the total outlays set forth for such year in such statement to be greater than the receipts set forth for such year in such statement".

Mr. HEFLIN. Mr. President, I have been giving some thought to a name for my amendment. I have decided that this is an amendment that could be properly labeled a protection amendment against the post-Vietnam syndrome. I will refer to that later.

Mr. President, the amendment I am offering to Senate Joint Resolution 58 is simple and straightforward, yet one that could prove vital to the national security of the United States.

Section 3 of the constitutional amendment to balance the budget authorizes the Congress to waive any of the requirements imposed upon it by the amendment for a year in which a declaration of war is in effect. While this exception to the general requirements of Senate Joint Resolution 58 is necessary, in my judgement it does not go far enough. Since this country can be in a state of military emergency at times other than when a declaration of war is in effect, I believe there may arise circumstances when Congress would want to spend significant amounts on national defense without a declaration of war. Congress must be given the necessary flexibility to respond rapidly when a military emergency arises.

A military emergency exception, in my judgment, is good. But it must be crafted in language to provide every possible safeguard against its misuse. I think the amendment that we have here today has been carefully crafted in a manner to provide the safeguards that are necessary.

First, if you will look at this amendment, you see that it says "except that if Congress, after"—and note the word "after"—"the adoption of a statement of receipts and outlays, should find the Nation in an unforeseen and imminent condition of military emergency and so declare by a joint resolution adopted by a majority of the whole number of both Houses of Congress, the Congress may then, by a majority vote of the whole number of both Houses of Congress, provide for such additional outlays for the defense of the Nation as are necessary to finance the military response to the emergency."

Now there are some very key words that are placed here for the idea of providing safeguards. First, a budget is adopted. My amendment will prevent any jockeying of figures from one program to another program with the idea that you could have a military emergency. It says first you must adopt the budget. Then, after that, if the Nation finds itself in an unforeseen—and I think you should pay attention to that word "unforeseen"; that means it had to arise after the budget was adopted—and imminent condition of military emergency and so declare by a joint resolution by a majority of the whole number of both Houses—in the Senate that is 51 votes; it is not a simple majority but 51. The word "after," the word "unforeseen," the words "majority of the whole number" are safeguards designed to prevent its misuse.

Now I want to point out it also calls for in this declaration that if the Nation is in a condition of military emergency it must be declared so by a joint resolution, which means that the President has to sign the resolution.

Now you have here, first, the budget being adopted. Second, you have to have it "after." You have to have an unforeseen state of military emergency to arise. You then have to have 51 votes in the Senate and a majority of the whole membership of the House of Representatives to declare that a condition of military emergency exists. The President must sign it. Then you have to come back after that and then vote to exceed the budget in regards to outlays but only for military purposes.

I think that that provides all the safeguards against its misuse. It provides the safeguards against any jockeying when the budget was originally adopted. This language, I think, is most important.

Then it also says "for the defense of the Nation." Now that is language that I think is important. This language in particular was picked out and selected for that use—"as for the defense of the Nation"—by David Stockman's office. And I think that these safeguards are here.

Now there is one other safeguard, and that is that the appropriations that could lead to deficit spending in regards to military purposes are for only the period of the remainder of the fiscal year. So if you had a situation where a military emergency arose, it would have to arise after the budget is adopted, it has to be unforeseen, it then has to have a majority vote of the whole membership of the House and the Congress and then the resolution so declaring it has to be signed by the President. You then come back with the other step; that is, then to provide for additional outlays only for defense and it can only last until the end of the fiscal year and then any future outlays would have to be by a three-fifths vote.

Now I believe that this is crafted in such a manner as to provide all safeguards that are necessary to prevent its misuse.

Let us take some hypothetical situations of how this would occur. You are 2 months into a fiscal year and a military emergency arises. It must be unforeseen and it has to be after the budget was adopted. You then have 10 months that would be remaining that you could vote by a majority of the whole membership before you would then meet the requirement of having to vote it by three-fifths.

Now this would mean, as I see it, that this is a safeguard in that you are allowed to come in by a majority of the whole membership for supplemental appropriations only to meet the military emergency.

You have under a provision in this constitutional amendment where taxes could be increased by a majority vote but military spending in a military emergency under the present language would require a three-fifths vote. You could have a set of facts where taxes were raised to meet a military emergency but the vote of three-fifths could not be obtained to spend the increase to meet the emergency.

I want to mention a word that you will hear a lot about if this constitutional amendment is ratified and we look to the future. That word is "proration." Perhaps it is a new word on the congressional scene, but in the States it is a word that is heard frequently, and it means a great evil. Under a set of circumstances in many States where this has occurred, and it occurs fairly frequently, you will have a situation where the estimate of revenues to come in have been overestimated and you find yourself where there is a shortage of the projected revenues coming into the Treasury.

You are then in a situation in the fiscal year where, in most States where they have these constitutional amendments, you do not have the three-fifths escape valve. What do you do? You have to then start worrying about monthly and quarterly payments. If the anticipated revenues are 5 percent less than the figure that was assumed when the budget was adopted, it means, under a balanced budget requirement, you have to have a cutback of 5 percent.

We will find ourselves in a situation, if a military emergency arose during a proration period, where there was a 5- or 10-percent shortage in regards to the revenues coming in, that you would then say, "Well, what do we do?" You would have every agency of the Government seeking to try to get additional funds. You would have a situation where the three-fifths would be required. But if you are in a military emergency, in my judgment the military expenditures ought to be given a better opportunity to pick up money, and, if they have to, to go into deficit spending to create it for that purpose alone.

In the ordinary course of events without proration there could be problems, but if there is proration that exists, then that is an added reason why there should be this provision which would allow for military emergency exception.

I want to also point out the War Powers Act. Under the War Powers Act the President takes certain action. Congress has 60 days in which it can do several things. In some instances that period of time can be extended for 90 days. But the President takes action and then, by a simple majority of the House and the Senate, we can find that under the War Powers Act the action of the President in taking that action can be approved. Then we find that we have to go into the question of this is a military emergency and, therefore, you need additional funds. Should then we be placed in the position of where it is necessary to get

a three-fifths vote for the additional amount of money that is needed for military purposes involved in that?

In my judgment, I think this amendment is tailored to the War Powers Act and, therefore, it is important in regards to the usage of that act and what would occur.

I want to point out that the administration has concerns about military emergency exceptions.

I ask unanimous consent that a statement of administrative policy dated July 13, 1982, be printed in the RECORD.

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

STATEMENT OF ADMINISTRATION POLICY

S.J. RES. 58—BALANCED BUDGET CONSTITUTIONAL AMENDMENT

The Administration strongly supports S.J. Res. 58, the Balanced Budget/Tax Limitation Amendment to the Constitution, as drafted. Because the resolution has been drafted with care and its provisions considered in detail over an extensive period of time, the Administration would not support changes in Section 1 or 2 that have not had the benefit of such thoughtful consideration. The Administration does, however, believe that Section 3 should be broadened and would support the following change:

The Congress may waive the provisions of this article for any fiscal year in which a declaration of war is in effect or there is an unforeseen imminent threat to national security.

The Administration opposes any change that would delay ratification of the amendment or place its provisions in statute rather than the Constitution.

Mr. HEFLIN. I want to point out that on July 13, 1982, this statement was issued: "The administration strongly supports Senate Joint Resolution 58, the balanced budget tax limitation amendment to the Constitution, as drafted. Because the resolution has been drafted with care and its provisions considered in detail over an extensive period of time, the administration would not support changes in sections 1 or 2 that have not had the benefit of such thoughtful consideration." Listen to these words: "The administration does, however, believe that section 3"—that is the one that says they are suspended in the event of a declaration of war—"should be broadened and would support the following change: The Congress may waive the provisions of this article for any fiscal year in which a declaration of war is in effect or there is an unforeseen imminent threat to national security.

"The administration opposes any changes that would delay the ratification of the amendment or place its provisions in statute rather than the Constitution."

That was on July 13, 1982.

A number of Democrats and a number of Republican Senators were summoned to the White House on July 27. That was Tuesday a week ago. At that time, we met with the President. The only matter that was brought up pertaining to the constitutional amendment to balance the budget, and it was called for that purpose, was the expression first made by David Stockman of the need for a national security exception or a national defense emergency exception.

At that time, I discussed with him an amendment that I had. He said he wanted to get together and study it. Later, Dr. Annelise Anderson of this office and I worked on it. They wanted some different language. They wanted the words "unforeseen" and "imminent" placed in it. We agreed to that. The amendment I sent to the desk today is the work product of a joint effort between the White House staff and myself.

After we rewrote it and agreed on it, then the question arose as to whether or not the administration would go forward and would support it.

First, they said, "Well, what our position is going to be is that we will send out a statement of administrative policy in which we state we have no objection to the Heflin amendment. We agree with the concept." But they were not taking a positive advocacy position in regard to it.

Then we find the word comes back that they are going to oppose it because of the fact that they fear that if an amendment is adopted, it will weaken the chances of the passage of the overall amendment.

I listened to Senator QUAYLE and his argument about the Armstrong-Boren amendment. I wrote out what he said. He said, "There is some mythical messenger from the House of Representatives who is advocating political tactics." He went on to say, "We ought to quit horsing around for political reasons."

Then, to my utter amazement, today I had called to my attention that the Secretary of the Treasury, Donald Regan, testified this morning before a committee of the House. Here is the AP release.

The Reagan administration asked Congress today to broaden a proposed balanced-budget amendment to the Constitution to allow deficit spending during national emergencies short of war.

Treasury Secretary Donald T. Regan, in testimony prepared for a House Judiciary Subcommittee hearing, said the administration enthusiastically supports the overall amendment.

"Individual Americans, who must live within their own means, have every right to expect and demand that their Government do so as well," Regan said.

The proposed amendment, moving toward expected passage this week in the Senate, would prohibit the Government from spending more than in takes it, except in wartime—or unless both Houses of Congress vote by a 60-percent majority to allow deficit spending.

"A wide variety of events, not necessarily entailing a declaration of war, may pose threats to national security," Regan told the Judiciary Subcommittee on Monopolies and Commerical Law.

"The administration would encourage the Congress to amend (the constitutional amendment) to allow a broader range of events—unforeseen events posing an imminent threat to national security—to qualify for a waiver," Regan said.

It goes on. I ask unanimous consent that a copy of this Associated Press wire report be printed in the RECORD at this point.

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

BALANCED BUDGET

(By Tom Raum)

WASHINGTON.—The Reagan administration asked Congress today to broaden a proposed balanced-budget amendment to the Constitution to allow deficit spending during national emergencies short of war.

Treasury Secretary Donald T. Regan, in testimony prepared for a House Judiciary Subcommittee hearing, said the administration enthusiastically supports the overall amendment.

"Individual Americans, who must live within their own means, have every right to expect and demand that their Government do so as well," Regan said.

The proposed amendment, moving toward expected passage this week in the Senate, would prohibit the Government from spending more than it takes in, except in wartime—or unless both Houses of Congress vote by a 60-percent majority to allow deficit spending.

"A wide variety of events, not necessarily entailing a declaration of war, may pose threats to national security," Regan told the Judiciary Subcommittee on Monopolies and Commercial Law.

"The administration would encourage the Congress to amend (the constitutional amendment) to allow a broader range of events—unforeseen events posing an imminent threat to national security—to qualify for a waiver," Regan said.

The Senate is expected to take final action on the balanced budget proposal by noon Wednesday. Supporters of the proposed amendment, claiming they have more than the two-thirds or 67 votes necessary for approval, say a vote could come sooner.

At the outset of today's hearing, Representative Peter Rodino, D-N.J., chairman of the House Judiciary Committee, made clear he opposed the measure.

He called the proposal "an unwise and unworkable trivializing of a document that guarantees fundamental rights and provides the framework for the orderly function of government."

Rodino's opposition has kept the proposed amendment bottled up in his committee for months.

Mr. HEFLIN. I then requested that we be able to see Secretary of the Treasury Donald Regan's testimony. So we got from the House what he testified this morning. On page 5, I read what he stated there:

House Joint Resolution 350 also provides a deficit in wartime, permitting the Congress to waive its requirement for any year in which a declaration of war is in effect. A wide variety of events, not necessarily entailing a declaration of war, may, however, pose threats to national security. The ad-

ministration would therefore encourage the Congress to amend House Joint Resolution 350 to allow a broader range of events, unforeseen events, posing an imminent threat to national security to qualify for a waiver. The administration would be pleased to work with the sponsors of the amendment on language to insure flexibility to help meet an increase in outlays in a given year due to unforeseen events that are imminent threats to national security.

That is the testimony of the Secretary of the Treasury. When we met at the White House on July 12, as I stated before, the only matter that was brought up by the administration was their concern over a military emergency exception. Secretary of the Treasury Donald Regan was present at that time, along with the Vice President and the President. The President, in response to some statements that I made about the Vietnam war being an undeclared war, the Korean war being an undeclared war, and the fact that we served as the arsenal of democracy prior to World War II, pointed out to the group that was present that there were at least 125 times in the history of this country in which we had become involved militarily without a declaration of war.

Mr. President, in all fairness and all candor, I cannot state that the administration supports my amendment now. I can state that they approved the language of it. They were involved in rewriting it. In all candor, they may oppose it. But if there is opposition, it is not based upon the principle that is involved. The opposition is solely that certain people in the Senate and in the House have tried to tell them that this might weaken and might lessen the chance of passage of the constitutional amendment to balance the budget in the House of Representatives.

Mr. President, I have tried to figure out whom this amendment might offend. I have about come down to the only category that I could list, which would be conservative doves. I cannot identify many of those people. To put that word "conservative" and the word "doves" together is just about an impossibility.

Mr. President, I respect the floor manager and his efforts. I respect the efforts being made in the House of Representatives to pass this amendment. I am one of the original cosponsors of it. The first bill I introduced when I came to the Senate was a bill calling for a constitutional amendment to balance the budget. But I do not believe that this amendment that I offer is going to affect its passage. I think it is a needed principle, it is a needed exception that should be allowed, and I cannot, by any degree at all, get it past me, in my mind, that the administration does not agree. The extent that they went to to call a meeting on July 27 at the White House and the only subject that the administration brought up—there were other subjects discussed, but the only subject that was brought up was a military emergency exception to this constitutional amendment. When the President said there had been 125 times that the United States of America has been involved militarily without a declaration of war, that is a pretty good indication that he felt that there was a need for a military emergency exception to this amendment.

(Mr. MURKOWSKI assumed the chair.)

Mr. HEFLIN. Mr. President, the administration may oppose it. I do not know exactly whether or not the Secretary of the Treasury and the White House are on the same wavelength. But his statement in support of this concept was made this morning. I think the fact is that the White House, the administration, believes in this principle. They realize it ought to be placed in the resolution. They may have been talked out of it by that mythical messenger that Senator QUAYLE talked about that flies from the House of Representatives to the Senate and back again purely for political tactics.

In answer to this, I use the words of Senator QUAYLE when he said, "Let's quit horsing around for political reasons."

I think that this amendment is a vital amendment. It may well be the difference between this Nation's life and this Nation's death. America, in the past, has had the luxury of lead time to build our military resources up to meet the emergencies. World War II started in 1939. It allowed us to do a lot of things and to get ready before Pearl Harbor. The fact that the Japanese fleet turned around at Pearl Harbor and did not come toward the United States allowed us the luxury of leadtime and the luxury to buildup.

In the next war or the next real emergency we may face, we may not have that leadtime. I think it is most important that we adopt a military emergency exception which has all the safeguards to prevent its misuse. As I explained before, under the language, the budget has to be adopted before the military emergency can come into being, it has to come after the budget is adopted and it has to be an unforeseen military emergency that will arise. There must be a joint resolution passed by the whole membership of the House and the Senate and signed by the President, and then you can go toward deficit spending but for military purposes only, and only for the remainder of the fiscal year and, at the end of the fiscal year, you go back to the three-fifths requirement.

I think that is adequate safeguard to prevent its misuse. I want to talk about the number of undeclared wars in which America has deployed troops.

I have an appendix to a 1975 committee report from the Foreign Affairs Committee of the House of Representatives which gives the instances of the use of U.S. Armed Forces abroad from 1798 to 1975, and there are 183 instances of American troops deployed abroad without a formal declaration of war.

I ask unanimous consent that this appendix be printed in the Record at this point.

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

183 INSTANCES OF AMERICAN TROOPS DEPLOYED ABROAD WITHOUT A FORMAL DECLARATION OF WAR

APPENDIX II

INSTANCES OF USE OF UNITED STATES ARMED FORCES ABROAD, 1798–1975

(Inclusion of an event in this list does not connote either legality or illegality or significance. Many of these incidents were minor in nature.)

1798–1800—Undeclared naval war with France.—This contest included land actions, such as that in the Dominican Republic, city of Puerto Plata, where marines captured a French privateer under the guns of the forts.

1801–05—Tripoli.—The First Barbary War, including the George Washington and Philadelphia affairs and the Eaton expedition, during which a few marines landed with United States Agent William Eaton to raise a force against Tripoli in an effort to free the crew of the Philadelphia, Tripoli declared war but not the United States.

1806—Mexico (Spanish territory).—Capt. Z. M. Pike, with a platoon of troops, invaded Spanish territory at the headwaters of the Rio Grande deliberately and on orders from Gen. James Wilkinson. He was made prisoner without resistance at a fort he constructed in present day Colorado, taken to Mexico, later released after seizure of his papers. There was a political purpose, still a mystery.

1806–10—Gulf of Mexico.—American gunboats operated from New Orleans against Spanish and French privateers, such as La Fitte, off the Mississippi Delta, chiefly under Capt. John Shaw and Master Commandant David Porter.

1810—West Florida (Spanish territory).—Gov. Claiborne of Louisiana, on orders of the President, occupied with troops territory in dispute east of Mississippi as far as the Pearl River, later the eastern boundary of Louisiana. He was authorized to seize as far east as the Perdido River. No armed clash.

1812—Amelia Island and other parts of east Florida, then under Spain.—Temporary possession was authorized by President Madison and by Congress, to prevent occupation by any other power; but possession was obtained by Gen. George Matthews in so irregular a manner that his measures were disavowed by the President.

1813—West Florida (Spanish territory).—On authority given by Congress, General Wilkenson seized Mobile Bay in April with 600 soldiers. A small Spanish garrison gave way. Thus U.S. advanced into disputed territory to the Perdido River, as projected in 1810. No fighting.

1813–14—Marquesas Islands.—Built a fort on Island of Nukahiva to protect three prize

ships which had been captured from the British.

1814—Spanish Florida.—Gen. Andrew Jackson took Pensacola and drove out the British with whom the United States was at war.

1814-25—Caribbean.—Engagements between pirates and American ships or squadrons took place repeatedly especially ashore and offshore about Cuba, Puerto Rico, Santo Domingo, and Yucatan. Three thousand pirate attacks on merchantmen were reported between 1815 and 1823. In 1822 Commodore James Biddle employed a squadron of two frigates, four sloops of war, two brigs, four schooners, and two gunboats in the West Indies.

1815—Algiers.—The second Barbary War, declared by the opponents but not by the United States. Congress authorized an expedition. A large fleet under Decatur attacked Algiers and obtained indemnities.

1815—Tripoli.—After securing an agreement from Algiers, Decatur demonstrated with his squadron at Tunis and Tripoli, where he secured indemnities for offenses during the War of 1812.

1816—Spanish Florida.—United States forces destroyed Nicholis Fort, called also Negro Fort, which harbored raiders into United States territory.

1816-18—Spanish Florida.—First Seminole War.—The Seminole Indians, whose area was a resort for escaped slaves and border ruffians, were attacked by troops under Generals Jackson and Gaines and pursued into northern Florida. Spanish posts were attacked and occupied, British citizens executed. There was no declaration or congressional authorization but the Executive was sustained.

1817—Amelia Island (Spanish territory off Florida).—Under orders of President Monroe, United States forces landed and expelled a group of smugglers, adventurers, and freebooters.

1818—Oregon.—The U.S.S. Ontario, dispatched from Washington, landed at the Columbia River and in August took possession. Britain had conceded sovereignty but Russia and Spain asserted claims to the area.

1820-23—Africa.—Naval unit raided the slave traffic pursuant to the 1819 act of Congress.

1822—Cuba.—United States naval forces suppressing piracy landed on the northwest coast of Cuba and burned a pirate station.

1823—Cuba.—Brief landings in pursuit of pirates occurred April 8 near Escondido; April 16 near Cayo Blunco; July 11 at Slquapa Bay; July 21 at Cape Cruz; and October 23 at Camrioca.

1824—Cuba.—In October the U.S.S. Porpoise landed bluejackets near Matauzas in pursuit of pirates. This was during the cruise authorized in 1822.

1824—Puerto Rico (Spanish territory).—Commodore David Porter with a landing party attacked the town of Fajurdo which has sheltered pirates and insulted American naval officers. He landed with 200 men in November and forced an apology.

1825—Cuba.—In March cooperating American and British forces landed at Sagua La Grande to capture pirates.

1827—Greece.—In October and November landing parties hunted pirates on the Islands of Argenteire, Miconi, and Andross.

1831-32—Falkland Islands.—To investigate the capture of three American sailing vessels and to protect American interests.

1832—Sumatra.—February 6 to 9.—To punish natives of the town of Quallah Battoo for depredations on American shipping.

1833—Argentina.—October 31 to November 15.—A force was sent ashore at Buenos Aires to protect the interests of the United States and other countries during an insurrection.

1835-36—Peru.—December 10, 1835 to January 24, 1836, and August 31 to December 7, 1836.—Marines protected American interests in Callao and Lima during an attempted revolution.

1836—Mexico.—General Gaines occupied Nacogdoches (Tex.), disputed territory from July to December during the Texan war for independence, under orders to cross the "imaginary boundary line" if an Indian outbreak threatened.

1838-39—Sumatra.—December 24, 1838 to January 4, 1839.—To punish natives of the towns of Quallah Battoo and Muckie (Mukki) for depredations on American shipping.

1840—Fiji Islands—July.—To punish natives for attacking American exploring and surveying parties.

1841—Drummond Island, Kingsmill Group.—To avenge the murder of a seaman by the natives.

1841—Samoa.—February 24.—To avenge the murder of an American seaman on Upolu Island.

1842—Mexico.—Commodore T. A. C. Jones, in command of a squadron long cruizing off California, occupied Monterey, Calif., on October 19, believing war had come. He discovered peace, withdrew and saluted. A similar incident occurred a week later at San Diego.

1843—China.—Sailors and marines from the St. Louis were landed after a clash between Americans and Chinese at the trading post in Canton.

1843—Africa, November 29 to December 16.—Four United States vessels demonstrated and landed various parties (one of 200 marines and sailors) to discourage piracy and the slave trade along the Ivory coast etc., and to punish attacks by the natives on American seamen and shipping.

1844—Mexico.—President Tyler deployed U.S. forces to protect Texas against Mexico, pending Senate approval of a treaty of annexation. (Later rejected.) He defended his action against a Senate resolution of inquiry.

1849—Smyrna.—In July a naval force gained release of an American seized by Austrian officals.

1851—Turkey.—After a massacre of foreigners (including Americans) at Jaffa in January, a demonstration by the Mediterranean Squadron was ordered along the Turkish (Levant) coast. Apparently no shots fired.

1851—Johanna Island (coast of Africa), August.—To exact redress for the unlawful imprisonment of the captain of an American whaling brig.

1852-53—Argentina—February 3 to 12, 1852; September 17, 1852 to April 1853.—Marines were landed and maintained in Buenos Aires to protect American interests during a revolution.

1853—Nicaragua—March 11 to 13.—To protect American lives and interests during political disturbances.

1853-54—Japan.—The "opening of Japan" and the Perry Expedition.

1853-54—Ryukyu and Bonin Islands.—Commodore Perry on three visits before going to Japan and while waiting for a reply from Japan made a naval demonstration, landing marines twice, and secured a coaling concession from the ruler of Naha on Okinawa. He also demonstrated in the Bonin Islands. All to secure facilities for commerce.

1854—China—April 4 to June 15 to 17.—To protect American interests in and near Shanghai during Chinese civil strife.

1854—Nicaragua—July 9 to 15.—San Juan del Norte (Greytown) was destroyed to avenge an insult to the American Minister to Nicaragua.

1855—China—May 19 to 21 (f).—To protect American interests in Shanghai. August 3 to 5 to fight pirates near Hong Kong.

1855—Fiji Islands—September 12 to November 4.—To seek reparations for depredations on Americans.

1855—Uruguay—November 25 to 29 or 30.—United States and European naval forces landed to protect American interests during an attempted revolution in Montevideo.

1856—Panama, Republic of New Granada—September 19 to 22.—To protect American interests during an insurrection.

1856—China—October 22 to December 6.—To protect American interests at Canton during hostilities between the British and the Chinese; and to avenge an unprovoked assault upon an unarmed boat displaying the United States flag.

1857—Nicaragua—April to May, November to December.—To oppose William Walker's attempt to get control of the country. In May Commander C. H. Davis of the United States Navy, with some marines, received Walker's surrender and protected his men from the retaliation of native allies who had been fighting Walker. In November and December of the same year United States vessels Saratoga, Wabash, and Fulton opposed another attempt of William Walker on Nicaragua. Commodore Hiram Paulding's act of landing marines and compelling the removal of Walker to the United States, was tacitly disavowed by Secretary of State Lewis Cass, and Paulding was forced into retirement.

1858—Uruguay—January 2 to 27.—Forces from two United States warships landed to protect American property during a revolution in Montevideo.

1858—Fiji Islands—October 6 to 16.—To chastise the natives for the murder of two American citizens.

1858-59—Turkey.—Display of naval force along the Levant at the request of the Secretary of State after massacre of Americans at Jaffa and mistreatment elsewhere "to remind the authorities (of Turkey) * * * of the power of the United States."

1859—Paraguay.—Congress authorized a naval squadron to seek redress for an attack on a naval vessel in the Parana River during 1855. Apologies were made after a large display of force.

1859—Mexico.—Two hundred United States soldiers crossed the Rio Grande in pursuit of the Mexican bandit Cortina.

1859—China—July 31 to August 2.—For the protection of American interests in Shanghai.

1860—Angola, Portuguese West Africa—March 1.—To protect American lives and property at Kissembo when the natives became troublesome.

1860—Colombia, Bay of Panama—September 27 to October 8.—To protect American interests during a revolution.

1863—Japan—July 16.—To redress an insult to the American flag—firing on an American vessel—at Shimonoseki.

1864—Japan—July 14 to August 3, approximately.—To protect the United States Minister to Japan when he visited Yedo to negotiate concerning some American claims

against Japan, and to make his negotiations easier by impressing the Japanese with American power.

1864—Japan—September 4 to 14—Straits of Shimonoseki.—To compel Japan and the prince of Nagato in particular to permit the Straits to be used by foreign shipping in accordance with treaties already signed.

1865—Panama—March 9 and 10.—To protect the lives and property of American residents during a revolution.

1866—Mexico.—To protect American residents, General Sedgwick and 100 men in November obtained surrender of Matamoras. After 3 days he was ordered by U.S. Government to withdraw. His act was repudiated by the President.

1866—China—June 20 to July 7.—To punish an assault on the American consul at Newchwang; July 14, for consultation with authorities on shore; August 9, at Shanghai, to help extinguish a serious fire in the city.

1867—Nicaragua.—Marines occupied Managua and Leon.

1867—Island of Formosa—June 13.—To punish a horde of savages who were supposed to have murdered the crew of a wrecked American vessel.

1868—Japan (Osaka, Hiogo, Nagasaki, Yokohama, and Negata)—Mainly, February 4 to 8, April 4 to May 12, June 12 and 13.—To protect American interests during the civil war in Japan over the abolition of the Shogunate and the restoration of the Mikado.

1868—Uruguay—February 7 and 8, 19 to 26.—To protect foreign residents and the customhouse during an insurrection at Montevideo.

1868—Colombia—April 7—at Aspinwall.—To protect passengers and treasure in transit during the absence of local police or troops on the occasion of the death of the President of Colombia.

1870—Mexico, June 17 and 18.—To destroy the pirate ship Forward, which had been run aground about 40 miles up the Rio Tecapan.

1870—Hawaiian Islands—September 21.—To place the American flag at half mast upon the death of Queen Kalama, when the American consul at Honolulu would not assume responsibility for so doing.

1871—Korea—June 10 to 12.—To punish natives for depredations on Americans, particularly for murdering the crew of the General Sherman and burning the schooner, and for later firing on other American small boats taking soundings up the Salce River.

1873—Colombia (Bay of Panama)—May 7 to 22, September 23 to October 9.—To protect American interests during hostilities over possession of the government of the State of Panama.

1873—Mexico.—United States troops crossed the Mexican border repeatedly in pursuit of cattle and other thieves. There were some reciprocal pursuits by Mexican troops into border territory. The cases were only technically invasions, if that, although Mexico protested constantly. Notable cases were at Remolina in May 1873 and at Las Cuevas in 1875. Washington orders often supported these excursions. Agreements between Mexico and the United States, the first in 1882, finally legitimized such raids. They continued intermittently, with minor disputes, until 1896.

1874—Hawaiian Islands—February 12 to 20.—To preserve order and protect American lives and interests during the coronation of a new king.

1876—Mexico—May 18.—To police the town of Matamoras temporarily while it was without other government.

1882—Egypt—July 14 to 18.—To protect American interests during warfare between British and Egyptians and looting of the city of Alexandria by Arabs.

1885—Panama (Colon)—January 18 and 19.—To guard the valuables in transit over the Panama Railroad, and the safes and vaults of the company during revolutionary activity. In March, April, and May in the cities of Colon and Panama, to reestablish freedom of transit during revolutionary activity.

1888—Korea—June.—To protect American residents in Seoul during unsettled political conditions, when an outbreak of the populace was expected.

1888—Haiti—December 20.—To persuade the Haitian Government to give up an American steamer which had been seized on the charge of breach of blockade.

1888-89—Samoa—November 14, 1888, to March 20, 1889.—To protect American citizens and the consulate during a native civil war.

1889—Hawaiian Islands—July 30 and 31.—To protect American interests at Honolulu during a revolution.

1890—Argentina.—A naval party landed to protect U.S. consulate and legation in Buenos Aires.

1891—Haiti.—To protect American lives and property on Navassa Island.

1891—Bering Sea—July 2 to October 5.—To stop seal poaching.

1891—Chile—August 28 to 30.—To protect the American consulate and the women and children who had taken refuge in it during a revolution in Valparaiso.

1893—Hawaii—January 16 to April 1.—Ostensibly to protect American lives and property; actually to promote a provisional government under Sanford B. Dole. This action was disavowed by the United States.

1894—Brazil—January.—To protect American commerce and shipping at Rio de Janeiro during a Brazilian civil war. No landing was attempted but there was a display of naval force.

1894—Nicaragua—July 6 to August 7.—To protect American interests at Bluefields following a revolution.

1894-95—China—Marines were stationed at Tientsin and penetrated to Peking for protection purposes during the Sino-Japanese War.

1894-95—China—Naval vessel beached and used as a fort at Newchwang for protection of American nationals.

1894-96—Korea—July 24, 1894 to April 3, 1896.—To protect American lives and interests at Seoul during and following the Sino-Japanese War. A guard of marines was kept at the American legation most of the time until April 1896.

1895—Colombia—March 8 to 9.—To protect American interests during an attack on the town of Bocas del Toro by a bandit chieftain.

1896—Nicaragua—May 2 to 4.—To protect American interests in Corinto during political unrest.

1898—Nicaragua—February 7 and 8.—To protect American lives and property at Suan Juan del Sur.

1898-99—China—November 5, 1898, to March 15, 1899.—To provide a guard for the legation at Peking and the consulate at Tientsin during contest between the Dowager Empress and her son.

1899—Nicaragua—To protect American interests at San Juan del Norte, February 22 to March 5, and at Bluefields a few weeks later in connection with the insurrection of Gen. Juan P. Reyes.

1899—Samoa—March 13, to May 15.—To protect American interests and to take part in a bloody contention over the succession to the throne.

1899-1901—Philippine Islands.—To protect American interests following the war with Spain, and to conquer the islands by defeating the Filipinos in their war for independence.

1900—China—May 24 to September 28.—To protect foreign lives during the Boxer rising, particularly at Peking. For many years after this experience a permanent legation guard was maintained in Peking, and was strengthened at times as trouble threatened. It was still there in 1934.

1901—Colombia (State of Panama)—November 20 to December 4.—To protect American property on the Isthmus and to keep transit lines open during serious revolutionary disturbances.

1902—Colombia—April 16 to 23.—To protect American lives and property at Bocas del Toro during a civil war.

1902—Colombia (State of Panama)—September 17 to November 18.—To place armed guards on all trains crossing the Isthmus and to keep the railroad line open.

1903—Honduras—March 23 to 30 or 31.—To protect the American consulate and the steamship wharf at Puerto Cortez during a period of revolutionary activity.

1903—Dominican Republic—March 30 to April 21.—To protect American interests in the city of Santo Domingo during a revolutionary outbreak.

1903—Syria—September 7 to 12.—To protect the American consulate in Beirut when a local Moslem uprising was feared.

1903-04—Abyssinia.—Twenty-five marines were sent to Abyssinia to protect the U.S. Consul General while he negotiated a treaty.

1903-14—Panama.—To protect American interests and lives during and following the revolution for independence from Colombia over construction of the Isthmian Canal. With brief intermissions, United States Marines were stationed on the Isthmus from November 4, 1903, to January 21, 1914, to guard American interests.

1904—Dominican Republic—January 2 to February 11.—To protect American interests in Puerto Plata and Sosua and Santo Domingo City during revolutionary fighting.

1904—Tangier, Morocco.—"We want either Perdicaris alive or Raisula dead." Demonstration by a squadron to force release of a kidnaped American Marine guard landed to protect consul genera.

1904—Panama—November 17 to 24.—To protect American lives and property at Ancon at the time of a threatened insurrection.

1904-05—Korea—January 5, 1904, to November 11, 1905.—To guard the American Legation in Seoul.

1904-05—Korea.—Marine guard sent to Seoul for protection during Russo-Japanese War.

1906-09—Cuba—September 1906 to January 25, 1909.—Intervention to restore order, protect foreigners, and establish a stable government after serious revolutionary activity.

1907—Honduras—March 18 to June 8.—To protect American interests during a war betwen Honduras and Nicaragua; troops were stationed for a few days or weeks in Trujillo, Ceiba, Puerto Cortez, San Pedro, Laguna and Choloma.

1910—Nicaragua—February 22.—During a civil war, to get information of conditions at

Coriuto; May 19 to September 4, to protect American interests at Bluefields.

1911—Honduras—January 26 and some weeks thereafter.—To protet American lives and interests during a civil war in Honduras.

1911—China.—Approaching stages of the nationalist revolution. An ensign and 10 men in October tried to enter Wuchang to rescue missionaries but retired on being warned away.

A small landing force guarded American private property and consulate at Hankow in October.

A marine guard was established in November over the cable stations at Shanghai.

Landing forces were sent for protection in Nanking, Chinkiang, Taku and elsewhere.

1912—Honduras.—Small force landed to prevent seizure by the Government of an American-owned railroad at Puerto Cortez. Forces withdrawn after the United States disapproved the action.

1912—Panama.—Troops, on request of both political parties, supervised elections outside the Canal Zone.

1912—China—August 24 to 26, on Kentucky Island, and August 26 to 30 at Camp Nicholson.—To protect Americans and American interests during revolution activity.

1912—Turkey—November 18 to December 3.—To guard the legation at Constantinople during a Balkan War.

1912-25—Nicaragua—August to November 1912.—To protect American interests during an attempted revolution. A small force serving as a legation guard and as a promoter of peace and governmental stability, remained until August 5, 1925.

1912-41—China.—The disorders which began with the Kuomintang rebellion in 1912, which were redirected by the Invasion of China by Japan and finally ended by war between Japan and the United States in 1941, led to demonstrations and landing parties for the protection of U.S. interests in China continuously and at many points from 1912 on to 1941. The guard at Peking and along the route to the sea was maintained until 1941. In 1927, the United States had 5,670 armed men ashore in China and 44 naval vessels in its waters. In 1933 U.S. had 3,027 armed men ashore. All this protective action was in general terms based on treaties with China ranging from 1858 to 1901.

1913—Mexico—September 5 to 7.—A few marines landed at Claris Estero to aid in evacuating American citizens and others from the Yaqui Valley, made dangerous for foreigners by civil strife.

1914—Haiti—January 29 to February 9, February 20 to 21, October 19.—To protect American nationals in a time of dangerous unrest.

1914—Dominican Republic—June and July.—During a revolutionary movement, United States naval forces by gunfire stopped the bombardment of Puerto Plata, and by threat of force maintained Santo Domingo City as a neutral zone.

1914-17—Mexico.—The undeclared Mexican-American hostilities following the Dolphin affair and Villa's raids included capture of Vera Cruz and later Pershing's expedition into northern Mexico.

1915-34—Haiti—July 28, 1915, to August 15, 1934.—To maintain order during a period of chronic and threatened insurrection.

1916—China.—American forces landed to quell a riot taking place on American property in Nanking.

1916-24—Dominican Republic—May 1916 to September 1924.—To maintain order during a period of chronic and threatened insurrection.

1917—China.—American troops were landed at Chungking to protect American lives during a political crisis.

1917-22—Cuba.—To protect American interests during an insurrection and subsequent unsettled conditions. Most of the United States armed forces left Cuba by August 1919, but two companies remained at Camaguey until February 1922.

1918-19—Mexico.—After withdrawal of the Pershing expedition, our troops entered Mexico in pursuit of bandits at least three times in 1918 and six in 1919. In August 1918 American and Mexican troops fought at Nogales.

1918-20—Panama.—For police duty according to treaty stipulations, at Chiriqui, during election disturbances and subsequent unrest.

1918-20—Soviet Russia.—Marines were landed at and near Vladivostok in June and July to protect the American consulate and other points in the fighting between the Bolsheviki troops and the Czech Army which had traversed Siberia from the western front. A joint proclamation of emergency government and neutrality was issued by the American, Japanese, British, French, and Czech commanders in July and our party remained until late August.

In August the project expanded. Then 7,000 men were landed in Vladivostok and remained until January 1920, as part of an allied occupation force.

In September 1918, 5,000 American troops joined the allied intervention force at Archangel, suffered 500 casualties and remained until June 1919.

A handful of marines took part earlier in a British landing on the Murman coast (near Norway) but only incidentally.

All these operations were to offset effects of the Bolsheviki revolution in Russia and were partly supported by Czarist or Kerensky elements. No war was declared. Bolsheviki elements participated at times with us but Soviet Russia will claim damages.

1919—Dalmatia.—U.S. Forces were landed at Trau at the request of Italian authorities to police order between the Italians and Serbs.

1919—Turkey.—Marines from the U.S.S. Arizona were landed to guard the U.S. Consulate during the Greek occupation of Constantinople.

1919—Honduras—September 8 to 12.—A landing force was sent ashore to maintain order in a neutral zone during an attempted revolution.

1920—China—March 14.—A landing force was sent ashore for a few hours to protect lives during a disturbance at Kiukiang.

1920—Guatemala—April 9 to 27.—To protect the American Legation and other American interests, such as the cable station, during a period of fighting between Unionists and the Government of Guatemala.

1920-22—Russia (Siberia)—February 16, 1920, to November 19, 1922.—A marine guard to protect the United States radio station and property on Russian Island, Bay of Vladivostok.

1921—Panama-Costa Rica.—American naval squadrons demonstrated in April on both sides of the Isthmus to prevent war between the two countries over a boundary dispute.

1922—Turkey—September and October.—A landing force was sent ashore with consent of both Greek and Turkish authorities, to protect American lives and property when the Turkish Nationalists entered Smyrna.

1922-23—China.—Between April 1922 and November 1923 Marines were landed five times to protect Americans during periods of unrest.

1924—Honduras—February 28 to March 31, September 10 to 15.—To protect American lives and interests during election hostilities.

1924—China—September.—Marines were landed to protect Americans and other foreigners in Shanghai during Chinese factional hostilities.

1925—China—January 15 to August 29.—Fighting of Chinese factions accompanied by riots and demonstrations in Shanghai necessitated landing American forces to protect lives and property in the International Settlement.

1925—Honduras—April 19 to 21.—To protect foreigners at La Celba during a political upheaval.

1925—Panama—October 12 to 23.—Strikes and rent riots led to the landing of about 600 American troops to keep order and protect American interests.

1926—China—August and September.—The Nationalist attack on Hankow necessitated the landing of American naval forces to protect American citizens. A small guard was maintained at the consulate general even after September 16, when the rest of the forces were withdrawn. Likewise, when Nationalist forces captured Kluklang, naval forces were landed for the protection of foreigners November 4 to 6.

1926-33—Nicaragua—May 7 to June 5, 1926, to January 3, 1933.—The coup d'etat of General Chamorro aroused revolutionary activities leading to the landing of American marines to protect the interests of the United States. United States forces came and went, but seem not to have left the country entirely until January 3, 1933. Their work included activity against the outlaw leader Sandino in 1928.

1927—China—February.—Fighting at Shanghai caused American naval forces and marines to be increased there. In March a naval guard was stationed at the American consulate at Nanking after Nationalist forces captured the city. American and British destroyers later used shell fire to protect Americans and other foreigners. "Following this incident additional forces of marines and naval vessels were ordered to China and stationed in the vicinity of Shanghai and Tientsin."

1932—China.—American forces were landed to protect American interests during the Japanese occupation of Shanghai.

1933—Cuba.—During a revolution against President Gerardo Machado naval forces demonstrated but no landing was made.

1934—China.—Marines landed at Foochow to protect the American Consulate.

1940—Newfoundland, Bermuda, St. Lucia, Bahamas, Jamaica, Antigua, Trinidad, and British Guiana.—Troops were sent to guard air and naval bases obtained by negotiation with Great Britain. These were sometimes called lend-lease bases.

1941—Greenland.—Taken under protection of the United States in April.

1941—Netherlands (Dutch Guiana).—In November the President ordered American troops to occupy Dutch Guiana but by agreement with the Netherlands government in exile, Brazil cooperated to protect aluminum ore supply from the bauxite mines in Surinam.

1941—Iceland.—Taken under the protection of the United States, with consent of its Government, for strategic reasons.

1941—Germany.—Sometime in the spring the President ordered the Navy to patrol ship lanes to Europe. By July U.S. warships were convoying and by September were attacking German submarines. There was no authorization of Congress or declaration of war. In November, the Neutrality Act was partly repealed to protect military aid to Britain, Russia, etc.

1946—Trieste.—President Truman ordered the augmentation of U.S. troops along the zonal occupation line and the reinforcement of air forces in northern Italy after Yugoslav forces shot down an unarmed U.S. Army transport plane flying over Vennezia Giulla. Earlier U.S. naval units had been dispatched to the scene.

1948—Palestine.—A marine guard was sent to Jerusalem to protect the U.S. Consular General.

1948-49—China.—Marines were dispatched to Nanking to protect the American Embassy when the city fell to Communist troops, and to Shanghai to aid in the protection and evacuation of Americans.

1950-53—Korea.—U.S. responded to North Korean invasion of South Korea by going to its assistance, pursuant to United Nations Security Council resolutions. Congressional authorization was not sought.

1954-55—China.—Naval units evacuated U.S. civilians and military personnel from the Tachen Islands.

1956—Egypt.—A Marine battalion evacuated U.S. nationals and other persons from Alexandria during the Suez crisis.

1958—Lebanon.—Marines were landed in Lebanon at the invitation of its government to help protect against threatened insurrection supported from the outside.

1959-60—The Caribbean.—2d Marine Ground Task Force was deployed to protect U.S. nationals during the Cuban crisis.

1962—Cuba.—President Kennedy instituted a "quarantine" on the shipment of offensive missiles to Cuba from the Soviet Union. He also warned the Soviet Union that the launching of any missile from Cuba against any nation in the Western Hemisphere would bring about U.S. Nuclear retaliation on the Soviet Union. A negotiated settlement was achieved in a few days.

1962—Thailand.—The 3d Marine Expeditionary Unit landed on May 17, 1962 to support that country during the threat of Communist pressure from outside; by July 30 the 5,000 Marines had been withdrawn.

1962-75—Laos.—From October 1962 until 1975, the United States played a role of military support in Laos.

1964—Congo.—The United States sent four transport planes to provide airlift for Congolese troops during a rebellion and to transport Belgian paratroopers to rescue foreigners.

1964-73—War in Vietnam.—U.S. Military advisers had been in South Vietnam for a decade, and their numbers had been increased as military position of Saigon government became weaker. After the attacks on U.S. destroyers in the Tonkin Gulf. President Johnson asked for a resolution expressing U.S. determination to support freedom and protect peace in Southeast Asia. Congress responded with the Tonkin Gulf Resolution, expressing support for "all necessary measures" the President might take to repel armed attack against U.S. forces and prevent further aggression. Following this resolution, and following a Communist attack on a U.S. installation in central Vietnam, the U.S. escalated its participation in the war.

1965—Dominican Republic.—Intervention to protect lives and property during a Dominican revolt. More troops were sent as the U.S. feared the revolutionary forces were coming increasingly under Communist control.

1967—Congo.—The United States sent three military transport aircraft with crews to provide the Congo central government with logistical support during a revolt.

1970—Cambodia.—U.S. troops were ordered into Cambodia to clean out Communist sanctuaries from which Viet Cong and North Vietnamese attacked U.S. and South Vietnamese forces in Vietnam.

The object of this attack, which lasted from April 30 to June 30, was to ensure the continuing safe withdrawal of American forces from South Vietnam and to assist the program of Vietnamization.

1974—Evacuation from Cyprus.—United States naval forces evacuated U.S. civilians during hostilities between Turkish and Greek Cypriot forces.

1975—Evacuation from Vietnam.—U.S. naval vessels, helicopters, and marines were sent to assist in evacuation of refugees and U.S. nationals from Vietnam.

1975—Evacuation from Cambodia.—President Ford ordered U.S. military forces to proceed with the planned evacuation of U.S. citizens from Cambodia.

1975—Mayaguez incident.—President Ford ordered military forces to retake the SS Mayaguez, a merchant vessel en route from Hong Kong to Thailand with a U.S. citizen crew which was seized from Cambodian naval patrol boats in international waters and forced to proceed to a nearby island.

Mr. HEFLIN. I want to point out a few of these important deployments of troops where there was declaration of war. There were a lot of them in which there was some naval action. They were not as important, but there have been a great number in which we have had military action which necessitated additional expenditures for the military. They certainly could be classified as military emergencies.

In 1914 to 1917, there occurred the Mexican War, and there was a tremendous amount of activity. General Pershing won his reputation in the Mexican War, yet it was an undeclared war. Therefore, under this constitutional amendment it would have required a three-fifths vote for military operations.

In 1927, the United States had 5,670 troops ashore in China and 44 naval vessels in its waters. In August of 1918, the United States landed 7,000 troops in Russia in Vladivostok, and they remained there until January of 1920 as a part of an allied occupation force.

In September of 1918, out of those 7,000 American troops in Russia, we suffered some 500 casualties.

Now, let us consider what happened before our entry into World War II. We were the arsenal of democracy. We spent a tremendous amount of money on military preparations and military expenditures conveying ships to England. We sent many, many vessels. We had destroyers, we had convoys all during that time without a formal declaration of war.

The Lebanese situation brings to mind again that in 1958 we landed American troops in Lebanon. In 1962, you had the Cuban missile confrontation, at which time there was a quarantine of Cuba. Again, no declaration of war.

Then again we look to the vote that sticks out in my mind, that on the eve of World War II the draft was adopted by one vote in the House of Representatives.

Senator JENNINGS RANDOLPH at that time was in the House, and his vote was the difference between whether or not the draft was to be enacted at that time. If we had not had the leadtime with the draft being enacted, I shudder to think of the consequences that might have occurred to this Nation in World War II.

Then there was the Berlin airlift, which also involved a great deal of military expenditures. Again, at that particular time it may have been that three-fifths vote might have been required, but there have been occasions in which there is a congressional mentality that the difference in the Senate between 51 and 60 votes can well mean the difference between this Nation's life and this Nation's death.

Then I look at Korea. Korea was classified because it was not a declared war as a police action, and it went on for a number of years.

Then I look at the recent situation in Iran. We deployed troops in Iran in an effort to try to rescue the hostages and we also expended large sums of money dealing with a third ocean Navy. We had to put naval ships, aircraft carriers in and around the Persian Gulf and the Indian Ocean. All of these are instances of the expenditure of money without a declared war.

Then I come to Vietnam. Really, I suppose as I look over the history of this Nation there have been few wars that had the unpopularity of the Vietnam war.

Following the Vietnam war, within, say, 2, 3, 4 years thereafter, I shudder to think what would have occurred if we had had a military emergency. I believe the difference between 51 and 60 votes for military appropriations could have been indeed vital at that particular time. I cannot get that out of my mind, and it moves me to say that we do need this military emergency exception, with a post-Vietnam war syndrome manifesting itself in many ways in this country, a period which I do not believe most of us are proud.

I feel a military emergency exception is absolutely essential.

Let us look at some close votes, and there have been some close ones, in the history of this country. The House of Representatives declared war on Britain in 1812 by a 6-vote majority. We know about the draft and the fact that on the eve of World War II there was one vote, JENNINGS RANDOLPH'S vote, that made the difference in the

outcome of World War II in my judgment.

Then there is a vote which is somewhat different dealing with Vietnam. The vote that approved the withdrawal of the troops from Vietnam passed the Senate by nine votes.

In the Senate as we look at this military exception, the difference between 51 and 60 votes, I do not believe we ought to be playing political games with a mystical or mysterious messenger that flies back and forth between the Senate and the House. I believe this is a very serious matter and a matter in which the life of this Nation or the death of this Nation may well be involved.

I want to point out that there are a lot of things which can occur in the future, including strategic oil reserves and its relationship with a military emergency. I want to point out that we are faced in the not-too-distant future with a change of leadership in Russia. Dr. Shulman of the Russian Institute of Columbia University predicted about 6 or 7 months ago that there would be a change of leadership from a group in which the leaders are of the age 65 to 75, to a group of the age 40 to 55 in a matter of 5 years with some transitional changes taking place in the meantime.

The change in leadership may mean a lot of different things.

The Mideast is a powder keg, and I am worried about the Iranian-Iraqi war. I am worried about where Iran is getting its military might from today. I am worried about what Iran may do if it succeeds in taking over the Iraqi oilfields and what other nations may be on its list in that area.

It seems to me that as we move toward fiscal responsibility, a balanced budget, we should also take into account that military emergencies can arise. They have arisen in the past, when we have deployed troops abroad without a formal declaration of war, many times. That does not mean that we are going to need additional finances every time, but I have recited a number of instances in which it was extremely important that we did have the resources to meet the problem that existed at that time.

Mr. STENNIS. Mr. President, will the Senator yield?

Mr. HEFLIN. I am about through, but I will yield to the distinguished Senator from Mississippi.

Mr. STENNIS. I thank the Senator.

Mr. President, the Senator's amendment certainly does attract my favorable attention. Although the language in the resolution is what I would call adequate, this amendment gives more elasticity and more shifting ground for the difference in the vote.

I know by experience on this floor that when the Korean war started, we relied on the United Nations. During the war in Vietnam, the uncertainty was here, but there never was a crystallization of the real issue of declaring war. Congress backed off from it.

However, the language that was worked on in the War Powers Act, which Vietnam generated, shows this very problem.

Incidentally, if the proposed constitutional amendment—which I am very much in favor of and have been for years—is passed, I believe that the greatest experts we have in the use of the English language, coupled with the other qualities, must be brought in at the conference to work on this. But I think this is an improvement over the present proposal of the regular resolution.

I commend the Senator highly for the way he has spelled it out here—the words "unforeseen," "military emergency." As one who worked on the War Powers Act, I do not think we can improve on that language. It is spelled out clearly. It is protected all the way through, as I see it. I believe we will strengthen the amendment greatly and bring it closer to reality by adopting this amendment, which I hope the Senate will see fit to do.

I commend the Senator for his fine work.

Mr. RANDOLPH. Mr. President, will the distinguished Senator from Alabama yield for an observation?

Mr. HEFLIN. I am delighted to yield to the distinguished Senator from West Virginia, to whom I have referred on several occasions in my previous remarks, whose vote was a deciding factor in the adoption of the draft prior to World War II.

Mr. RANDOLPH. I thank my colleague.

Mr. President, it was on the evening of August 12, 1941, when in the House of Representatives, we were coming to the climax of very bitter debate, wide ranging in defense matters, with the decision to be made on the extension of the Selective Service Act. The vote, of record, was close. In fact it was 203 to 202. It was a decision by one vote. I supported the draft in that crucial action.

I well recall, the speeches during that debate. Yes; it was a bitter debate. Especially, as we neared the rollcall. Statements were made that no nation on Earth would even consider an attack on the United States of America and that we were a strong country and we did not have an urgent need for the extension of the Selective Service Act—the draft. Many of our colleagues argued that by continuing the Selective Service Act we were warmongers. I remember those cruel words. House Members searched their minds and hearts on that fateful day.

Perhaps the Japanese Imperial Empire, the warlords of Japan, felt there was a division in this country—one side for the draft, the other side against the draft. They may have believed there was a lack of unity within our country; that we were a Republic in which the lines were tightly drawn. Who knows? Recall, as I have said, that our vote was on August 12. The United States was attacked by sea and air on December 7 of that year, 1941.

Yes; the closeness of that vote indicated to the Japanese that we were not a united country, that we were divided, one against the other. That mistaken view might have occasioned their all out attack at Pearl Harbor.

There is always the importance of one vote. The knowledgeable Senator from Alabama has developed his case. I point out that several States of the Union have come into the Union by only one vote. Did the Senator mention that fact?

Mr. HEFLIN. No; I did not. But I understand that the State of Texas was annexed by only two votes. That is the only one I know of specifically in that regard.

Mr. RANDOLPH. Several States came into the Union by one vote.

One vote is highly important. A young man said to me recently, "What is the importance of my one vote?"

I replied: "That is a vote that belongs to you and no one else, and if you do not exercise it, it ceases to exist."

What I have said is not analogous to what the Senator from Alabama is saying, but it shows that one vote that is used is a very important vote; that one vote is perhaps the deciding vote on a vital issue.

I support the Senator's amendment. He has spoken with logic. It was very considerate of him to permit me to be a cosponsor.

I return again to that one vote, on August 12, 1941, of 203 to 202. In my considered judgment that result was exceedingly helpful in our successful struggle in defense of our Republic.

Mr. HEFLIN. I thank the distinguished Senator.

Mr. BIDEN. Mr. President, will the Senator yield a second?

Mr. HEFLIN. I yield to the distinguished Senator from Delaware.

Mr. BIDEN. It is probably useful that we do not know which States came in by only one vote. We may very well wish there were a two-thirds requirement.

Mr. HEFLIN. At this time I will reserve the remainder of my time until later.

Mr. THURMOND. Mr. President, I allot myself as much time as may be required.

Mr. President, this amendment purports to be an amendment to provide a waiver of Senate Joint Resolution 58 in times of military emergency which is unforeseen at the time Congress adopts a statement of receipts and outlays.

Senate Joint Resolution 58 already has a waiver for a declaration of war which is in section 3.

If the Nation is truly facing an emergency situation where military expenditures may be necessary to meet an imminent threat, I honestly believe Congress will take the necessary steps. What are the necessary steps? Either by three-fifths vote to incur a deficit, or to raise the revenues necessary to fund additional military expenditures.

Mr. President, I am sympathetic with the purpose of this amendment, but do not believe it is necessary to meet unforeseen military emergency situations. History tells us that Congress is not afraid to respond to national military emergencies.

Mr. President, we have opposed amendments seeking to place an emergency waiver in Senate Joint Resolution 58 based on the fact that under the proposed amendment Congress can waive its provisions with regard to deficits by three-fifths and with regard to revenues by a constitutional majority.

Mr. President, opponents have argued but what if Congress does not vote by those margins to meet the emergency situation? What then?

Congress has always responded to those emergency situations where the security of our Nation is at stake. The legislative record of Congress bears this out. Since before World War II Congress has consistently supported funding for emergency situations which threaten the security of the Nation.

Congress has risen to the occasion in the past and will continue to do so in my opinion under the provisions of Senate Joint Resolution 58. We do not need additional language in this amendment, and I will continue to argue that the amendment adequately provides a method for meeting such emergency situations.

Mr. President, I ask unanimous consent that a table showing the actions of Congress during emergency situations where more than the 60 percent necessary in this proposed amendment voted for the spending necessary to meet emergency conditions be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. THURMOND. Mr. President, the Senator from Alabama indicated that the White House favors this amendment. I state categorically the White House is opposed to this amendment. I have talked to the White House myself and was told that a committee in the White House had considered this very amendment and decided against it. I want the record to show that.

I talked to Mr. Duberstein, the chief of liaison to Congress. He assured me that that was the official position of the administration on this amendment.

We feel that this amendment is unnecessary for the response that I have stated and for that reason we oppose the amendment.

EXHIBIT 1

HISTORY OF CONGRESSIONAL VOTES ON MAJOR DEFENSE SPENDING BILLS DURING URGENT MILITARY SITUATIONS (1937–82)

PRE-WORLD WAR II

Bill/law	Title/description	Amount	Year	House—Vote
H.R. 5232	Navy Department appropriations	$528 million	1937	Final passage: House—Voice; Senate—64 to 11. Conference report: House—Voice; Senate—Voice.
H.R. 6692	Army appropriations fiscal year 1938	$417 million	1937	Final passage: House—Voice; Senate—Voice. Conference report: House—300 to 42; Senate—Voice.
H.R. 8993	Navy Department appropriations, fiscal year 1939	$546.9 million	1938	Final passage: House—Voice; Senate—Voice.
H.R. 9995	Army appropriations fiscal year 1939	$459 million	1938	Final passage: House—Voice; Senate—Voice. Conference report: House—Voice; Senate—Voice.
H.R. 6149	Navy appropriations bill	$770.5 million	1939	Final passage: House—297 to 58; Senate—61 to 14.
H.R. 6791	Supplemental military appropriations	$223 million	1939	House—Voice; Senate—Voice.
H.R. 7805	Army and Navy appropriations, fiscal year 1941	$740 million	1940	Final passage: House—Voice; Senate—Voice. Conference report: House—Voice; Senate—Voice.
H.R. 9209	Military establishment appropriations, fiscal year 1941	$785 million	1940	Final passage: House—Voice; Senate—74 to 0. Conference report: House—Voice; Senate—Voice.
H.J. Res. 607	Additional Military Establishment appropriations, fiscal year 1941	$337 million	1940	Final passage: House—Unanimous; Senate—Voice.
H.J. Res. 614	Supplemental defense housing measure, fiscal year 1941	$75 million	1940	Final passage: House—Voice; Senate—Voice.
H.R. 10263	Supplemental national defense appropriations, fiscal year 1941	$5 billion	1940	Final passsage: House—Voice; Senate—Unanimous. Conference report: House—Voice; Senate—Voice.
H.R. 10572	3d supplemental defense appropriations, fiscal year 1941	$2 million (defense research)	1940	Final passage: House—Voice; Senate—Voice.
H.R. 4124	Supplemental national defense appropriations	$4.4 billion	1941	Final passage: House—327 to 0.
H.R. 4050	Supplemental national defense appropriations	$7 billion	1941	Final passage: House—336 to 55; Senate—67 to 19.
H.R. 6159	Supplemental military appropriations	$10 billion	1941	House—Voice; Senate—Voice.
H.R. 5788	Supplemental military appropriations	$6 billion	1941	Final passage: House—328 to 67; Senate—59 to 13.

Note: United States declared war on Japan Dec. 8, 1941, Germany and Italy Dec. 11, 1941.

PRE-KOREAN WAR BUILD-UP

Bill/law	Title/description	Amount	Date	House	Vote
1947					
H.R. 3493	Navy appropriations, fiscal year 1948	$3.1 billion	May 20, 1947	House	Voice.
H.R. 3493	Navy appropriations, fiscal year 1948	$3.3 billion	June 24, 1947	Senate	Voice.
H.R. 3493	Navy appropriations, fiscal year 1948, conference report	$3.2 billion	July 15, 1947	House, Senate	Voice.
H.R. 3678	Military establishment appropriation bill	$5.2 billion	June 5, 1947	House	Voice.
H.R. 3678	Military establishment appropriation bill	$5.6 billion	July 15, 1947	Senate	Voice.
H.R. 3678	Military establishment appropriation bill, conference report	$5.4 billion	July 25, 1947	House, Senate	Voice.
1948					
H.R. 6226	National defense supplemental, 1948	$923.1 billion	April 15, 1948	House	343 to 3.
H.R. 6226	National defense supplemental, 1948	$958.2 billion	May 6, 1948	Senate	74 to 2.
H.R. 6226	National defense supplemental, 1948, conference report	$948.9 billion	May 11, 1948	House, Senate	Voice.
H.R. 6771	National military establishment, military functions	$6.4 billion	June 2, 1948	House	350 to 2.
H.R. 6771	National military establishment, military functions	$6.8 billion	July 17, 1948	Senate	Voice.
H.R. 6771	National military establishment, conference report	$6.7 billion	July 19, 1948	House, Senate	Voice.
H.R. 6772	Department of the Navy	$3.6 billion	June 3, 1948	House	Voice.
H.R. 6772	Department of the Navy	$3.8 billion	June 15, 1948	Senate	Voice.
H.R. 6772	Department of the Navy, conference report	$3.7 billion	June 17, 1948	House, Senate	Voice.

PRE-KOREAN WAR BUILD-UP—Continued

Bill/law	Title/description	Amount	Date	House	Vote
1949					
H.R. 4146, Public Law 434	National military establishment appropriations bill, fiscal year 1950	$15.6 billion	April 13, 1949	House	271 to 1.
			August 29, 1949	Senate	Voice.
H.R. 6427, Public Law 430	Second supplemental appropriations bill	$1,079 million, included $915 million for military aid and Military National Establishment.	October 14, 1949	Senate	Voice.
			October 18, 1949		

KOREAN WAR

[North Korea invaded the Republic of Korea June 25, 1950. U.S. ground forces landed June 30. On July 24, President Truman asked Congress for $10 billion for armed services for Korean military operations]

Bill/law	Title/description	Amount	Date	House	Vote
1950					
H.R. 9526, Public Law 848.	1st supplemental appropriations/in direct response to the cost of the Korean war and President Truman's July 24 request.	$17.2 billion total. Included $11.6 billion for the Defense Department. $4 billion for military aid.	Aug. 26, 1950	House	311 to 1, final passage.
			Sept. 14, 1950	Senate	Voice, final passage.
H.R. 9920, Public Law 911.	2d supplemental appropriations/additional appropriations for the Korean war	$19.8 billion total. Included $16.8 billion for the Defense Department.	Dec. 15, 1950	House	Voice.
			Dec. 21, 1950	Senate	Voice.
			Jan. 1, 1951	House	Voice, conference report.
			Jan. 2, 1951	Senate	Voice, conference report.
1951					
S. Res. 99	Affirmed the dispatch of 4 U.S. divisions to NATO by President Truman		Apr. 4, 1951	Senate	69 to 21.
H.R. 9526	Supplemental appropriations for 1951	$16.8 billion total. $11.6 billion for military purposes.	Aug. 26, 1951	House	310 to 1, final passage.
H.R. 5054	Defense Department appropriations for 1952	$56.9 billion	Aug. 9, 1951	House	348 to 2, final passage.
			Sept. 13, 1951	Senate	79 to 0, final passage.
1952					
H.R. 7391	Defense appropriations for 1953	$45.7 billion	Apr. 9, 1952	House	Voice, final passage.
			June 30, 1952	Senate	66 to 0, final passage.
1953					
H.R. 5969	Defense appropriations for 1954	$34.4 billion total, $2 billion for the Korean War.	July 2, 1953	House	386 to 0, final passage.
			July 23, 1953	Senate	Voice, final passage.

SPUTNIK AND THE "MISSILE GAP"

[Sputnik was successfully launched on Oct. 4, 1957]

Bill/law	Title/description	Amount	Date	House	Vote
1958					
H.R. 9739, Public Law 325	Authorization of supplemental funds for construction of Air Force SAC bases	$550 million	Jan. 15, 1958	House	374 to 0, final passage.
			Jan. 30, 1958	Senate	Voice, final passage.
H.R. 10146, Public Law 322	Supplemental appropriations to accelerate strategic programs	$1.3 billion	Jan. 23, 1958	House	388 to 40, final passage.
			Feb. 8, 1958	Senate	78 to 0, final passage.
H.R. 12738, Public Law 724	Defense appropriations for 1959	$39.6 billion	June 5, 1958	House	390 to 0, final passage.
			July 30, 1958	Senate	71 to 0, final passage.
H.R. 13015, Public Law 685	Authorization for funds for military construction	$1.76 billion	July 10, 1958	House	379 to 2, final passage.
			July 30, 1958	Senate	80 to 0, final passage.
1959					
H.R. 7454, Public Law 166	Defense appropriations for 1960	$39.2 billion	June 3, 1959	House	392 to 3, final passage.
			July 14, 1959	Senate	90 to 0, final passage.
H.R. 5674, Public Law 149	Authorization for funds for military construction	$1.2 billion	Apr. 16, 1959	House	379 to 7, final passage.
			June 30, 1959	Senate	89 to 3, final passage.
S. 1096, Public Law 12	Authorization for funds for NASA	$48.4 million	Mar. 10, 1959	Senate	91 to 0, final passage.
			Apr. 14, 1959	House	Voice, final passage.
H.R. 7007, Public Law 86	Authorization for funds for NASA	$485.3 million	May 20, 1959	House	294 to 128, final passage.
			June 14, 1959	Senate	81 to 1, final passage.
1960					
H.R. 10809, Public Law 481	Authorization for funds to accelerate the Saturn rocket program	$915 million	Mar. 9, 1960	House	399 to 10, final passage.
			May 3, 1960	Senate	78 to 0, final passage.
H.R. 10777, Public Law 500	Authorization for funds for military construction	$1.2 billion	Mar. 9, 1960	House	407 to 4, final passage.
			May 13, 1960	Senate	Voice, final passage.
H.R. 11998, Public Law 601	Appropriations for defense for 1961	$40 billion	June 30, 1960	House	402 to 5, conference report.
			June 30, 1960	Senate	83 to 3, conference report.

VIETNAM WAR

Bill/law	Title/description	Amount	Date	House	Vote
1964					
H.J. Res. 1145	Southeast Asia resolution ("Gulf of Tonkin" resolution)		Aug. 7, 1964	House	414 to 0.
H.J. Res. 1145	Southeast Asia resolution ("Gulf of Tonkin" resolution)		Aug. 7, 1964	Senate	88 to 2.
1965 [1]					
S. 800	Military procurement authorization, fiscal year 1966	$15.2 billion	April 6, 1965	Senate	85 to 0.
H.R. 7657	Military procurement authorization, fiscal year 1966	$15.3 billion	May 5, 1965	House	396 to 0.
H.J. Res. 447 [2]	Supplemental appropriations for military operations in Southeast Asia	$700 million	May 5, 1965	House	408 to 7.
H.J. Res. 447	Military supplemental appropriations, fiscal year 1966	$700 million	May 6, 1965	Senate	88 to 3.
H.R. 9221	Defense Department appropriations, fiscal year 1966	$45.1 billion	June 23, 1965	House	407 to 0.
			August 25, 1965	Senate	89 to 0.
1966					
H.R. 12889, S. 2791	Supplemental Defense authorization for Vietnam war, fiscal year 1966	$4.8 billion	March 1, 1966	House	393 to 4.
			March 1, 1966	Senate	93 to 2.
H.R. 13546	Defense Department Vietnam supplemental appropriations, fiscal year 1966	$13.1 billion	Mar. 15, 1966	House	389 to 3.
			Mar. 22, 1966	Senate	87 to 2.
S. 2950	Military procurement authorization, fiscal year 1967	$17.5 billion	April 28, 1966	Senate	Voice.
			June 14, 1966	House	356 to 2.

VIETNAM WAR—Continued

Bill/law	Title/description	Amount	Date	House	Vote
S. 2950	Military procurement authorization, fiscal year 1967 (conference report)		July 12, 1966	Senate	81 to 1.
			July 12, 1966	House	359 to 2.
H.R. 15941	Defense appropriations, fiscal year 1967	$58.6 billion	July 20, 1966	House	393 to 1.
H.R. 15941	Defense appropriations, fiscal year 1967	$58.1 billion	August 18, 1966	Senate	86 to 0.
H.R. 17637	Military construction and housing appropriations, fiscal year 1967	$1 billion	September 14, 1966	House	346 to 3.
			October 10, 1966	Senate	Voice.
1967					
S. 665	Supplemental defense authorization for Vietnam war	$4.4 billion	March 1, 1967	Senate	89 to 2.
S. 665	Supplemental defense authorization for Vietnam war (conference report)	$4.5 billion	March 8, 1967	House	364 to 13.
H.R. 7123	Vietnam supplemental fiscal year 1967	$12.2 billion	March 16, 1967	House	385 to 11.
H.R. 7123	Vietnam supplemental fiscal year 1967	$12.2 billion	Mar. 20, 1967	Senate	77 to 3.
S. 666	Military procurement authorization, fiscal year 1968	$20.8 billion	Mar. 21, 1967	Senate	86 to 2.
H.R. 9240	Military procurement authorization, fiscal year 1968	$21.5 billion	May 9, 1967	House	401 to 3.
H.R. 10738	Defense Department appropriations, fiscal year 1968	$70.2 billion	June 13, 1967	House	407 to 1.
H.R. 10738	Defense Department appropriations, fiscal year 1968	$70.1 billion	Aug. 22, 1967	Senate	84 to 3.
H.R. 10738	Defense appropriations fiscal year 1968, conference report	$69.9 billion	Sept. 12, 1967	House	365 to 4.
			Sept. 13, 1967	Senate	74 to 3.
1968					
H.R. 16703	Military construction	$1.8 billion	Apr. 25, 1968	House	346 to 14.
			June 25, 1968	Senate	74 to 3.
S. 3293	Military procurement authorization, fiscal year 1969	$21.6 billion	Apr. 19, 1968	Senate	54 to 3.
			July 11, 1968	House	363 to 15.
S. 3293	Military procurement authorization, fiscal year 1969 conference report	$21.6 billion	Sept. 10, 1968	House	322 to 15.
			Sept. 11, 1968	Senate	Voice.
H.R. 18785	Military construction appropriations, fiscal year 1969	$1.7 billion	July 29, 1969	House	Voice.
			Aug. 1, 1968	Senate	71 to 3.
H.R. 18707	Defense Department appropriations, fiscal year 1969	$72.2 billion	Sept. 12, 1968	House	333 to 7.
H.R. 18707	Defense Department appropriations, fiscal year 1969	$71.8 billion	Oct. 3, 1968	Senate	55 to 2.
H.R. 18707	Defense appropriations, fiscal year 1969, conference report	$71.8 billion	Oct. 11, 1968	House	213 to 6.
			Oct 11, 1968	Senate	Voice.
1969					
H.R. 14751	Military construction appropriations, fiscal year 1970	$1.4 billion	Nov. 13, 1969	House	343 to 32.
H.R. 15090	Defense Department appropriations, fiscal year 1970	$69.3 billion	Dec. 8, 1969	House	330 to 33.
H.R. 14751	Military construction appropriations, fiscal year 1970	$1.69 billion	Dec. 8, 1969	Senate	82 to 0.
H.R. 15090	Defense Department appropriations, fiscal year 1970	$69.6 billion	Dec. 15, 1969	Senate	85 to 4.
1970					
H.R. 17123	Military procurement authorization, fiscal year 1971	$19.9 billion	May 6, 1970	House	326 to 69.
			Sept. 1, 1970	Senate	84 to 5.
H.R. 19590	Defense Department appropriations, fiscal year 1971	$66.4 billion	Oct. 8, 1970	House	274 to 31.
			Dec. 8, 1970	Senate	89 to 0.
H.R. 17970	Military construction appropriations, fiscal year 1971	$2.04 billion	June 11, 1970	House	308 to 57.
			Oct. 14, 1970	Senate	Voice.
1971					
H.R. 8687	Defense procurement authorization	$21 billion	June 17, 1971	House	331 to 58.
H.R. 8687	Defense procurement authorization	$21.4 billion	October 6, 1971	Senate	82 to 4.
H.R. 11731	Defense appropriations, fiscal year 1972	$70.8 billion	November 23, 1971	Senate	80 to 5.
H.R. 11731	Defense appropriations, fiscal year 1972	$70.5 billion	December 15, 1971	House	293 to 39.
1972					
H.R. 15495	Defense procurement authorization, fiscal year 1973	$21.3 billion	June 27, 1972	House	334 to 59.
H.R. 15495	Defense procurement authorization, fiscal year 1973	$20.5 billion	August 2, 1972	Senate	92 to 5.
H.R. 15495	Defense procurement authorization, fiscal year 1973, conference report	$20.9 billion	September 13, 1972	House	335 to 44.
H.R. 15495	Defense procurement authorization, fiscal year 1973, conference report	$20.9 billion	September 15, 1972	Senate	73 to 5.
H.R. 16754	Military construction appropriations, fiscal year 1973	$2.2 billion	September 25, 1972	House	293 to 12.
H.R. 16754	Military construction appropriations, fiscal year 1973	$2.3 billion	October 3, 1972	Senate	87 to 0.
H.R. 16593	Defense Department appropriations, fiscal year 1973	$74.6 billion	September 14, 1972	House	322 to 41.
		$74.5 billion	October 2, 1972	Senate	70 to 5.
H.R. 16754	Military construction appropriations, fiscal year 1973, conference report	$2.3 billion	October 12, 1972	House	333 to 10.
			October 12, 1972	Senate	Voice.
H.R. 16593	Defense Department appropriations, fiscal year 1973, conference report	$74.4 billion	October 12, 1972	House	316 to 42.
			October 13, 1972	Senate	Voice.

[1] February 1965: President Johnson ordered bombing raids over North Vietnam. On June 8, 1965, U.S. commanders authorized to commit 23,000 U.S. advisers to combat.
[2] H.J. Res. 447 was approved in less than 53 hrs. after President Johnson's request.

Mr. HEFLIN. Mr. President, will the Senator yield?

Mr. THURMOND. I am pleased to yield.

Mr. HEFLIN. In the Senator's table there are instances of votes on national defense efforts showing votes in high majorities. Does that mean that we do not need article III which says that we will suspend the three-fifths requirement in times of declared war? Does it mean that my amendment really does not have any effect? I feel the Senator's argument that we have had instances in the past of large votes approving military appropriations is correct. But I do not think that we can point to this post-Vietnam syndrome period that we had 4 or 5 years, that and state that if a military emergency or threat to national security were to arise that would have meant that we could have had under the circumstances additional deficit spending.

Also the fact is that here the Senator does not have the atmosphere of restraint on spending that we will have under the constitutional amendment. I think that that is another answer to that.

I thank the Senator for yielding.

Mr. THURMOND. Mr. President, we think that this amendment is adequate and the more we add to these amendments the more cumbersome they get. The House leaders tell us that it is going to make it very difficult if we add to this amendment. If something is really essential, really necessary, that is one thing. But we feel that this amendment is not necessary for the reasons that I just stated. We feel that Congress will take the necessary steps. They can do this, as I said, by either a three-fifths vote to incur a deficit or they can raise the revenues necessary to fund the additional military expenditures.

The chart I have, I think, is self-explanatory. This chart goes back to 1937 showing where the Congress overwhelmingly took action to take care of the situation in all those instances.

I wish to commend the able Senator from Alabama. He has been most helpful on this constitutional amendment. He is a most-valuable member of the Judiciary Committee, has great knowledge and experience as chief justice of the State of Alabama, which has served him well here, and we appreciate the good work he is doing. But we just feel that a constitutional amendment should be limited to the essentials, and that the amendment he has offered here is not essential to the purposes to be accomplished here. That is the reason why we oppose it.

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

Mr. THURMOND. I would be pleased to yield.

Mr. BIDEN. Does the chairman of the Judiciary Committee believe that this amendment, the constitutional amendment, before us, if it had been law in 1970, 1971, and 1972, when Senator DENTON was in a prison camp in Vietnam, that we could have gotten a super majority on the floor of the U.S. Senate to run the deficit up or in 1974 when things were still going on, that he could have gotten a super majority to insure we would see to it that our military men would have what they needed, when they did not even have what they needed then? Does he think he could have gotten those numbers?

Mr. THURMOND. Mr. President, in response to the statement by the distinguished ranking member of the Judiciary Committee, with whom I have the pleasure of working regularly, I want to say I think these figures here for 1971 are very clear. Here is a defense procurement authorization which passed 331 to 58. That was H.R. 8687. Here is H.R. 8687, a defense procurement authorization, which passed by a vote of 82 to 4; defense appropriations for fiscal year 1972 passed 80 to 5; defense appropriations for fiscal year 1972 which passed 293 to 39. For 1972 you might say there are similar majorities.

Mr. BIDEN. Does the Senator think if the war had gone on he could have gotten those numbers in 1975 and 1976?

Mr. THURMOND. Well, Mr. President, I think the American people will stand by our country in time of emergency. I think public opinion will demand it, and the record shows in the past we have done that.

Mr. BIDEN. One last question, if I may: What does the Senator think would happen this year if the constitutional amendment were in place? Does the Senator think we would have voted the money we needed for defense or does he think we would have had to cut out—let me see, to balance the budget, if memory serves me correctly, we would have to cut out—new programs flat out, just cut them all out now in order to balance the budget to keep the military supplied, or does the Senator think we would have eliminated the tax cut?

I do not know what we would do. I am just curious as to what the Senator thinks. I know the Senator believes very strongly in the need for defense in time of an undeclared war, which we have now, as I am told by my conservative friends, that there is an undeclared war with the Soviet Union right now. What would we do?

Mr. THURMOND. Well, Mr. President, I think the people of the country will back the necessary funds to provide the necessary military establishment. I think that was clear last year and this year when President Reagan recommended such a large defense appropriation and made a request for a great increase, and after all public opinion controls, and Congress went along with him. So public opinion must have backed that increase.

Mr. BIDEN. So the Senator thinks public opinion would have supported these large deficits then?

Mr. THURMOND. I think public opinion supported the large defense expenditure. I do not think public opinion necessarily supported some of the other matters, but that is a matter of opinion.

Mr. BIDEN. I thank the Senator.

Mr. DENTON. Mr. President, if the distinguished senior Senator from Alabama will yield time, I would like to offer some opinions and ask some questions on this matter. I certainly want to adhere to the administration's position regarding this question. I want to take the counsel of my distinguished chairman of the Judiciary Committee who is managing the bill at this time, and the counsel of my distinguished chairman of the Armed Services Committee, also present in the Chamber at the moment.

I must say that I agree with the Senator from South Carolina that the thrust of my colleague from Alabama's proposed amendment is sound, and I respect the views of the distinguished Senator from South Carolina who had such a distinguished career in World War II and who has been such a staunch defender of this Nation's security, along with the Senator from Texas.

However, I believe this matter is of such importance that I would ask us to look further into it than we have in the last few minutes.

I have read Senator DOMENICI's comments on this matter when he considered the introduction of a similar amendment. He said:

> While I had some indication the administration wanted some additional language, and I thought some necessary, I have been persuaded there is reasonable likelihood we will be able to get the votes needed to establish Federal fiscal policies that are responsive to national emergencies other than war without providing for an additional waiver.

He goes on to say:

> I honestly believe we will not operate in a vacuum and we will offer our fiscal policy when we have emergencies of the type and sort of war. I have been persuaded that Congress will supply the requisite votes to get that done.

I believe all those who have been speaking to Senator HEFLIN's amendment would favor additional spending if there is some kind of unforeseen and imminent threat arising to our national security. I think the question concerns the exact method by which we take more comfort that that aim will be achieved. The question is whether recognition of a threat will be by a majority vote, or whether it will be more likely by a three-fifths vote? At the moment I am persuaded that it will be more likely by a majority vote.

However, I have one strong present reservation about the wording of the amendment of my colleague from Alabama, and that is that he refers to finding the Nation in an "unforeseen and imminent condition of military emergency." I think that we would have difficulty in applying the term "military emergencies" to a number of other threats to the national security which could arise and, indeed, Mr. Stockman and, I believe, the President or at least the White House have implied that they want language that provides for the possibility of an unforeseen or imminent threat to the "national security," I think that phrase is a more all-embracing, and one which could be more easily and more generally defined than the phrase a "military emergency."

I wonder if my respected colleague from Alabama would entertain a suggestion to change the words following "nation" in the third line of his unprinted amendment, and substitute "to find the nation with an unforeseen and imminent threat to the national security," and, thus, have it read, "should find the nation with an unforeseen and imminent threat to the national security as so declared by joint resolution adopted," and so forth? I believe that comes into identity with expressions from the White House, with the statements of David Stockman and, I believe, more clearly identifies that which is in the mind of Senator THURMOND, Senator TOWER, and my colleague Senator HEFLIN. A "military emergency" would not have to exist if, say, the nation discovered through intelligence sources that such and such an act might be taking place and if we did not do certain things by appropriating money or moving troops to such and such an area, which would take money, without violating the War Powers Act, we would be in great trouble.

I think this entire body would be in favor of a broader provision permitting concern for "national security" as a whole.

I ask the Senator from Alabama, would he agree to ask unanimous consent to make the change that I suggested?

Mr. HEFLIN. Yes, I would. I think the suggestion of amendatory language by the distinguished Senator from Alabama is wise and good. This in my amendment language went back and forth between the White House, Stockman's office, and my office. I had the language of "military urgency" in my original amendment. We finally agreed on the words "military emergency," but I think, in keeping with the language that was contained in the statement of administrative policy dated July 13, 1982, and in keep-

ing with the testimony of Secretary Donald Regan today, in which he uses the words "threats to national security," that that is an improvement on the language, and I, therefore, request unanimous consent to amend my amendment to reflect those words instead of the words "military emergency."

The PRESIDING OFFICER. Is there objection to the modification? Without objection, the amendment is so modified.

The amendment (UP No. 1173), as modified, is as follows:

On page 3, line 21, insert before the period a comma and "except that if Congress, after the adoption of the statement of receipts and outlays, should find the Nation with an unforeseen and imminent threat to the national security and so declare by a joint resolution adopted by a majority of the whole number of both Houses of Congress, the Congress may then, by a majority vote of the whole number of both Houses of Congress, provide for such additional outlays for the defense of the Nation as are necessary to finance the military response to the emergency which would cause the total outlays set forth for such year in such statement to be greater than the receipts set forth for such year in such statement".

The PRESIDING OFFICER. Who yields time?

Mr. HEFLIN. Mr. President, Senator TOWER was here and wanted to make a statement. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. 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, if the able Senator from Alabama is ready to yield back his time, we are ready to yield back our time. I understood the Senator from Alabama would yield 2 hours on his amendment to the two managers of the resolution.

Mr. HEFLIN. Yes. I was waiting for Senator TOWER. He said he wanted to make his statement in support of this. But I do not know where he is right now. I do not want to hold this up any longer. I am willing to go to a vote.

I believe I have 8 hours under my control. I am willing to yield back 2 hours of that for the floor managers of the bill, if they desire it. I reserve the remainder of my time for possibly another amendment.

Mr. FORD. Mr. President, reserving the right to object, I would like to inquire what will the 2 hours yielded to the floor managers of the bill do? Does that just give them extra time to debate tomorrow? I thought we had an agreement that was basically that we would have one amendment tomorrow and then an hour on each side and then we would go to a vote at 12 o'clock.

I do not understand the yielding of the 2 hours to the manager of the bill. Could somebody enlighten me?

Mr. THURMOND. Mr. President, so far as the Senator from South Carolina is concerned, we could just yield it all back and get to a vote just as quick as we can on all the amendments.

Mr. FORD. That is fine. But I do not know why the 2 hours was yielded to the managers of the bill when we had 2 hours of debate tomorrow.

Mr. THURMOND. We did not need any time and we thought someone else might need it.

Mr. FORD. I see the distinguished majority leader is here. I thought we had the time limit for tomorrow. I was just trying to figure out how we were getting around that and what was going to happen beyond that.

Mr. BAKER. Mr. President, if the Senator will yield, I say to my friend from Kentucky that by reason of previous arrangements there apparently are 107 minutes, I believe, still available to the distinguished Senator from South Carolina on the resolution and 87 minutes under the control of the minority. I assume that if the Senator from Alabama were to relinquish 2 hours of his time it would be added to those totals and it would not affect the 12 noon vote on tomorrow.

Mr. FORD. Mr. President, I have no objection. I just did not understand. I thank the majority leader for his courtesy.

Mr. BAKER. I thank the Senator from Kentucky.

Mr. President, the Senator from Texas is in the Chamber. I hope we can dispose of this amendment pretty promptly because we have two others behind it and a decision has to be made shortly on whether we continue this debate tonight or go over to tomorrow. We presently have an order to convene at 9 o'clock tomorrow morning.

Mr. President, I hope we can finish soon.

The PRESIDING OFFICER. Who yields time?

Mr. HEFLIN. Mr. President, I yield to the distinguished Senator from Texas.

Mr. TOWER. Mr. President, I will be very brief. I think that the whole exercise on this constitutional amendment is the ultimate confession of failure on the part of the Congress of the United States. We are unable to discipline ourselves to do what we should do and, therefore, we feel constrained to try to institutionalize that discipline in the Constitution of the United States.

The Constitution is a document that was crafted very carefully and was the result of some of the best minds of the 18th century. It represented a spirit of compromise and a recognition of divergent interests and an ability to subordinate those differences to the greater good of creating a fundamental law for this country that has served us remarkably well when we consider the changing times and circumstances and demography and geography.

It is with a heavy heart that I see the Congress of the United States offer this amendment to the Constitution. I cannot help but believe there is great merit in what George Will said when he said we should not change the fundamental law, the Constitution.

This is a matter that should not really be in the fundamental law of this land. In fact, almost two-thirds of the States of this country requested a constitutional convention to consider such an amendment. There is a great deal of popular support for the submission of this amendment. Therefore, I think that we are obliged to submit it to a referendum of the people as they are represented in their respective State legislatures. Because I think it should be submitted to such a referendum and because I think there should be a great national debate on this issue, I intend to vote to report this amendment. However, if invited by any State legislature in the country, I would be deeply delighted to testify against its ratification.

I think that this whole exercise indicates that we do not know what the far-reaching effect of this amendment may be. Some think there are loopholes in it and it is not tight enough. Others think it may be too restrictive and impose undue burdens on the ability of the Congress to do its business. I do perceive the possibility that it could result in a paralysis of public action by virtue of matters acted on by the Congress being tied up in courts for months and perhaps even years.

My primary concern is the security of the United States of America and our ability to respond to emergencies in a timely way and with whatever resources may be required to deal with that emergency. Therefore, I believe that the amendment couched in its present terms is inadequate, and I therefore support the amendment offered by the Senator from Alabama. I think it is a constructive step.

I do have doubts that in a time of national emergency, or what might be perceived as a national emergency by some, there might be a sharp division then pending that would preclude a 60-percent majority that would enable us to act in an adequate way.

Therefore, I think it is prudent, in the interest of our security, to adopt the amendment that has been offered by the Senator from Alabama and I intend to support it and urge my colleagues to do likewise.

SEVERAL SENATORS. Vote! Vote!

Mr. HEFLIN. I have no objection to a vote. I reserve the remainder of my time on a possible second amendment.

I ask for the yeas and nays on my amendment.

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

The yeas and nays were ordered.

SEVERAL SENATORS. Vote!

Mr. THURMOND. If the distinguished Senator from Alabama is ready to yield back his time, I am ready to yield mine back.

Mr. BIDEN. A parliamentary inquiry, Mr. President.

The PRESIDING OFFICER. The Senator will state it.

Mr. BIDEN. How can one reserve time on an amendment and at the same time have a vote on that amendment?

The PRESIDING OFFICER. The unanimous-consent agreement under which the Senate is operating provided for a total of 6 hours to be divided among two amendments, divided in the manner the proponents and opponents of the amendments see fit.

Mr. BIDEN. I thank the Chair.

The PRESIDING OFFICER. Has the Senator from Alabama reserved the remainder of his time for use on a subsequent amendment and is he prepared to go to a vote?

Mr. HEFLIN. That is correct.

The PRESIDING OFFICER. In accord with the unanimous-consent agreement, the question is on agreeing to the amendment of the Senator from Alabama. The yeas and nays have been ordered and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. STEVENS. I announce that the Senator from Minnesota (Mr. DURENBERGER) and the Senator from Arizona (Mr. GOLDWATER) are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 47, nays 51, as follows:

[Rollcall Vote No. 284 Leg.]

YEAS—47

Baucus	Ford	Moynihan
Bentsen	Glenn	Nunn
Biden	Hart	Pell
Bradley	Heflin	Pryor
Bumpers	Heinz	Randolph
Byrd, Robert C.	Hollings	Riegle
Cannon	Huddleston	Sarbanes
Chafee	Inouye	Sasser
Chiles	Jackson	Schmitt
Cohen	Johnston	Specter
Cranston	Kennedy	Stennis
Denton	Leahy	Tower
Dixon	Levin	Tsongas
Dodd	Matsunaga	Weicker
Eagleton	Metzenbaum	Zorinsky
Exon	Mitchell	

NAYS—51

Abdnor	Burdick	Dole
Andrews	Byrd,	Domenici
Armstrong	Harry F., Jr.	East
Baker	Cochran	Garn
Boren	D'Amato	Gorton
Boschwitz	Danforth	Grassley
Brady	DeConcini	Hatch
Hatfield	Mathias	Roth
Hawkins	Mattingly	Rudman
Hayakawa	McClure	Simpson
Helms	Melcher	Stafford
Humphrey	Murkowski	Stevens
Jepsen	Nickles	Symms
Kassebaum	Packwood	Thurmond
Kasten	Percy	Wallop
Laxalt	Pressler	Warner
Long	Proxmire	
Lugar	Quayle	

NOT VOTING—2

Durenberger Goldwater

So Mr. HEFLIN's amendment (UP No. 1173), as modified, was rejected.

Mr. THURMOND. Mr. President, I move to reconsider the vote by which the amendment was rejected.

Mr. DECONCINI. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. BUMPERS addressed the Chair.

The PRESIDING OFFICER. The Senator from Arkansas.

UP NO. 1174

Mr. BUMPERS. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Arkansas (Mr. BUMPERS) proposes an unprinted amendment numbered 1174.

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

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

The amendment is as follows:

Strike all after the resolved clause, and substitute in lieu thereof 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, except the President may transmit to the Congress a budget for a fiscal year in which total outlays are greater than total receipts if the President includes with such budget a detailed statement specifying the reasons why total outlays for such fiscal year should exceed total receipts for such fiscal year.

"Section 2. After receiving the budget required by section 1 of this article, and 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. 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. The Congress and the President shall, pursuant to legislation or through exercise of their powers under the first and second articles, ensure that actual outlays do not exceed the outlays set forth in such statement.

"Section 3. Total receipts for any fiscal year set forth in the statement adopted pursuant to this article shall not increase by a rate greater than the rate of increase in national income in the year or years ending not less than six months nor more than twelve months before such fiscal year, unless a majority of the whole number of both Houses of Congress shall have passed a bill directed solely to approving specific additional receipts and such bill has become law.

"Section 4. The Congress may waive the provisions of this article for any fiscal year in which a declaration of war is in effect or for any fiscal year in which the Congress declares a national economic emergency by a majority vote of the whole number of both Houses directed solely to that subject.

"Section 5. 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.

"Section 6. Except to the extent provided in legislation enacted by the Congress after the effective date of this article, the judicial power of the United States shall not extend to that part of any case, controversy, claim, or defense arising under, or based in whole or in part on, this article, nor shall that part of any case, controversy, claim or defense arising under, or based in whole or in part on, this article be entertained or considered by any court of the United States or of any State.

"Section 7. The Congress shall enforce and implement this article by appropriate legislation.

"Section 8. This article shall take effect for the second fiscal year beginning after its ratification.

The PRESIDING OFFICER. The Chair invites all Senators who wish to converse to retire from the Chamber and asks Senators and others in the Chamber to be in order so that the Senator from Arkansas may be heard.

Mr. BUMPERS. Mr. President, this is an amendment in the nature of a substitute, and I will take about 5 minutes——

Mr. FORD. Mr. President, a point of order. The Senate is not in order. It is getting late and I think the Senator from Arkansas deserves to be listened to.

The PRESIDING OFFICER. The Senator from Kentucky makes a good point. It is the desire of the Chair to maintain a quiet atmosphere in the Chamber so that the Senator can be heard.

Mr. BUMPERS. Mr. President, this is an amendment in the nature of a substitute. It does three things. It embodies the entire amendment of the Judiciary Committee with the exception of the amendment that was adopted today and presented by the Presiding Officer, the Senator from Colorado, and the Senator from Oklahoma (Mr. BOREN). It does three more things. I am offering this amendment for a very simple reason. I think there are a lot of Senators who would like to vote for something they feel would be much more responsible than Senate Joint Resolution 58 in its current form.

It will give Senators an opportunity to vote for something that embodies three improvements.

No. 1, this amendment does, indeed, give the President a role in submitting a budget to the Congress. The amendment that I have offered on that subject is precisely the same language that the Senator from Kentucky had in his amendment. And, incidentally, the Senator from Kentucky is a cosponsor of this amendment.

So, if Senators feel that the President ought to at least be a bit player in this drama, this is an amendment that takes care of that.

No. 2, it embodies the proposition that by a majority vote the Congress may declare a national economic emergency. That has been debated extensively and I will not belabor it except to just make this one point. This country can be in as much trouble economically as it is in time of war. There is only one entity in the United States that can reverse an economic disaster, and that is the U.S. Government. What would we have done in 1932 had this amendment been in place? Everybody knows the answer to that. And so, if Senators believe that Congress ought to be able to waive the requirements of this by a majority vote and declare an economic emergency because there is an economic emergency, this amendment provides for it.

Third, this amendment contains the language of the Senator from Washington (Mr. GORTON) and the Senator from New Hampshire (Mr. RUDMAN) dealing with the court's jurisdiction over all challenges to this amendment.

It is difficult to comprehend what a nightmare this constitutional amendment can turn into. It does not take a fertile mind to conjure up hundreds of scenarios that would literally logjam every court in this country if we do not place some limits on judicial review.

There is the underlying assumption, I believe, by most of my colleagues that the courts are going to take the position that every challenge to how Congress handles this amendment is a political question and therefore the people of this country do not have any standing to sue.

Senators must understand that the U.S. Supreme Court, when it has dealt with challenges to the Constitution on occasion has, indeed, said, "That is a political question. That is not something this court is going to deal with."

For years and years and years the States in this country did not reapportion and all of a sudden came a case called Baker against Carr. I think it was 1962. The Supreme Court suddenly said, "This is no longer a political question; it is a due process and equal protection question." What the Court said is that challenges to districts on constitutional grounds would henceforth be heard. If you live in a district that elects a representative to the State legislature and there are 100,000 people in that district and the district adjoining that one elects one member to the legislature and only has 50,000 people, their vote counts twice as much as the vote where 100,000 people live. Baker against Carr set the stage, and after Reynolds against Sims every State in the Nation had to reapportion. All Senators remember that.

So, to assume that the courts of this country are going to take the position that every court case under this amendment presents a political challenge could be very dangerous indeed.

Take for example, the question we just voted on, the amendment by Mr. HEFLIN dealing with whether we are at war or not; can you imagine somebody raising the question in court, are we at war? Were we at war when we were in Korea? Were we at war when we were in Vietnam? The Constitution says we shall declare war, but there was no declaration of war in those instances.

To all my colleagues in the U.S. Senate, I have said it many times, but I want to say it again: You are dealing with the most sacred document known to man, with the exception of the Holy Bible, so far as this Senator is concerned. We should not amend it at a late hour, when people are tired. We should not amend it because somebody had a political idea. We should do it thoughtfully and deliberately.

I remind Senators that Thomas Jefferson, James Madison, and Ben Franklin did not see fit, in their wisdom, to put a provision such as this in the Constitution, and I dare say that we should not, either.

So I am saying that the courts should not have jurisdiction of challenges under this constitutional amendment, unless Congress gives it to them, and this amendment states clearly that proposition. We could decide to say that certain elements should be subject to court challenge. We can do that by legislation after ratification. But until we do that, I can envision Congress being subjected to all kinds of mandamus actions.

I can visualize some third-level bureaucrat saying he has taken it on himself not to issue another food stamp because, in his opinion, it will unbalance the budget. A food stamp recipient hauls that bureaucrat into court and says, "The budget is not unbalanced, and you don't have the right to withhold my food stamps."

Multiply that thousands of times, and those are just some of the possible scenarios that may develop.

This is a responsible amendment. In my opinion, it is a vast improvement. The three amendments I have incorporated in this substitute have been very well thought out by the sponsors who previously offered them here.

So, if you want to vote for something responsible and tell people you voted for something responsible, vote for this amendment.

Mr. THURMOND. Mr. President, every part of this amendment has been acted upon by the Senate and voted down. We are not going to take more time, and 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 am willing to yield back my time, if the able Senator from Arkansas is willing to do so.

Mr. BUMPERS. If nobody else wishes to speak on it, I am prepared to do so.

Mr. FORD. Mr. President, will the Senator yield?

Mr. BUMPERS. I yield.

Mr. FORD. Mr. President, I understand that the distinguished Senator from South Carolina says that all these things have been debated and it is now time to vote and there is no need to take any further time. This is the first time all three have been put together. It is the first time we have had an opportunity to vote on the three of them at the same time, en bloc.

Not many people here like what they are doing. Even the distinguished Senator from Texas (Mr. TOWER) said he is going to vote for the amendment, and then he will go to the legislature and testify against their ratifying the amendment. That is the kind of amendment we now have before us.

It does not make a great deal of sense to me that those people who are opposed to the amendment are still voting for it and yet think it is wrong.

Here is an opportunity to take three amendments to the constitutional amendment, which received at least 45 votes. Every one received at least 45 votes. I have seen a lot of pressure in this Chamber, but I have never seen any more pressure than was exerted to defeat at least one of them.

When they could not defeat the Armstrong amendment this afternoon, they backed off, and you saw people vote their conscience rather than political pressure, and they switched their votes. There was a larger vote this afternoon for the Armstrong amendment than we had on the others. But once the pressure was taken off, Senators began to vote their consciences. Now it is time. If you want to make a change for the better, you have the opportunity to vote en bloc for those amendments that have come very close to being adopted, if the political pressure had not been applied.

They put an arm around me and said, "I like your amendment. It's a good amendment. I wanted to vote for it, but they wouldn't let me."

I do not believe they would not let you. They asked you not to, and the political pressure was put on.

These are good amendments. This will give an opportunity for some of us who will not vote for it in its present form to vote for it tomorrow noon. So if we can get this amendment adopted, this substitute of the distinguished Senator from Arkansas, it will give some of us in this Chamber an opportunity to vote for this amendment who would not otherwise vote for it.

I thank the distinguished Senator from Arkansas for yielding.

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

Mr. BUMPERS. I yield.

Mr. HART. If I correctly understand the argument of the Senator from Arkansas on this amendment, it is as follows: It is a chancy, if not dangerous, proposition to amend the Constitution of the United States. But if we are going to amend the Constitution of the United States, we should at the same time deny, for all practical effects, access of citizens and organizations in our society to the courts of the land to challenge the provisions of this constitutional amendment. Is that correct?

Mr. BUMPERS. It is correct, to this extent: Except such rights as Congress shall give by legislation subsequent to the ratification of the amendment.

Mr. HART. Subsequent to the ratification of the amendment.

Mr. BUMPERS. That is right.

Mr. HART. But this amendment does not spell out suits where citizens have standing.

Mr. BUMPERS. The Senator is correct.

Mr. HART. I gather that the Senator would agree that, as dangerous as it is to amend the Constitution, it is even more dangerous to amend the Constitution and then deny to the citizens of this country the right to challenge the constitutionality of the behavior of public officials under that amendment.

Mr. BUMPERS. The Senator is absolutely correct; because, in my humble opinion, unless you limit judicial review, there is no possibility of this constitutional amendment ever working.

If you allow every court in this country to entertain challenges, whether it is in the tax court dealing with a revenue question, whether it is in the Federal courts dealing with whether a particular outlay exceeds a balanced budget, this amendment, in my opinion, is absolutely unworkable.

I do not see how in the world it can work anyway. But I certainly do not believe it ever can work if everybody can successfully see who is disenchanted with what Congress has done or who sees some technical violation of their perception of the amendment. If that happens, then I assure you that the amendment does not have any chance of working.

Mr. HART. The net effect of what the Senator is saying is that if we amend the Constitution in the manner of this resolution, to balance the budget, in order to make that amendment work, we must, at the same time, foreclose a fundamental right of American citizens to challenge the constitutionality of the actions of public officials under that amendment.

Mr. BUMPERS. Let me say one other thing.

It is the opinion of this humble Senator-lawyer that the courts, under precedents that exist today, are not going actually to entertain and resolve the kinds of cases the Senator from Colorado has mentioned.

What I am saying is that the court in the past has changed its mind on what is political and what is not. It is my humble opinion that, right now, most every challenge that could be presented will be considered political, but I might be wrong.

Mr. HART. First of all the Senator from Colorado did not talk about any type of suit. I talked about any kind of a range of suits. It was not a specific political question I was talking about.

Frankly, what I am talking about is a suit brought by a citizen of the United States presuming ratification of this amendment which brought into question the constitutionality of the provision of the resolution that could become an amendment to the Constitution having to do with gaging the balance of the budget on a term in the resolution called national income, and we have seen in debate over the past week that no one on this floor can define what national income is nor do they want to.

Mr. MOYNIHAN. Mr. President, will the Senator from Colorado yield for a question?

Mr. HART. After I finish the thought.

So, in effect, what the Senator from Arkansas is saying is to make this constitutional amendment work we have to deny the rights of citizens in this country the ability to challenge in the courts of this country the notion of national income which no Senator on the floor is able to define.

I yield to the Senator from New York.

Mr. MOYNIHAN. I thank the Senator from Colorado.

With deepest regard for the Senator from Arkansas and he knows that there is not a person in this Chamber whose sense of the Constitution I hold in higher respect with regard to his judgment and his commitment. But in this report it states there are not only three algebraic formulas. But there is one paragraph that says the term national income may include and then there are five definitions of this possible meaning, and as a form of not contending anyone will accept one definition, I offered on the floor of the Senate the definition of the Department of Commerce now in place with respect to what national income means. The report says it will be defined by Congress later. But would I be wrong? And I ask either the Senator from Colorado or the Senator from Arkansas. Has the court ever accepted a congressional definition of a constitutional term as final? I believe it has not.

Mr. HART. It has not, to the recollection of the Senator from Colorado. And further and perhaps even more importantly, the Senator from Colorado cannot recall an instance in the history of this Republic where Congress has cut off access to the courts to the judicial branch of government by a citizen of this country to raise the issue.

Mr. BUMPERS. If I may just respond to the Senator from New York, I came to this floor yesterday and engaged the Senator from Utah in a colloquy on this very point because I think if there is anything that is likely to be successfuly challenged, it is this term "national income" which no one seems to know the meaning of.

Mr. MOYNIHAN. I sought to represent it on a blackboard if the Senator will recall.

Mr. BUMPERS. Yes.

Mr. MOYNIHAN. One of many possible definitions.

Mr. BUMPERS. And the committee report not only lists five possible criteria for determining what national income is, but it goes ahead to state two things: No. 1, that the list is not exclusive. No. 2, that it will be whatever Congress decides it shall be. It is not immutable, which means Congress may change yearly its determination as to what national income is. But to get down to the point of someone's right to challenge the determination by Congress of what national income is, it is my belief——

Mr. MOYNIHAN. May we have order, Mr. President?

Mr. HART. May we have order in the Senate?

Mr. BUMPERS. It is my belief that once Congress makes that determination it is not likely to be subject to challenge because of the political question doctrine. I believe that the constitutional scholars in this country would verify this. I believe that if Congress decides, for example, that gross national product is the same thing as national income for the purposes of defining it under this constitutional amendment, if we decide that GNP is what that is I do not believe that anyone could successfully challenge that under current precedents. I am not saying that I like that, and I am not saying that nonretrievability would be a universal rule.

But it is my belief right now that there are very few of those cases that courts will actually hear and decide. But unless we make a specific limitation on judicial reviews, I can tell you that there is a risk that the thousands of lawsuits that will be filed against Congress and members of the executive branch will bring Government to a halt.

Mr. RUDMAN. Mr. President, will the Senator from Arkansas yield for a question?

Mr. BUMPERS. Let me yield to the Senator from New Hampshire.

Mr. RUDMAN. I thank the Senator from Arkansas.

I believe that the Senator from Arkansas stated that this amendment embodied three other amendments including the Gorton-Rudman amendment.

Mr. BUMPERS. I apologize. It is not precisely the language of the Gorton-Rudman amendment.

Mr. RUDMAN. I believe the amendment of the Senator from Arkansas has a good deal of appeal and the Senator from Colorado and the Senator from New York raise I think very valid points.

The point raised, of course, questions what we would do about definitional controversies which normally exist with statutes and probably in this case constitutional amendments. Let me point out to the Senator from Arkansas that amendment 2005 introduced by the Senator from Washington and the Senator from New Hampshire contained this language:

> Except for cases of controversies seeking to define the terms used herein or directed exclusively and implementing legislation adopted pursuant to section 5.

I submit to the Senator from Arkansas that would probably cure some of the concerns expressed by the Senator from Colorado and others.

Mr. BUMPERS. I would be willing to modify my amendment. My amendment actually goes further in excluding the right to challenge this than did the Senator's amendment.

But I do not believe the Senator from Colorado voted for the Senator's amendment either. So I am not sure we picked up his vote with that change.

SEVERAL SENATORS. Vote. Vote.

Mr. THURMOND. Mr. President, is the Senator willing to yield back his time?

Mr. HART. Could I ask the Senator from Arkansas a further question? Earlier today the Senator from Colorado introduced into the RECORD the testimony of Laurence Tribe, professor of constitutional law at Harvard University, delivered today before the House Committee on the Judiciary.

On page 13 of that testimony Professor Tribe says as follows:

> The Federal taxpayers claiming that Congress was raising and spending taxes in violation of the new amendments expressed restrictions on the spending and taxing powers of Congress could certainly obtain standing under the case of *Flast* v. *Cohen* cited as 392 U.S. 831-968.

It is the opinion of the constitutional authority at Harvard University Law School that taxpayers would have standing to raise the issues that the Senator from Arkansas I believe just said that they would not. Does the Senator from Arkansas agree or disagree with that?

Mr. BUMPERS. I apologize. Would the Senator restate that? Do not read the whole thing over. Just summarize it.

Mr. HART. Professor Tribe at Harvard Law School says, citing a 1968 Supreme Court case, that Federal taxpayers would have standing, would presently have standing, to challenge the Congress decisions under this amendment about raising and spending taxes in violation of this amendment's restrictions on that power. In other words, the Supreme Court has ruled as recently as the last 14 years that taxpayers would have such standing.

What the Senator's amendment would do is take that standing away, if I understand it correctly.

Mr. BUMPERS. The Senator is correct.

Mr. GORTON. Mr. President, will the Senator yield?

Mr. BUMPERS. I would be happy to yield.

Mr. GORTON. The Senator is delighted to say he is precisely in agreement with that testimony of Professor Tribe, and it was to prevent that rather obvious course of action that the Senator from New Hampshire and I introduced our amendment last week. It was to cure exactly that problem that the Senator from Arkansas has included a similar although not identical provision in the amendment before us.

Mr. HART. I see. So the idea is to amend the Constitution of the United States and the problems that it creates such as concerned citizens not believing the Congress is living up to the constitutional restrictions one way or the other, that problem is to be taken away by further amendment to the Constitution to take away their right to bring suits in court.

Mr. GORTON. The concern that both the Senator from Arkansas has expressed and this Senator has expressed that in changing rules relating to the way in which the budget is adopted we not inadvertently cause a very substantial shift in the separation of powers away from the Congress of the United States in the direction of the courts. It is a conservative amendment in the sense that at the present time, given the present Constitution, courts, by and large, do not enter into the budget-making process.

The Senator from Arkansas, echoing what we said earlier, simply wishes to continue that 200-year precedent even though this constitutional amendment should become a part of our basic document.

Mr. HART. So it is the decision of the Congress of the United States to make the Constitution an economic document, and then say to the taxpayers, and the citizens of this country that they will not have standing in the courts of the United States to challenge the constitutionality of the operation of that economic behavior. I think that is the most outrageous argument I have ever heard.

Mr. BUMPERS. Let me say again what I have said. I am not saying they will not have any standing, but saying only that they will have the standing Congress sees fit to give them.

Mr. HART. If it sees fit to give it to them.

Mr. BUMPERS. Article 3 of the U.S. Constitution says there shall be a Supreme Court and such inferior courts as Congress sets up, and Congress sets up the courts.

Mr. HART. That is setting up courts; it is not talking about who has access to these courts.

We are going to make the Constitution of the United States an economic document and then tell the taxpayers and the citizens of this country they cannot sue under that economic document. That is the best argument I have ever heard against this constitutional amendment. If you have got to deny access to the courts to the people of this country because of what you are doing to the Constitution, that is the best argument not to adopt this resolution.

Mr. MOYNIHAN. Mr. President, will the Senator from Arkansas yield for a question?

Mr. BUMPERS. I would be happy to yield.

Mr. MOYNIHAN. I cannot too often restate my affection and regard for him in this matter, but is it not the case that this would be the first amendment ever to the Constitution which the Congress, by a vote, could suspend to what idea about the Constitution that 60 Members of this body might judge that a part of the Constitution does not obtain? Second, in support of the Senator from Colorado, we have had Marbury against Madison, the elemental fact that the Supreme Court will judge the meaning of the Constitution. How can we presume, after nearly two centuries, to deny the Court that most elemental of American liberties?

Mr. HART. The Senator from New York has put his finger right on the crux of the problem. I would ask the Senator from Arkansas this question: Would the amendment, if adopted, prevent a citizen of this country from

raising the issue of the constitutionality of the amendment itself?

Mr. BUMPERS. Absolutely not.

Mr. GORTON. Mr. President, will the Senator yield? This is a part of the Constitution. There is no challenge to the constitutionality of a part of the Constitution.

Mr. HART. I differ with the Senator on that.

Mr. BUMPERS. Someone might raise the question of constitutionality because it was not ratified correctly or some such thing as that. Of course, anybody could raise that.

Mr. BIDEN. Mr. President, will the Senator yield?

Mr. BUMPERS. Yes.

Mr. BIDEN. The Senator from Colorado's last question is like asking, can, in fact, the Congress deny the right of a citizen to challenge the constitutionality of the 14th amendment? How in the world can a citizen challenge the constitutionality of the constitutional amendment? I mean, talk about preposterous statements——

Mr. BUMPERS. That is the point the Senator from Washington is raising.

Mr. BIDEN. I know. I just want to raise another question. You know, the later the evening gets, the more ridiculous this whole discussion becomes.

Mr. GORTON. Mr. President, will the Senator yield?

Mr. BUMPERS. Yes, I would be happy to yield.

Mr. GORTON. From what the Senator from New York pleads, he made an impassioned plea that this was an entirely unprecedented course of action. I beg to read to the Senator from New York the 11th amendment. It says:

> The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

This has a precedent which is almost 200 years old, I will say to the Senator from Arkansas.

Mr. BUMPERS. The Senator is very perceptive. That is entirely correct. The answer to the Senator from New York's question is, yes, we have done it before. In the 11th amendment, we said no citizens of one State may bring an action against another State of which they are not citizens or residents.

Mr. MOYNIHAN. Could I not ask my revered friend that the first 10 and, as a matter of fact, the 11th and also the 12th amendments have to do with the sorting out—and the 13th as well, the sorting out—of the arrangements of the new Government in its very early years, and we have not ever since dealt in this body in this document, in this—it is truly a sacred document and, as he, the Senator from Arkansas said, and as we know to be true, not above the Bible itself is there, beyond the Bible is there, a more sacred document—we have dealt with the rights of Americans and the powers of Government, with one small unhappy interlude with respect to a past time given to some and not to others, but we have dealt with the powers of Government and the rights of citizens, and now we introduce an ephemeral enthusiasm of the ladies and gentlemen opposite, which is to be encompassed in the basic doctrine of our land and not to be subject to challenge in court.

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

Mr. BUMPERS. The answer to that question from the Senator from New York is yes, under this amendment.

Mr. BIDEN. Let me begin by saying that I think this whole amendment, the more I have listened to it—not the amendment of the Senator from Arkansas but the constitutional amendment that is not clear to all of us—is not very workable.

Mr. MOYNIHAN. Mr. President, may we have order?

Mr. BIDEN. That is all right; I am accustomed to it.

The PRESIDING OFFICER (Mr. ARMSTRONG). The Senator from New York and the Senator from Delaware will suspend.

Mr. BIDEN. I quite frankly do not care whether the Senate is in order while I speak, as long as the official reporter gets what I am saying.

The point that I want to make, though, is very simple, and that is that we really are carrying out objection to the basic amendment, the underlying constitutional amendment, to the point of absurdity.

The fact of the matter is, there is precedent—the 11th amendment is the precedent.

The Senator from New York, who is one of the most persuasive and articulate Members of this body—possibly one of the most persuasive and articulare Members who has ever served in this body—has said, was not the Senator from Arkansas' argument—was not the 11th amendment defining the relationship of the branches of Government—I wish I could say it with the same inflection—the fact of the matter is, this is doing that. Is not this amendment, which is an ill-considered amendment, but is not this constitutional amendment attempting to define the relationship between the branches of Government as it relates to who has the budgetary authority? We are, in fact, not proscribing a right that the Supreme Court now has; we are just saying "You are not going to get a new one."

We are defining who holds what power. And we are saying to you, as we said in the 11th amendment, "You can not play in this game. You are not in. We are not dealing you in."

So there is nothing so wrong about that, but for the fact the amendment itself is wrong. That is the only problem with this. We are attaching a reasonable amendment to an unreasonable concept. The unreasonable concept is that you can define balancing a budget. That is the unreasonableness of this.

So let us not confuse reasonable arguments attached to unreasonable concepts with unreasonable arguments attached to unreasonable concepts.

This is a reasonable argument attached to an underlying amendment that is fatally flawed.

Mr. BUMPERS. I thank the Senator. And I yield back the remainder of my time.

Mr. THURMOND. I yield back my time.

The PRESIDING OFFICER. All time having been yielded back, the question is on agreeing to the amendment of the Senator from Arkansas (Mr. BUMPERS). The yeas and nays have been ordered and the clerk will call the roll.

The legislative clerk called the roll.

Mr. STEVENS. I announce that the Senator from Minnesota (Mr. DURENBERGER), the Senator from Arizona (Mr. GOLDWATER), and the Senator from Vermont (Mr. STAFFORD) are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber wishing to vote?

The result was announced—yeas 32, nays 65, as follows:

[Rollcall Vote No. 285 Leg.]

YEAS—32

Bentsen	Ford	Mitchell
Biden	Gorton	Nunn
Bradley	Heinz	Pell
Bumpers	Hollings	Pryor
Byrd, Robert C.	Huddleston	Randolph
	Inouye	Riegle
Cannon	Jackson	Sarbanes
Cohen	Levin	Sasser
Cranston	Long	Specter
Dixon	Mathias	Tsongas
Eagleton	Matsunaga	Weicker

NAYS—65

Abdnor	Exon	Melcher
Andrews	Garn	Metzenbaum
Armstrong	Glenn	Moynihan
Baker	Grassley	Murkowski
Baucus	Hart	Nickles
Boren	Hatch	Packwood
Boschwitz	Hatfield	Percy
Brady	Hawkins	Pressler
Burdick	Hayakawa	Proxmire
Byrd, Harry F., Jr.	Heflin	Quayle
	Helms	Roth
Chafee	Humphrey	Rudman
Chiles	Jepsen	Schmitt
Cochran	Johnston	Simpson
D'Amato	Kassebaum	Stennis
Danforth	Kasten	Stevens
DeConcini	Kennedy	Symms
Denton	Laxalt	Thurmond
Dodd	Leahy	Tower
Dole	Lugar	Wallop
Domenici	Mattingly	Warner
East	McClure	Zorinsky

NOT VOTING—3

Durenberger	Goldwater	Stafford

So Mr. BUMPERS' amendment (UP No. 1174) was rejected.

Mr. THURMOND. Mr. President, I move to reconsider the vote by which the amendment was rejected.

Mr. DECONCINI. I move to lay that motion on the table.

The motion to lay on the table is agreed to.

Mr. THURMOND. Mr. President, we are ready for the next amendment if Senator BIDEN is ready to present it.

The PRESIDING OFFICER. The Chair requests that Senators refrain from conversation. We are having difficulty hearing the discussion from the floor.

Does the Senator from Delaware seek recognition?

Mr. BIDEN. Yes, I do, Mr. President.

The PRESIDING OFFICER. The Chair will be pleased to recognize the Senator momentarily as soon as order is restored.

UP AMENDMENT NO. 1175

Mr. BIDEN. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Delaware (Mr. BIDEN) proposes an unprinted amendment numbered 1175.

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

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

The amendment is as follows:

On page 2, line 10 strike all through page 4, line 14 and insert in lieu thereof the following:

"ARTICLE—

"SECTION 1. (a) Total outlays of the Government of the United States during any fiscal year shall not increase at a rate greater than the rate of increase in the gross national product in the last calendar year ending before such fiscal year, unless Congress by a vote of three-fifths of the whole number of both Houses shall have authorized a specific additional amount of outlays for such fiscal year.

"(b) The allowable rate of increase in outlays for any fiscal year set by subsection (a) shall be reduced, if the rate of inflation in the preceding calendar year is greater than 6 per cent, by one quarter of the amount by which the inflation rate exceeds 6 per cent.

"SEC. 2. Congress may waive the provisions of this Article for any fiscal year in which a national emergency declared by the President or the Congress is in effect.

"SEC. 3. Total outlays shall include all outlays of the United States except those for repayment of debt principal.

Renumber SEC. 6, "SEC. 4".

Mr. BIDEN. Mr. President, to the pleasure, I hope, of my colleagues, rather than taking an enormous amount of time, I shall limit my debate on this amendment to 5 minutes.

Mr. STENNIS. Mr. President, may we have order? Let us listen for 10 minutes, at least.

Mr. BIDEN. I shall try very hard to limit my remarks to 5 minutes so we can all go home. Anybody who wants a ride to Delaware with me after that is welcome to come.

Mr. President, my amendment is a fairly stark departure from the constitutional amendment that we have before us. It is, in essence, a substitute. Although it is a modification technically, it is a substitute.

I came to the floor, notwithstanding the doubt in the mind of my good friend from New Mexico about my sincerity on the issue, hoping that what I believe to be a flawed amendment from the Judiciary Committee could be corrected. I believe it could have been corrected and made workable if, in fact, we were able to adopt several of the amendments, one of which was something other than a declaration of war being required to obviate the need for the supermajority, one of which relates to the courts. There were several of them.

Without going into a great deal of detail, one thing we have all figured out today, particularly with the adoption of the Armstrong amendment, is that there is really no great point of reference in this amendment to determine what estimates mean, what they are, what they constitute, whether or not this is, in fact, even remotely moving us toward a balanced budget.

The Senator from New Mexico just struck a responsive chord in me when he said the two reasons for this amendment are to shift the bias, so that it is a bias against more spending and against higher taxes. He left out the notion of a balanced budget.

Now I understand why, because it is really not workable. It cannot be done. You cannot get from here to there. So, Mr. President, what I did is go back.

We have—I am not being facetious—a very progressive and very good Governor in my State, named Pierre DuPont, who testified before Budget Committee field hearings. In those hearings—I shall in a moment ask unanimous consent that his entire statement be put in the RECORD. In those hearings, he said, with regard to controlling Government spending:

And so the suggestion I would like to make to you gentlemen this morning is that the Federal budget process might come under better control if there were: First, legislative; and then, constitutional spending controls. I believe we must have a constitutionally mandated spending growth restraint mechanism and until we do, you're not liable to solve the very difficult problem that we have.

And it is a difficult problem. And it is one in which I think you need some help to solve. I am not talking about a balanced budget requirement. That would be unworkable, undefinable and, in any case, if you balance the budget at extremely high rates of taxation and spending you are not going to help yourself because that problem will be just as bad as the problem we have today.

I am not talking about a balanced budget requirement. I am not talking about a constitutional convention of any kind. I think that would be an enormous mistake.

He goes on from there.

Mr. President, I ask unanimous consent that the entire statement of Governor DuPont be printed in the RECORD.

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

STATEMENT OF HON. PIERRE S. DUPONT, GOVERNOR OF THE STATE OF DELAWARE.

Governor DUPONT. Senator Biden, Senator Gorton, I appreciate the opportunity to be with you this morning. I congratulate the Budget Committee on taking its hearing process out into the field and, in fact, I was not aware that you even had such a process, but I appreciate the fact that you do, the fact that I was invited to participate and the opportunity to talk a little bit about the problem that I think we have and make a suggestion as to how we might perhaps come to grips with that problem a little more effectively than we have in the past.

Certainly our economy has become in the last two years the subject of an unprecedented debate. I don't reccall in my time in the Congress, or as Governor, years in which the Federal budget was of greater concern. Everyone is talking about it. Everyone is concerned about it and the public is beginning to put the budget under a magnifying glass and scrutinizing every aspect of it extremely carefully.

I think it is healthy. I think it is long past due. I think it is clear that inflation rates and interest rates, savings and investment rates, unemployment rates and tax levels are all too high and it is past time to consider as a country whether we want to continue the same kind of budget process and the same kind of program we had in the past or whether it isn't time to take a fresh look and perhaps begin a new approach.

The American people decided in 1980 that we ought to take a look at the process, and that is what you gentlemen are engaged in today and, as I say, I think it is a very healthy thing that we are engaged in this debate. I come at the problem from a somewhat different perspective than you do because it is not my assignment to try to put the Federal budget together, or to vote on it, or to offer specific amendments changing this section or that section.

So I would like to step back if I might and take a little bit longer view and I would like to present to you a brief commentary on where I think we are in terms of the budget and the process and then a specific suggestion that I think might help change the direction that the country has been going in that has caused us to have this debate in the first place.

And I would add that in terms of specifics—you are going to hear from a lot of witnesses in the next few days—most particularly, later today Schramm, our Secretary of Health and Social Services, is going to make a detailed presentation about her budget, and I think that is the budget that is most significantly affected by the President's proposals for 1983 and she will have chapter and verse of how the process is going to affect the health and social service programs that impact the people of Delaware.

So we are here today to take a look at the Federal budget, the steering mechanism by which the government directs the spending of our money and the future economic force

of our country. I think a lot of people have concluded over the past few years that the budget mechanism is out of synch and it is out of alignment with the state objectives that we have for our economy; stable prices; maximum employment; available credit; and steady economic growth.

Looking at the budget process over the past several years, it seems to me that one of its major flaws is its institutional bias that permits higher and higher taxes, higher and higher spending, and higher and higher deficits. It is the process that I think may hold hope for the solution to these problems.

Certainly Congress has tried a number of approaches and when I was there we passed a new budget process which all of us believed was going to substantially improve the entire budgeting process, but it hasn't really worked very well to achieve some of those basic goals.

By way of illustration, just look at the recent trend in deficit spending of the country. In the decade of the 1950s, the total budget deficits came to $27.5 billion over the ten years. In the sixties it rose to $60 billion. In the seventies to $300 billion. And in the first four years, including fiscal year 1983, of the 1980s, that deficit will aggregate almost $290 billion. And, of course, in fiscal year 1983 alone, as Senator Gorton just pointed out, we are talking of a deficit somewhere in excess of $100 billion.

Clearly, that is a problem. Sustained annual deficits of the magnitude of 90 or $150 billion present an enormous difficulty for the economy. I don't believe and I would guess you would concur that economic recovery is going to come to pass until we come to grips with those deficits, until we start reducing them and at least give a signal that we are serious about bringing them under control.

While we have deficits of that size we are going to have reduced investment, interest rates are going to stay high. If the choice is to monetize the debt, inflation rates will continue to stay high and economic growth is likely to remain very slow and sluggish.

Clearly we can't let this trend of $27 billion in the decade of the fifties and then $60 billion, and $300 billion and perhaps eight or $900 billion in the decade of the eighties continuing. How are we going to break the cycle? How are we going to change what I think everyone agrees is a continuing persistent 20-year pattern of spending more money than we are taking in?

It seems to me that that is the central problem of our economy and of the budget process today. Well, it seems to me that we might begin to solve the problem if we began to improve some of the machinery of fiscal management. We might begin to look at perhaps some of the weaknesses of the budget process itself.

And I speak with a little bit of knowledge on a much smaller scale of a similar problem because Delaware itself faced some similar economic problems to the ones that we are now facing on the national level. The Delaware economy is not the United States economy and the differences are more than six zeros tacked on to the end.

But I do believe we might have something to contribute because we have had some experience in his particular State at the State level that I think might have a useful analogy on the Federal level.

In the middle of the 1970s, Delaware was going through a very difficult economic period. We had the lowest bond rating of any State in the country. Five of our first seven years in the decade we ran serious operating deficits. In 1976 we were rolling over short-term paper in the amount of $150 million on a budget of less than $450 million. During the recession years of '74 and '75 our employment and income losses far exceeded those of the nation.

And a review of those desolate years would never have predicted the current stability or growth that we are enjoying now that we are into the 1980s. We were going through, just as America is now going through, a period of sustained high unemployment, high debt cost, sluggish economic growth and we were borrowing at an unprecedented rate.

When we came to grips with these problems we devised a broad financial and budget management program that began to strengthen our economy. Governor Tribbitt, just before he left office, took the first step by putting some limits on capital spending authorizations. We followed up tightening up on those even more.

We have consistently reduced per capita debt. We have taken the cost of debt service from 16 cents on the dollar in 1976 to 11 cents on the dollar this year. But central to the theme of our financial success story has been our ability to reduce the growth of State spending and this is where I think the Federal analogy applies.

The essential mechanism by which we accomplished this are two constitutional amendments: One, to limit and restrain our spending authority; second, to put legal limits on our taxing authority. These external controls on our budget process are not absolute prohibitions but they do set guidelines for us to follow and require our legislative process to set some priorities.

They restrict our freedom to continually tax and spend without regard to future consequences. They put a ceiling on our spending so that each year in the legislature the issue becomes how to slice the pie, not how to increase the size of the pie to accommodate all those who would like a larger slice.

And the result of these constitutional amendments has been for balanced budgets, no short-term debt, a nine percent tax cut, a bond rating that has gone up four times, the only State in America whose unemployment rate went down in 1980 instead of up, and in the middle of 1981 we stood third in the Nation in the rate of growth of personal income. I don't believe any of that would have come to pass but for the central concept of our new program which was a constitutional spending one.

And so the suggestion I would like to make to you gentlemen this morning is that the Federal budget process might come under better control if there were: First, legislative; and then, constitutional spending controls. I believe we must have a constitutionally mandated spending growth restraint mechanism and until we do, you're not liable to solve the very difficult problem that we have.

And it is a difficult problem. And it is one in which I think you need some help to solve. I am not talking about a balanced budget requirement. That would be unworkable, undefinable and, in any case, if you balance the budget at extremely high rates of taxation and spending you are not going to help yourself because that problem will be just as bad as the problem we have today.

I am not talking about a balanced budget requirement. I am not talking about a constitutional convention of any kind. I think that would be an enormous mistake. I am talking about a congressionally-enacted statute followed by a constitutional amendment to limit the growth of Federal spending.

The growth limit ought to be based on the outlays of the previous year adjusted upwards by GNP growth and downwards by some kind of an inflation penalty. You need simple majorities to solve the emergency problem. Perhaps an override for a particular year by a 60 percent vote. Perhaps an emergency one-time increase by a three-quarter vote of the Congress and some people have suggested that if you are under a declaration of war you could suspend the process entirely and that might be fine as well.

It is not simple. The definitional problems are complex. The mechanism for putting the whole process into place is difficult. The Congress and the President together have demonstrated for the past 20 years that spending, and tax increases, and deficits are going to continue to grow until we have some kind of restraint.

And I think if we had that kind of a process that the problems that we have seen over the past 20 years could be substantially mitigated. I very much support the concept of the President's economic recovery program, of tax reduction, and spending reductions, and additional resources to national defense.

I think for too long we have relied on higher and higher taxes and higher and higher spending, and the resulting increased deficits, and I think it is time to change direction. But you have a tough time changing that direction, and let me make a suggestion as to how you ought to approach the problem overall.

Clearly a $100 billion deficit is too high. Clearly we are not going to get an economic recovery of any kind until that problem is dealt with. And a key to reducing that deficit, it seems to me, is in allocating responsibility all across the board. We have approached the problem perhaps from the wrong perspective.

The President in his program seems to have suggested that first we are going to cut taxes by so much; second, we are going to raise the defense budget by so much; third, we are going to leave the entitlement programs just as they are; and fourth, we are then going to balance the budget by reducing everything else as much as we have to.

I don't have the exact figures but, when you take entitlements and defense you are somewhere up over 70 percent of the budget.

Senator GORTON. Closer to 80.

Governor DUPONT. Closer to 80. And, in fact, I don't think coming at the problem from that point of view is going to work. It seems to me that you have to allocate part of the solution of your problem to defense, to taxes, to entitlements and to the other spending programs as well. Perhaps not all equally but at least in the perception that it is being accomplished fairly and at least in fact there are some changes being made in all programs.

Defense clearly has to be increased because of the neglect of the past decade. But perhaps not as much as programs. Tax reductions, particularly the business oriented tax reductions that were hung on the Christmas tree when the bill got to the floor, ought to be re-examined.

Personally, I would be opposed to postponing personal tax reductions because those reductions for the average American taxpayer have been very small and I think

we have been overtaxed as people of this country, so I would leave that portion of it alone.

As to entitlements, it seems to me we are not going to come to grips with the problem until the growth of those entitlement programs is somehow limited, and that too, to be fair, must be across the board. All the programs must be affected.

Finally, of course, the balance of the program should take their fair share of the reductions, but in regard to State and local help, I would say that we went from $84 billion in fiscal 1980 to $60 billion in fiscal 1982, the current year, and the President's budget calls for even further reductions. Going from 84 to 60, a 25 percent reduction, is certainly our fair share of the reductions so I would suggest that perhaps we ought to start to look at some of the other areas before taking reductions there.

In short, I think we have a significant institutional problem in our budget process. We have a process that is designed to spend more money. We need a process that is turned around, that is designed to stop spending more money and try to bring spending growth under control.

I believe with the constitutional spending growth limit we could do that. I believe that would be beneficial for you all in the Senate and the Congress because I know how difficult it is when the folks come from home and ask for more money for a particular program. This would give you an argument to say, "Well, I would like to help but, look, we have this spending limitation and we have to live within it."

Secondly, I believe it would reduce the deficits. And thirdly, if we accomplish that it will start us on the road to much more significant real growth in the economy and that * * *.

Mr. BIDEN. The point the Governor makes, and I might add, I found out after doing a little research, the Senator from Pennsylvania (Mr. HEINZ) had a similar amendment that really gets at the crux of the problem in a more reasonable way. Instead of trying to go through the elusive process of balancing the budget, which we all acknowledge we will not even be able to estimate—and I acknowledge that GNP is not a precise mechanism. This says, "total outlays of the Government of the United States during any fiscal year shall not increase at a rate greater than the rate of increase of the GNP in the last calendar year," and so on.

So you have a measure. You do not have to sit and guess whether or not revenues are coming in from oil reserves on Federal land. You do not have to guess whether or not there is going to be flood, famine, whatever. You know what happened the year before. So what you do is tie in the amount of money that the Federal Government can spend to, in fact, the growth of the GNP.

Then it says—if the Senator calls for a vote again, I shall speak for an hour-and-a-half—"the allowable rate of increase for outlays in any fiscal year set by the subsection I just read shall be reduced if the rate of inflation in the preceding calendar year is greater than 6 percent," and so on. The point is that there are two yardsticks: Last year's inflation rate and last year's growth, in order for us to have some sense of where we want to go this year; rather than go through what is a charade of being able to accurately guess what the performance of the economy is going to be in the upcoming year.

There is much more to say, but I shall not say any more, except to conclude with a comment I made earlier today.

I say to Members of the Senate that the folks out there do not have a lot of faith in us. They think we do not know what we are doing. I do not understand how they came to that conclusion, but they do not have a whole lot of faith in us. They do not believe what we tell them, and they do not need another shot at what they will view as chicanery. They are all hepped up. They want a balanced budget amendment. And really what they want is what the Senator from New Mexico said. They want to cut the growth of taxation and they want to cut the growth of spending.

This is a reasonable thing to want, but we have told them the way we are going to do this is through a balanced budget amendment.

We are going to pass this constitutional amendment, and what minimal reservoir of good faith remains in the American public about the collective wisdom of this body will be dissipated incredibly rapidly because along comes 1985 or 1986. The amendment is now law, we have a $300 billion deficit or a $100 billion deficit or any other deficit, and they are going to say, "See, none of it matters even when you put it in the Constitution."

I will cease now. That is all I have to say.

The PRESIDING OFFICER. Does the Senator yield back his time?

Mr. BIDEN. I yield back all my time, assuming the other side is not going to take more time than I did.

Mr. THURMOND. Mr. President, the Senator has offered an amendment as a substitute for the constitutional amendment we have been considering now for a number of days. We have studied this amendment, and we do not think it is superior to the amendment that we have. In fact, we think it is inferior to the amendment we have.

I am not going to take more time of the Senate. I yield back my time so we can vote.

The PRESIDING OFFICER. The question now is on agreeing to the amendment proposed by the Senator from Delaware.

Mr. BIDEN. 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.

The PRESIDING OFFICER. All time having been yielded back, the clerk will call the roll.

The legislative clerk called the roll.

Mr. STEVENS. I announce that the Senator from Minnesota (Mr. DURENBERGER), the Senator from Arizona (Mr. GOLDWATER), and the Senator from Vermont (Mr. STAFFORD) are necessarily absent.

Mr. CRANSTON. I announce that the Senator from Louisiana (Mr. JOHNSTON) and the Senator from Louisiana (Mr. LONG) are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 10, nays 85, as follows:

[Rollcall Vote No. 286 Leg.]

YEAS—10

Biden	Inouye	Randolph
Cranston	Jackson	Tsongas
Eagleton	Matsunaga	
Ford	Metzenbaum	

NAYS—85

Abdnor	Exon	Moynihan
Andrews	Garn	Murkowski
Armstrong	Glenn	Nickles
Baker	Gorton	Nunn
Baucus	Grassley	Packwood
Bentsen	Hart	Pell
Boren	Hatch	Percy
Boschwitz	Hatfield	Pressler
Bradley	Hawkins	Proxmire
Brady	Hayakawa	Pryor
Bumpers	Heflin	Quayle
Burdick	Heinz	Riegle
Byrd, Harry F., Jr.	Helms	Roth
	Hollings	Rudman
Byrd, Robert C.	Huddleston	Sarbanes
Cannon	Humphrey	Sasser
Chafee	Jepsen	Schmitt
Chiles	Kassebaum	Simpson
Cochran	Kasten	Specter
Cohen	Kennedy	Stennis
D'Amato	Laxalt	Stevens
Danforth	Leahy	Symms
DeConcini	Levin	Thurmond
Denton	Lugar	Tower
Dixon	Mathias	Wallop
Dodd	Mattingly	Warner
Dole	McClure	Weicker
Domenici	Melcher	Zorinsky
East	Mitchell	

NOT VOTING—5

Durenberger	Johnston	Stafford
Goldwater	Long	

So Mr. BIDEN's amendment (UP No. 1175) was rejected.

Mr. THURMOND. Mr. President, I move to reconsider the vote by which the amendment was rejected.

Mr. BAKER. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 1945

Mr. CRANSTON. Mr. President, I call up my amendment No. 1945 and ask that it be made the pending business for tomorrow.

Mr. FORD. Mr. President, if the distinguished Senator from California will withhold, I need 60 seconds or he can do this and then ask a question.

Mr. CRANSTON. Could I do this now and then yield to the Senator?

Mr. FORD. Certainly. I do not wish to lose my right.

The PRESIDING OFFICER. The amendment will be stated.

Mr. HATCH. Mr. President, reserving the right to object, there may be one other amendment before the Cranston amendment. So I would have to object.

Mr. BAKER. The Senator may not object.

Mr. HATCH. They may call it up as a matter of right.

There may be another amendment in addition to the Cranston amendment.

The PRESIDING OFFICER. The Chair is having difficulty hearing the Senator.

Mr. THURMOND. Speak louder.

Mr. HATCH. There may be another amendment in addition to the Cranston amendment.

I wish to preserve that right. The Senator wishes to call up his amendment. Then we wish to ask unanimous consent that there be a right to call up one further amendment before the final vote.

Mr. BAKER. Mr. President, I believe I am correct, am I not, in saying that there is no unanimous-consent order in respect to this but rather an announcement that on tomorrow the arrangement would be the Cranston amendment plus final passage? Is that not correct?

The PRESIDING OFFICER. The Senator is correct. No unanimous-consent agreement has been entered into.

Mr. BAKER. This evening a few moments ago certain Senators who were involved in the so-called Armstrong-Boren amendment indicated that they might have a further amendment. I encouraged them to offer that amendment this evening if possible, in order to preserve the arrangement which had been proclaimed for tomorrow rather extensively and over some period of time.

It is my impression that they decided against offering that amendment and I, of course, cannot speak for them. If they decide to call up an amendment then I suppose they can do that.

But it had been my hope that if such an amendment were going to be offered it would be offered this evening and not in the morning and when I released our people and indicated there would be no more RECORD votes tonight it was on the basis I had been told that that amendment would not be offered.

Once again if there is to be an amendment on this I hope that there will be some possibility of doing that yet this evening. But we are in a bad situation now because we cannot have a rollcall vote on that this evening.

I am willing to abide by whatever arrangement the Members of the Senate wish to make.

But I wanted to make that observation so that no one might misunderstand and think there had been any cross wires on the arrangement that had been announced heretofore.

Mr. ROBERT C. BYRD. Mr. President, I appreciate what the majority leader has said.

The understanding was, although it may not have been ordered strictly by word, the understanding was that all amendments would be disposed of today, with the exception of an amendment by Mr. CRANSTON, and there would be 1 hour on that amendment. I understood he had 2 hours, and was willing to give up one of the hours. Then we would have 2 hours of debate on the constitutional amendment, and the majority leader and I discussed that yesterday. We entered into an agreement. I am sure that was my intent, my understanding of the agreement we entered into. I cannot speak for the majority leader but I feel that my understanding is—that he understood that that was our agreement.

I would hope there would not be another amendment now called upon tomorrow in addition to the Cranston amendment because the understanding was the Cranston amendment, which was the substitute the minority whip has been working on all along, would be the only amendment that would be voted on tomorrow.

If that agreement, if that understanding, is going to be breached, then I think other Senators would have a right to call up an amendment also if they so wish.

I would just hope, as the majority leader has expressed the hope, that we could stick to that understanding because it clearly was the intent and understanding. I had no idea there would be any effort to call up an amendment tomorrow or I would have sought to, in talking with the distinguished majority leader, tie the agreement down to the point that there would be no doubt. That is all I have to say.

(The following proceedings occurred after midnight:)

(Mr. HATCH assumed the chair.)

Mr. ARMSTRONG. Just an observation so there would be no misunderstanding. First, there had been some discussion of whether or not an amendment may be offered which would affect the Armstrong-Boren-Hollings-Quayle amendment. I do not know whether any such amendment will be offered nor whether if such an amendment is offered I would support it, but I did take the trouble to inquire at the desk whether or not a unanimous-consent agreement had been entered into which would preclude my right or the right of other Senators to offer such an amendment.

I did so in preparation for discussions with Mr. QUAYLE and Mr. BOREN, and we were given to understand that no agreement had been entered into. We were not, I guess, aware of the informal understanding. We were aware that the Senator from California (Mr. CRANSTON) had an amendment and it was the last major amendment that was scheduled, and that we had a 12 o'clock deadline. But what we wanted to be sure of was that we had not forfeited in any way the right to offer an amendment tomorrow.

I just want to clarify, first, if we had inadvertently trespassed on an understanding, it was purely by not being aware of it. We sought counsel at the desk as to what consent agreement had been entered into.

Frankly, I do not know whether or not we will have an amendment. If we do it will take little or no time. It would be either something that all of us could agree on or it would be agreeable to everybody, and it would not require extensive debate.

So with that explanation, Mr. President, Senators should be on notice that there may be an amendment to be offered maybe by the Senator from Utah or the Senator from Colorado. But in any case we apologize if we have trespassed on some private understanding.

Mr. BAKER addressed the Chair.

The PRESIDING OFFICER. The majority leader.

Mr. BAKER. Mr. President, I understand the remarks of the Senator from Colorado and I appreciate them. It really was not a private understanding though, it had been discussed at some length on the floor and publicly.

Mr. ARMSTRONG. I understand.

Mr. BAKER. But it is true, as he points out, no unanimous consent agreement was entered into. I am at fault, perhaps, in releasing our people because I pressed hard earlier tonight to suggest that if such an amendment was going to be offered that it be offered tonight rather than in the morning. There is no requirement that it be offered tonight instead of in the morning, but rather in order to preserve the arrangement that had been announced for tomorrow.

When I received word from another Senator, not the Senator from Colorado but another Senator principally involved in this amendment, that the amendment would not be offered tonight, I assumed that that meant the amendment would not be offered at all. If I was in error in that respect I apologize for it because had I known otherwise I would not have indicated to our clerks and to the minority leader and his representatives that that would be the last vote to occur this evening. I do not think there is anything we can do about it except to do the best we can.

It is now 1 minute to 12 at night, and——

Mr. BIDEN. Mr. President, will the majority leader yield for a question?

Mr. BAKER. Yes, I yield.

Mr. BIDEN. Does that mean then that those of us who have other amendments who did not forswear bringing them up will be able to bring them up tomorrow?

Mr. BAKER. Yes; any Senator can bring up any amendment, I will say to the Senator from Delaware. There is a general provision, a unanimous-consent order that was entered into some days ago which states that any amendment would have an hour's time limitation. It was some days ago. I do not remember the date.

We agreed that there would be specified amendments with time limitations totaling approximately 56 hours and any other amendment not so specified would be limited to an hour of debate, to be equally divided, and that the rollcall votes would occur not later than 12 noon on Wednesday and not earlier than 12 noon on Tuesday.

I believe I recite accurately the essence of the unanimous consent agreement. But nothing in there says that other amendments will not be in order. Indeed, other amendments are still in order. I hope we do not fall over that cliff, because that could be an endless prospect and we would end up then with that traffic jam that I inveighed against for days on end, that we would end up at 12 o'clock with a dozen amendments and no time for debate.

(Mr. ARMSTRONG assumed the chair.)

Mr. BIDEN. Mr. President, I would agree with that. That is why some of us went pell-mell tonight in short order into their amendments. But if the Senator from Colorado and the Senator from Utah are going to breach what I believe to be a clear understanding that everyone had, then I want to be on record to make it clear that I may have several more amendments tomorrow and I will use the full hour on each of the amendments, assuming I can get the floor.

Mr. BAKER. Mr. President, if I may be recognized, I think the situation as it relates to the rights of Senators has now been proclaimed accurately and clearly and all Senators are on notice that they are entitled to their rights. But they should also know that I think the best think to do is to try to sleep on this overnight and see if we cannot resolve it in the morning.

ORDER TO REDUCE LEADERSHIP TIME ON TOMORROW

Mr. BAKER. Mr. President, while I have the floor, I have discussed this with the minority leader. I ask unanimous consent that for tomorrow only the time allocated for the two leaders under the standing order be reduced from 10 minutes each to 1 minute each and that at the conclusion of that time, that is the time allocated to the two leaders under the abbreviated arrangements, the Senate return to the consideration of Senate Joint Resolution 58.

The PRESIDING OFFICER. Is there objection to the request? Hearing none, it is so ordered.

Mr. BAKER. Mr. President, I, for one, do not think I am in a position to mediate this any further. I will try to work out something overnight, and I will jealously guard and protect the rights of all Senators while, at the same time, hoping that we do not have the dilemma on our hands tomorrow.

BILLS HELD AT THE DESK—H.R. 6454 AND H.R. 6033

Mr. BAKER. Mr. President, I have two unanimous-consent requests that I hope the minority leader has seen and is in a position to consider.

Mr. ROBERT C. BYRD. Yes.

Mr. BAKER. Mr. President, I ask unanimous consent that H.R. 6454 be held at the desk pending further disposition.

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

Mr. BAKER. Mr. President, I ask unanimous consent that H.R. 6033 be held at the desk pending further disposition.

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

Mr. BAKER. Mr. President, I am prepared to yield the floor or to proceed as the Senate may wish.

BALANCED BUDGET—TAX LIMITATION CONSTITUTIONAL AMENDMENT

The Senate resumed consideration of the joint resolution.

AMENDMENT NO. 1945

(Purpose: Proposing an amendment to the Constitution to balance the budget, in the nature of a substitute)

Mr. CRANSTON. Mr. President, I call up amendment No 1945.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from California (Mr. CRANSTON), for himself and Mr. MOYNIHAN proposes an amendment numbered 1945.

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

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

The amendment is as follows:

Strike all after the resolving clause and insert in lieu thereof the following: "That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution if ratified by the legislatures of three-fourths of the several States within seven years after its submission to the States for ratification:

"'ARTICLE—

"'SECTION 1. Prior to each fiscal year, the President shall submit and the Congress shall adopt a statement of receipts and outlays for that year in which total outlays are no greater than total receipts, except that total outlays may exceed total receipts for the sole purpose of maintaining the benefit schedule under the laws of the United States providing for social security and the benefits and services provided under the laws of the United States on account of the service of military veterans. The Congress may amend such statement in conformity with this article. Upon adoption of such statement or any revision of it, actual outlays for that year shall not exceed outlays set forth in such statement.

"'SECTION 2. The Congress may waive the requirement of this article for any fiscal year in which a national emergency has been declared by the President or by the Congress.

"'SECTION 3. The Congress shall have the power to enforce this article by appropriate legislation.

"'SECTION 4. This article shall take effect for the second fiscal year beginning after its ratification.'.

"Amend the title so as to read: 'Joint Resolution proposing an amendment to the Constitution to provide for a balanced budget.' ".

Mr. CRANSTON. I yield the floor.

Several Senators addressed the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. BAKER. Mr. President, I am prepared to put us in a brief period for routine morning business. Does the Senator from Kentucky have a matter on this joint resolution?

Mr. FORD. I have a matter on Senate Joint Resolution 58. I would like to have someone yield me just a couple of minutes to ask a question that will require a yes or no answer. It is very simple.

Mr. ROBERT C. BYRD. Mr. President, is there any time left on this side on the resolution?

Mr. THURMOND. Mr. President, we would be pleased to yield the Senator a couple of minutes on the bill, if that is what he wants.

Mr. FORD. I promise I am not going to bring up an amendment or anything.

The PRESIDING OFFICER. In response to the minority leader's question, there is time remaining on the resolution.

Mr. ROBERT C. BYRD. I yield to the Senator such time as he may require off the resolution.

Mr. FORD. I thank the distinguished minority leader.

Mr. President, as my colleagues know full well by now, I am an ardent advocate of a 2-year Federal budget cycle. Since introducing S. 1683 last year, I have devoted much time and effort to circulating this concept among Members of Congress, other public officials, and outside experts. It is my fervent hope that this procedur-

al reform can be enacted soon, and begin to furnish its significant benefits to our challenging budget situation as soon as possible.

While Senate Joint Resolution 58 is not totally inconsistent with a 2-year budget cycle consisting of 2 separate fiscal years, it is my judgment that the ideal of a budget in balance is more realistic on a 2, rather than 1, year basis. Therefore I have introduced an amendment which would accommodate a 2-year budget cycle and also change the mandatory balance objective to a 2-year event.

There are several advantages in adopting this approach. It will reduce the rigidity which the mandate for annual balanced budgets creates, and thus lessen the need for use of the waivers presently built into the proposed constitutional amendment. By stretching the budget period to a more manageable span of time, it will increase the probabilities of success in both the President and Congress holding to a balanced budget.

If we are going to put a balanced budget and spending limitation standard into our Constitution, we should at least try to do it in a way which makes failure of compliance less certain, and successful compliance a reasonable probability.

As I have told the leadership, I do not intend to call up my amendment because it would no doubt be defeated. However, I would like to ask the distinguished floor leaders whether they believe anything in this amendment would prohibit the Federal Government from switching to a 2-year budget cycle. Does it mean that we will have to live with even more hastily considered appropriation bills?

In the past 5 years, deadlines for first and second budget resolutions have been met only twice out of 10 reporting dates. The lag in the other eight completions extended for as many as 74 days. And, or course, this coming year we may not even pass a second budget resolution. We will automatically allow the first budget resolution to become the second budget resolution.

In the same 5 years, only in 1 were all 13 regular appropriation bills enacted by the beginning of the fiscal year—and even in that year—fiscal year 1977—a continuing resolution was needed to fund some programs and for the 5 years, a total of 10 continuing resolutions had to be enacted.

The track record of recent years borders on making a mockery of the budget process.

In an article published in the March-April 1981 issue of Challenge, the Director of the Congressional Budget Office, Alice M. Rivlin, gave forthright expression to her views on the congressional budget process, and made several wise recommendations. Among those were her suggestion relating to a biennial budget system.

Dr. Rivlin commends the existing budget system as a vast improvement over the pre-1974 methods, but acknowledged a widespread public perception that Congress does a bad job of budgeting. She attributed this to two main factors; namely, first, the failure to accept and deal with economic uncertainty as an inescapable fact of life; and second, the propensity to try to do too much and make too many not-so-important decisions. She added:

> In particular the annual budget cycle is a pernicious one. For most activities of Government, annual review is too frequent.

Further, into her article, Dr. Rivlin observed:

> An obvious first step toward reducing the frequency of decisions on Government programs would be 2-year appropriations for almost everything. This would allow the Congress to use the first year of each 2-year session for oversight and the second to enact a 2-year appropriations.

Mr. President, it is interesting to note that while past OMB Directors have had some objections and reservations to biennial fiscal proposals, the present Director, David Stockman, was a cosponsor of H.R. 2000, a bill introduced in the 96th Congress to provide for just such a 2-year budget, authorization and appropriation system. Also this year, the General Accounting Office has already indicated its support for the concept. I might add that two of my more distinguished colleagues in this body have recently introduced their own proposals for a 2-year budget and appropriation cycle. I am referring to the Senator from Indiana, Mr. QUAYLE, and the Senator from Delaware, Mr. ROTH. Both of these Senators are very knowledgeable about the budget process.

Mr. President, I do not intend to delay this debate much longer; however, I would like to take just a few more minutes to voice what I consider to be some of the advantages of a 2-year budget system. Briefly, they are:

First, there will be savings of time, effort, and money;

Second, multiyear planning, budgeting, and appropriations will allow for more careful legislative work on all matters—new legislation, oversight, budget resolutions, and appropriations;

Third, extending the budget period can and should introduce a greater degree of spending discipline and stability, and can be a major, effective step in curbing inflation; and

Fourth, State and local governments will benefit greatly from the increased certainty of the Federal impact on their plans and budgeting.

Mr. President, I hope that Senate Joint Resolution 58 will not prohibit us from making this much-needed improvement in the way the budget for the Federal Government is funded. I believe a 2-year budget cycle would serve to remedy many of the current problems with the budget process. Moreover, it may be necessary to make this change if the balanced budget constitutional amendment is put in place. I predict that the President and Congress will need the additional time to deal in an intelligent and responsible manner with the hundreds of complex issues in a $700 billion budget.

If we are going to put a balanced budget and spending limitations standard in our Constitution, we should at least try to do it in a way which makes failure of compliance less certain and successful compliance a reasonable probability.

As I told the leadership, I do not intend to call up my amendment because it would no doubt be defeated. I have seen that three times this week and that is a bitter cup. However, I would like to ask the distinguished floor leaders whether they believe anything in this amendment would prohibit the Federal Government from switching to a 2-year budget cycle.

Mr. THURMOND. Mr. President, we know of nothing that would prohibit going to a 2-year cycle.

Mr. FORD. So the answer would be "No." I thank the distinguished floor manager of the bill. I thank the distinguished minority leader, the Senator from West Virginia, for allowing me this opportunity.

Mr. LEAHY. Mr. President, I rise in opposition to the constitutional amendment as reported from the committee and to speak in behalf of a series of amendments which were entered in the CONGRESSIONAL RECORD on July 1.

I am not calling up my amendments at this time. Instead, I would like to speak more broadly on the rationale for the constitutional amendment and in favor of my amendments.

The proposed constitutional amendment reflects the public perception, reported regularly in public polls, that the Federal Government should balance the Federal budget. I support a balanced budget. Everyone supports a balanced budget. But I also recognize that, at certain times, during recessions for example, a strict requirement for a balanced budget is a prescription for wholesale economic disaster and depression.

The proposed constitutional amendment embodies the economic theories of a small group of economists who believe that excessive Federal spending and taxation have been the major causes of our economic problems in recent years. In fact, it is fair to say that the seeds of this proposed constitutional amendment were planted the day after the inauguration, when Presidential aides took down the portraits

of Abraham Lincoln and Thomas Jefferson and replaced them with a portrait of Calvin Coolidge. In reality, it is impossible to establish a direct connection between deficits and the economic health of our Nation. The only period when the U.S. Government ran a surplus over an extended period of time was 1911 through 1930, yet the Depression followed.

By contrast, the period of the fifties and sixties were characterized by persistent deficits, but substantial economic growth.

Similarly, on the issue of inflation, both Council of Economic Advisers Chairman Weidenbaum and CEA member Niskanen have publicly stated that the evidence does not show any convincing relationship between inflation and deficits.

This does not mean that high budget deficits, especially today's abnormally high deficits, do not have serious negative economic consequences. Deficits can lead to excessive Government borrowing, which competes directly with private sector investment needs. They can lead to higher interest rates and, during times of strong economic growth, to higher inflation

But it is critical to understand that deficits are essential in certain circumstances to avoid recessions or depressions.

For example, the Republican version of the Joint Economic Committee's annual report for 1982 stated: "The ultimate result (of balancing the budget during a recession) could be the reemergence of a deficit requiring still further procyclical fiscal adjustment."

The greatest strength of our economic system is that there are hundreds of thousands of economic decisionmakers. Only those who make the most efficient decisions will survive.

However, this extreme diffusion of decisionmaking is also a market economy's greatest weakness. When confidence in the entire economic system is shattered or in great doubt, no rational individual businessman will sustain economic demand by making new investments or purchases of goods. Each individual will minimize his own risks by reducing his purchases and investments. All these individual decisions combined will create a declining spiral of demand which will throw millions out of work and cause tens of thousands of business failures. Ultimately, the failure of demand means a depression. I submit that Congress must have the flexibility to respond to recessions, so that devastating cyclical swings in the economy can be prevented. As former Senator Muskie has stated, We must "have time to pop the parachute before we hit the ground."

The Congressional Research Service issued a similar warning:

Strict enforcement of a budgetary balance would compel a Hooverlike reaction, in which expenditures are reduced to match a drop in government revenues. If this were to happen, the stabilizing capacity of the federal budget would be severely impaired and comparatively mild recessions could blow up into major depressions.

Or, as Nobel Prize-winner James Tobin stated:

Should a Congress, observing that its budget has fallen into deficit because of unexpected recession, cut expenditures and/or raise taxes to restore budget balance? To do so is to intensify the recession. Herbert Hoover pursued this course in 1930-32, without notable success for either budget or economy.

In 1979, even though the budget was in deficit, conservative economist Michael Evans and Alan Greenspan both opposed balancing the budget at that point because of its effect on the economy.

Therefore, it is essential that the Federal Government continue to have the ability to fully utilize fiscal policy where it is essential to prevent recession or depression.

The dangers of the constitutional amendment to our economy are clear from a series of studies done by the Council of Economic Advisers in the late seventies 1970's. These studies examine what would have happened to the U.S. economy if it had been forced into balance during recessionary periods.

These studies show that unemployment would have been increased by millions, and the country would have been thrown into a period of economic decline unprecedented since the Great Depression.

One study found that, in the 1973-75 period, the GNP would have declined by 10 percent—a massive decline—instead of the 2.6-percent decline actually incurred.

In 1975, unemployment would have reached 11.2 percent, instead of 8.5 percent. In 1976, unemployment would have reached 11.3 percent, instead of 7.7 percent. That is over 3.5 million more unemployed if the budget had been balanced.

Just this week, my colleague, Senator MOYNIHAN, asked Wharton Econometrics to determine the economic effects of balancing the budget in 1981.

GNP would have dropped by almost 9 percent.

The unemployment rate would have increased by almost 50 percent—to 15 million unemployed.

This is a staggering cost. It is wrong, very wrong, to throw 5 million Americans out of work so that a few politicians can wave a constitutional amendment at election time and pretend all our problems are solved.

This amendment will also make the Congress a pawn of the economic forces in the Nation and the world, rather than the protector of our Nation's economic health. Tight monetary policies of the Federal Reserve, OPEC price hikes, international monetary fluctuations can all throw the budget seriously out of balance. These extraneous actions will force Congress to cut Federal spending whether the social or military needs of the country can be met or whether it causes a depression.

Let me give some examples of how extraneous economic conditions have forced the budget into a deficit.

In 1974, President Ford had just come into office. He convened a symposium of well-known economists brought in from all over the country. We had finished the fiscal year ending the previous July with the smallest deficit in a number of years, $4.7 billion. On the basis of the advice that he got from the economists, he said, "We will have a balanced budget in the next fiscal year."

That was in October. In December, the bottom fell out of the economy. President Ford found he had to submit in January not a balanced budget, but a budget with a $52 billion deficit.

Even international currency speculation can destroy a balanced budget.

In 1978, Congress went out of session, and a continuing decline of the dollar caused the Federal Reserve Board to tighten monetary policy to raise interest rates in order to shore up international confidence in the dollar.

The result was to add $5 billion to the cost of interest on the Federal debt in the budget. So the deficit rose by $5 billion to $43 billion, and the Congress was not even in session.

I do not know what one does then. Do you put the Chairman of the Federal Reserve Board in jail because, by his action, he has caused the spending to go through the ceiling?

Mr. President, I have a series of amendments I plan to offer. I personally have serious misgivings about trying to change the proposed constitutional amendment. Trying to improve this constitutional amendment is like trying to teach a duck to sprint; the results just do not justify all the effort.

But the very real possibility that this amendment, flawed and dangerous as it is, may be approved by the Senate means that I must attempt to limit the damage.

The drafters of this constitutional amendment acknowledged the need for a national security waiver. In times of war, Congress is empowered to waive the restrictive provisions of the amendment. Mr. President, I submit that economic collapse constitutes an equally grave threat to our national security. As Dwight Eisenhower once said, "If our economy should go broke, the Russians would have won even a greater victory than anything they could obtain by going to war."

I believe the dangers of depression and economic collapse are as great as the dangers of war.

I believe Americans care as much about going to work as to war.

I believe jobs are as vital to our national security as armaments.

For these reasons, I intend to offer a series of amendments which make it clear that Congress places an equal priority on the avoidance of war and depression.

My amendments are to section 3 of Senate Joint Resolution 58, the waiver for national security section of the resolution.

The first amendment that I plan to call up will state that Congress may incur a deficit if it is necessary to prevent unemployment from exceeding 10 percent and 11 million unemployed.

I am beginning with this level of unemployment because I believe our present level of unemployment—over 10 million—is already completely unacceptable.

The unemployed machine toolworker in Vermont, the autoworker in Detroit, the construction workers in the South, the black teenager just 10 blocks from where we stand today, who have been out of work for months, know that we already have an unemployment disaster.

The enormity of our present unemployment crisis can be seen in the fact that 10 million unemployed is the equivalent of shutting down completely all the following industries: Metal mining, coal mining, oil and gas extraction, crushed stone, residential construction, highway construction, plumbing, heating, air-conditioning, carpentry, electricians, roofers, railroads, trucking, airlines, public utilities, and telephone.

Just this week, my colleague from New York released a study showing that unemployment would increase by almost 50 percent, about 5 million people, if we had balanced the budget in 1981. That is nearly the equivalent of throwing every working man and woman in New England out of work.

Mr. President, if this amendment fails, I shall follow with a series of amendments increasing the level of unemployment in the amendment by 2 percentage points until the point of 20 percent and 22 million unemployed is reached.

I believe the American public deserves to know how far we intend to permit the economy to deteriorate before we take the steps necessary to restore our economic health.

The economic theories of Coolidge and Hoover will not meet the Economic realities of the eighties. The American people want jobs, not nostalgia.

Mr. GLENN. Mr. President, the proposed balanced budget-tax limitation amendment to the U.S. Constitution may pose an easy vote for many Senators, but easy votes should not be mistaken for the tough decisions needed to solve our basic economic problems. Indeed, this particular vote is a prime example of the very phenomenon the amendment's supporters say they oppose: Ignoring future consequences in favor of immediate political benefits.

The committee's report states: ". . . the availability of unlimited deficit spending allows the political costs of spending measures to be deferred in time, while enabling the political benefits to be enjoyed immediately." Similarly, this amendment provides its supporters an easy vote for a measure of considerable current popularity—"pure political candy," to quote the New York Times—while deferring the consequences for a future time, future Congresses, future Presidents, and future taxpayers. It permits Members of the Senate to support an esteemed cause without having to admit that because this Government—this President and this Congress—went too far last year, we should postpone the third installment of the individual tax cut.

In effect, this amendment would declare that, since we cannot discipline ourselves, we instead should discipline those who come after us. As the Washington Post put it, "It is grotesque for Senators and a President who cannot get their current deficit under $100 billion to support, piously, constitutional language putting it at zero." Former Attorney General John Mitchell once reminded us, the important thing is "to watch what we do, not what we say."

More than 200 years ago, Alexander Hamilton argued that "Nothing * * * 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." Our Constitution has endured because of its flexibility and because the Framers of that great document took the long view. If it is to endure further, we must be equally farsighted.

Before we rush to judgment, we should listen to such voices as that of American Enterprise Institute resident economist Rudolph G. Penner, who has bluntly warned "that budget-limiting constitutional amendments should be avoided all together." In testimony to a House of Representatives subcommittee, Penner argued,

If the political will to limit budget growth does not exist, constitutional limits will not do much good and they could do a great deal of harm. If the political will to limit budget growth does exist, constitutional amendments are not required.

Just what kind of harm could such an amendment do?

For one thing, the state of the art of forecasting is such that we will wind up with a budget balance that is itself far from exact. Indeed, today's statements of receipts and outlays are at least as confusing as the proposed budget for fiscal year 1983 which was transmitted to Congress in February of this year was misleading. Just within the past few days, we have seen the deficit projections swell from the $103.9 billion target we established only last month to $110 to $114 billion, according to the Secretary of the Treasury, and to $141 to $151 billion, according to the Congressional Budget Office. Clearly, the earlier projections were misleading. Clearly, at least some projections now are wrong. And with this amendment in place, there will be enormous temptation to deliberately skew economic assumptions in the future. Erroneous forecasts, intentional or not, would then lead us into making erroneous decisions.

Second, the amendment would also limit the Government's ability to adjust its tax and spending policies to meet the changing needs of economic stabilization. That could easily lead to greater reliance on less efficient options, such as regulatory policies or credit allocations.

I believe the Federal budget should be balanced when it makes sound economic sense. In fact, I believe it would be healthy to operate with a surplus—and to reduce our outstanding indebtedness. But outlawing deficits by fiat would be virtually impossible—and it would frequently be unwise as well.

The proposed amendment would index any rise in tax revenues to the percentage increase in national income—a term that is left undefined and subject to changing interpretation. This clearly represents a constitutional limitation based on the kind of "immediate necessity" Alexander Hamiliton so wisely warned against.

The proposed amendment is a radical departure from our history and limits the flexibility of our Constitution. The last time we tried something like this, the result was the 18th amendment to the Constitution—and we recognized the mistake of that scheme by repealing it.

Mr. President, the people of this country are suffering from high interest rates, not from the Constitution. They are seeing money drained from the smaller communities of this Nation, they are seeing the number of unemployed escalate, and they are watching their friends and neighbors in small business bleeding and, all too often, dying the death of bankruptcy.

The times call for something other than a "pass the buck" resolution that ducks the real problems. Every Senator in this Chamber knows that there is more than a little hypocrisy involved here—and I, for one, refuse to indulge it. I shall vote against this shortsighted amendment and continue to work for long-run solutions. I do not always agree with David Stockman and his Office of Management and

Budget, but in this case, I fully share the sentiments expressed in OMB's report earlier this year. That report began by saying—and I quote—"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."

Mr. President, I agree, and I wish that the President of the United States agreed with that report from his own Office of Management and Budget.

Mr. President, I ask unanimous consent that a column entitled "Balanced Budget Hoax," by George Will, which appeared in the Washington Post of July 25, 1982, be printed in the RECORD.

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

[From the Washington Post, July 25, 1982]

BALANCED BUDGET HOAX

(By George F. Will)

God, preparing condign punishment for hot air emitted in support of humbug, turned the temperature up to 90 the day the President addressed a rally for a constitutional amendment to require balanced budgets. The rally to make government—that questing beast—obedient to "the people" was for people with tickets. A ticket to a rally for an amendment to "require" balanced budgets calls to mind the invitation a Lady Colfax issued, after the First World War, to a luncheon to "meet the mother of the Unknown Warrior."

But members of the sainted public could get tickets. Red tickets were for employees of the Republican National Committee and high-level employees of the—if you'll pardon the expression—government. They got to sit smack in front of the president. Blue tickets allowed lesser government employees to sit farther back from Himself. White tickets, handed out on the streets, put plain people, to whose salvation the rally was dedicated, at the rear.

Behind the president, stewing like prunes in their juices, were congress-persons and senators, some of whom sincerely support the amendment for which they were rallying. Legislators who did not feel ill-used obviously were properly used as applauding props.

Washington's air this season is thick with humidity and hoaxes, such as nuclear "freezes" that won't freeze anything, and "flat rate" tax programs without flat rates. So what is one more hoax among friends? This hoax—this trivialization of the Constitution—is, simultaneously, a confession of political incompetence and an assertion of intellectual mastery—mastery not noticeable in the results of recent economic policies.

At precisely the moment when economists are especially bewildered by the inability of their theories to encompass events, politicians, running for cover from the electoral consequences of their activities, are proposing to constitutionalize an economic doctrine. They would graft something evanescent onto something fundamental.

Under the amendment, Congress would be required to adopt, prior to each fiscal year, a statement of receipts and outlays, the latter not to exceed the former. But such economic numbers are estimates made of warm taffy, all gooey and stretchable.

Neither clairvoyance nor candor can be counted on in Congress or the Office of Management and Budget. So who will enforce what on whom if—when—the numbers are significantly wrong? Will the president control outlays by impounding appropriated funds? Will courts superintend the appropriations process?

If the latter, will every taxpayer have standing to sue? No one can know until courts speak. And they will speak, because the amendment does not stipulate that controversies under it are not reviewable by courts. Were that stipulation made, the amendment would become a receipe for paralysis and lawlessness.

The amendment says that total receipts in any fiscal year may not be set to increase at a rate faster than the rate of increase of national income in the previous calendar year. The implication of this is that whatever else the government has recently got wrong, the current ratio of federal spending to national income is just about right.

But, then, the amendment would allow Congress to change this ratio by a simple majority vote. And by a three-fifths vote, Congress could authorize a deficit—which is what Congress has been doing for generations. So, to enable current incumbents to strike a pose, some incumbents want to clutter the Constitution with an amendment that might be, in practice, 98 percent loophole. It would be that, unless the political culture and congressional mores changed substantially, in which case the amendment would be beside the point.

The amendment is long, but should be longer. It depends on Congress making precise projections, so it should contain 1,000 more clauses, four of which are:

Floods, hurricanes and other acts of God that wish to occur during the next fiscal year must register with OMB six months before the fiscal year begins, so Congress can know that relief-spending shall occur.

Agricultural commodities covered by price supports must inform the Agriculture Department if they are planning to materialize in inconvenient quantities in the next fiscal year.

Anyone planning to need unemployment compensation in the coming fiscal year must notify the Labor Department.

Before causing crises, tiresome foreigners must notify the U.S. Defense Department of any effects their crises will have on U.S. defense spending.

And . . . oh, yes: I love lobster, and own elm trees. Could Congress please require lobsters to grow on elm trees?

Sorry, I digress. It must be the heat.

● Mr. LEVIN. Mr. President, in an attempt to clarify some of the procedural issues associated with this balanced budget amendment, I recently sent Senator THURMOND a letter containing some fairly basic questions relative to this issue. He was kind enough to respond and I think it might be useful to share with my colleagues my questions and his answers. I believe they demonstrate that if we adopt this resolution we will have just begun a most difficult trip down some uncharted waters. As Senator THURMOND'S responses make clear, this legislation is not self-enforcing and, as a result, the Congress may have to establish new rules of procedure governing points of order as well as comprehensive enacting legislation. My point is simply that this amendment, despite its promises, does not provide us with a mechanism which assures a balanced budget.

Mr. President, I ask that my letter to Senator THURMOND and his responses be printed in the RECORD.

The letters follow:

U.S. SENATE,
Washington, D.C., August 2, 1982.

HON. STROM THURMOND,
Russell Senate Office Building,
Washington, D.C.

DEAR STROM: Because floor time is getting short, I would appreciate your answers to the following questions so that I can insert same in the Record in the debate on the pending amendment.

1. Assuming no change in the Senate rules and no changes in relevant legislation, will the Balanced Budget Amendment be violated if an appropriation bill is passed which breaches a spending target in the statement of outlays (assuming such statements contain such targets)?

2. If the amendment would be violated in question No. 1, what specific enforcement mechanisms and specific judicial remedies would exist to redress the violation?

3. If the amendment would not be violated in Question No. 1, how will the amendment act as a restraint on specific pieces of spending legislation?

4. Under current Senate rules, would a point of order lie against any appropriation bill which exceeded the amount set forth in the statement of outlays described in the Amendment?

Thanks for helping out in this manner.

Sincerely,

CARL LEVIN.

RESPONSES TO SENATOR CARL LEVIN

1. The assumption in this question is a tenuous one since the effective implementation of this amendment will almost certainly require comprehensive enacting legislation by Congress. Since there is an absolute obligation imposed upon Congress in Section 1 to conform actual outlays with planned levels of outlays, it is not unreasonable to suppose that Congress will have to establish procedures to ensure that this does not occur. Given the general constitutional direction in Article I, section 9 that no money shall be drawn from the Treasury "but in consequence of appropriations made by law", this does not appear to be an unreasonable obligation to impose upon Congress. Because the amendment would not be self-enforcing, Congress will almost certainly have to develop appropriate enacting legislation.

2. To repeat, the amendment would not be self-enforcing. There would be a clear responsibility placed upon Congress to develop procedures to ensure that it is capable of satisfying its new constitutional responsibilities under the proposed amendment. There are a variety of enforcement mechanisms that are available. These are described in greater detail on pages 60-66 of the Committee Report. These would include: the explicit responsibilities imposed upon Congress and the President by the proposed amendment, Congressional implementation legislation, limited judicial review, and, perhaps most importantly, public opinion. Because the thrust of the amendment is to

ensure that Members of Congress must cast votes on all tax increases, including the tax increase of deficit spending, it is anticipated that the public will be in a far better position to monitor the performance of their elected representatives, and to enforce the proposed amendment at the ballot box every other November.

3. Again, there is no serious question that Congress will have to develop effective implementation legislation. This is a function of Congress' constitutional responsibility under the "necessary and proper" clause to fully carry out its delineated constitutional authorities. The amendment will act as an indirect restraint by imposing an obligation upon Congress to develop effective implementation legislation to carry out its new responsibilities under the Balanced Budget amendment. Congress must determine the precise means by which actual outlays are to be effectively conformed with planned outlays. A variety of options could possibly be adopted, including points of order under the Senate rules, entitlement reforms, improved spending monitoring, etc.

4. Under current Senate rules, points of order lie against unconstitutional exercises of legislative authority. Given, however, that this fundamental issue would be in controversy, it would still probably be necessary for Congress to establish new rules to determine when and under what circumstances points of order would be available to challenge individual spending programs.●

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, not to extend past the hour of 12:15 a.m., in which Senators may speak.

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

SENATOR GLENN'S SPEECH AT THE NATIONAL CORN GROWERS CONVENTION

Mr. HUDDLESTON. Mr. President, today, the distinguished senior Senator from Ohio, JOHN GLENN, made a significant address at the National Corn Growers Convention in Des Moines.

In his remarks, Senator GLENN discussed the worsening state of the agricultural economy and the things he believes must be done to strengthen that economy.

As the senior Democrat on the Committee on Agriculture, Nutrition, and Forestry, I read Senator GLENN's speech with great interest, and I commend it to my colleagues.

Mr. President, I ask unanimous consent that the text of Senator GLENN's remarks be printed in the RECORD.

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

REMARKS OF SENATOR JOHN GLENN

It is an honor to be here only one day after the President of the United States visited with you. But with all due respect, I see things a little differently than President Reagan.

Take the economy, for instance. Although the President admits that it's in terrible shape, he says that all the indicators are starting to improve—and that recovery is on the way. Now frankly, that scares me a little—because I remember what happened the last time we had a President who kept assuring us that prosperity was just around the corner.

Nevertheless, I hope the President is right—because if recovery doesn't come soon, there won't be much left to save. America's unemployment lines are longer today than they've been since 1938. Real interest rates are the highest they've been since 1932, there are more business bankruptcies than at any time since 1933, and now the Farmers Home Administration tells us that more farms will be forced into liquidation this year than at any time since the agency was founded.

And to top it all off, the Administration is swelling this sorry river of statistics with a sea of red ink from the biggest budget deficits in American history. Yesterday, as usual, the President tried to explain these deficits by blaming them on his predecessors. But you know, there were a few things the President forgot to mention.

He forgot to tell you that even by his Administration's own estimates, Federal deficits over the next 3 years will be larger than those of the last 4 Administrations combined. He forgot to mention that the trillion dollar national debt he inherited was 200 years in the making—the work of every President from George Washington to Jimmy Carter. But it's only going to take this President 3 years to run up 500 billion dollars worth of debt—half of what it took 39 other Presidents two centuries to accumulate. And let me add that these aren't figures we Democrats cooked up for political purposes. Last week, the nonpartisan Congressional Budget Office—whose past forecasts have proven highly accurate—announced that Federal deficits would total 140 to 160 billion dollars over each of the next 3 years.

That's why I find it a little cynical of him to call for a constitutional amendment requiring balanced budgets. Think about it! What he's really saying is that there ought to be a law against what he's doing. Now that's the height of political hypocrisy—and I think the American people are going to see right through it. In my opinion, we don't need a change in the Constitution—we need a change in the voodoo policies that caused this mess in the first place.

Ballooning budget deficits are keeping interest rates skyhigh—and if they don't come down, more and more farmers are going to be plowed under. Yesterday, President Reagan's advisors took him out to visit Donald Dee's farm outside Des Moines. But you know, if the President really wanted to know how his policies were working, he shouldn't have gone to a farm—he should have gone to a farm sale.

He would have had plenty to choose from. In fact, there are 5 times as many farms for sale in the Midwest this year as last year—and Iowa alone has lost a thousand of them.

In his speech yesterday the President quoted Thomas Jefferson as saying that farmers are "God's Chosen People." Well, farmers may be God's chosen people—but they sure don't seem to be Ronald Reagan's. It reminds me of a story I once heard about a farmer who owned a pig with a wooden leg. When a travelling salesman asked about it, the farmer told him that the pig had once saved his family's life by waking them up before a fire destroyed the farm house. "And that's how the pig got the wooden leg?" asked the salesman. The farmer shook his head. "When you have a pig like that," said the farmer, "you don't want to eat him all at once."

And that just about sums up how the Administration has been treating America's farmers. Instead of showing gratitude for everything you've done for this country, they're destroying you a little bit at a time.

Over the past two years, farm income has plunged 40% and parity has tumbled to 56%. Since February of 1980, the real value of farmland here in the Corn Belt has dropped an average of 19%—and the value of our agricultural exports will fall this year for the first time since 1975.

During the 1980 Presidential campaign, candidate Reagan asked whether you were better off than you were 4 years ago. Today, maybe he ought to be asking whether you're better off now than you were during the Great Depression. Last year, real farm income fell to its lowest level since 1934—and this year, it will be lower than it's ever been in American history.

In fact, about the only thing going up these days is what farmers owe to their bankers. Today, farm debt stands at more than 180 billion dollars—9 times more than net farm income. As Winston Churchill once said in another context: "Never have so many owed so much to so few."

But it's really no laughing matter. Because when you lose your shirt on every crop you take to market, it's not too long before your farm winds up on the market. Farm loan delinquencies are expected to reach 34 percent this year—much of it among younger farmers. But if we keep forcing them off the farm, we'll be losing a lot more than crops and money. We'll lose a way of life that can never be recovered.

Now the Administration says it's concerned about all this and wants to help. So first they helped by slashing the Department of Agriculture's budget by 20 percent for 1983—mostly in the areas of rural lending and crop support programs. Then they helped some more with a Reduced Acreage Program that hasn't worked and wasn't even announced until your crops were already planted. And now the Administration even refuses to use the authority contained in their own farm bill to make emergency loans to hard-pressed farmers.

But despite all this, they say everything will work out if we just give their policies a little more time. How much more time? Well, two weeks ago, Treasury Secretary Regan told us. The same man who once predicted that the economy would come "roaring back by spring" now says we can expect recovery—and I quote—"by the late 1980s or early 1990s."

Well, I'm afraid I've got some bad news for the Secretary. Because America's farmers just can't afford to wait another decade—or even another year. And I say that if this Administration really believes they can keep treating farmers like that hog with the wooden leg, then they're in for a bushel of trouble this coming November.

But it's not enough merely to criticize. The time for partisanship is past—and finger-pointing and buck-passing just aren't going to work anymore. The question now isn't who's responsible for getting us into this mess. The question now is who's going to be responsible enough to get us out. So in that spirit, let me briefly summarize a few specific actions to get our farms and our economy back on track.

First, Federal deficits must be cut—and that means that government spending must be reduced. But it must be reduced in a way that preserves the social fabric of our Nation. Fairness—fairness is the key. Because while we must eliminate fat and waste wherever we find it, we must never lose our compassion for those who need it.

Second, we must trim that enormous personal tax cut that upset the apple cart in the first place. Specifically, the 10 percent cut scheduled for next July should be postponed until the deficit and interest rates come down to manageable levels. Naturally, we all like tax cuts. You do, I do, everyone does. But I believe the people of this country would be willing to postpone next year's cut if it meant lower interest rates and a more balanced budget.

Third, Congress must ask the Federal Reserve Board to shoot for the high end of their own money supply targets. With lower budget deficits there must be enough money available to bring interest rates down and permit the economy to grow.

Fourth, we must throw a life-line to America's family farmers before it's too late. In the short-run, that means recognizing that while credit is no substitute for income, when there's no income, there's no substitute for credit. We're not going to resuscitate our economy by drowning our farmers—and that's why the Administration must immediately use the money Congress gave it to revive the Economic Emergency Loan Program.

Fifth, we must act boldly to reduce the bin-busting grain stocks that have deflated prices and exhausted our storage capacity. Doing that will require at least two things. First, it means supplementing the wheat and feed-grain set-aside programs that haven't worked with something that will. The Administration's so-called "RAP"—or Reduced Acreage Program—has failed because it's all stick and no carrot. But instead of correcting their mistake, they apparently want to perpetuate it—and I say the last thing farmers need now is another bum-RAP. That's why I'm a cosponsor of the voluntary, paid Acreage Diversion Plan now moving through the Senate. According to the Congressional Budget Office, combining paid acreage diversion with acreage reduction would raise the price of corn and other feed-grains by 10 percent, while reducing Federal outlays for these crops by nearly a billion dollars a year. Now that's an offer even a supply-side economist should find hard to refuse.

The other things we must do is aggressively expand our farm export markets. That will mean developing new marketing mechanisms at the national level and "check-off" programs like you have here in Iowa at the state level. But above all, it means showing the world that America is a reliable supplier who honors her contracts. America has traditionally been known as the Breadbasket of the World. But now we're in danger of becoming a kind of store that other countries use only in a pinch. Nothing destroy confidence and markets faster than uncertainty—and I say it's high time we stopped using food as a foreign policy weapon—and quit using farmers as diplomatic pawns.

And that brings me to last week's decision regarding the Soviet-American Grain Agreement. I know many of you were hoping for a new, long-term agreement. Others of you probably would be content with a one-year extension of the existing accord. Unfortunately, none of us knows for sure what the Administration's position actually is. In the advance text of yesterday's Presidential speech, the following line appeared—and I quote: "This Administration does not have—nor will we have—a grain embargo on the Soviet Union." But for some reason, that line was deleted when the speech was actually delivered. At yet another point in his speech, the President implied that Soviet grain purchases beyond the minimum requirements are still open to question.

Now what does all this actually mean? I'm not sure I know. But there's one thing I do know: any limitation on voluntary Soviet purchases is at least a partial grain embargo—no matter what the President calls it. But a Reagan embargo isn't going to end repression in Poland any more than the Carter embargo ended the Soviet occupation of Afghanistan. What it will do, however, is further enhance America's reputation as an unreliable supplier and cause the Soviets to purchase what they need from our international competitors.

In my opinion, that's bad foreign policy—and even worse economics. They can't use food for cannon fodder—and the money they spend for wheat is money they don't have for missiles. Frankly, I'd rather make it a little easier for them to buy our corn—and a little harder for them to target our cities.

Finally, I believe it is a grave mistake to let today's agricultural abundance lull us into abandoning our research and development efforts. In the past, these efforts have wrought miracles of productivity unmatched by any other nation on earth—including the doubling of our corn yield in just the last 20 years. But we cannot afford to rest on our laurels. The future demands that we sustain—and even increase—our commitment to R&D, especially in such vital areas as soil conservation and the rebuilding of our transportation infrastructure. That's why I oppose the Reagan Administration's shortsighted cuts in America's R&D budget—and that's why I applaud the NCGA's sponsorship of the National Corn Research Priorities Study of 1982. You've provided a comprehensive agricultural research agenda—one that I hope the Administration will heed, as well as read. They must learn that while cutting our research program may be penny wise for reducing this year's budget deficit, it's absolutely pound foolish for the long-term future of this Nation.

Let me close my remarks with one final thought. Today, I have talked about a few of the problems facing our country. That they are formidable—or that meeting them will not be easy—goes without saying.

But let's keep things in the proper perspective. Because for all our flaws, faults and imperfections, America remains the greatest nation on the face of this earth. If we ever forget that, the continuing stream of immigrants is there to remind us. They come from small villages in Latin America, Asia, and the Middle East. They willingly risk death at sea to escape the so-called "worker's paradise" that is Cuba, and they flock to us from behind Europe's Iron Curtain.

Why do they do it? They do it because America remains today exactly what it was at the time of its founding: a shining beacon of freedom and opportunity—a place where hopes and dreams can still come true.

So in these revolutionary times, let us remember that we ourselves are heirs to a great revolution. Perhaps Ralph Waldo Emerson put it best. Well over a century ago, he sought to calm the fears of an earlier generation this way:

"If there is any period one would desire to be born in, is it not the Age of Revolution, when the old and the new stand side by side and admit of being compared? When the energies of all men are searched by fear, and by hope. When the historic glories of the old can be compensated by the rich possibilities of the new era. This time, like all times, is a very good one, if we but know what to do with it."

Ladies and gentlemen, I believe you and I know what to do with it.

Thank you very much.

KIRK SMITH, MAN OF VALUE

Mr. GORTON. Mr. President, 1 month ago today, on July 4, 1982, my friend and colleague, J. Kirk Smith, died after a year-long battle against cancer. But today, I do not want to talk of Kirk's death, I want to hail his life.

Kirk was a journalist whose wide-ranging and distinguished career spanned almost 30 years. He was my press secretary, both during the 1980 election campaign and here in the Capital. He also served as press secretary to one of Washington's most colorful Governors, Albert Rosellini.

Kirk was long an active, committed member and administrator of newspaper guilds in Seattle and San Francisco. He also served on the management side in the newspaper business as assistant managing editor of Seattle's morning daily, the Seattle Post-Intelligencer.

The seeming paradox of his career is immediately apparent and easily explained. Kirk had what Democrats and Republicans, management and labor, wanted and needed—the rare ability to see and communicate the truth, objectively, but with compassion.

This ability served him well in meeting countless deadlines, settling acrimonious management-labor disputes and counseling a wide and diverse circle of devoted friends.

We are all saddened by Kirk's death, but one of his staff assistants is, she admits quite selfishly, also angered by his passing. She felt that having the chance to work so closely with him was one of the greatest opportunities offered to a young writer. She is sorely disappointed that she knew him only a short time, not nearly long enough or well enough.

I know how she feels. I knew Kirk Smith for many years, as a friend, confidant and ally. And yet, I felt as if I did not know him nearly long enough or well enough. I shall miss him greatly.

Emmett Watson, one of Kirk's closest friends at the Post-Intelligencer wrote a column following his death that I think does as good a job as is possible in the requisite space in summing up Kirk's profound contribution to his profession. It is entitled "Kirk Smith, Man of Value." I ask unani-

mous consent that it be printed in the RECORD.

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

[From the Seattle Post-Intelligencer, July 13, 1982]

KIRK SMITH, MAN OF VALUE

The experience of living longer than your friends is no cause for complaint but it carries with it an inescapable, inexorable sadness. I am appalled in counting back the many good people I knew in the newspaper business who are now gone. The list of names would staff a good metropolitan newspaper.

Phil Taylor, Dick Sharp, Royal Brougham, George Varnell, Ruth Howell, Eddie Hill, John Randolph, Chick Kaplan, Nard Jones, Marion Stixrood, Cliff Harrison, Doug Welch, Leo Sullivan, Russell McGrath, Sam Angeloff and, only last Friday, Dick Stephens. All of these people had a strong impact on Seattle journalism and several were my own close friends. Some were well known, others less so, but all of them had a devotion to craft that was admirable and often inspiring. The old guard has changed gradually but it has changed. I think all of those mentioned herein would agree that journalism is better than it was since their times. Their replacements are better educated, more inclined to evaluate, more skeptical in the search for news and what it means.

On Sunday, memorial services were held for a man who, more than any of the others, was able to span those newspaper generations. Kirk Smith died little more than a week ago. He is by no means a household word to people who read daily newspapers. Yet he had a profound effect—even if some of them don't know it—on the people who work here today. For starters, Kirk Smith was a masterful journalist. In the year he worked at the P-1 and at other papers, his habits never varied. Each morning, while others stretched, yawned and procrastinated, Kirk Smith would have a telephone to his ear. Each day he would painstakingly gather his facts, then turn to writing in the afternoon.

The next morning, when you checked the paper, there would be one, sometimes two, often three, stories written by Kirk Smith. Perhaps his by-line would appear on only one of them. But each story, no matter how seemingly unimportant, was given its due; carefully crafted, beautifully written and factually accurate. There is a game one can play with such stories and I urge young hopefuls in journalism to play it. Take a story, any story, and read it through carefully. Then pick out key words, adverbs, adjectives and nouns, and see if you can come up with a substitute word that might better be used.

To do this with Kirk Smith's stories was a losing game. He always seemed to have the right word, the exact phrase, needed to convey a meaning. So what he did for everyone who read him was to set a standard of excellence that was to be admired and emulated.

That was the craftsman Kirk Smith. He had that blend of intelligence, humor, skepticism, honesty and compassion that made up the complete newspaperman. But he was much more than that. He always believed that newspapering was less a job than a profession and he devoted much of his life to elevating its stature. For many years he did not practice journalism; he worked with newspaper guilds in both San Francisco and Seattle. Once, when he helped bring in a sizable wage settlement at the P-1, the grateful employees begged to increase his salary as a guild officer. He refused, saying he would not take an increase greater than theirs.

As a guild officer, he helped settle countless disputes between management and employees. He acted as nursemaid, counselor, confidant to a profession rich in frustrated egos and congenital feelings of insecurity. There came a day back in 1978 when management recognized his gifts and made him assistant managing editor of this paper. "I will have to tell you," he said, in effect, when he accepted the job, "that the day a picket line forms around this paper, that will signal my automatic resignation. Even if I'm management, I can't cross a picket line of the people I work with. Some people have religion, I have that."

This paper has what is known as a "bitch board"—I suspect other papers also have one—on which employees tack up random thoughts, notes and comments on the way things are being run. The "bitch board" can be hilariously funny, often cruel and sarcastically instructive. It is interesting to note that during Kirk Smith's 23-month tenure as the working boss of this paper's newsroom, the bitch board was notably bland. I cannot claim to be a better friend of Kirk Smith's than hundreds of others in this business but we did talk now and then, candidly, as friends often do.

I good-naturedly berated him for wasting his talent. "With your gifts you shouldn't be just doing stories. You have a good way with people and a fine grasp of what journalism should be. You should get out of union work, you should get more into the running of newspapers." "Maybe so," he agreed, a bit sheepishly, "but let me tell you something. I get more fulfillment out of getting some young clerk a $7.50 raise than all that management has to offer."

Kirk Smith thought of sports as merely fun and games, a section to be tolerated in a newspaper. He was a natural athlete but never took his gifts seriously. He preferred reading and playing chess. Once I gave him a difficult computer chess game to try out. He beat it handily, then turned in an exquisite, two-page exposition on the computer's stupidity. He liked good drink, good talk, good work, good friends and his lovely family. He left us with all of his values intact.

MESSAGES FROM THE HOUSE

At 2:23 p.m., a message from the House of Representatives, delivered by Mr. Berry, one of its reading clerks, announced that the House has passed the following bill, without amendment:

S. 2218. An act to provide for the development and improvement of the recreation facilities and programs of Gateway National Recreation Area through the use of funds obtained from the development of methane gas resources within the Fountain Avenue Landfill site by the city of New York.

The message also announced that the House has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 6033. An act relating the preservation of the historic Congressional Cemetery in the District of Columbia for the inspiration and benefit of the people of the United States;

H.R. 6091. An act to designate the Mary McLeod Bethune Council House in Washington, District of Columbia, as a national historic site, and for other purposes; and

H.R. 6454. An act to amend title 18, United States Code, to clarify the applicability of offenses involving explosives and fire.

ENROLLED BILL SIGNED

At 4:36 p.m., a message from the House of Representatives, delivered by Mr. Berry, announced that the Speaker has signed the following enrolled bill:

S. 2218. An act to provide for the development and improvement of the recreation facilities and programs of Gateway National Recreation Area through the use of funds obtained from the development of methane gas resources within the Fountain Avenue Landfill site by the city of New York.

The enrolled bill was subsequently signed by the President pro tempore (Mr. THURMOND).

At 5:18 p.m., a message from the House of Representatives, delivered by Mr. Gregory, one of its reading clerks, announced that the House disagrees to the amendments of the Senate to the bill (H.R. 6530) to establish the Mount St. Helens National Volcanic Area, and for other purposes; agrees to the conference asked by the Senate on the disagreeing votes of the two Houses thereon; and appoints Mr. DE LA GARZA, Mr. UDALL, Mr. WEAVER, Mr. SEIBERLING, Mr. FOLEY, Mr. WILLIAMS of Montana, Mr. BROWN of California, Mr. SKEEN, Mr. CLAUSEN, Mr. MORRISON, Mr. PASHAYAN, and Mr. CHAPPIE as managers of the conference on the part of the House.

The message also announced that the House has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 4365. An act to provide that per capita payments to Indians may be made by tribal governments, and for other purposes;

H.R. 4568. An act to direct the Secretary of the Interior to release on behalf of the United States certain restrictions contained in a previous conveyance of land to the city of Albuquerque, N. Mex., and for other purposes;

H.R. 4647. An act to award special congressional gold medals to Fred Waring, the widow of Joe Louis, and Louis L'Amour; and

H.R. 6159. An act to establish a program under the coordination of the Office of Science and Technology Policy for improving the use of risk analysis by those Federal agencies concerned with regulatory decisions related to the protection of human life, health, and the environment.

HOUSE BILLS REFERRED

The following bills were read the first and second times by unanimous consent, and referred as indicated:

H.R. 4365. An act to provide that per capita payments to Indians may be made by tribal governments, and for other purposes; to the Select Committee on Indian Affairs.

H.R. 6091. An act to designate the Mary McLeod Bethune Council House in Washington, District of Columbia, as a national historic site, and for other purposes; to the Committee on Energy and Natural Resources.

H.R. 6159. An act to establish a program under the coordination of the Office of Science and Technology Policy for improving the use of risk analysis by those Federal agencies concerned with regulatory decisions related to the protection of human life, health, and the environment; to the Committee on Commerce, Science, and Transportation.

HOUSE BILLS HELD AT THE DESK

The following bills were ordered held at the desk pending further disposition, by unanimous consent:

H.R. 6033. An act relating the preservation of the historic Congressional Cemetery in the District of Columbia for the inspiration and benefit of the people of the United States;

H.R. 6454. An act to amend title 18, United States Code, to clarify the applicability of offenses involving explosives and fire.

HOUSE BILL PLACED ON THE CALENDAR

The following bill was read the first and second times by unanimous consent, and placed on the calendar:

H.R. 4647. An act to award special congressional gold medals to Fred Waring, the widow of Joe Louis, and Louis L'Amour.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. DURENBERGER, from the Committee on Governmental Affairs, without amendment:

S. 2329. A bill to establish an Efficiency Advisory Roundtable to assist the Advisory Commission on Intergovernmental Relations in its activities concerning the New Federalism (with additional views) (Rept. No. 97-515).

By Mr. HATFIELD, from the Committee on Appropriations, with amendments:

H.R. 6863. An act making supplemental appropriations for the fiscal year ending September 30, 1982, and for other purposes (Rept. No. 97-516).

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. GARN, from the Committee on Banking, Housing, and Urban Affairs:

Richard W. Heldridge, of California, to be a member of the Board of Directors of the Export-Import Bank of the United States.

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. JACKSON:

S. 2801. A bill to withdraw certain lands from mineral leasing, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. DIXON (for himself, Mr. PERCY, Mr. HEINZ, Mr. KENNEDY, Mr. LEVIN, Mr. DECONCINI and Mr. METZENBAUM):

S. 2802. A bill to amend the Federal-State Extended Unemployment Compensation Act of 1970 to restore a former provision relating to the insured unemployment rate; to the Committee on Finance.

By Mr. SASSER:

S. 2803. A bill to create a Federal, State, and local drug forfeiture fund; to the Committee on the Judiciary.

By Mr. PELL:

S. 2804. A bill to authorize the Secretary of Education to provide financial assistance to States for use in expanding educational programs in juvenile and adult correctional institutions to assist in the rehabilitation of criminal offenders, and for other purposes; to the Committee on Labor and Human Resources.

By Mr. HATFIELD (for himself, Mr. PACKWOOD, Mr. JACKSON, Mr. GORTON, Mr. CRANSTON, and Mr. MURKOWSKI):

S. 2805. A bill to provide for the orderly termination, extension, or modification of certain contracts for the sale of Federal timber, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry and the Committee on Energy and Natural Resources, jointly, for no more than 30 days.

By Mr. HATFIELD (for himself, Mr. STENNIS, and Mr. DOMENICI):

S. 2806. A bill to restrict Federal funding of abortions; to the Committee on Governmental Affairs.

By Mr. ROBERT C. BYRD (for himself, Mr. CRANSTON, Mr. INOUYE, Mr. FORD, Mr. BAUCUS, Mr. BENTSEN, Mr. BIDEN, Mr. BOREN, Mr. BUMPERS, Mr. BURDICK, Mr. CANNON, Mr. DECONCINI, Mr. DIXON, Mr. DODD, Mr. EAGLETON, Mr. HUDDLESTON, Mr. JACKSON, Mr. JOHNSTON, Mr. KENNEDY, Mr. LEVIN, Mr. MATSUNAGA, Mr. MELCHER, Mr. METZENBAUM, Mr. MITCHELL, Mr. MOYNIHAN, Mr. PELL, Mr. PRYOR, Mr. RANDOLPH, Mr. RIEGLE, Mr. SARBANES, and Mr. SASSER):

S. 2807. A bill to amend the Federal Reserve Act; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. EAGLETON (for himself, Mr. LEVIN, Mr. DURENBERGER, Mr. HATCH, Mr. KENNEDY, Mr. METZENBAUM, and Mr. SARBANES):

S.J. Res. 225. A joint resolution to provide for the designation of the week beginning on November 21, 1982, as "National Alzheimer's Disease Week."; to the Committee on the Judiciary.

By Mr. COCHRAN:

S.J. Res. 226. A joint resolution to authorize and request the President to designate October 1, 1982, as "American Enterprise Day."; to the Committee on the Judiciary.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. MATSUNAGA (for himself, Mr. INOUYE, Mr. STEVENS, Mr. MURKOWSKI, Mr. GOLDWATER, Mr. DECONCINI, Mr. DOMENICI, and Mr. SCHMITT):

S. Res. 441. A resolution to authorize and direct the Architect of the Capitol to install additional stars on the ceiling and walls of the Senate Chamber; to the Committee on Rules and Administration.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. JACKSON:

S. 2801. A bill to withdraw certain lands from mineral leasing, and for other purposes; to the Committee on Energy and Natural Resources.

WILDERNESS PROTECTION ACT OF 1982

Mr. JACKSON. Mr. President, today I am introducing the Wilderness Protection Act of 1982. This legislation is almost identical to that which was favorably reported by the House Interior and Insular Affairs Committee by a vote of 34 to 7 on June 24, 1982. The measure is now awaiting action by the full House of Representatives.

Mr. President, this is a very straightforward bill. It would immediately and permanently withdraw lands in the National Wilderness Preservation System—except for lands in Alaska—from oil, gas, oil shale, coal, phosphate, potassium, sulfur, gilsonite, and geothermal leasing. National Forest System lands recommended to Congress for designation as wilderness, wilderness study areas, and further planning lands identified in RARE II would be temporarily withdrawn from such leasing. The bill also provides for mineral inventories of withdrawn areas, revocation of withdrawals in the case of urgent national need, the protection of valid existing rights, and for leasing under wilderness if exploration and extraction is below the surface and is accomplished from outside the wilderness.

Mr. President, the Congress has been embroiled in a debate over mineral prospecting, exploration, leasing, and development in wilderness and so-called wilderness candidate areas for the past 1½ years. This debate began early in 1981 when the Forest Service announced that it was considering issuing permits for seismic activities involving the use of explosives in the Bob Marshall Wilderness in Montana. At the same time, it was discovered that some 340 applications for oil and gas leases were pending within the so-called Bob Marshall Wilderness "complex"—the Bob Marshall, Scapegoat, and Great Bear Wilderness Areas. In response, the House Interior and Insular Affairs Committee voted on May 21, 1981, to invoke its emergency withdrawal authority pursuant to section 204(e) of the Federal Land Policy and Management Act and requested the Secretary of the Interior to make an emergency withdrawal of the Bob Marshall complex from mineral leas-

ing. The Secretary made the withdrawal and the matter is now being litigated in the Federal district court in Montana.

In the ensuing months the controversy over wilderness leasing heightened when leasing recommendations were developed for wilderness areas in California, Washington, Wyoming, and Arkansas, and when three leases were actually issued by the Department of the Interior in the Capitan Mountains Wilderness Area in New Mexico.

In November 1981, the Secretary of the Interior agreed to place a 6-month moratorium on leasing in wilderness areas in order to give Congress time to consider changes in the law. In late January, the Secretary extended the moratorium until the end of the current session of the 97th Congress. In the meantime, the Congress continues to consider a variety of statewide wilderness proposals, some of which withdraw wilderness lands from further leasing and others that do not.

Mr. President, I am introducing this legislation today because the debate over the past 1½ years has convinced me of three things. First, the people of this country are, for the most part, overwhelmingly opposed to oil and gas development in wilderness areas. In every instance, where leasing has been an issue, public reaction has been swift and negative. The strong sentiment in my State and elsewhere in the country is that wilderness and potential wilderness areas should be the last places to be leased. I concur in this view, and the bill I am introducing today will help insure that other lands are explored and developed first.

Second, I am convinced that the amount of oil and gas involved is very small. There are millions and millions of acres of Federal lands available for leasing that are not components of the Wilderness Preservation System. Secretary Watt, for example, has recently announced the implementation of a 5-year plan for leasing over 1 billion acres of the Outer Continental Shelf. By comparison, the amount of acreage withdrawn under his bill is quite small indeed. Further, experts at the Oak Ridge National Laboratory have indicated at hearings conducted by the House Interior and Insular Affairs Committee that wilderness and wilderness-candidate areas may only contain on the order of 3 percent of the Nation's undiscovered gas resources. Obviously, this figure is quite speculative, but even if it is 100 percent too low, it is clear that the potential energy loss is a relatively small price to pay for preserving our Nation's wilderness system.

Finally, I think it is very important that the Congress act before the end of this year. Secretary Watt has urged us to address this issue legislatively, and I think we should respond. Once the current moratorium expires at the end of this Congress, we will again be forced to deal with the leasing question through administrative confrontation, section 204(e) of FLPMA and the courts. It is clear that Secretary Watt intends to issue oil and gas leases between the end of this Congress and December 31, 1983, when the leasing authority expires under the terms of the Wilderness Act. I think we should deal with that eventuality now rather than wait to legislate in the crisislike and emotionally charged atmosphere that pervaded the Congress and the administration last year.

Mr. President, the only difference between the bill I am introducing today and the one reported from the House Interior Committee last month is that my bill does not include the so-called expedited procedures associated with the consideration of a recommendation of the President to permit leasing in a wilderness in the case of a national need to do so. It is my view that a decision such as this should be made in accordance with normal legislative procedures.

I understand that as a result of discussions between the bill's sponsors in the House and the chairman of the Rules Committee, a substitute bill also deleting the language will be offered when the measure comes before the House.

Mr. President, I am very hopeful that we can resolve this matter this year. I look forward to working with my colleagues on both sides of the aisle and in the House toward this end.

Mr. President, I ask unanimous consent that the bill be printed in the RECORD.

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

S. 2801

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Wilderness Protection Act of 1982".

WITHDRAWALS

SEC. 2. Except as specifically provided in this Act, notwithstanding any other provision of law—

(a) lands designated by Congress as components of the National Wilderness Preservation System are hereby withdrawn from disposition under all laws pertaining to oil, gas, oil shale, coal, phosphate, potassium, sulphur, gilsonite, and geothermal leasing, and all amendments thereto;

(b) lands within the national forest system which have been recommended for designation as wilderness in Executive Communication 1504, Ninety-sixth Congress (House Document Numbered 96-119) are hereby withdrawn from disposition under all laws pertaining to oil, gas, oil shale, coal, phosphate, potassium, sulphur, gilsonite, and geothermal leasing, and all amendments thereto, until Congress determines otherwise or until a revision of the initial plans required by the Forest and Rangeland Renewable Resources Planning Act of 1974 as amended by the National Forest Management Act of 1976 is implemented recommending the land concerned for other than wilderness designation, whichever comes first;

(c) wilderness study areas designated by act of Congress are hereby withdrawn from disposition under all laws pertaining to oil, gas, oil shale, coal, phosphate, potassium, sulphur, gilsonite, and geothermal leasing, and all amendments thereto for the period of interim wilderness protection and management of such wilderness study areas contained in the act of Congress designating such wilderness study areas;

(d) lands within the national forest system identified for further planning in Executive Communication 1504, Ninety-sixth Congress (House Document Numbered 96-119) are hereby withdrawn from disposition under all laws pertaining to oil, gas, oil shale, coal, phosphate, potassium, sulphur, gilsonite, and geothermal leasing, and all amendments thereto, until one year after the date of final approval and implementation of an initial forest plan covering the further planning area concerned pursuant to the Forest and Rangeland Renewable Resources Planning Act of 1974 as amended by the National Forest Management Act of 1976: *Provided, however,* That if any further planning area is recommended for wilderness in such initial plan it shall remain withdrawn for the period specified for recommended wilderness areas in subsection (b) of this section.

EXCEPTED LANDS

SEC. 3. The withdrawal and other provisions of this Act shall not apply to—

(a) any national forest system land released to management for any uses the Secretary concerned deems appropriate through the land management planning process by any statewide or other Act of Congress designating components of the National Wilderness Preservation System now in effect or hereinafter enacted;

(b) lands designated as congressional wilderness study areas in Colorado by sections 105 and 106 of the Act of December 22, 1980 (Public Law 96-560), land designated as congressional wilderness study areas in New Mexico by section 103 of the Act of December 19, 1980 (Public Law 96-550), or to lands within the River of No Return Wilderness, Idaho, which are subject to section 4(d)(1) of the Central Idaho Wilderness Act of 1980 (Public Law 96-312);

(c) Bureau of Land Management wilderness study areas, which have been identified pursuant to section 603 of the Federal Land Policy and Management Act of 1976 (Public Law 94-579); or

(d) lands in the State of Alaska.

PROSPECTING AND INVENTORIES

SEC. 4. (a) Nothing in this Act shall prevent the Secretary of Agriculture or Interior from issuing under their existing authority in any area of national forest or public lands withdrawn pursuant to section 2 of this Act such permits as may be necessary to conduct to prospecting, seismic surveys, and core sampling conducted by helicopter or other means not requiring construction of roads or improvements of existing roads or ways, for the purpose of gathering information about and inventorying energy, mineral, and other resource values of such area, if such activity is carried out in a manner compatible with the preservation of the wilderness environment: *Provided, however,* That seismic activities involving the use of

explosives shall not be permitted in designated wilderness areas.

(b) The Secretary of the Interior shall augment recurring surveys of the mineral values of wilderness areas pursuant to section 4(d)(2) of the Wilderness Act and acquire information on other national forest and public land areas withdrawn pursuant to this Act, by conducting, in conjunction with the Secretary of Energy, the national laboratories, or other Federal agencies, as appropriate, such mineral inventories of areas withdrawn pursuant to section 2 of this Act as he deems appropriate. These inventories shall be conducted in a manner compatible with the preservation of the wilderness environment through the use of methods including core sampling conducted by helicopter; geophysical techniques such as induced polarization, synthetic aperture radar, magnetic and gravity surveys; geochemical techniques including stream sediment reconnaissance and X-ray defraction analysis; land satellites; or any other methods he deems appropriate. The Secretary of the Interior is hereby authorized to conduct inventories or segments of inventories, such as data analysis activities, by contract with private entities deemed by him to be qualified to engage in such activities whenever he has determined that such contracts would decrease Federal expenditures and would produce comparable or superior results.

(c) The Secretary of the Interior and the Secretary of Agiculture may prescribe such regulations, as they deem necessary, to insure that confidential, privileged, or proprietary information obtained by them or any officer or employee of the United States under this Act is not disclosed.

RECOMMENDATIONS OF THE PRESIDENT TO CONGRESS

SEC. 5. (a) At any time after the date of enactment of this Act, the President may transmit a recommendation to Congress that minerals prospecting, exploration, development, or extraction not permitted under this Act shall be permitted in a specified area or areas withdrawn pursuant to section 2 of this Act. Notice of such transmittal shall appear in the Federal Register and shall be conveyed to the Governor of the State in which the area or areas are located.

(b) A recommendation may be transmitted to the Congress under subsection (a) if the President finds that, based on available information—

(1) there is an urgent national need for the minerals activity; and

(2) such national need outweighs the other public values of the wilderness lands involved and the potential adverse environmental impacts which are likely to result from the activity.

(c) Together with a recommendation, the President shall submit to the Congress—

(1) a report setting forth in detail the relevant factual background and the reasons for his findings and recommendations;

(2) a statement of the conditions and stipulations which would govern the recommended activity; and

(3) in any case in which an environmental impact statement is required under the National Environmental Policy Act of 1969, a statement which complies with the requirements of section 102(2)(C) of that Act.

(d) Any recommendation made pursuant to this section shall take effect only upon enactment of a joint resolution approving such recommendation.

VALID EXISTING RIGHTS

SEC. 6. All provisions of this Act shall be subject to valid existing rights.

SEC. 7. The Secretary of the Interior is authorized to issue oil and gas leases for the subsurface of national forest or public land wilderness areas that are immediately adjacent to producing oil and gas fields or areas that are prospectively valuable. Such leases shall allow no surface occupancy and may be entered only by directional drilling from outside the wilderness or other nonsurface disturbing methods.

By Mr. DIXON (for himself, Mr. PERCY, Mr. HEINZ, Mr. KENNEDY, Mr. LEVIN, Mr. DECONCINI, and Mr. METZENBAUM):

S. 2802. A bill to amend the Federal-State Extended Unemployment Compensation Act of 1970 to restore a former provision relating to the insured unemployment rate; to the Committee on Finance.

INSURED UNEMPLOYMENT RATE

Mr. DIXON. Mr. President, today I am introducing legislation I feel is imperative to address the critical problem of unemployment extended benefits which is currently before us.

As you know, this Nation as a whole, is experiencing its highest rates of unemployment in the past 40 years. However, due to a change enacted last year in the Omnibus Reconciliation Act, the individuals who are experiencing the longest and most difficult period of unemployment—those who have exhausted their first 26 weeks of benefits—are not even counted when the States calculate their insured unemployment rates.

That rate bears little or no resemblance to the actual level of unemployment a State suffers. In my own State of Illinois, we are experiencing a total unemployment rate of 11.3 percent, but our insured rate is only 5 percent. The same is true in many other States, as the table included at the end of this statement shows.

The longer this recession and its accompanying record unemployment rates continue, the more this situation will worsen. It is indefensible for us to continue to ignore those people who are currently receiving extended benefits when we calculate the rate by which a State qualifies.

The bill I am introducing today, along with my colleague, Senator PERCY, would change the method of calculation of the insured unemployment (IUR), so that anyone receiving benefits—whether it be the first 26 weeks, the 13 weeks of extended benefits or, should it pass, the 13 weeks of Federal supplemental benefits—would be counted for the IUR.

By changing the method of calculating the IUR, we will be able to more accurately reflect those individuals who are actively looking for jobs and need to continue to receive benefits so that they do not become a burden on the State's welfare rolls.

Ten states "triggered off" extended benefits between June 1 and July 31. Their total number of unemployed did not decrease, however. My bill contains a provision making the new calculation retroactive to June 1 for purposes of counting those who were on extended benefits at that time. Those States who most recently "triggered off" are: Mississippi, June 19; New Jersey, June 19; Massachusetts, June 26; Arkansas, July 3; Maine, July 3; Minnesota, July 10; Delaware, July 17; Indiana, July 17; Maryland, July 31; and Alabama, July 31.

It is estimated that in these States, approximately 150,000 persons who were receiving extended benefits are no longer eligible. Should Illinois "trigger off," which it is scheduled to do shortly, an additional 50,000 people would be added to that list.

I urge my colleagues to support this bill, which will make an immediate difference. This problem will be further complicated if we do not make this change, because of the scheduled increase in the permissible IUR rate to 6 percent on September 26. Should this occur, it has been estimated that as few as 10 States would qualify for extended benefits, and they would not be those with the largest number of unemployed people.

In addition, this bill will address a problem relating to changes that States were required to make in State laws in order to conform with the Federal changes. It would enable them, for purposes of certification, to pay benefits without calling legislatures into special session,.

I am pleased to have the support of my colleague from Illinois, CHUCK PERCY, as an original cosponsor of this bill and also Senators HEINZ, KENNEDY, LEVIN, and DECONCINI.

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. 2802

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a)(1) section 203(e)(1)(A) of the Federal-State Extended Unemployment Compensation Act of 1970 (as amended by section 2402 of the Omnibus Budget Reconciliation Act of 1981) is amended by striking out "individuals filing claims for regular compensation" and inserting in lieu thereof "individuals filing claims for compensation (including regular, extended, supplemental, and sharable regular compensation)".

(2) The amendment made by paragraph (1) shall apply for purposes of determining whether there are State "on" or "off" indicators for weeks beginning on or after June 1, 1982. For purposes of making such determinations for such weeks, such amendment shall be deemed to be in effect for all weeks, whether beginning before, on, after June 1, 1982.

(b)(1) In the case of any State with respect to which the Secretary of Labor has determined that State legislation is required in order to amend its State unemployment compensation law so as to include any requirement imposed by this section, such State's unemployment compensation law shall not be determined to be out of compliance under section 3304(c) of the Internal Revenue Code by reason of a failure to contain any such requirement for any period prior to the end of the first session of the State legislature which begins after the date of the enactment of this Act, or which began prior to the date of the enactment of this Act and remained in session for at least twenty-five calendar days after such date of enactment. For purposes of the preceding sentence, the term "session" means a regular, special, budget, or other session of a State legislature.

(2) Any State described in paragraph (1) may choose to implement the amendments made by this section, subject to the effective dates contained in this section, prior to the time that changes in the State unemployment compensation law are formally adopted if such State is not otherwise barred from doing so pursuant to State law.

Mr. PERCY. Mr. President, I am pleased to join my friend and colleague, ALAN DIXON, in an effort to address the extremely grave situation which confronts our own State of Illinois and others with respect to our continued ability to pay extended unemployment benefits. This legislation is the direct result of an emergency meeting of the Illinois congressional delegation, held yesterday, to consider the impact of a cessation of these benefits on the 50,000 unemployed in Illinois receiving them now, as well as a number of possible solutions to that problem. It is my belief that the Illinois delegation will unite in its effort to resolve this situation favorably for those who are suffering long-term unemployment because of the recession, and will cooperate with Governor Jim Thompson on this matter at every opportunity.

Federal law provides that an additional 13 weeks of unemployment benefits—beyond the regular, State-funded 26 weeks—may be paid in States with high unemployment. These benefits are funded by the States and Federal Government jointly and are paid when a specially calculated insured unemployment rate (IUR) reaches 5 percent. The Omnibus Budget Reconciliation Act of 1981 altered the formula by which the IUR is calculated to exclude from the count those who are already receiving extended benefits. Because of this and other changes in UI enacted at the same time, many unemployed in Illinois and about 10 other States are in danger of losing their extended benefits at a time when no economic upturn is foreseen and when the possibility of permanent reemployment is slight. With our regular unemployment rate at a tragic 11.3 percent level, our IUR is currently hovering around the threshold at a current rate of 5.002 percent.

The legislation we are introducing today would restore to the calculation of the IUR those who have exhausted their State benefits and are collecting extended benefits. If the purpose of the extended benefits program is to help those in high unemployment States, then it makes no sense to me that we are about to terminate it for those whose burden has been the heaviest and lasted longest. If these recipients had been counted in the IUR, Illinois' rate would have been in excess of 6 percent and would present a more accurate picture of conditions in our State.

Mr. President, I mentioned earlier that a number of States are in similar circumstances. The bill offered by my distinguished colleague to help our State may not be the answer for all of the others. It also entails additional Federal spending which we must make a reasonable effort to offset. But it is a starting point. I commend him for his initiative and his quick response to the situation. We will continue to work together, with our delegation, our Governor, and with other affected States to find the most feasible proposal that can be enacted the quickest before the unemployed in our States suffer the loss of the only assistance that for many of them is keeping their families together and off the welfare rolls.

UNEMPLOYMENT RATES AND IUR RATES BY STATE

State	Unemployment rate [1]	Number of people	IUR [2]
Michigan (3)	14.3	616,000	6.65
Alabama	13.2	225,000	4.89
Washington	12.3	246,000	6.31
Indiana (10)	11.4	292,000	4.29
South Carolina	11.4	170,000	5.32
Ohio (5)	11.1	566,000	5.45
Oregon	11.1	145,000	6.85
West Virginia	10.9	84,000	6.26
District of Columbia	10.6	33,000	3.55
Illinois (4)	10.6	586,000	5.00
Tennessee	10.6	221,000	4.96
Louisiana	10.3	192,000	4.19
Alaska	10.1	20,000	6.66
Mississippi	10.0	107,000	5.41
Idaho	9.8	43,000	6.65
Kentucky	9.8	159,000	5.42
Pennsylvania (6)	9.8	529,000	6.21
New Jersey (8)	9.7	355,000	4.5
Wisconsin	9.7	234,000	5.59
Arizona	9.3	122,000	4.0
Maine	9.3	49,000	4.31
Rhode Island	9.2	44,000	5.74
Arkansas	9.1	94,000	5.03
New Mexico	9.1	53,000	3.81
California (1)	9.0	1,085,000	4.90
North Carolina	8.7	256,000	4.35
Nevada	8.7	42,000	4.26
Maryland	8.6	189,000	3.96
Massachusetts	8.6	257,000	3.55
Montana	8.5	33,000	5.03
Missouri	7.9	187,000	3.82
New York (2)	7.9	633,000	3.60
New Hampshire	7.6	37,000	2.75
Vermont	7.6	20,000	5.10
Iowa	7.5	109,000	4.19
Georgia	7.4	197,000	3.19
Florida (9)	7.3	346,000	2.37
Delaware	7.1	22,000	2.93
Virginia	7.1	188,000	2.21
Utah	7.0	47,000	4.41
Colorado	6.9	107,000	2.83
Minnesota	6.7	144,000	3.76
Connecticut	6.5	105,000	3.25
Hawaii	6.4	29,000	3.31
Texas (7)	6.3	456,000	1.71
Kansas	5.5	64,000	3.93
Nebraska	5.4	43,000	2.60
Oklahoma	5.2	78,000	2.49
Wyoming	4.9	13,000	3.35
North Dakota	4.3	14,000	2.93

[1] As of May 1982.
[2] As of July 10, 1982.

By Mr. SASSER:

S. 2803. A bill to create a Federal, State, and local drug forfeiture fund; to the Committee on the Judiciary.

FEDERAL, STATE, AND LOCAL DRUG FORFEITURE FUND ACT OF 1982

● Mr. SASSER. Mr. President, on behalf of myself and the Senator from Arkansas (Mr. PRYOR), I am today introducing legislation to facilitate cooperation between Federal and State and local law enforcement agencies in combating drug trafficking.

In this country, violent crime rose by 11.1 percent in 1980, and law enforcement personnel are convinced that this surge of criminal activity is largely drug related. Drug trafficking is big business for organized crime. The estimate for the value of the illicit drug trade is $80 billion. That figure would make it the second largest corporation in the United States, behind Exxon and slightly ahead of Mobil.

The byproduct of this illegal industy is more violent crimes every year. In Tennessee, there were 20,824 violent crimes in 1980. These included 10,427 assaults, 8,208 robberies, and 489 murders. Other States fared no better. Georgia's violent crime total was 29,993. Florida is experiencing a virtual crime epidemic. earlier this month, in Cleveland, Tenn., Federal, State, and local law enforcement agents confiscated 1,200 pounds of pure cocaine worth nearly $400 million. Also taken were vehicles, weapons, and $450,000 in cash. This is the second largest cocaine seizure in U.S. history. Law enforcement officials believe the drugs were flown into Tennessee directly from Colombia.

Lest anyone think this was a fluke, about a year ago there was a similar raid in Sevier County, Tenn. that netted 600 pounds of pure cocaine with an estimated street value of $200 million. Officials say they only know about less than 1 percent of the illegal drugs coming into Tennessee and estimate that cocaine alone is a $500 million-a-year business in east Tennessee.

While drug enforcement is primarily a Federal responsibility, our State and local police are increasingly being drawn into the fight, for two reasons. First, many of the most successful drug busts require close Federal-State cooperation. The work does not begin and end with the arrest. Months and months of groundwork are necessary—surveillance, checking of leads, and

building up the record of evidence necessary to obtain a conviction. State and local law enforcement agents are an integral part of these efforts—efforts which require more and more of scarce resources.

In the seizure of Cleveland, Tenn., for instance, agents of both the Tennessee Bureau of Investigation and DEA had the major suspects under surveillance for a number of months. Knoxville's organized crime unit had also conducted surveillance operations and officers from Cleveland, Knoxville, and Bradley County were involved in the effort. Without the dedicated work of State and local law enforcement personnel, the Federal agents would simply be swamped in the drug flow. This cooperation, however, costs the departments in time and manpower—resources that are increasingly in short supply in these times of budget restraint.

The second reason for the increasing involvement of State and local officials is that they are the ones left to cope with the rising crimewave that is the result of the increasing drug traffic. They are the ones who have to cope with the vicious thugs who make our people feel unsafe in their own homes and afraid to walk the streets at night. These local crimes are the kinds that touch most people's lives—muggings, robberies, thefts, and often murder. While much of their cause and solution lie beyond the resources of local law enforcement, their control is a local responsibility.

Because of the increasing State and local involvement in Federal drug enforcements and the increasing crime which they are called upon to deal with, I am today introducing the Federal, State, and Local Drug Forfeiture Fund Act of 1982. This legislation has five main parts:

First, proceeds from the liquidation of assets seized in drug enforcement efforts would be put into a special trust fund.

Second, 50 percent of the funds available in any one year would be earmarked for Federal drug enforcement, prevention, and education efforts.

Third, 30 percent of the total available moneys would be available to the States on a per capita basis for the same purposes.

Fourth, the remaining 20 percent would be discretionary funds under the control of the Administrator of the Drug Enforcement Administration. These would be available for particularly promising programs in States where sufficient funds were not available under a State's block grant allotment. This will also compensate States which fare poorly under block grant formulas but which have a worthy program which should be funded.

Finally, in any drug operation in which there was significant State and local participation, the State would get 20 percent of the proceeds from that particular operation, right off the top.

Mr. President, the bill I am introducing today is a result of extensive discussions with Tennessee officials, law enforcement personnel, and U.S. and State district attorneys. It is one approach of many that might be offered and it would help to compensate State and local agencies for their cooperation in what are often primarily Federal cases.

I particularly want to recognize the contributions of Tennessee District Attorney General Richard Fisher and his staff. It was in his jurisdiction that the latest drug arrests were made. The support provided by his office was an integral part of this successful operation and is a perfect example of the imput by State agencies in drug enforcement efforts.

I want to stress that the money available from the trust fund would be available for drug abuse prevention and education programs as well as for enforcement purposes. While enforcement is important, we must remember that drug treatment and education programs can also be extremely valuable in educating our youth about the damage of drugs. This will help reduce the favorable image of drugs which drug dealers use as they prey on our young people. Consequently S. 2803 insures that drug abuse and education programs will receive their fair share of the available funds.

I intend to speak out further on this matter in the weeks ahead and draw the attention of my colleagues to this pressing national problem.

Mr. President, 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. 2803

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Federal, State, and Local Drug Forfeiture Fund Act of 1982".

SEC. 2. (a) Congress finds that—

(1) the rising level of drug trafficking indicates a need for increasing the resources allocated to drug enforcement, treatment, and education;

(2) the proceeds from drug enforcement operations should be utilized in the effort against drug trafficking and drug abuse;

(3) State and local law enforcement agencies are frequently significantly involved in Federal drug enforcements;

(4) such State and local cooperation entails significant expense to such agencies; and

(5) the proceeds from Federal drug enforcement efforts should be shared with State and local agencies.

(b) The purpose of this Act is to provide that proceeds from Federal drug forfeitures, security forfeited by drug offenders jumping bail, and fines imposed on drug offenders are used for Federal, State, and local drug law enforcement, treatment, and education activities.

SEC. 3. Section 1963 of title 18 of the United States Code is amended—

(1) in subsection (a)—

(A) by striking out "and" immediately before "(2)"; and

(B) by striking out the period at the end and inserting in lieu thereof the following: ", and (3) in cases in which the racketeering activity consisted of any offense involving dealing in narcotic or other dangerous drugs, which is chargeable under State law or any offense involving the felonious manufacture, importation, receiving, concealment, buying, selling, or otherwise dealing in narcotic or other dangerous drugs, punishable under any law of the United States, any proceeds or profits derived from any interest, security, claim, or property or contractural right, described in clause (1) or (2) of this subsection.";

(2) in subsection (c), by striking out the period at the end and inserting in lieu thereof the following: ", except that the Attorney General shall provide for the use of any such property forfeited in cases in which the racketeering activity consisted of any offense involving dealing in narcotic or other dangerous drugs, which is chargeable under State law or any offense involving the felonious manufacture, importation, receiving, concealment, buying, selling, or otherwise dealing in narcotic or other dangerous drugs, punishable under any law of the United States, for Federal, State, and local drug law enforcement, treatment, and education activities as provided in section 511 (h) of the Controlled Substances Act (Public Law 91-513; 21 U.S.C. 881 (h))."; and

(3) by adding at the end the following new subsection:

"(d) If the racketeering activity consists of any offense involving dealing in narcotic or other dangerous drugs, which is chargeable under State law or any offense involving the felonious manufacture, importation, receiving, concealment, buying, selling, or otherwise dealing in narcotic or other dangerous drugs, punishable under any law of the United States, it shall be presumed that all assets or other property of the convicted person are subject to forfeiture under this section, unless such convicted person proves otherwise by the preponderance of the evidence.".

SEC. 4. (a) Section 408 of the Controlled Substances Act (Public Law 91-513; 21 U.S.C. 848) is amended—

(1) in subsection (a)(2)(A) by adding after the phrase "the profits obtained by him in such enterprise" the following: ", including any profits and proceeds, regardless of the form in which held, that are acquired, derived, used, or maintained, indirectly or directly, in connection with or as a result of a violation of paragraph (1)"; and

(2) in subsection (a)(2) by adding at the end thereof the following flush material: "Any property forfeited under this section shall be disposed of as provided in section 511(h) of the Controlled Substances Act (Public Law 91-513; 21 U.S.C. 881(h))."

(b) Subsection (e) of section 511 of the Controlled Substances Act (Public Law 91-513; 21 U.S.C. 881) is amended to read as follows:

"(e) Whenever property is forfeited under this title the Attorney General shall dispose of the property as provided in subsection (h)."

(c) Section 511 of such Act is further amended by adding at the end thereof the following:

"(h)(1) There is hereby appropriated, to remain available until expended, for each fiscal year beginning after the date of the enactment of this subsection a sum equal to the proceeds from the disposition and sale during the immediately preceding fiscal year of all property, not required to be destroyed by law or harmful to the public, forfeited in cases under (A) this subsection, (B) section 408 of this Act, and (C) section 1963 of title 18, United States Code, where such forfeited property relates to drug racketeering, to be used as provided in paragraph (2). In addition and notwithstanding any other provision of law, any money paid as a fine by an offender as punishment for any offense involving dealing in narcotic or other dangerous drugs, which is chargeable under Federal law or any offense involving the felonious manufacture, importation, receiving, concealment, buying, selling, or otherwise dealing in narcotics or other dangerous drugs, punishable under any law of the United States and any security forfeited for failure to appear for proceedings under chapter 207 of title 18, United States Code, in connection with such offenses, shall be available for use as provided in paragraph (2).

"(2) The fund created by paragraph (1) shall be administered by the Drug Enforcement Administration and shall be distributed on an annual basis as follows:

"(A) 50 per centum to be retained by the Drug Enforcement Administration to be used for Federal level drug law enforcement, treatment, and education activities;

"(B) 20 per centum to be retained by the Drug Enforcement Administration to be distributed under regulations of the Attorney General to specific State and local programs that demonstrate effectiveness in drug law enforcement, treatment, and education activities; and

"(C) 30 per centum to be distributed to the States on a per capita proportional basis to be used for State level drug law enforcement, treatment, and education activities.

"(3) Notwithstanding any other provision of this section, where a State participates in a drug seizure in a substantial manner, as determined by the Attorney General, such State shall be entitled to 20 per centum of the proceeds from the property forfeited as a part of the seizure to be paid out of the fund created under this subsection.".●

By Mr. PELL:

S. 2804. A bill to authorize the Secretary of Education to provide financial assistance to States for use in expanding educational programs in juvenile and adult correction institutions to assist in the rehabilitation of criminal offenders, and for other purposes; to the Committee on Labor and Human Resources.

FEDERAL CORRECTIONAL EDUCATION ASSISTANCE ACT

● Mr. PELL. Mr. President. I am again submitting legislation entitled "The Federal Correctional Education Assistance Act." This bill is very similar to the one I introduced in 1979. It would authorize the Secretary of Education to make grants to State education agencies for educational programs for criminal offenders in correctional institutions.

I regret to say that the need for this legislation has not declined over the past 3 years. In fact, quite the opposite has occurred. Over the past several years there has been a 50-percent increase in the incarceration rate for adult offenders. Sadly, the prison population of our Nation is at an all-time high of about 500,000 people. In addition, another 1,800,000 juveniles and adults are on probation and parole.

Today, the United States spends about $6 billion a year to house inmates in State correctional facilities, local jails, and Federal institutions and centers. This amounts to almost $13,000 a year for each inmate. It is a staggering amount, which exceeds the cost of education for 1 year at either Harvard or Yale. In fact, on the average this Nation spends 2½ times as much money on keeping a person incarcerated than on sending a young man or woman to college.

As awful as these figures are, there might be some consolation if we knew that these people, while incarcerated, were being prepared for a productive, responsible life upon release from prison. That simply is not the case.

Of the $6 billion spent to maintain our prison system, between 80 percent and 90 percent is spent on control and security. Less than 20 percent is spent on rehabilitation and training. Of the 20 percent, the amount that is spent on basic and vocational education is very small. In fact, recent data from the National Institute of Education reveals that only 2 percent of the total cost of incarceration goes to vocational education and related programs. On the average, a State spends only 1.5 percent of its total correctional budget on inmate education and training programs. Further, corrections education programs are generally plagued by inadequate funds, space, equipment, and trained staff.

To make matters even worse, the lack of adequate education programs is further complicated by the nature of the prison population. As noted by the National Advisory Council on Vocational Education in its excellent report, "Vocational Education in Correctional Institutions":

The typical inmate is a 25-year-old male, with an uncertain educational background, limited marketable skills, and few positive work experiences. He completed no more than 10 high school grades and functions 2-3 grade levels below that. He is likely to be poor, having earned less than $10,000 in the year prior to arrest.

Although the U.S. prison population is ninety-six percent male, the plight of the incarcerated woman cannot be overlooked. She is typically under 30, a single mother with two or more children, poor and on welfare. She is likely to have problems with physical and/or mental health, drugs and/or alcohol.

This situation does not improve when a person is released from prison. The unemployment rate among ex-offenders is three times the rate for the general public. Those that do find jobs often work in low-income, semi-skilled positions. If they do not commit another crime, many ex-felons end their lives in suicide or dereliction among the skid-row population. As Chief Justice Warren Burger put it so eloquently:

Ninety-five percent of the adults who are presently confined in our Nation's prisons will eventually return to freedom. Without any positive change, including learning marketable job skills, a depressing number—probably more than half of these inmates—will return to a life of crime after their release.

The situation, in fact, is even more distressing than that described by the Chief Justice; 60 to 75 percent of the 150,000 offenders released from institutions each year will return to crime, and 30 to 50 percent will be recommitted to prison within 1 year. Among juveniles, the rate of recidivism reaches as high as 80 percent.

In response to this deplorable set of circumstances, the Chief Justice proposed in his 1981 report to the American Bar Association the introduction of mandatory educational and vocational programs for all inmates. He urged that every inmate who could not read, write, spell, and do simple arithmetic would be given that training. In addition, the Chief Justice recommended a large expansion of vocational training in the skilled and semi-skilled crafts. His recommendations were not only echoed but amplified and expanded upon by the report of the National Advisory Council on Vocational Education to which I have previously referred. That report should be required reading for every public official in this country.

The Chief Justice's recommendations combined with those of the National Advisory Council on Vocational Education clearly point to the need for a greater Federal commitment in the corrections education area. To my mind, their observations and findings provide strong support for the legislative initiative I undertook in 1979 and am renewing this year. In addition, they are buttressed by the results of studies in California, Maryland, New Mexico, Texas, and Washington which correlate a reduction in the recidivism rate with education and training received by the inmate while in prison.

The Federal Correctional Education Assistance Act would authorize $25 million a year in grants to State education agencies. The size of a grant would be determined by a ratio of a State's inmate population to the total inmate population in all States, but no State would receive less than $100,000. The States would have considerable latitude in the use of the Federal funds. They could be spent on a variety of education programs, including:

First, academic programs for basic education, special education, secondary school credit, postsecondary edu-

cation, fine arts, recreation, and health;

Second, vocational training programs;

Third, library development and library services;

Fourth, teacher training in correctional education, particularly in social education, reading instruction, and abnormal psychology;

Fifth, educational release programs for offenders, with special attention on vocational work release training programs;

Sixth, guidance programs, including testing, counseling, psychological evaluation, and placement services;

Seventh, supportive services, with special emphasis upon job placement and coordination of education services with other agencies furnishing services to criminal offenders after their release; and

Eighth, cooperative programs with business to provide job training for offenders.

Mr. President, I urge my colleagues to give this legislation their serious consideration. I would most certainly welcome their cosponsorship of this important measure. I look forward to the bill being referred to the Committee on Labor and Human Resources, and am very hopeful that it will eventually be the subject of hearings by the Subcommittee on Education, Arts, and Humanities. I ask unanimous consent that the full text of the legislation be printed in the RECORD.

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

S. 2804

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Federal Correctional Education Assistance Act".

FINDINGS AND DECLARATION OF PURPOSE

SEC. 2. (a) The Congress finds that—

(1) existing educational programs in juvenile and adult correctional institutions are inadequate to meet the needs of accused individuals or convicted offenders;

(2) State and local educational agencies and other public and private nonprofit agencies do not have the financial resources needed to respond to the increasing need of the correctional system for appropriate institutional and noninstitutional educational services for accused individuals and convicted criminal offenders;

(3) education is important to, and makes a significant contribution to, the adjustment of individuals in society; and

(4) there is a growing need for immediate action by the Federal Government to assist State and local educational programs for criminal offenders in correctional institutions.

(b) It is, therefore, the purpose of this Act to provide financial assistance to the States to carry out educational programs for criminal offenders in correctional institutions.

DEFINITIONS

SEC. 3. As used in this Act—

(1) "criminal offender" means any individual who is charged with or convicted of any criminal offense, including a youth offender or a juvenile offender;

(2) "correctional institution" means any—

(A) prison,

(B) jail,

(C) reformatory,

(D) work farm,

(E) detention center, or

(F) halfway house, community-based rehabilitation center, or any other similar institution designed for the confinement or rehabilitation of criminal offenders;

(3) "Secretary" means the Secretary of Education;

(4) "State" means any State of the United States, the District of Columbia, and the Commonwealth of Puerto Rico; and

(5) "State educational agency" means the State board of education or other agency or officer primarily responsible for the State supervision of public elementary and secondary schools, or, if there is no such officer or agency, an officer or agency designated by the Governor or by State law.

AUTHORIZATION

SEC. 4. (a)(1) There is authorized to be appropriated $25,000,000 for fiscal year 1984, and for each succeeding fiscal year ending prior to October 1, 1986, to enable the Secretary to make grants to States in accordance with the provisions of this Act.

(2) Funds appropriated for any fiscal year may remain available until expended.

(b) The Secretary is authorized to make grants to State educational agencies and to make grants for programs of national significance in accordance with the provisions of this Act.

ALLOCATION

SEC. 5. (a)(1) In each fiscal year in which the funds appropriated pursuant to section 4(a) exceed $15,000,000 the Secretary shall reserve 3 percent of the funds appropriated for carrying out section 8.

(2) From the sums appropriated pursuant to section 4(a) in each fiscal year in which paragraph (1) does not apply and from the remainder of the sums appropriated pursuant to section 4(a) for each fiscal year in which paragraph (1) does apply, the Secretary shall allocate to each State $100,000 plus an amount which bears the same ratio to such sums or to such remainder, as the case may be, as population of the State in correctional institutions for the year preceding the year for which the determination is made bears to the population of all States in correctional institutions for such year.

(b) The amount by which any allotment of a State for a fiscal year under subsection (a) exceeds the amount which the Secretary determines will be required for such fiscal year for applications approved under section 7 within such State shall be available for reallotment to other States in proportion to the original allotments to such States under subsection (a) for that year, but with such proportionate amount for any such State being reduced to the extent it exceeds the sum the Secretary estimates such State needs and will be able to use for such year. The total of such reduction shall be similarly reallotted among the States whose proportionate amounts were not so reduced. Any amount reallotted to a State under this subsection during a fiscal year shall be deemed part of its allotment uder subsection (a) for such year.

(c) No sums appropriated pursuant to section 4(a) shall be used for purposes inconsistent with the Juvenile Justice and Delinquency Prevention Act of 1974.

USES OF FUNDS

SEC. 6. Grants made under this Act to States may be used, in accordance with applications approved under section 7, for the cost of educational programs for criminal offenders in correctional institutions, including—

(1) Academic programs for—

(A) basic education with special emphasis on reading, writing, vocabulary, and arithmetic;

(B) special educaiton programs as defined by State law;

(C) bilingual or bicultural programs for members of minority groups;

(D) secondary school credit programs;

(E) postsecondary programs;

(F) fine arts programs;

(G) recreation and health programs; and

(H) curriculum development for the programs described in this paragraph;

(2) standard and innovative vocational training programs;

(3) library development and library service programs;

(4) training for teacher personnel specializing in correctional education, particularly training in social education, reading instruction, and abnormal psychology;

(5) educational release programs for criminal offenders, with special attention given to vocational work release training programs;

(6) guidance programs, including testing, preparation, and maintenance of case records for criminal offenders, counseling, psychological evaluation, and placement services;

(7) supportive services for criminal offenders, with special emphasis upon job placement services and coordination of educational services with other agencies furnishing services to criminal offenders after their release; and

(8) cooperative programs with business concerns designed to provide job training for criminal offenders.

APPLICATION

SEC. 7. (a) A State desiring to receive a grant under this Act shall submit an application to the Secretary containing or accompanied by such information as the Secretary deems reasonably necessary, with such annual revisions as are necessary. Each such application shall—

(1) provide that the programs and projects for which assistance under this Act is sought will be administered by, or under the supervision of, the State educational agency;

(2) set forth a program for carrying out the purposes set forth in section 6 and provide for such methods of administration as are necessary for the proper and efficient operation of the program;

(3) provide assurances that no person with responsibilities in the operation of such program will discriminate with respect to any program participant or any employee in such program because of race, color, creed, national origin, sex, political affiliation or beliefs;

(4) provide assurances that funds received under this Act will be used only to supplement, and to the extent practical increase, the level of funds that would, in absence of such Federal funds, be made available from regular non-Federal sources for the purposes described in section 6, and in no case may such funds be used to supplant funds from non-Federal sources; and

(5) provide for a three-year report to the Office of Education containing a description

of the activities assisted under this Act together with a description of evaluation programs designed to test the effectiveness of education programs assisted under this Act.

(b) Each application made under this Act may be approved by the Secretary if the Secretary determines that the application meets the requirements set forth in this Act.

PROGRAMS OF NATIONAL SIGNIFICANCE

SEC. 8. (a) From funds reserved pursuant to section 5(a)(1), the Secretary is authorized to make grants to State and local educational agencies, institutions of higher education, State correctional agencies, and other public and private nonprofit organizations and institutions to meet the costs of programs of national significance which the Secretary determines give promise of improving the education of criminal offenders.

(b) No grant may be made under this section unless an application is made to the Secretary at such time, in such manner, and containing such information as the Secretary deems reasonably necessary.

PAYMENTS AND WITHHOLDING

SEC. 9. (a) The Secretary shall pay to each State which has an application approved under this Act an amount equal to the cost of an application approved under section 7(b) or section 8(b).

(b) Whenever the Secretary, after giving reasonable notice and opportunity for hearing to a State under this Act, finds—

(1) that the program or project for which assistance under this Act was made has been so changed that it no longer complies with the provisions of this Act; or

(2) that in the operation of the program or project there is failure to comply substantially with any such provision;

the Secretary shall notify such State or grantee, as the case may be, of the findings and no further payments may be made to such State or grantee, as the case may be, by the Secretary until the Secretary is satisfied that such noncompliance has been, or will promptly be, corrected. The Secretary may authorize the continuance of payments with respect to any projects pursuant to this Act which are being carried out by a State and which are not involved in the noncompliance.●

By Mr. HATFIELD (for himself, Mr. PACKWOOD, Mr. JACKSON, Mr. GORTON, Mr. CRANSTON, and Mr. MURKOWSKI):

S. 2805. A bill to provide for the orderly termination, extension, or modification of certain contracts for the sale of Federal timber, and for other purposes; by unanimous consent, referred jointly to the Committee on Energy and Natural Resources and the Committee on Agriculture, Nutrition, and Forestry for not to exceed 30 days.

FOREST PRODUCTS INDUSTRY

Mr. HATFIELD. Mr. President, today I am introducing legislation designed to alleviate the acute economic distress of the forest products industry, an industry which is essential in meeting our Nation's housing needs. The lumber and wood products industry is the backbone of the economy of Oregon and other timber-producing States in the West. I am taking this action because I believe that many small, independent companies are on the verge of collapse and because the Federal Government is inextricably involved in the situation already. In my State, 73 lumber mills are closed. In Washington and California, the number of mills closed is 59 and 40, respectively. Let me emphasize that I am not asking the Federal Government to spend one nickel to aid this distressed industry. Rather, I am proposing that the Federal Government, which is the major seller of timber in the West, be empowered to modify or terminate its current timber sales contracts with them. Failure to act will wreak havoc upon those employed in the industry, local communities who rely on timber sales revenues, and the Federal timber sales program. The current recession has impacted industries throughout the Nation and, as in previous recessions, the homebuilding industry has been particularly hard hit. Some of my colleagues may ask, "Why should action be taken to aid one ailing industry? Why not put our efforts solely into an overall economic recovery which will bring about homebuilding?"

Mr. President, my answer is that I agree that we must continue to work toward overall economic recovery. But, without action soon to deal with this situation, that industry which must provide the building materials necessary to house our people will continue to be decimated by depression, and its structure will be severely and adversely altered by the time any substantial recovery occurs.

Since October 1, 1979, 10 wood products firms in Oregon have taken bankruptcy; 6 other companies that are involved in remodeling have also gone bankrupt. Although figures are not available, it can be safely stated that many other companies that have direct ties to the wood products industry have also gone bankrupt. Today, many other firms in the independent segment of the lumber and wood products industry are facing bankruptcy. In the West, these companies are almost totally reliant on Government timber for their raw material. Timber is purchased under contracts dictated by the Government which in many instances enjoys a monopoly position as their supplier. Typically, these forest products companies purchase Government timber on a schedule that provides them with a timber supply for several years, so that they may plan properly.

During the seventies, homebuilding demand was high and timber shortages were projected. Many companies invested substantial sums of money in mill improvements to allow greater utilization of timber. This increased the necessity to have a stable supply of timber under contract, and companies bid the highest prices possible for Government timber based upon their projections of lumber and plywood prices when the logs would be milled, usually at least 2 years in the future. Federal timber contracts have had little in the way of financial requirements on the part of the purchaser and, during the seventies this system worked; in fact, it worked particularly well for the Federal Treasury. In 1979, national forest timber receipts to the Treasury totaled $854.7 million. In 1980, the receipts totaled $614.6 million, and in 1981, receipts totaled $596 million. Although figures for 1982 are not available, the Forest Service estimates that receipts will be down substantially. During this decade we had Federal housing policies which fostered homebuilding. The entire picture has now changed. With the shift in the Federal economic program and through a combination of tight money, high interest rates, and deregulation of financial institutions, capital has been channeled away from housing. Housing starts have plummeted from the more than 2 million annually which characterized the seventies to less than 1 million.

This situation has put the companies who bid competitively for Government timber in a terrible bind. The prices of the lumber and plywood they produce are much lower than the prices of Government timber they have under contract. In Oregon and Washington, for example, there is about 20 billion board feet of Government timber under contract. As much as 75 percent of the volume under contract bid as of January 1, 1982, cannot be economically havested, resulting in a potential default situation of drastic proportions. Some of the very large companies, which also operate pulp and paper plants and have extensive timberland holdings would no doubt survive, but most of the small- and medium-sized companies would be forced to close down and default on their contracts. Massive defaults would create chaos for the companies, the Federal agencies which administer the contracts, the counties which share in the timber sale receipts, and those who work in the mills and in our forests.

This problem threatens the industry which is the predominant source of economic activity and is the largest single employer in the Pacific Northwest. Prior to its collapse, the lumber and wood products industry provided over one-fourth of all regional manufacturing jobs. In Oregon, about one-third of all manufacturing jobs have been in the lumber and wood products industry. When the jobs indirectly dependent upon the industry are taken into account, the livelihood of half of Oregon's population is at stake in the health of this industry.

Nearly 40 percent of the Nation's lumber production and over one-half of its plywood production has come

from the Pacific Northwest. The demise of this industry would have enormous impacts upon the Nation's balance of payments.

Since 1979, 22,000 of the 90,000 direct jobs in Oregon's products industry have been lost. Half of the mills in my State have shut down or curtailed operations. Many of those mills still operating are owned and operated by people who live in communities nearly completely dependent on the payrolls of the mills that operate there. But the outlook for their continued operation is, in many cases, very poor.

Mr. President, when two parties are involved in a contractual agreement, and drastically changed conditions disable one of those parties to the point whereby the contract cannot be fulfilled, there are two options: defaulting on or modification of the contract; that is precisely the choice we face today.

The States of Oregon, Washington, and California, all of which sell timber from their lands, have faced this issue directly with respect to their own forests. Each of these States enacted legislation to modify existing timber sales contracts. Oregon authorized modification of prices and extensions of its contracts. Washington authorized termination without penalty of a portion of its contracts and extensions. California authorized modification of contract prices. The legislation I am introducing today would provide similar authority to the Federal timber-selling agencies.

Mr. President, introduction of this legislation follows months of discussion and debate among those who are involved in and affected by the forest products industry. Last December, I proposed that the Department of the Interior modify its contracts so that prices would reflect current values. In the ensuing 8 months, many members of the industry have worked diligently to develop a proposal which represents their national viewpoint on this matter. Basically, that proposal would allow purchasers to terminate up to 40 percent of their timber sales contracts, extend other contracts for up to 5 years, and it would deal with the so-called purchaser credit issue by making ineffective purchaser credits effective. Senator McCLURE and I had pressed the industry to come up with a proposal which met their needs.

While the legislation I am introducing today encompasses some of these policies, it is not the proposal of the industry. My bill is much broader in its scope. It would provide the Secretaries of the Interior and Agriculture with the tools necessary to deal with the problems I have outlined through contract modification or termination, but it does not set out the specific methods of implementing them. For example, my legislation allows termination of a portion of timber sales but does not specify the portion. It also allows for price modification, which was not a part of the proposal developed within the industry. This legislation also does not include the timber purchaser credit issue.

The lack of these specific provisions is not an indication of my opposition to them. As the issue has been discussed over the months, it has gotten more and more detailed and, quite frankly, some of the details are the results of compromises within the industry. At this point, it is clear that public hearings are essential on this issue and I believe the need for more specificity should be a part of those hearings. Any such hearings should be broad in scope and allow for discussion of these issues by industry, labor, homebuilders, conservation groups, and representatives of the affected areas.

Today's legislation, then, is not introduced at the behest of any particular group. Rather, it is intended to address the issues faced by all of those whose lives and communities are affected by the forest products industry, not merely the companies who purchase and mill the timber. It represents my firm belief that the Federal Government must have the flexibility to deal with the crisis we face and allow small, independent businesses to continue to provide this Nation with housing materials at reasonable prices.

There is one additional threat should we not act. In Canada, where government timber is sold without competitive bidding and price is indexed according to economic conditions, Canadian manufacturers have increased their share of the U.S. market from under 19 percent in 1975 to more than 30 percent in 1981. Yet, at present, we face a situation where the policy of our Government is "hang tough" on contracts and let our own companies, workers, and communities hang.

Mr. President, I am pleased that Senators PACKWOOD, JACKSON, GORTON, and CRANSTON are joining me in introducing this legislation. I ask my colleagues to carefully consider the bill, the issue, and its ramifications nationally.

Mr. President, I ask unanimous consent that this bill be jointly referred to the Senate Energy and Natural Resources Committee and the Senate Committee on Agriculture. I have discussed this matter with the Senator from North Carolina, Senator HELMS, who is the chairman of the Senate Agriculture Committee, and with the Senator from Idaho, Senator McCLURE, who is chairman of the Senate Energy and Natural Resources Committee. Therefore, it has been cleared with them. I ask unanimous consent that it be jointly referred and reported back within 30 days.

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

Mr. President, I ask unanimous consent that the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follow:

S. 2805

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Congress finds that in order to avert widespread bankruptcies, sustain the flow of income from Federal forest lands to the Federal treasury and to units of local government, and assist in restoration of employment, it is in the national interest to provide for the modification of certain contracts for the purchase of timber from Federal lands.

SEC. 2. Upon a showing of economic hardship by the private contracting party, the Secretary of the Interior for public lands and the Secretary of Agriculture for national forest system lands are authorized to modify any timber sales contract bid prior to January 1, 1982. Such modifications may include—

(1) termination of a portion of timber sales contracts for the purchase of timber bid prior to January 1, 1982, held by a private contracting party;

(2) extension of the termination dates of such contracts, not to exceed five years beyond original termination dates of such contracts; and

(3) modification of the purchase price of the timber sold, reflecting current market values, for such contracts that are not extended.

SEC. 3. The Secretaries shall publish procedures for the modification of contracts pursuant to this Act in the Federal Register within 30 days after the date of enactment of this Act.

SEC. 4. The authority granted pursuant to this Act shall expire one year after the date of enactment of this Act.

● Mr. PACKWOOD. Mr. President, I am pleased to join Senator HATFIELD in introducing this bill to provide timber contract relief. This legislation is vital for the Pacific Northwest. It will provide significant aid to dozens of communities, workers, and businesses whose livelihood has been devastated by the current housing depression.

As a Senator from a State with one of the highest unemployment rates in the country, I am well aware of the disastrous condition of its principal industry. There is no question that the timber industry is in a state of collapse. It is experiencing its longest and deepest decline since the Great Depression. In Oregon, with a statewide unemployment rate of nearly 12 percent, communities dependent on logging and sawmills are experiencing unemployment rates well over 20 percent.

Current statistics relating to sawmills in Oregon provide a crystal clear picture of what is happening. Thirty-two percent of the sawmill workforce is either unemployed or working curtailed shifts.

And of the sawmills themselves, 37 percent are either closed or have cut

back their operations. I ask unanimous consent, Mr. President, that two charts showing these statistics be printed at this point in the RECORD.

OREGON SAWMILLS: CURRENT EMPLOYMENT SITUATION[1]

Normal number of workers, 31,076; workers unemployed, 3,232; workers on curtailed shifts, 6,588; and percent workers curtailed or unemployed, 32.

OREGON SAWMILLS: MILL CLOSURES AND CURTAILMENTS[1]

Normal number of mills, 210; mills closed, 27; mills with curtailed operations, 50; and percent mills closed or curtailed, 37.

These statistics, Mr. President, deal only with Oregon sawmills. Recent reports on other forest product operations, such as plywood and pulp mills, are just as dismal. For example, the American Plywood Association reported on July 24, 1982, that 28 of Oregon's 73 plywood plants are closed, and 9 are on curtailed schedules. This adds up to a total of 33 percent of the State's plywood capacity either out of action altogether, or just scraping by.

The primary cause of the timber depression is high interest rates. Mortgage interest rates of 17 percent and more have priced almost everyone out of the new home market. If people can not buy, builders can not build. If builders can't build, lumber and plywood can't be sold. According to the U.S. Forest Service, residential construction, the largest market for softwood lumber and plywood, has dropped from more than 2 million housing starts in 1978 to less than 1 million this year. Clearly, the long-term solution to the timber depression is a higher level of housing starts through lower interest rates.

In the short term, however, we are faced with the possible disintegration of a substantial part of the timber industry. If some way of moving more timber through the mills is not found, it will be a weak and ineffective industry we turn to when interest rates finally come down and the demand for housing booms.

The steep drop in demand for housing has made it uneconomical to cut Federal timber that was put under contract just a few months ago. Timber contracted for more than $300 per thousand board feet in 1979 or 1980 cannot be cut today, when new contracts are being sold at less than $200. In fact, the price of some of these older timber contracts is actually higher than the cost of finished lumber. The U.S. Forest Service recently estimated that nearly 90 percent of the National Forest timber under contract in western Oregon and Washington could not be cut, milled and sold at a price that would allow the producer to break even—let alone make a profit.

[1] As of July 24, 1982. Source: Western Wood Products Association.

Mr. President, if no action is taken to alleviate this situation, there will be a large number of timber sale defaults. There is no doubt that many firms will be unable to pay the damages resulting from defaulted sales, and they will go under. Their operations will close down; their workers will lose their jobs. Small timber operators in the Pacific Northwest, who purchase nearly 50 percent of Federal timber, will be the hardest hit. Many of them are 100 percent dependent upon Federal sales.

The bill we are introducing today, Mr. President, attempts to head off this timber contract disaster. For a period of 1 year, it authorizes the Secretaries of Agriculture and Interior to take the actions necessary to assure a strong, diverse forest products industry to meet the Nation's construction needs. It is not some kind of massive Federal assistance project; it is a short-term solution to a short-term problem. It buys the time needed by hundreds of workers, communities and businesses to get back on their feet.

No doubt some will say this bill is a single industry bailout. Nothing could be further from the truth. First, the Federal Government's timber revenue is dropping off dramatically as millions of board feet of timber under contract go uncut. Second, the defaulted timber sales which will occur without this bill mean high administrative costs for Federal agencies because defaulted sales must be resold, damages must be assessed, and collection efforts made. Finally, there is little doubt that many firms simply will be bankrupted by damages, so the Federal Government will never receive the original price of the timber sale. The bill we are introducing today will reduce or eliminate these costs to the Government.

Mr. President, no one in the Pacific Northwest has come easily to a decision favoring timber contract relief legislation. But during the last several months, as the timber economy has gone from bad to worse to disastrous, the idea has gained substantial support. I understand the Energy and Natural Resources Committee of the Senate intends to hold prompt hearings on this bill, and I urge the committee and the full Senate to approve it as quickly as possible.●

● Mr. JACKSON. Mr. President, I am pleased to join with Senator HATFIELD and several of my colleagues in cosponsoring this important piece of legislation.

As many of my colleagues know, unemployment in the timber industry in my part of the country is at historically high levels. The housing industry is in a bona fide depression; interest rates are out of sight; mills are closing; and bankruptcies in timber related businesses are at an all time high.

The legislation that we are introducing today is very straightforward and is designed to address at least one of the problems associated with this situation. The bill is designed to permit the Secretaries of the Interior and Agriculture to terminate or extend timber sale contracts for Federal timber on Federal lands or to modify the purchase price of the timber sold puruant to such contracts to more accurately reflect the current depressed market conditions.

Mr. President, without this legislation, I have no doubt that literally hundreds of small mills and timber companies in my State and other parts of the Pacific Northwest will default on outstanding timber contracts. This is not what may happen, Mr. President; this is what will happen unless we do something about it. Plant and mill closures, bankruptcies, and defaulted timber contracts are things none of us want and can only serve to exacerbate an already desperate situation.

This bill will certainly not solve all of the problems of the timber industry. We may well need to take additional steps to address other elements of this problem. It is however, a vehicle by which we can begin to address the very real needs of this sector of our economy.

Mr. President, I look forward to hearings before the Energy and Natural Resources Committee in the near future and hope that the Congress can move expeditiously on this measure.●

● Mr. GORTON. Mr. President, I am pleased to join my colleague from Oregon as a cosponsor of this legislation.

The United States has a 3-year backlog of sold but uncut timber. With the current severe slump in housing starts, timber prices have dropped dramatically since the late 1970's, when many small timber companies entered into contract agreements with the U.S. Forest Service. It is currently impossible for many of these companies to profitably harvest the high-priced contracts. As a result, many will be forced to default on their contracts, which could force hundreds of companies into bankruptcy.

I am very supportive of Senator HATFIELD's efforts to develop a proposal to aid the ailing timber industry. I am delighted that he has taken the initiative in introducing this legislation, and I look forward to having hearings held so that all interested parties can express their views on this proposal. It is my hope that Congress will take immediate action to move swifty on this bill.●

● Mr. CRANSTON. Mr. President, I am pleased to join Senator HATFIELD and others in sponsoring this legislation to provide for the termination, extension, or modification of existing contracts for Federal timber in in-

stances where there is economic hardship.

In the last few years timber companies bid high prices for timber on national forest and BLM lands, anticipating a boom in the housing industry. But housing construction has fallen off sharply and the timber industry is now suffering from the lack of demand for lumber and the consequent low lumber prices. Many companies cannot harvest the timber on Federal lands without sustaining substantial losses, and thus are likely to default on their contracts. Under existing law, the timber companies would have to pay a penalty for defaulting. This could force some companies into bankruptcy—unless the law is changed.

I believe that it is in the public interest to grant relief to timber companies which often are the single largest employers in a region and generate important income from Federal lands to local governments. The legislation being introduced today would permit such relief through the termination, extension, or modification of timber contracts on a case-by-case basis. The language in the bill is broad and needs refinement to insure that the assistance provided the timber companies is both economically sound and environmentally responsible. I am pleased that there will be hearings on the bill so that there can be full consideration of the impacts of the proposal. I may want to recommend modifications to the legislation at that time.●

By Mr. HATFIELD (for himself, Mr. STENNIS, and Mr. DOMENICI):

S. 2806. A bill to restrict Federal funding of abortions; to the Committee on Governmental Affairs.

FEDERAL ABORTION FUNDING RESTRICTION ACT

● Mr. HATFIELD. Mr. President, on April 15, 1982, I introduced the Federal abortion funding restriction bill as S. 2372 and placed the bill directly on the Senate Calendar. It was my intention to eliminate the hodge-podge of abortion riders that have bogged down the appropriations process since 1977, and to solidify existing Federal funding restrictions in statutory form. S. 2372 also provided an orderly and expeditious manner for the U.S. Supreme Court to review its landmark decision of Roe against Wade. The bill expressed the findings of the Congress that unborn children who are subjected to abortion are living members of the human species and that the fundamental principle of American law is to recognize and affirm the intrinsic value of all human life. By enacting this legislation, the Congress would be acting within its constitutional sphere of authority over the expenditure of Federal funds.

In the past few weeks I have heard from countless constituents and dozens of organizations that are deeply interested in or affected by this legislation. I have solicited their counsel and have found their suggestions to be very helpful.

Today I am introducing legislation which incorporates many of these suggestions. The basic thrust of my initiative remains unchanged. The modifications in the new bill should make clearer the constitutionality of this exercise of legislative powers. Briefly, the revised bill differs in the following ways:

First, S. 2372 prohibited the use of Federal funds "to perform abortions, to reimburse or pay for abortions, to refer for abortions, except when the life of the mother would be endangered if the child were carried to term."

It was my intent to codify existing regulations of the Department of Health and Human Services which forbid promoting or actively arranging abortions, but do not forbid giving medical advice or counseling regarding abortion. Recent Federal court decisions in Arizona and North Dakota call into question the constitutionality of restrictions on abortion referrals. If the prohibition of referral is broadly interpreted as interfering with the counseling relationship of doctor and patient, the statute may be an unconstitutional infringement on first amendment freedoms. *Planned Parenthood of Central and Northern Arizona* v. *State of Arizona*, No. Civ 80-665 Phx Wec (D. Ariz 1982); *Valley Family Planning* v. *State of North Dakota*, 489 F. Supp. 238 (D.N.D.), Aff'd 661 F. 2d 99 (9th Cir. 1981).

In order to make clear that only active promotion or arrangement of abortions is forbidden, the modified bill deletes the word "refer" and substitutes instead the language: "* * * to perform abortions, to reimburse, pay, arrange for or promote abortions.* * *"

Second, S. 2372 as originally introduced prohibited the use of Federal funds to "give training in the techniques for performing abortions, or to finance experimentation on aborted children." This language was interpreted by some as broadly restricting funding for medical schools teaching medical techniques which, though basic to a medical education, could be used to perform abortions. Because this provision was seen as interfering with the scope of medical education, I dedided some weeks ago to delete this section of the bill.

In any event, existing Federal statutes place limits on the Federal funding of experimentation on unborn children. The National Science Foundation Authorization Act of 1974 and the National Research Service Award Act of 1974 both limit the use of Federal funds to conduct research on a human fetus which is outside the womb of its mother and which has a beating heart. Although additional clarifying legislation may be necessary in the future, I believe that current restrictions in law are sufficient.

Third, S. 2372 had also provided that no federally funded institution could discriminate in the hiring of employees, or admission of medical students because of the employee's or applicant's opposition to abortion, or refusal to counsel or assist in performing abortions. It has been brought to my attention that persons who are not conscientiously opposed to abortion may also, in some circumstances, be discriminated against. In the interest of fairness, I have redrafted this provision to make it clear that no entity that receives Federal assistance may discriminate against an employee or applicant because of that person's convictions about abortion. The new language carefully tracks conscience clauses that have already been enacted by the Congress. (Health Programs Extension Act of 1973, Public Law 93-45; and the Nurse Training Amendments of 1979, Public Law 96-76).

Fourth, in order to provide an enforcement device to insure that Federal funds were not spent in unauthorized ways for abortions, S. 2372 granted the right to any person to bring a civil action against recipients of Federal funds. The enforcement problem is unique in this situation because the aborted child is unable to bring an action on its own behalf, and the parents are unlikely to contest the misuse of Federal funds. Critics of S. 2372 argued that the bill's solution to this problem granted unlimited standing to persons who may not have suffered any injury.

My modified bill provides that any aggrieved person may bring an action against a recipient of Federal funds if an alleged violation of this act occurs. A plethora of environmental statutes (such as the Clean Air Act, the Outer Continental Shelf Lands Act, Deep Water Port Act and Surface Mining Control and Reclamation Act) utilize similar language.

Inserting the requirement that the suing party be aggrieved insures that the courts will resolve the difficult issue of who has standing to sue. This provision enables the courts to continue their accustomed role of deciding if a real dispute based on actual injury to the complaining party exists.

Because the Congress has broad powers in its appropriations powers it is possible that the Congress could enact a statute which gives taxpayers the right to bring an action when Federal funds are improperly spent for abortion. However, this bill leaves to the courts the decision of whether a case or controversy exists. In essence, the new language makes it clear that

no constitutional problem exists with the standing requirement.

Fifth, my revised bill also makes it clear that only the recipient of Federal funds can be sued if a violation of Federal law occurs. If Federal funds are improperly spent to perform an abortion the mother could not be sued under this provision because the violation occurred. A strained reading of S. 2372 led some to conclude that such a result would have been possible. By striking the words "against any party, including a recipient of Federal funds" and substituting instead "against any recipient of Federal funds" we make it clear that only the entity and organization which receives funding need worry about a violation of Federal law in funding an abortion.

Sixth, I have also decided to delete the so-called Ashbrook amendment from my revised bill. Last year the House added a provision to H.R. 4121, the Treasury-Postal Service Appropriations Act of 1982, that prohibits the use of funds, except where the life of the mother is endangered, to pay for an abortion or the administration expenses connected with any health plan under the Federal employees health benefits program that covers abortions. The Senate has not adopted this language but the possibility continues to exist that a rider will be offered to either the Treasury-Postal bill or continuing resolution for 1983.

It is my belief that the Ashbrook amendment should be debated in the context of an appropriate authorization of the Federal employees health benefit program and not as a rider to an important appropriations bill. Even though the Federal Governmeent pays 60 percent of the health insurance cost of each Federal employee, I have not found a consensus to exist in the Senate on the Ashbrook amendment. Thus, I have decided to delete this provision in order to make the bill more acceptable to my colleagues. If the Congress decides to proceed with the Ashbrook amendment, it should be debated on a relevant statutory vehicle—not as a rider to an important appropriations measure.

Seventh, one of my primary objectives in introducing S. 2372 was to provide a vehicle for the Supreme Court to reconsider its much-criticized Roe against Wade decision. S. 2372 provided that if a State law was enacted pursuant to the findings in this legislation, and the statute was invalidated because of Roe against Wade, any party could appeal directly to the Supreme Court of the United States. The purpose of this provision was to provide an orderly but expeditious review by the U.S. Supreme Court of the abortion controversy.

Critics of S. 2372 claimed that the provision was biased; only so-called pro-life advocates could obtain expedited review. While I believe this criticism to be spurious—the chances are slim that a restrictive State law would be upheld by a Federal district court under Roe against Wade—I have nonetheless had the expedited review provision redrafted to insure that a right to expedited review is available whether the law is invalidated or upheld.

Moreover, to insure that the expedited review section is outcome neutral, I have eliminated the requirement that a State law may receive direct review only if it is expressly based on the findings in S. 2372. Instead, the bill I am now introducing allows for direct review of any State abortion law that is based upon the provisions of this act, regardless of whether the State accepts the findings of this act. As a result, the people of a State are free, through the actions of their elected representatives, to either accept the findings of this bill about the humanity of the unborn, or to reject them. In either case, the right to a direct appeal to the U.S. Supreme Court remains.

Mr. President, I would again stress that it was my intention in S. 2372, and it is still my intention today, to introduce a vehicle which States may use to obtain expeditious reconsideration of Roe against Wade. While this bill puts the Congress on record as valuing the life of the unborn, it does not mandate that States adopt these findings in order to receive expedited Supreme Court review. In short, this bill provides an orderly and expeditious process for review of the abortion controversy which is outcome neutral.

Nothing in this bill outlaws abortion. The only way that our abortion laws would be changed under this bill is if the people of a State, through their elected representatives, enact a restrictive abortion statute and that statute is upheld by the U.S. Supreme Court.

The legislation I am introducing today states that a fundamental principle of American law is to recognize and affirm the intrinsic value of all human life—including the unborn, and that there is an urgent need to bring the funding practices of the Federal Government into compliance with that principle. By deciding, within its sphere of constitutional authority, to value all human life, the Congress would be taking a bold step on behalf of the unborn. If this bill were enacted, the State legislatures and, ultimately, the Supreme Court would have to face the question of whether to value the humanity of the unborn as well.

Mr. President, it is my firm belief that this bill embodies the values that the Congress has chosen to adopt through repeated enactment of Hyde language in appropriations measures. I urge my colleagues to carefully review the provisions of this bill as a meaningful alternative to other abortion measures pending in the Congress.

Mr. President, I ask unanimous consent that the text of the bill be reprinted in the RECORD, followed by the original version of S. 2372.

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

S. 2806

Be it enacted by the Senate and House of Representatives of the United States of America Congress assembled, That this Act may be cited as the "Federal Abortion Funding Restriction Act".

SEC. A2. The Congress finds that—

(1) it is a fundamental principle of American law to recognize and affirm the intrinsic value of all human life;

(2) unborn children who are subjected to abortion are living members of the human race; and

(3) there is an urgent need to bring the Federal Government into compliance with the principle of the intrinsic value of all human life as it relates to all matters affecting the lives of unborn children.

SEC. 3. In light of the findings in section 2, and pursuant to the duty of Congress to ensure that the Federal Government not kill innocent human beings or assist others in doing so—

(1) no agency of the Federal Government shall perform abortions, except when the life of the mother would be endangered if the child were carried to term;

(2) no funds appropriated by Congress shall be used to perform abortions, to reimburse, pay, arrange for, or promote abortions, except when the life of the mother would be endangered if the child were carried to term; and

(3) no institution that receives Federal financial assistance shall discriminate against any employee, applicant for employment, medical student, or applicant for admission to a medical school, on the basis of that person's opposition to, or support for, abortion or such person's reluctance or willingness to counsel or assist in the performance of abortions.

SEC. 4. (a) Any aggrieved person may commence a civil action, on his own behalf or on behalf of an unborn child, against any recipient of Federal funds who is alleged to be in violation of any provision of clause (1) or (2) of section 3.

(b) Any person or class which alleges it is aggrieved by conduct in violation of clause (3) of section 3 may commence an action for appropriate redress.

(c) The district courts shall have jurisdiction, without regard to the amount in controversy, to enforce compliance with the provisions of section 3.

SEC. 5. Any party may appeal to the Supreme Court of the United States from an interlocutory or final judgment, decree, or order of any court of the United States regarding the enforcement of this Act, or of any State law or municipal ordinance based on this Act, or any judgment, decree, or order which adjudicates the constitutionality of this Act, or of any such law or ordinance. Any party to such case shall have a right of direct appeal to the Supreme Court of the United States on the same terms as govern appeals pursuant to section 1252 of title 28, United States Code, notwithstanding the absence of the United States as a party to such case.

SEC. 6. If any provision of this Act or the application thereof to any person or circumstance is judicially determined to be invalid,

the validity of the remainder of the Act and the application of such provision to other persons and circumstances shall not be affected by such determination.

S. 2372

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That title 42 of the United States Code shall be amended at the end thereof by adding the following new chapter:

"CHAPTER 101

"SECTION 1. The Congress finds that—

"(a) it is a fundamental principle of American law to recognize and affirm the intrinsic value of all human life;

"(b) unborn children who are subjected to abortion are living members of the human species; and

"(c) there is an urgent need to bring the Federal Government into compliance with the principle of the intrinsic value of all human life, regarding all matters affecting the lives of unborn children.

"SEC. 2. In light of the above findings, and pursuant to the duty of Congress to ensure that the Federal Government not kill innocent human beings or assist others to do so:

"(a) No agency of the Federal Government shall perform abortions, except when the life of the mother would be endangered if the child were carried to term.

"(b) No funds appropriated by Congress shall be used to perform abortions, to reimburse or pay for abortions, to refer for abortions, except when the life of the mother would be endangered if the child were carried to term.

"(c) No funds appropriated by Congress shall be used to give training in the techniques for performing abortions, or to finance experimentation on aborted children.

"(d) The Federal Government shall not enter into any contract for insurance that provides for payment or reimbursement for abortions other than when (1) the life of the mother would be endangered if the child were carried to term, or (2) by means of a special rider financed by the employee.

"(e) No institution that receives Federal financial assistance shall discriminate against any employee, applicant for employment, medical student, or applicant for admission as a medical student, on the basis of that person's opposition to abortion or refusal to counsel or assist in the performance of abortions.

"SEC. 3. Any person may commence a civil action, on his own behalf or on behalf of unborn children, against any party, including a recipient of Federal funds, who is alleged to be in violation of section 2 (a), (b), (c), and (d) above. Any person or class which alleges it is aggrieved by conduct in violation of section 2(e) may commence an action for appropriate redress. The district courts shall have jursidiction, without regard to the amount in controversy, to enforce compliance with the provisions of section 2.

"SEC. 4. In light of the above findings, and to expedite Supreme Court consideration of the interest of the States in protecting the lives of all human beings within their jurisdiction, if any State enacts legislation which prohibits or restricts abortions and which is expressly based on the findings in section 1 of this Act, and such legislation is invalidated by final order of any court of the United States, any party to such case shall have a right to direct appeal to the Supreme Court of the United States, under the same provisions as govern appeals pursuant to section 1252 of title 28, United States Code, notwithstanding the absence of the United States as a party to such case.

"SEC. 5. If any provision of this Act or the application thereof to any person or circumstance is judicially determined to be invalid, the validity of the remainder of the Act and the application of such provision to other persons and circumstances shall not be affected by such determination.".●

By Mr. ROBERT C. BYRD (for himself, Mr. CRANSTON, Mr. INOUYE, Mr. FORD, Mr. BAUCUS, Mr. BENTSEN, Mr. BIDEN, Mr. BOREN, Mr. BUMPERS, Mr. BURDICK, Mr. CANNON, Mr. DECONCINI, Mr. DIXON, Mr. DODD, Mr. EAGLETON, Mr. HUDDLESTON, Mr. JACKSON, Mr. JOHNSTON, Mr. KENNEDY, Mr. LEVIN, Mr. MATSUNAGA, Mr. MELCHER, Mr. METZENBAUM, Mr. MITCHELL, Mr. MOYNIHAN, Mr. PELL, Mr. PRYOR, Mr. RANDOLPH, Mr. RIEGLE, Mr. SARBANES, and Mr. SASSER):

S. 2807. A bill to amend the Federal Reserve Act; to the Committee on Banking, Housing, and Urban Affairs.

BALANCED MONETARY POLICY ACT OF 1982

Mr. ROBERT C. BYRD. Mr. President, I rise to introduce the Balanced Monetary Policy Act of 1982, legislation which is designed to bring down interest rates and thus to move our Nation out of a tragic and ever-widening recession.

Bold action by Congress is imperative, because the administration has embraced two economic experiments which together have brought our Nation to the brink of depression.

One of these, the "supply side" economic theory, which holds that tax cuts for the wealthy will bring prosperity to all, is now widely recognized as a failure.

The other administration economic policy is less well known, but no less of a disaster. I refer to the administration's support of tight money and high interest rates.

The Federal Reserve Board, in October of 1979, undertook a dramatic and far-reaching policy change. It embraced the monetarist economic theory that reducing the growth of the money supply is the only way to stop inflation. It therefore abandoned any attempt to control interest rates. The assumption was that if the growth of the money supply was sufficiently slowed down, and if interest rates were allowed to float freely, inflation would be halted and in time interest rates would come down on their own. Stripped of all the technical jargon, monetarists believe the only way to stop inflation is to start a recession.

Mr. Reagan, as a candidate for President, wholeheartedly embraced this monetarist dogma. As President, he has repeatedly affirmed his support for the Federal Reserve's tight-money, high-interest rate policy.

Some of us, I must say, had severe doubts about the monetarist theory from the start. On October 19, 1979, only days after the Board adopted this new policy, I said on the Senate floor:

> Ultimately, to control inflation we must produce more, not less. Attempting to control inflation or protect the dollar by throwing legions of people out of work and shutting down shifts in our factories and mines is a hopeless policy. . . . The Congress will be watching closely to ensure that the recession of 1974 and 1975 will not be repeated. . . . We will watch with concern the impact of this policy on small businesses which depend on credit markets for financing. We will watch its impact on the construction industry. . . .

Mr. President, we have now seen the results of this experiment with monetarism.

Between October 1959 and October 1979—that is, for the 20 years leading up to the new policy—the prime rate averaged 6.5 percent; and the Federal funds rate—the amount of interest that banks are allowed to charge one another—averaged 5.4 percent.

Between October 1979 and October 1981—the first 2 years of the new policy—prime averaged 16.8 percent and the Federal funds rate averaged 14.9 percent.

Those are shocking figures and they have had shocking results.

Today, 10.4 million Americans are out of work, and 2½ million of them lost their jobs since Mr. Reagan became President. The unemployment rate stands at 9.5 percent, the highest level since the Great Depression. Five hundred small businesses are failing each week, and the rate is above that of 1929. Home and farm foreclosures are at levels unknown since the 1930's. The automobile and construction industries have been devastated.

In 1981, domestic auto production and sales declined to 20-year lows, and 1982 has proven even worse for U.S. automakers. In June of this year, sales of domestically produced passenger cars declined to an annual rate of only 4.6 million, a decline of more than 12 percent from last June's depressed sales rate.

The impact of high interest rates has been even more devastating on the housing industry. In 1981, new private housing starts and sales of new single-family homes declined to all-time record lows and, as with the auto industry, conditions have declined even further in 1982.

In the face of widening economic disaster, in the face of immeasurable human suffering, in the face of pleas by corporate executives, conservative economists, and Republican officeholders for a change in the economic policy, the President and his underlings have no reply except to blame others for their mistakes and to assure us that prosperity is just around the corner.

Mr. President, too many innocent lives have already been sacrificed on the "altar of monetarism," too many men, women and children are suffering because of the theories of economic idealogues who do not have to pay the price of their mistakes.

The White House, with its promises of recovery, is living in a dream world. Let us look for a moment at the real world. In a recent article in the Washington Post, reporter Dan Balz described the new economic realities better than any statistics can. His article concerned the thousands of new American migrants who have been arriving in Texas from the North and Midwest in search of jobs. Mr. Balz writes:

> These newcomers are now found increasingly in pawnshops, hocking their few possessions to buy a meal; in soup kitchen lines in the inner cities of Houston and Dallas; huddled in broken-down campers near a downtown park; at the unemployment offices applying for out-of-state benefits; at the churches along the interstate highways that flow from the north, seeking emergency food assistance or money to fix a broken car; at the welfare office asking about benefits; at child welfare homes asking someone else to care for their children because they have been unable to find work.

Mr. President, this is not a description of the America of the thirties. This is not a fictional protrait from "The Grapes of Wrath." This is not some mythical kingdom called South Succotash. This is the United States of America, the greatest nation on earth, in the summer of 1982. At this very moment, millions of Americans are suffering terribly, and needlessly, because this administration has lost its economic gambles.

Today, high interest rates are "public enemy No. 1." More than any other single factor, they have caused this present, tragic recession.

The economist Lester Thurow summed up the problem succinctly in a recent Newsweek article:

> Capitalism, a system where individuals invest today to get more back tomorrow, simply doesn't work with high interest rates and the stagnant business conditions they create.

The truth of this proposition is everywhere around us. The administration may choose to hide its head, ostrich-like, in the warm sands of economic dogma, but the rest of us must face the facts. We cannot tolerate these sky-high interest rates—rates that until recently would have been considered usurious. Congress must act to bring down these killer interest rates before they bring down our economy and the strength and security of our Nation.

Mr. President, the Constitution authorized Congress to "coin money" and "regulate the value thereof." Congress created the Federal Reserve Board in 1913 as an instrument to assist in the carrying out of that mandate. But over the years the Board has tended to do the bidding of the administration in power. We have seen that happen recently, as the administration's economic ideologues have pursued their experiment with high interest rates and achieved such disastrous results. It is time for Congress to wrest control of monetary policy from the hands of a tiny band of monetary ideologues in the White House, the administration, and the Federal Reserve. It is time for basic economic policy once more to be set by those elected officials who must bear the final responsibility. It is time to restore commonsense, balance, and stability to monetary policy. To that end, I am today introducing the Balanced Monetary Policy Act of 1982.

As we all know, economics is a highly technical field. But at bottom what we are dealing with in this legislation is very simple.

We are talking about jobs.

We are talking about growth.

We are talking about economic recovery.

We are talking about the lives and well-being of hard-working Americans who deserve better than the uncertainty and hardship that the present administration has inflicted upon them.

Let me outline the specifics of my legislation.

The heart of this bill is a requirement that the Federal Reserve Board reestablish the traditional relationship between interest rates and inflation. Historically, short-term interest rates like the prime rate have run 1 to 4 percentage points above inflation. This is a level we can live with and that can give us jobs and economic growth.

My bill does not say that Congress should tinker with the technical details of monetary policy on a day-to-day basis. Rather, the act mandates the broad, fundamental goals of balance, public disclosure, and stability. This bill makes affordable interest rates once more a clearly defined national goal. It will restore balance to our monetary policy by requiring the Board to set targets for both money growth and real interest rates. In recent years, the Board has veered from one extreme to another—from ignoring inflation to ignoring high interest rates and the deep recession they cause. This bill is intended to stop this economic extremism and get us back to a balanced, commonsense middle-of-the-road policy.

The Federal Reserve Board has many tools at its disposal to bring rates down to reasonable levels. It has shown one way to bring rates down in the last few weeks as it lowered its so-called discount rate, which is the rate at which it loans to banks. By lowering this discount rate from 12 to 11 percent, the Fed has helped drive the prime rate down from 16.5 to 15 percent. But we have seen small drops in short-term interest rates before, only to have them wiped out by new increases in rates as the administration's tight money policy came into conflict with increasing budget deficits and business borrowing. My bill would bring interest rates down by making them an explicit part of Federal Reserve planning and assuring that the recent drops in the prime rate are maintained and expanded. If the prime rate were now at the historic levels mandated by this bill it would be somewhere between 9 and 11 percent—which is the goal of this bill.

The Fed has other tools besides the discount rate to reestablish the traditional relationship between interest rates and inflation. For instance, the Federal Reserve could bring down the "Federal funds" rates, which are the bank rates the Board controls most directly. These so-called Federal funds consist of the money that banks lend to each other overnight to help meet cash requirements of their day-to-day activities. The Board can raise interest rates on these loans by selling securities to banks, which the banks pay for, thus removing cash from their vaults and draining money from the total available for banks to lend to each other. Alternatively, the Federal Reserve can lower interest rates by buying securities from banks, thus providing banks with cash that makes more money available to the Federal funds markets and lowers the price of that money.

Using these purchases and sales, known as open market operations, the Federal Reserve can maintain reasonable control over the Federal funds rate.

While my bill would bring balance back to Federal Reserve policy by requiring it to make interest rates a significant part of its policy targets once more, it would not bring us back to the days when easy money fueled high inflation.

The most important difference between the interest rate targets established by my bill, and the old interest rate targets set by Federal Reserve Board is that the targets in my bill contain a countercyclical approach which dampens inflation before its begins to rage out of control. In the pre-October 1979 period, the Fed paid attention to interest rates, without any concern for inflation. Since October 1979, the Fed has concerned itself with only inflation and not at all with interest rates. My bill would establish a balanced approach to both these concerns.

The Federal Reserve Board would be required to keep real interest rates positive; that is, interest rates would have to stay above the level of inflation. Thus, the Board would have to watch both inflation and interest

rates. By keeping interest rates only slightly above inflation during recession and letting the spread rise as inflation began to build, the Fed could increase demand as a recession began to set in or it could slow loan demand before policymakers needed to use recession to fight inflation.

The Federal Reserve Board would continue to report to Congress twice a year, as under current law. In the first report, due no later than February 20 of each year, the Board would establish its targets for the growth of monetary and credit aggregated consistent with the traditional spread between short-term interest rates and inflation for the calendar year in which the report is presented.

In cases where there is a sudden increase in unemployment or inflation, my bill provides an escape clause designed to assure that the Federal Reserve Board can act to smooth out sudden surges in prices. The escape clause lets the Federal Reserve Board establish targets for interest rates above or below historic levels, as long as the Board notifies Congress in writing within 10 days of such changes and explains the reason for these changes.

My bill is not a straitjacket on Fed policymaking. It does anticipate that under certain severe conditions the Board may need to react suddenly, and provides a mechanism for the Board to do so.

There is nothing in this bill that will encourage inflation. We must continue the fight to lower inflation. But, once again, we must have a balanced policy, one that emphasizes lower interest rates—and economic recovery—along with the fight against inflation. We must keep both goals in mind. To ignore either goal—as this administration has done—is to court disaster.

We can look to West Germany for proof that such a balanced policy can succeed. There the central bank has paid attention to many economic variables including both interest rates and monetary growth, and the Germans have both lower inflation and lower unemployment than we do, with their unemployment at 5.8 percent and inflation running at only 5 percent.

Nor, Mr. President, can we lessen our fight against huge Federal deficits. We need to reduce this administration's record deficits, and we will continue to propose constructive ways to do so. But, once again, the point is balance. We must fight both battles—fiscal policy is part of the problem, but we must consider monetary policy along with it.

We must never forget that high interest rates are a direct cause of high deficits and that by lowering interest rates we can lower our deficits. This is true in two ways. First, high interest rates depress the economy, increase unemployment, and thereby cause both lowered tax revenues and higher spending for unemployment benefits. It has been, conservatively estimated that each additional percentage point of unemployment adds $25 billion to the deficit. Thus, the 2.1 percentage points that the unemployment rate has climbed during the Reagan Presidency—from 7.4 to 9.5 percent—has increased our deficit by more than $50 billion—half of what the administration projects it to be in fiscal year 1983.

Second, high-interest rates significantly increase the interest we must pay on our national debt. In fact, interest on the national debt is the fastest-growing element of the Federal budget—faster growing, for example, than either defense spending or social security. Ten years ago, interest payments took up 6 cents of every dollar spent by the Federal Government. For 1983 those interest payments will have more than doubled, to 13 cents out of every Federal dollar. These net interest payments will cost $97 billion in 1983—almost the entire projected deficit for that year.

Clearly, to lower interest rates would directly and dramatically lower our Government's annual deficits. We all want a balanced budget, and clearly lower interest rates would be a vital first step.

Mr. President, we cannot accept the premise that the only answer for inflation is recession. This is not an either/or choice. We have that again, but only if we pursue balanced, sensible policies that will lower interest rates.

Along with the need for balanced monetary policy, is a great need for the Federal Reserve to conduct its business in a more open, public manner. It has developed a tradition of secrecy that can only be harmful to public trust and ultimately to our economy. The American public is directly affected by the decisions of the Federal Reserve and the American public has a right to know what it is doing and why. My bill would therefore require the Board to make public its plans and goals in a variety of ways. Such public exposure would have the added advantage of bringing increased stability to the financial community. As things now stand, bankers and economists are second-guessing the Federal Reserve's ever-changing policy and this uncertainty creates a great many unnecessary and costly problems for our economy. To require the Board to report regularly to Congress, to publicly announce its policy changes, and to set yearly, rather than weekly, goals will go far toward bringing new stability to the financial community.

Mr. President, 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. 2807

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Balanced Monetary Policy Act of 1982".

SEC. 2. Purposes. It is the purpose of this Act to insure that monetary policy is conducted in a way which assures both economic growth and stable prices. It is the further purpose of this Act to return predictability and stability to financial markets, thus providing for lower, more stable real rates of interest.

SEC. 3. (a) Section 2A of the Federal Reserve Act is amended—

(1) by inserting "(a)" after "SEC. 2A."; and

(2) by striking out all after the first sentence and inserting in lieu thereof the following: "In furtherance of these goals the Board of Governors and the Federal Open Market Committee of the Federal Reserve System shall establish yearly targets for positive real short-term interest rates, consistent with historic levels and with sustained economic growth and stable prices. The Board of Governors and the Federal Open Market Committee of the Federal Reserve System shall also establish yearly targets for the growth or diminution of money and credit aggregates, consistent with the yearly targets for real short-term interest rates."

"(b) The Board of Governors and the Federal Open Market Committee shall take such actions as are necessary to assure that the targets for monetary aggregates, credit aggregates, and real short-term interest rate levels are achieved, on average, on an annual basis."

"(c) Nothing in this section shall be interpreted to require that the targets for short-term interest rates or for the growth or diminution of the monetary and credit aggregates be achieved if the Board of Governors and the Federal Open Market Committee determine that they cannot or should not be achieved because of unfavorable economic conditions such as rapidly accelerating inflation or high unemployment, and if within ten days of making such determination, the Board transmits a written report to the Committees of the Congress referred to in subsection (d) explaining the reasons for any revisions to or deviations from such targets and notifying the Committees of the new targets and of the objectives and plans for meeting those targets."

"(d) In addition, the Board of Governors shall transmit to the Congress, not later than February 20 and July 20 of each year, independent written reports setting forth—

"(1) a review and analysis of recent developments affecting economic trends in the Nation;

"(2) the objectives and plans of the Board of Governors and the Federal Open Market Committee with respect to achieving historic real short-term interest rate levels;

"(3) the objectives and plans of the Board of Governors and the Federal Open Market Committee with respect to the ranges of growth or diminution of the monetary and credit aggregates for the calendar year during which the report is transmitted;

"(4) the relationship of the aforesaid objectives and plans to the pursuit of full employment, stable economic growth, low inflation and affordable interest rates for productive sectors of the economy; and

"(5) the relationship of the aforesaid objectives and plans to the short-term goals set forth in the most recent Economic

Report of the President pursuant to section 3(a)(A) of the Employment Act of 1946 and to any short-term goals approved by the Congress.

As a part of its report on July 20 of each year, the Board of Governors shall include a statement of its objectives and plans with respect to the ranges of growth or diminution of the monetary and credit aggregates and the achievement of historical real short-term interest rate levels for the calendar year following the year in which the report is submitted. The reports and statements required under the two preceding sentences shall be transmitted to the Congress and shall be referred in the Senate to the Committee on Banking, Housing, and Urban Affairs, and in the House of Representatives to the Committee on Banking, Finance and Urban Affairs. The Board shall consult with each such committee on the reports and statements and, thereafter, each such Committee shall submit to its respective body a report containing its views and recommendations with respect to the intended policies of the Board.

"(e) To promote order and stability in the financial markets and full information about economic conditions for all citizens, the Board of Governors shall publicly announce changes in objectives and plans at the time those changes are determined.".

(b) The amendment made by subsection (a) takes effect one month after the date of enactment of this Act.

Mr. SASSER. Mr. President, I rise today as an original cosponsor of S. 2807, the Balanced Monetary Policy Act of 1982. This very constructive legislation offers the Congress an excellent means of easing the interest rate crisis that we now face.

Mr. President, the administration has failed dismally in its efforts to get interest rates under control. Real interest rates, the effective interest one has to pay after discounting for the rate of inflation, have averaged 6.5 percent, at least twice the historical level of real interest rates, since 1979. And for the first quarter of 1982, real interest rates were above the level of 12 percent.

These high real interest rates have devastated the economy, as evidenced by the fact that we are using less than 70 percent of our industrial capacity, and even less than 50 percent of capacity in some of our most basic industries like the steel industry.

High interest rates have crucified small business. We will see over 22,000 small business failures this year. We recorded over 13,000 by the end of July 1982. This year we should see the highest level of business failures that we have ever seen since the Great Depression. Already bankruptcy filings in Tennessee are up over 77 percent from last year, and 1981 was a very bad year for Tennessee small business.

And I contend that these business failures and bankruptcies are a direct result of the misguided interest rate policies of the Federal Reserve Board.

I would remind my colleagues that, by statute, the Federal Reserve Board is supposed to conduct its monetary policy to insure full employment and also to moderate long-term interest rates. Yet what do we see. Unemployment is at a level of 9.5 percent, and 10.5 million people are out of work. And we find that long-term interest rates stood at 14.2 percent in 1981, a full 7 percentage points above the 1960–81 average. Clearly, the Federal Reserve Board's interest rate policies have not succeeded in promoting employment or keeping long-term interest rates down.

As the Federal Reserve Board's misguided interest rate policies continue, we find that the confidence of the American people in the economy is failing; 48 percent of all Americans now believe that we are in a depression; 71 percent of all Americans, according to a recent Harris poll, now do not believe that the President can get us out of this recession.

Mr. President, one reason the American people are giving us hope is that interest rates, in real terms, are simply not dropping fast enough to promote an economy recovery.

And I believe that the American people want the Government to act to bring interest rates down. They do not want the Federal Reserve Board to pursue a monetary policy that destroys our economy.

The Balanced Monetary Policy Act of 1982 that we are introducing today provides the Federal Reserve Board with new interest rate guidelines that should help bring real interest rates down to a level of 1 to 3 percent.

I commend Senator BYRD and my other distinguished colleagues for introducing this legislation. It is my hope that S. 2807, will receive prompt and immediate consideration by the Banking, Housing, and Urban Affairs Committee and the full Senate.

By Mr. EAGELTON (for himself, Mr. LEVIN, Mr. DURENBERGER, Mr. HATCH, Mr. KENNEDY, Mr. METZENBAUM, and Mr. SARBANES):

S.J. Res. 225. Joint resolution to provide for the designation of the week beginning on November 21, 1982, as "National Alzheimer's Disease Week"; to the Committee on the Judiciary.

NATIONAL ALZHEIMER'S DISEASE WEEK

● Mr. EAGLETON. Mr. President, today my distinguished colleagues, Senators LEVIN, DURENBERGER, HATCH, KENNEDY, METZENBAUM, and SARBANES, and I are introducing a joint resolution declaring the sense of the Congress to be that the President is authorized and requested to issue a proclamation designating the week beginning November 12, 1982, as "National Alzheimer's Disease Week."

Of the 25 million people over the age of 65 in the United States today, as many as 3 million experience what is to them a disturbing loss of memory. Of these, more than 1½ million have senile dementia of the Alzheimer's type, the progressive decline in intellect that most people call senility.

Alzheimer's disease, a little-known but surprisingly common disorder, is an insidious and relentless deterioration of the mind. At first, the individual experiences only minor and almost imperceptible symptoms that are often attributed to emotional upsets or other physical illnesses. Gradually, the afflicted person becomes more forgetful, unable to perform routine daily tasks. As the slow and steady destruction of brain tissue progresses, the victim loses the ability to perform even the simplest tasks, leaving him or her totally dependent on others for their care. The patient often recognizes no one and talks to no one. As eloquently but tragically stated by the wife of an Alzheimer's victim in hearings before the Aging Subcommittee of the Labor and Human Resources Committee in 1980, "It's like a funeral that never ends."

The quantifiable, $14 billion impact on our health care system, as enormous as it is, is but a fraction of the true cost of this silent epidemic. The loss of productive members of society, disruption of families, and loss of human dignity are incalculable drains on our society as a whole.

Senile dementia, or Alzheimer's disease, is one of the most overdiagnosed and misdiagnosed disorders of the mind. One of the difficulties associated with the diagnosis is the common, albeit mistaken, view that senility in later life is a normal part of aging itself. Regrettably, even many physicians have accepted the erroneous notion that if you live long enough you will inevitably show a significant decline in intellectual functioning. Another common misconception is that nothing can be done for an individual once the diagnosis is made.

Proper medical care can reduce many of its symptoms, and sound counseling can assist the patient, as well as the family, in coping with its profound impact on the lives of all involved.

True, medical science does not yet know how to cure, prevent, or reverse Alzheimer's disease. But that does not mean we cannot and should not take practical steps to ease the burden on Alzheimer's victims and their families. To begin with, we can redouble our efforts to insure that medical schools and other health professional training institutes incorporate curriculums regarding this condition and other disease states related to age into their training programs. We can better educate the practicing medical profession, nurses, caseworkers, social workers, and health counselors with regard to the symptoms of this dread disease. We can and must continue to capitalize on the extraordinary promise of recent advances in brain research

which have given us the real possibility of treating and preventing Alzheimer's disease.

Mr. President, the purpose of this resolution is to increase public awareness of this disease now known only to a few. It is my hope that the declaration of National Alzheimer's Disease Week will lead to better understanding of the needs of Alzheimer's patients and their families, to a heightened awareness of our entire health care delivery system of the nature of this disease, to more intensive continuing education of physicians and nurses in the management of the disease, to bolstering families who too often are struggling alone to cope with the day-to-day vigil over the deterioration of loved ones, and to a systematic investment of additional resources in basic and clinical research into the cause of and treatment for this dreaded affliction.

I urge all of my colleagues to join with Senators LEVIN, DURENBERGER, HATCH, KENNEDY, METZENBAUM, SARBANES, and myself in supporting the purpose of this joint resolution as a step toward understanding and combating what is one of the great tragedies of human life.

Mr. President, I ask unanimous consent that the joint resolution be printed at this point in the RECORD.

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

S.J. RES. 225

Whereas Alzheimer's disease produces senile dementia in 15 percent of all individuals who have attained the age of 65 and is responsible for over 50 percent of all nursing home admissions;

Whereas more than one million five hundred thousand American adults are affected by this surprisingly common disorder that destroys certain vital cells in the brain;

Whereas more than $14,000,000,000 is spent annually in treating the ravages of Alzheimer's disease;

Whereas one parent in one out of three families will succumb to this disease;

Whereas Alzheimer's disease is not a normal consequence of aging; and

Whereas an increase in the national awareness of the problem of Alzheimer's disease may stimulate the interest and concern of the American people which may lead, in turn, to increased research and eventually to the discovery of a cure for Alzheimer's disease: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the week beginning on November 21, 1982, is designated as "National Alzheimer's Disease Week" and the President is authorized and requested to issue a proclamation calling upon the people of the United States to observe that week with appropriate activities.●

ADDITIONAL COSPONSORS

S. 479

At the request of Mr. ROBERT C. BYRD, the name of the Senator from South Carolina (Mr. HOLLINGS) was added as a cosponsor of S. 479, a bill to designate the first Sunday in June of each year as "National Shut-in Day."

S. 1106

At the request of Mr. ZORINSKY, the name of the Senator from New Hampshire (Mr. HUMPHREY) was added as a cosponsor of S. 1106, a bill to reform the insanity defense.

S. 1421

At the request of Mr. EAGLETON, the names of the Senator from Missouri (Mr. DANFORTH), the Senator from New York (Mr. MOYNIHAN), the Senator from Washington (Mr. JACKSON), and the Senator from Minnesota (Mr. DURENBERGER) were added as cosponsors of S. 1421, a bill entitled the "National Archives and Records Administration Act of 1981."

S. 1698

At the request of Mr. DENTON, the name of the Senator from Illinois (Mr. DIXON) was added as a cosponsor of S. 1698, a bill to amend the Immigration and Nationality Act to provide preferential treatment in the admission of certain children of U.S. Armed Forces personnel.

S. 1809

At the request of Mr. CHAFEE, the name of the Senator from Hawaii (Mr. MATSUNAGA) was added as a cosponsor of S. 1809, a bill to provide that a portion of the cost of studies undertaken by the Corps of Engineers be paid by non-Federal interests.

S. 1889

At the request of Mr. MATSUNAGA, the name of the Senator from Texas (Mr. BENTSEN) was added as a cosponsor of S. 1889, a bill to establish the U.S. Academy of Peace, and for other purposes.

S. 1951

At the request of Mr. BENTSEN, the name of the Senator from California (Mr. HAYAKAWA) was added as a cosponsor of S. 1951, a bill to change the penalties for possession of controlled substances under section 401(b) of the Controlled Substances Act.

S. 2103

At the request of Mr. PACKWOOD, the name of the Senator from Oregon (Mr. HATFIELD) was added as a cosponsor of S. 2103, a bill for the relief of Kok Sjen Su and Grace Su, husband and wife.

S. 2338

At the request of Mr. PERCY, the name of the Senator from New York (Mr. MOYNIHAN) was added as a cosponsor of S. 2338, a bill to expand the membership of the Advisory Commission on Intergovernmental Relations to include elected school board officials.

S. 2485

At the request of Mr. LEAHY, the names of the Senator from Kentucky (Mr. HUDDLESTON) and the Senator from Michigan (Mr. LEVIN) were added as cosponsors of S. 2485, a bill to require the Secretary of Agriculture to establish a network of volunteers to assist in making available information and advice on organic agriculture for family farms and other agricultural enterprises, to establish pilot projects to carry out research and education activities involving organic farming, and to perform certain other functions relating to organic farming, with special emphasis on family farms.

S. 2554

At the request of Mr. PERCY, the name of the Senator from Kentucky (Mr. HUDDLESTON) was added as a cosponsor of S. 2554, a bill to require the Commodity Credit Corporation to dispose of Government-owned stocks of agricultural commodities.

S. 2585

At the request of Mr. CRANSTON, the names of the Senator from Pennsylvania (Mr. SPECTER), the Senator from Vermont (Mr. STAFFORD), the Senator from New Hampshire (Mr. RUDMAN), the Senator from Ohio (Mr. GLENN), the Senator from Vermont (Mr. LEAHY), the Senator from Mississippi (Mr. COCHRAN), and the Senator from Wyoming (Mr. SIMPSON) were added as cosponsors of S. 2585, a bill to provide that the Armed Forces shall pay benefits to surviving spouses and dependent children of certain members of the Armed Forces who die from service-connected disabilities in the amounts that would have been provided under the Social Security Act for amendments made by the Omnibus Budget Reconciliation Act of 1981.

S. 2618

At the request of Mr. ZORINSKY, the name of the Senator from Iowa (Mr. GRASSLEY) was added as a cosponsor of S. 2618, a bill to limit the retirement annuity of Members of Congress and former Members of Congress.

S. 2619

At the request of Mr. TSONGAS, the names of the Senator from Massachusetts (Mr. KENNEDY), the Senator from Rhode Island (Mr. PELL), the Senator from Pennsylvania (Mr. SPECTER), the Senator from North Dakota (Mr. ANDREWS), the Senator from Ohio (Mr. METZENBAUM), the Senator from Maryland (Mr. SARBANES), and the Senator from New Jersey (Mr. BRADLEY) were added as cosponsors of S. 2619, a bill to amend the Energy Security Act to extend the financing authority of the Synthetic Fuels Corporation to include projects for district heating and cooling and for municipal waste energy recovery, and for other purposes.

S. 2661

At the request of Mr. COCHRAN, the name of the Senator from Texas (Mr. BENTSEN) was added as a cosponsor of S. 2661, a bill to improve farm commodity prices through expanded export development and the use of ad-

vance loans and payments under the price and income support programs to encourage participation in the acreage adjustment programs for wheat, cotton, rice, and feed grains.

S. 2700

At the request of Mr. CANNON, the name of the Senator from Alabama (Mr. HEFLIN) was added as a cosponsor of S. 2700, a bill to amend title XVI of the Social Security Act to exclude from resources burial plots and niches and certain funds set aside for burial or cremation expenses for purposes of the supplemental security income program.

S. 2716

At the request of Mr. LEAHY, the name of the Senator from Minnesota (Mr. BOSCHWITZ) was added as cosponsor of S. 2716, a bill to enable milk producers to establish, finance, and carry out a coordinated program of dairy product promotion to improve, maintain, and develop markets for dairy products.

S. 2794

At the request of Mr. WEICKER, the name of the Senator from Oregon (Mr. HATFIELD) was added as a cosponsor of S. 2794, a bill to insure the intelligent and full utilization of marine resources.

SENATE JOINT RESOLUTION 199

At the request of Mr. THURMOND, the name of the Senator from South Dakota (Mr. ABDNOR), was added as a cosponsor of Senate Joint Resolution 199, a joint resolution proposing an amendment to the Constitution of the United States.

SENATE JOINT RESOLUTION 209

At the request of Mr. LEVIN, the names of the Senator from Rhode Island (Mr. CHAFEE) and the Senator from Connecticut (Mr. WEICKER) were added as cosponsors of Senate Joint Resolution 209, a joint resolution designating the week beginning September 5, 1982, as "National Adult Day Care Center Week."

SENATE JOINT RESOLUTION 214

At the request of Mr. PERCY, the names of the Senator from Minnesota (Mr. BOSCHWITZ) and the Senator from California (Mr. CRANSTON) were added as cosponsors of Senate Joint Resolution 214, a joint resolution to authorize and request the President to designate the month of November 1982 as "National React Month."

SENATE JOINT RESOLUTION 220

At the request of Mr. PRYOR, the names of the Senator from Minnesota (Mr. BOSCHWITZ), the Senator from Louisiana (Mr. JOHNSTON), the Senator from Georgia (Mr. NUNN), the Senator from New York (Mr. MOYNIHAN), the Senator from Minnesota (Mr. DURENBERGER), the Senator from Nevada (Mr. LAXALT), and the Senator from New Jersey (Mr. BRADLEY) were added as cosponsors of Senate Joint Resolution 220, a joint resolution to authorize the erection of a memorial on public grounds in the District of Columbia to honor and commemorate members of the Armed Forces of the United States who served in the Korean war.

SENATE RESOLUTION 355

At the request of Mr. DECONCINI, the name of the Senator from Vermont (Mr. STAFFORD) was added as a cosponsor of Senate Resolution 355, a resolution expressing the sense of the Senate with respect to the need to continue Federal funding for energy conservation and renewable energy resources.

AMENDMENT NO. 2010

At the request of Mr. ARMSTRONG, the names of the Senator from Indiana (Mr. QUAYLE), and the Senator from South Carolina (Mr. HOLLINGS) were added as cosponsors of amendment No. 2010 proposed to Senate Joint Resolution 58, a joint resolution proposing an amendment to the Constitution altering Federal fiscal decisionmaking procedures.

UP AMENDMENT NO. 1127

At the request of Mr. CANNON, the name of the Senator from Alabama (Mr. HEFLIN) was added as a cosponsor of UP amendment No. 1127 proposed to H.R. 4961, a bill to make miscellaneous changes in the tax laws.

SENATE RESOLUTION 441—RESOLUTION RELATING TO THE NUMBER OF STARS ON THE CEILING AND WALLS OF THE SENATE CHAMBER

Mr. MATSUNAGA (for himself, Mr. INOUYE, Mr. STEVENS, Mr. MURKOWSKI, Mr. GOLDWATER, Mr. DECONCINI, Mr. DOMENICI, and Mr. SCHMITT) submitted the following resolution; which was referred to the Committee on Rules and Administration:

S. RES. 441

Whereas the number of stars on the ceiling and walls of the Senate Chamber do not reflect the present number of States in the Nation: Now, therefore, be it

Resolved, That (a) the Architect of the Capitol is authorized and directed to install two additional stars on the ceiling of the Senate Chamber and four additional stars on its walls.

(b) Expenses incurred under this resolution shall be paid from the contingent fund of the Senate upon vouchers approved by the chairman of the Committee on Rules and Administration of the Senate.

AMENDMENTS SUBMITTED FOR PRINTING

WATER RECLAMATION FEASIBILITY STUDIES

AMENDMENT NO. 2011

(Ordered to be printed and to lie on the table.)

Mr. CHAFEE submitted an amendment intended to be proposed by him to the bill (S. 2443) to authorize the Secretary of the Interior to engage in feasibility investigations of certain water resource developments.

● Mr. CHAFEE. Mr. President, today I am submitting an amendment to S. 2443, a bill to authorize water reclamation feasibility studies. I would like to take a few moments, for the benefit of my colleagues, to explain the rationale and impact of this straightforward amendment.

The language of my amendment is quite similar to S. 1809, a bill I introduced last year which calls for local interests to pay 50 percent of future water resources studies undertaken by the U.S. Army Corps of Engineers. The only difference is the lower rate of local, non-Federal cost sharing required under this amendment.

Specifically, this amendment requires that a non-Federal interest—a State or States, or a local governmental entity, agree to pay 25 percent of the cost of each of the studies authorized by this bill.

The rationale for this approach is simple. Anyone who has seen our Federal water resources process at work recognizes the scattergun effect of the program. We fail to target projects. The States take whatever is made available. The Federal Government pays the full cost of the study and consequently there is no local constraint.

When I was Governor of Rhode Island I saw this happen. In the Senate, I see it replicated time and again.

My amendment simply says that none of these projects can be studied unless the local entities—the beneficiaries—agree to put up a small portion of the cost.

The benefit of this approach is twofold. First, since State and local government would fund a portion of the study there would be more Federal money available to fund necessary studies. Second, and perhaps most important, only those studies which have substantial local support would be undertaken. This will result in the completion of high priority studies at a faster rate than under the current system.

Mr. President, I believe this approach is close to one developing within the administration. Assistant Secretary of the Army (Civil Works) William Gianelli testified last June to the Senate's Water Resources Subcommittee that he was developing an approach for 50-50 cost sharing on new studies. I also would like to point out that last year when we enacted reforms to the Clean Water Act's construction grants program, the share local and State governments had to put for new sewage treatment plants was increased in phases from 25 to 45 percent. That change was supported

by the entire Senate, as well as the administration. Another innovative change we made in the Clean Water Act amendments last year was to require the local entity to put up 100 percent of the cost for the planning and design of the treatment plant. If the plan was approved by EPA for construction, the local entity would be reimbursed at the prevailing rate of the Federal-local cost share.

Mr. President, I am convinced my amendment is the proper approach to take with regard to these studies. Not only will we be able to save the Federal Treasury scarce funds with this amendment, we will be able to facilitate needed studies and define high priority projects. I believe the administration shares this belief. I would hope my colleagues will also recognize the value of this approach.

Mr. President, I ask unanimous consent that the amendment be printed in the RECORD.

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

On page 3, following line 10, add the following new section:

"SEC. 2. No feasibility study authorized by section 1 of this Act shall be commenced until the appropriate non-Federal interests contract with the Secretary of the Interior to pay, during the period of such study, 25 per centum of its cost."●

AMENDMENT NO. 2012

(Ordered to be printed and to lie on the table.)

Mrs. HAWKINS (for herself, Mr. CHAFEE, Mr. MATTINGLY, Mr. PELL, and Mr. MURKOWSKI) submitted an amendment intended to be proposed by them to the bill (S. 2774) to provide for reconciliation pursuant to section 2 of the first concurrent resolution on the budget for fiscal year 1983 (S. Con. Res. 92, 97th Congress).

NOTICES OF HEARINGS

SUBCOMMITTEE ON PUBLIC LANDS AND RESERVED WATER

Mr. WALLOP. Mr. President, I would like to announce for the information of the Senate and the public the scheduling of a public hearing before the Subcommittee on Public Lands and Reserved Water to consider H.R. 5161, to designate certain lands in the Monongahela National Forest, W. Va., as wilderness; and to designate management of certain lands for uses other than wilderness.

The hearing will be held on Wednesday, August 11, beginning at 2 p.m. in room 3110 of the Dirksen Senate Office Building.

Those wishing to testify or who wish to submit written statements for the hearing record should write to the Subcommittee on Public Lands and Reserved Water, room 3104, Dirksen Senate Office Building, Washington, D.C. 20510.

Witnesses are requested to limit their oral testimony to 5 minutes and to supply the subcommittee with 50 copies of their written statements 24 hours in advance of the hearing, as required by the rules of the committee.

Persons wishing to testify are requested to contact Mr. Tony Bevinetto of the subcommittee staff at the address listed above, telephone: 202-224-5161, by August 9, in order that the witnesses may be placed on panels and at the times convenient to the witnesses.

For further information regarding this hearing, please contact Mr. Bevinetto at the telephone number listed above.

Mr. President, I would like to announce for the information of the Senate and the public the scheduling of a public hearing before the Subcommittee on Public Lands and Reserved Water to consider S. 2118, to designate certain National Forest System lands in the State of Wyoming for inclusion in the National Wilderness Preservation System, to release other forest lands for multiple use management, to withdraw designated wilderness areas in Wyoming from minerals activity, and for other purposes.

The hearing will be held on Wednesday, August 18, beginning at 2 p.m. in room 3110 of the Dirksen Senate Office Building.

Those wishing to testify or who wish to submit written statements for the hearing record should write to the Subcommittee on Public Lands and Reserved Water, room 3104, Dirksen Senate Office Building, Washington, D.C. 20510.

Witnesses are requested to limit their oral testimony to 5 minutes and to supply the subcommittee with 50 copies of their written statements 24 hours in advance of the hearing, as required by the rules of the committee.

Persons wishing to testify are requested to contact Mr. Tony Bevinetto of the subcommittee staff at the address listed above, telephone: 202-224-5161, by August 16 in order that the witnesses may be placed on panels and at the times convenient to the witnesses.

For further information regarding this hearing, please contact Mr. Bevinetto at the telephone number listed above.

COMMITTEE ON THE BUDGET

Mr. DOMENICI. Mr. President, the Senate Committee on the Budget has changed its previously announced meeting time for the hearing with the Honorable Donald Regan, Secretary, Department of the Treasury, on Wednesday, August 4, from 9:30 a.m. to 9 a.m. The hearing will be held in 6202 Dirksen Senate Office Building as scheduled.

For further information, contact Nancy Moore of the Budget Committee at 224-4129.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON THE JUDICIARY

Mr. BAKER. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet during the session of the Senate on Wednesday, August 4, at 2 p.m. for the purpose of conducting hearings on the following nominations:

Judge Harry W. Wellford, of Tennessee, to be U.S. circuit judge for the Sixth Circuit Court of Appeals;

Mr. Antonin Scalia, of Illinois, to be circuit judge for the District of Columbia Circuit Court of Appeals;

Mr. Michael M. Mihm, of Illinois, to be U.S. district judge for the central district of Illinois;

Mr. Bruce M. Selya, of Rhode Island, to be U.S. district judge for the district of Rhode Island.

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

Mr. BAKER. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet during the session of the Senate on Wednesday, August 4, in order to consider and act on the attached committee business:

COMMITTEE ON THE JUDICIARY

AGENDA: NOMINATIONS

U.S. circuit court judges

Judge Harry W. Wellford, of Tennessee, to be U.S. circuit judge for the Sixth Circuit Court of Appeals.

Mr. Antonin Scalia, of Illinois, to be circuit judge for the District of Columbia Circuit Court of Appeals.

U.S. district court judges

Mr. Michael Mihm, of Illinois, to be U.S. district judge for the central district of Illinois.

Mr. Bruce Selya, of Rhode Island, to be U.S. district judge for the district of Rhode Island.

U.S. attorneys

Mr. Frederick Scullin, Jr., of New York, to be U.S. attorney for the Northern District of New York.

Mr. Larry Thompson, of Georgia, to be U.S. Attorney for the Northern District of Georgia.

U.S. Marshal

Ms. Faith P. Evans, of Hawaii, to be U.S. marshal for the District of Hawaii.

Other

Mr. Constantine N. Dombalis, of Virginia, to be a member of the Commission on Civil Rights.

Dr. Guadalupe Quintanilla, of Texas, to be a member of the Commission of Civil Rights.

Bills

H.R. 3517—A bill to authorize the granting of permanent residence status to certain nonimmigrant aliens residing in the Virgin Islands. (Subcommittee on Immigration and Refugee Policy)

S. 2297—A bill to improve protections for the tenants of shopping centers under the Bankruptcy Act. (Subcommittee on Courts)

S. 2671—To provide for the establishment of a Commission on the Bicentennial of the Constitution. (Full committee)

S. 2552—To protect the safety of intelligence personnel and certain other persons. (Full committee)

S. 186—Criminal Justice Construction Reform Act. (Subcommittee on Criminal Law)

S. 2411—Justice Assistance Act of 1982. (Subcommittee on Criminal Law and Juvenile Justice)

S. 1758—Betamax Copyright Bill. (Full committee)

S. 2420—Omnibus Victims Protection Act of 1983. (Subcommittee on Criminal Law)

Commemorative resolution

S. J. Res. 188—To designate March 1, 1982, as National Recovery Room Nurses Day. (Introduced by Senator Inouye.)

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

COMMITTEE ON FOREIGN RELATIONS

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 Wednesday, August 4, at 10 a.m., to hold an oversight hearing on economic and social reforms 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 Thursday, August 5, at 10 a.m., to hold an oversight hearing on economic and social reforms in El Salvador.

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

ADDITIONAL STATEMENTS

CITIZEN CRIME PREVENTION WORKS

● Mr. BIDEN. Mr. President, today I would like to recognize and pay tribute to an innovative and unique organization. The National Association of Town Watch (NATW) is a nonprofit nationwide network of citizen crime watch groups and local law enforcement agencies. Its founder and executive director, Mr. Matt A. Peskin of Wynnewood, Pa., established the organization early in 1981 in an effort to unite the thousands of citizen volunteers who are assisting their local police in organized crime watch programs. Mr. Peskin saw the need for a nationwide association through which local groups could share valuable crime prevention information and programs. By March of last year, the National Association of Town Watch had become a reality. Today, the organization has grown to include member groups in 22 States across the country and has even attracted membership from provinces in Canada.

There are several important characteristics I would like to relate to you about the organization. First, its members are only those who are affiliated with and working in cooperation with their local police. They are not vigilante groups. Rather, they are concerned citizens who have taken time to be trained and to work with the law enforcement agency in their particular community. Second, and perhaps most importantly, the organization has come a long way without a major source of funding. Through hard work, membership fees, and small contributions, NATW has been able to grow.

Mr. President, I believe that it is important that limited Federal support be available to local crime prevention programs, which have proven to be effective and worthwhile. It is my belief that the volunteer anticrime spirit can be enhanced if limited Federal resources and technical assistance are available. It is for this reason that Senator SPECTER and I introduced our Justice Assistance Act of 1982 (S. 2411) so that successful crime fighting programs can be continued.

The National Association of Town Watch just recently introduced and implemented a new dimension to the crime watch campaign that I strongly endorse. The program is called "letter carrier watch" and incorporates the voluntary services of local letter carriers to serve as additional eyes and ears while on their daily routes. The program is targeted at helping police combat the steadily growing number of daytime burglaries. Letter carriers are a valuable addition to an area's crime watch team for the following reasons: They know the neighborhoods quite well, their hours coincide with the time most day burglaries are committed, and many carriers are already adept at spotting suspicious activity. The suburban Philadelphia area and five other pilot areas across the country kicked off programs in their areas in May. Carriers attended awareness sessions conducted by crime prevention officers and the various components of the letter carrier watch were discussed. One of the major items outlined was safety. Carriers were instructed never to get physically involved in any suspicious circumstances—only to telephone the local police.

The program has certainly generated a great deal of public support. The program makes a great deal of sense. There is no real cost involved and, at the very least, it will serve as a deterrent to potential daytime criminals.

The carriers, the police, the community, and the media strongly support this program and I believe this to be an excellent crime prevention proposal. I urge every Member of the Senate to lend their support for expansion of the letter carrier watch program nationally.

I take my hat off to the National Association of Town Watch and to Mr. Peskin for showing us that the "spirit" is alive and well in communities across America. These citizens' groups and law enforcement agencies are fighting to keep their homes, their families, and their neighborhoods safe. Their efforts are paying off because they are working together. Mr. President, this is what "America" is all about.

I ask that the attached editorials be printed in the RECORD.

The editorials follow:

EVEN BETTER (II)

Yesterday, I talked about neighborhood townwatches; how they help citizens like you and me fight crime. And I told you that to join or form a Town Watch, you should call your local police department.

This is Lower Merion. It's a suburb of Philadelphia on the Main Line. I came here because it's a new idea to make Town Watches work even better!

Most Town Watches work at night. But in quiet, residential communities like this, a lot of burglaries occur during the day when nobody is home. But you know, there is someone around during the day.

Letter carriers. They know the neighborhoods where they deliver mail and they can recognize anything suspicious.

The National Association of Town Watch tried to organize a Letter Carrier Watch right here. And the letter carriers themselves were all for it.

But then the U.S. Postmaster General in Washington said no, that it was too dangerous.

Well, that's ridiculous. Town Watch doesn't stop crimes, it only reports suspicious activity to the police. And besides, letter carriers here want to help.

I'm going to send a copy of this editorial to William Bolger. He's the Postmaster General. If you agree with me that letter carriers should help fight crime, write to me and I'll send your letters along. I'm Pat Polillo and here's the address.

Pat Polillo—Vice President and General Manager-KYW Television

[From the New Spirit, May/June 1982]

COMMUNITIES APPLAUD LETTER CARRIER WATCH; POSTAL SERVICE SAYS: "TOO DANGEROUS"

(By Linda Kennedy)

The "Letter Carrier Watch" is a new wrinkle to the community crime prevention/awareness effort. The program incorporates the voluntary participation of local letter carriers as a component to an area's crime watch team. Once organized, local carriers attend an Awareness Session which is conducted by area crime prevention officers. The one-hour Session is designed to help increase the letter carriers sensitivity to suspicious activity and how to effectively report anything they may see. Most importantly, the letter carriers are instructed not to alter their routes, not to investigate suspicious circumstances and not to ever get physically involved.

The community, the local carriers, the police and local officials strongly support the effort and see the 'Carrier Watch' as a positive program in helping police combat daytime burglaries. There are 5 pilot programs underway, the first of which was kicked-off in the suburban Philadelphia area on May 20th. Similar efforts are orga-

nized in Tallahassee, FL, Madison, WI, Canton, OH, Texarkana, TX and Tulsa, OK.

Most recently however, areas have found that the Postal Service headquarters have directed letter carriers not to become involved in any kind of 'crime watch program'. According to U.S.P.S. spokespersons, the program would expose carriers to dangers not ordinarily part of their job . . . (?) Another official from the Postal Service said, "Our people are not law enforcement officers."

The U.S.P.S. attitude has not gone unchallenged. Ronald C. Hays, President of the Main Line Letter Carriers Association, describes the letter carriers participation as "an excellent idea." He is not alone. The U.S. Postal Service's opposition to NATW's "Letter Carrier Watch" has generated a flow of public support for the project.

WCAU-TV (CBS-Phila.) strongly supported the effort through several television editorials and news stories. The Philadelphia Inquirer said in a June 5 editorial, "carriers who wish to participate should be free to do so—with not only approval, but enthusiastic support from the U.S. Postal Service."

Susan Savage of Tulsa, Oklahoma and Anthony Moore of Canton, Ohio, both coordinators of Carrier Watch programs in their respective areas, expressed disbelief and anger when Postmasters in their communities discouraged implementation. Because the project is designed with carrier's safety in mind and offers the opportunity to increase the local letter carrier's awareness, the two coordinators, (along with many other groups and individuals), are asking "why?"

NATW Director Matt A. Peskin noted that a recent article in the Letter Carriers monthly publication, described the heroic actions of a letter carrier in South Carolina who spotted a burglary in progress. The carrier saw the broken window through which the burglars entered, went around to the back of the house and saw them inside, then went to call the police. Peskin said, "had that carrier attended our Awareness Session, he would have known to leave the area once he spotted the broken window." "By investigating the way he did," Peskin added, "he could have gotten his head blown off."

Peskin cited another glaring conflict in the Postal Service's thinking regarding crime prevention.

In a recent piece of correspondence from a Regional Director of the U.S.P.S., two Baltimore carriers received commendations from the U.S.P.S. for chasing down two armed holdup suspects. Peskin said, "first they commend a carrier for getting involved in a gun battle and then they tell us that the Letter Carrier Watch is too dangerous and that carriers aren't law enforcement officers?

The Association says it stands behind the program and urges all members, local carriers and concerned citizens to offer their support in favor of the program.

Stay tuned.●

SENATE JOINT RESOLUTION 224—JOINT RESOLUTION TO PREVENT NUCLEAR TESTING

● Mr. KENNEDY. Mr. President, on Friday, July 30, 1982, I introduced Senate Joint Resolution 224, a joint resolution to prevent nuclear testing, for myself and for 30 of my colleagues in the Senate.

I ask that the full text of Senate Joint Resolution 224 be printed in the RECORD.

The text of the joint resolution follows:

S.J. RES. 224

Whereas the United States is committed in the Limited Test Ban Treaty of 1963 and in the Non-Proliferation Treaty of 1968 to seek to achieve the discontinuance of all test explosions of nuclear weapons for all time;

Whereas a Comprehensive Test Ban Treaty would promote the security of the United States by constraining the U.S.-Soviet nuclear arms competition and by strengthening efforts to prevent the proliferation of nuclear weapons;

Whereas the Threshold Test Ban Treaty was signed in 1974 and the Peaceful Nuclear Explosion Treaty was signed in 1976, and both have yet to be considered for ratification by the full Senate;

Whereas the ratification of the Peaceful Nuclear Explosion Treaty and the Threshold Test Ban Treaty will ensure the effectiveness and full implementation of significant new verification procedures and so make completion of a Comprehensive Test Ban Treaty and further progress in strategic arms control more probable;

Whereas a Comprehensive Test Ban Treaty must be adequately verifiable, and whereas significant progress has been made in detection and identification of underground nuclear explosions by seismological and other means;

Whereas a Comprehensive Test Ban Treaty, to be effective, must ban nuclear explosions for peaceful purposes as well as nuclear weapons tests;

Whereas presently negotiations are not being pursued by the United States toward completion of a comprehensive test ban agreement;

Whereas substantial progress has been made in past negotiations on important elements of the Comprehensive Test Ban Treaty, including prohibition of nuclear explosions for peaceful purposes, as well as effective and unprecedented verification measures in the areas of seismic monitoring and on-site inspection; and

Whereas the past five Administrations have supported the achievement of a Comprehensive Test Ban Treaty: Now, therefore be it

Resolved by the Senate and the House of Representatives of the United States of America in Congress assembled, That at the earliest possible date the President of the United States should:

1. Request Senate consent to ratification of the Threshold Test Ban and Peaceful Nuclear Explosion Treaties, signed in 1974 and 1976 respectively;

2. Resume trilateral negotiations toward conclusion of a verifiable Comprehensive Test Ban Treaty.●

THEODORE SORENSEN ON NUCLEAR TEST BANS

● Mr. BIDEN. Mr. President, last week the Reagan administration made a startling announcement that it intended to abandon negotiations for a Comprehensive Test Ban Treaty. At that time, Senator MATHIAS joined me in announcing that we would introduce a bipartisan resolution on July 29, demanding immediate resumption of the negotiations as well as submission of the Threshold Test Ban and Peaceful Nuclear Explosion Treaties for Senate consent.

Five administrations, both Republican and Democratic, have pursued a comprehensive nuclear test ban since 1963, when President Kennedy signed and the Senate agreed to ratification of the Limited Test Ban Treaty. Theodore C. Sorensen, who was special counsel to President Kennedy, has written an eloquent and compelling article in the New York Times which makes clear the importance of this effort and condemns the Reagan administration's abandonment of these two decades of bipartisan commitment. Mr. President, I ask that Mr. Sorensen's important article be printed at this point in the RECORD.

The article follows:

[From the New York Times, July 25,1982]

TEST BAN AND EPITAPHS

(By Theodore C. Sorensen)

Ronald Reagan last week, in a move speaking volumes about his sincerity in the current strategic arms reduction talks, threw out 19 years of bipartisan American support for a comprehensive nuclear test ban treaty. The military arguments he accepted have heretofore been consistently rejected.

It was 19 years ago today that American, British and Soviet negotiators concluded and initialed in Moscow a treaty banning all nuclear weapons testing in the air, sea and outer space. John F. Kennedy called it "an important first step—a step toward peace [and] reason," adding that it was "a journey of a thousand miles." When W. Averell Harriman, the chief American negotiator, was welcomed home by his Georgetown neighbors, one woman brought her baby, saying, "What you did in Moscow will make it possible for him to look ahead to a full and happy life."

Because the treaty permitted undergound testing, it was indeed only a first small step toward slowing the nuclear arms race. Its text contemplated a future comprehensive ban. President Kennedy and Nikita S. Khrushchev, the Soviet leader, both hoped to resolve the one remaining obstacle to an underground-test ban—how to inspect suspicious seismic-disturbance reports. During these past 19 years, every President, regardless of party, actively sought an agreement between the United States and the Soviet Union to halt underground nuclear testing. For 19 years, arguments emanating from the Pentagon and nuclear-weapons laboratories about the need for more testing—to develop new weapons and enhance our confidence in existing weapons—were rejected by the White House.

Until last week.

With typical circuity, the Reagan Administration decision not even to negotiate for such a ban, once it had been involuntarily publicized, was attributed to a need to first redefine verification procedures for two interim, unratified, largely meaningless agreements that ban explosions over 150 kilotons. In truth, both superpowers can obtain all the test results they need below that threshold, which is 10 times the power of the Hiroshima bomb. Moreover, these interim agreements would both be rendered moot by a determinated Presidential com-

mitment to negotiate a comprehensive test ban. Because of new verification technology and procedures, such a pact seemed near in 1979 before it temporarily sank with the second strategic arms limitation treaty.

Opposition to a total ban from various military leaders and nuclear scientists in both Washington and Moscow over the last 19 years is not surprising. As Gen. Earle G. Wheeler testified regarding the 1963 treaty: "In the purest sense of the term, any agreement which limits the manner in which we develop our weapons systems represents a military disadvantage." Most armed services commanders, trained and paid and obligated to provide the strongest possible combat force, invariably want more tests, more weapons and more certainty about the reliability of their existing weapons.

These same arguments were all advanced in 1963 against the Limited Test Ban Treaty, by both active and retired commanders and by concerned citizens ranging from Edward Teller to Phyllis S. Schlafly. But their arguments were overcome by answers that are equally vaild today. The risks of an imperfect treaty were deemed less than the risks of an unabated arms race. A reduction in the tensions and economic burdens of the cold war was deemed worth the limitations on new weaponry. Preserving doubts in both the Kremlin and the Pentagon about the reliability of their respective stockpiles might someday stay a reckless hand. Establishing roadblocks to either superpower's development of destabilizing weapons might reduce future temptations to launch a surprise first strike. The Senate in 1963 listened, debated and approved the treaty by a vote of 80 to 19.

Unfortunately the ideology of those 19 is now in the saddle in Washington. The Reagan cold warriers advertise their plans for arms control with more hypocrisy than hope for success. They see no need for the superpowers to deter the spread of nuclear weapons by setting a good example. They want no part of a nuclear freeze, not even a mutual halt in testing warheads and weapons. Why should they? An Administration that can turn the clock back by decades on child labor and Social Security can easily go back to John Foster Dulles.

I would remind them of the statement of Everett M. Dirksen, the late Senate Republican leader, in switching to support the 1963 treaty, "I should not like to have written on my tombstone: 'He knew what happened at Hiroshima, but he did not take a first step.'" That first step in 1963 was impelled in part by a nuclear confrontation over Cuba the previous year. Let us pray that another such confrontation will not be required to produce the next step.●

REMARKS OF SENATOR MAX BAUCUS BEFORE THE NINTH CIRCUIT JUDICIAL CONFERENCE

● Mr. BIDEN. Mr. President, I would like to bring to the attention of the Senate a most provocative and interesting speech by our colleague, the junior Senator from Montana. On July 30 he delivered a statement before the Ninth Circuit Judicial Conference on the subject of legislation relating to the Federal courts now pending in Congress. The Senator calls upon Congress to deal with fundamental and recurring issues in the administration of criminal justice. These are the same matters addressed by S. 2572, the Violent Crime and Drug Enforcement Improvements Act of 1982 which both he and I and over half the Senate introduced a number of months ago. It now appears likely that the Senate will be voting on that bill in the near future.

I congratulate the Senator on his speech and ask that the full text of the speech be placed at this point in the CONGRESSIONAL RECORD.

The text of the remarks follow:

REMARKS OF SENATOR MAX BAUCUS

Being among so many members of the legal profession this afternoon, I'm reminded of the story of what happened when Pope John Paul the First died. It seems that he and a lawyer arrived at the front gate of heaven at the same time.

They were met by their guide. The guide walked them over to a beautiful palace and turned to the lawyer and said, "This will be your home." He then took John Paul and brought him to a small one room house with dirt floors and said, "Father, this is your home."

John Paul turned to his guide and said, "I don't want to be disrespectful, but why is it the lawyer gets a magnificent mansion, and I only get this one-room shack?"

"Well, Father," the guide responded, "we have many, many popes up here—but that's the first lawyer."

There is no question that here on Earth lawyers and lawmakers are viewed today with diminishing respect. The latest Harris Poll shows that only 16 percent of the American public has substantial respect for the legal profession and Federal lawmakers.

To make matters worse, the legal profession is behaving a lot like Rodney Dangerfield. It goes around muttering, "I can't get no respect." But it isn't doing much to earn any.

There should be little doubt that the judicial system is facing a crisis of confidence. Much of the blame rests with Congress.

First, Congress has failed to enact a set of reforms that could help restore respect and confidence in the legal system.

Second, Congress has been wasting much of its time considering proposals that run counter to the rule of law and are likely to diminish citizen respect for the law.

This afternoon I would like to discuss with you both sets of proposals—the first set is one that I believe ought to be quickly enacted. The second set presents a most serious threat to our form of government.

OUR CRIMINAL LAWS

There is no area of law that is in greater need of reform than criminal law. Violent crime is a source of fear and concern in every neighborhood and on every street:

People are afraid to visit city parks.

They're afraid to send their children to school.

They're afraid to walk to work in the morning and even more afraid to walk home at night.

Even in their own homes, they're afraid.

While the fear of crime and the rate of crime steadily increases, faith in the criminal justice system plummets. People are becoming more convinced every day that the criminal justice system is incapable of dealing with crime:

It's incapable of securing "guilty" verdicts against guilty defendants.

It's incapable of providing appropriate sentences for heinous crimes.

It's incapable of keeping dangerous persons off the streets and in the prisons.

These perceptions lie at the heart of the declining respect for the criminal justice system. It is these perceptions that Congress can and should be addressing.

THE INSANITY DEFENSE

Probably the most obvious area in need of immediate reform is the Federal rule on the insanity defense. The implications of the *Hinckley* decision go far beyond the public outrage about John Hinckley.

Simply put, it is difficult to respect a system that can actually acquit a person who short the President in full view of the entire Nation. That respect is further eroded by the fact that our rules may permit John Hinckley to be a free man in the very near future.

The blame should not be placed on the judge for the jury for the verdict of acquittal. The blame for this affront to our sense of justice has to be placed on the rules themselves.

The Federal insanity defense is confusing and unpredictable. It is not based on a clear statutory standard.

Several legislative solutions already have been introduced. Personally I favor adoption of a measure I co-sponored some time ago that would restructure the insanity defense. It would operate basically the same as Montana's law on the subject.

The essence of the Montana approach is that a person must have intended to commit the act he is being accused of. If his mental disease caused him to believe he was shooting a cabbage then the defense would be available.

When we change these rules we must also ensure that all mentally ill defendants receive appropriate treatment. Those who are acquitted on the basis of insanity should not be allowed to go back into the mainstream of society if they are still dangerous. The mentally ill who are convicted should be treated in prison.

This proposal would be a dramatic improvement in the insanity defense. I believe such a defense would give judges and juries a clear and more realistic way to assess the culpability of criminal defendants. And it would restore citizen respect for a criminal rule that is clearly not working today.

SENTENCING AND PAROLE

The insanity defense is only one of many criminal laws that are not working. Federal sentencing practices are another major source of public skepticism. Sentencing of convicted defendants is marred by inconsistency and doubletalk.

Today, Federal judges have too much discretion in imposing of sentences for Federal offenses. The length of a particular sentence is too dependent on the individual judge's personal sentencing philosophy. The result is that widely disparate sentences are being imposed for similar offenses and similar conduct.

Furthermore, public confidence is eroded when the system permits judges to publicly pronounce a 30-year sentence that may translate into only 5 or 6 years in prison. This judicial doubletalk is exacerbated by the uncertainty created by the parole system.

Let me be clear. I do not think that the blame for these problems lies with judges. Rather, I believe Congress has been unwilling to provide guidance. That is why I have advocated Congressional action in this area.

I strongly favor reforms that would reduce judicial discretion in sentencing and would eliminate the parole system as we know it.

Legislation I have co-sponsored would create a Federal commission to establish sentencing guidelines for Federal offenses. Judges would be bound by these guidelines unless they could specifically find aggravating or mitigating circumstances.

I do not mean to imply that we should handcuff judges. The bill would result in judges imposing sentences that they actually thought should be served rather than artificially inflated sentences—thus eliminating judicial doubletalk.

In addition, the bill would eliminate the possibility of early release on parole and with it the unpredictability of our current parole system. Good behavior in prison would still be recognized, but everyone—the public and defendant alike—would know ahead of time how many months of good time a felon would receive if they were a model prisoner.

These reforms bring increased predictability to the criminal justice system. Criminals would know what to expect. And everyone would be treated evenhandedly.

BAIL REFORM

There is one other area of our criminal rules that must be reformed. It is simply unacceptable for dangerous individuals who are in the custody of the courts to be permitted to go back on the streets to commit another crime.

Current Federal bail practices are designed to detain accused criminals who are not likely to reappear for trail. However, some judges are misusing the money bail system. The unfortunate result is that those dangerous defendants who have money or access to money—like those linked to organized crime—are released, while those who don't have money are not.

I have co-sponsored legislation that would eliminate money bail. Judges would thereby be required to determine whether the release of the accused would endanger the community.

This would be done in a full-blown hearing with civil liberty protections. If the accused were found dangerous, the judge could impose conditions on his release.

I believe this reform in bail procedures would bring more candor to the system by permitting judges to directly assess the impact of their decision on the safety and security of the community. It is a sensible and realistic approach to the need for reform in our bail rules.

The reforms in the insanity defense, sentencing, parole and bail that I have outlined this afternoon should be coupled with reform of the exclusionary rule and the imposition of a Federal death penalty for heinous crimes. This is a package of reforms that ought to be enacted by Congress at once.

If we don't act, the inequities I have outlined will continue. Equally important, public confidence will continue to erode.

Let us not, however, operate under any delusions. These reforms will not eliminate crime. They will end the perception that the rules of the criminal justice system are contributing to the continuing crime problem our country faces.

If we can dispel that perception, we will in fact have gone a long way toward restoring some respect for the system.

COURT JURISDICTION

You may be asking at this point why these reforms haven't been enacted. Partly it's because Congress has been spending time on another set of proposals. These pose a very real threat to our system of government.

Instead of working on a crime package and other needed judicial reforms, many Senators of the new right have been focusing the Senate's attention on the controversial social issues: School prayer, busing, and abortion.

So far their efforts to overturn Supreme Court decisions have failed. Their constitutional amendments are stalled.

Instead, they have begun to advocate a series of proposals that would permit Congress to overturn Supreme Court decisions by simple statute.

These Senators would strip the courts of the power to hear future cases on that issue. At last count, there are about 30 such bills pending in the House and Senate.

One would prohibit Federal courts from deciding abortion cases. Another would take away the Supreme Court's jurisdiction over cases involving school prayer. A third would prevent court action on school busing disputes.

Contrary to the claims of their proponents these measures would not outlaw abortion and school busing or legalize school prayer. The Supreme Court just would no longer provide a uniform, national interpretation of the Constitution. Instead, State courts would be given the last word on these matters.

The court stripping bills are actually an open invitation to the State courts to overrule decisions of the Supreme Court. They will breed disrespect of the rule of law.

As the Conference of State Court Chief Justices said:

"These proposed statutes give the appearance of proceeding from the premise that State court judges will not honor their oaths to obey the United States Constitution. . . ."

In the name of restoring "constitutional" decision making to the courts, the proposals in fact leave open the possibility of 50 "unconstitutional" decisions being handed down by the State courts.

Moreover, if Congress has the right to remove any constitutional right from the Court's jurisdiction, then, in effect, Federal courts could only protect those rights that a majority of Congress thought worthy of protection.

Constitutional guarantees—the hallmark of our society—suddenly will be swept aside by a simple majority vote. Constitutional rights could be "horsetraded" in the closing hours of each Congress. The bill of rights would become a political football.

It is important to keep in mind that court stripping is politically a two-edged sword. Although associated with the "new right" in the 97th Congress, such legislation could also be used in ways that would be anathema to the values of the "new right".

Why couldn't Congress impose onerous and discriminatory taxes and include a provision to prevent Supreme Court review of the constitutionality of all Federal taxation cases?

Why couldn't Congress attempt to preempt totally States from engaging in conduct traditionally within their power and remove Supreme Court jurisdiction over the 10th amendment?

As Senator Barry Goldwater has said:

"Whether or not Congress possesses the power of curbing judicial authority, we should not invoke it. As sure as the Sun will rise over the Arizona desert, the precedent will return to oppress those who weaken the courts. If there is no independent tribunal to check legislative or executive action, all written guarantees of rights in the world would amount to nothing."

It is for these very reasons that previous Presidents and previous Congresses have rejected the option of overturning by statute constitutional decisions of the Supreme Court.

President Lincoln and the 39th Congress responded to the infamous *Dred Scott* decision by proposing the 14th amendment. President Taft and the 61st Congress proposed the 16th amendment to overturn the Court's interpretation of the term "direct taxes".

The constitutional amendment process in article V of the Constitution has worked. We should continue to use it.

The proposals being debated in Congress today attempt to end run those requirements. By doing so they threaten to undermine the independence of the judicial branch of Government.

They also represent a direct threat to individual rights and liberties.

CONCLUSION

I raise these court stripping bills with you this afternoon because I believe they should serve as a warning to all of us who support reform of the judicial system.

Change alone will not bring added respect to our system of justice. Change must be careful, thoughtful and consistent with the fundamental principles of the Constitution.

The reforms in criminal rules that I am advocating today represent such responsible change.

The attempts to strip the Federal courts of their jurisdiction over constitutional issues are inconsistent with the basic principles of our Government. They will lead to less respect for the judicial system.

We cannot afford to sit back and let rules that aren't working continue to destroy public confidence in our system.

Nor, however, can we afford to enact changes that will fundamentally undermine the constitutional protections we all cherish.

Thank you.●

SEVENTH ANNIVERSARY OF HELSINKI ACCORDS

● Mr. HEINZ. Mr. President, 7 years ago, on August 1, 1975, the United States, the Soviet Union, and 33 other countries in Europe and North America accepted the principles and objectives embodied in the Helsinki Final Act as a guideline for developing peace, prosperity, and security in Europe.

The Helsinki Final Act, one of the flagships of détente, provides for increased trade and cultural exchanges, respect for basic human rights and the relaxation of military tension in Europe. These principles of cooperation established a blueprint for developing East-West relations along a path of peace.

Contrary to the original intent, the Soviet Union and its allies have, in many instances, systematically ignored and violated with impunity the principles relating to human rights and increased human contacts. Individuals in

those countries raised the human rights banner of Helsinki high, to be seen by all, only to have it trampled in successive repressive actions by their own governments.

The Soviet Union continues to restrict emigration, deny family reunification, jam Western radio broadcasts, restrict travel in general, invade bordering countries with the use of force and support repressive action and derogation of basic human rights, at home and in Poland.

Czechoslovakia continues to stifle dissident Charter '77 activists and harass religious believers. Romania continues to maintain excessive restraint on emigration and family reunification requests as well as imprison religious proponents. The list goes on indefinitely.

Regardless of the inability of individuals in the East to profit by these principles of freedom, the provisions of the Helsinki Final Act are far from meaningless. Greater vigilance by Western countries and individuals, strong endorsements of these basic human rights must continue to emanate from the countries of the free world.

For the last year and a half, I have been active as a member of the Commission on Security and Cooperation in Europe. This body monitors Soviet and Eastern European compliance with the high-minded principles of Helsinki. The two main CSCE review sessions at Belgrade and Madrid have placed human rights front and center on the international agenda. Our aim is to continue this vigilance and demonstrate solidarity with those individuals in the Soviet Union and Eastern Europe who ask only to be treated with dignity.●

THE SEVENTH ANNIVERSARY OF THE HELSINKI ACCORDS

● Mr. LEAHY. Mr. President, yesterday marked the seventh anniversary of the signing of a document which was to chart a new course in East-West relations: The Final Act of the Conference on Security and Cooperation in Europe. Signed in Helsinki on August 1, 1975, by 35 countries (all of Europe—except Albania—plus Canada and the United States) the Final Act broke new ground on the diplomatic front by recognizing that respect for human rights is an essential component of international relations.

Although 7 years is a short time, it has been enough time to expect to see at least some signs of sincere good will from the 35 participating states. I would be less than candid, however, if I did not say that I am disappointed—although not yet disillusioned—in the results achieved so far. Perhaps the most tragic irony in the Helsinki process so far is that the citizens of Eastern Europe have proven themselves to be far more willing to live up to Helsinki pledges than have their governments.

Seizing on the Final Act acknowledgement of the profound interconnection between government and the governed and the duties of governments to respect the individual liberties of their citizens, in 1976 and 1977 citizens decided to monitor their own governments' compliance with the Helsinki code of conduct. It is fitting that it was citizens in the most repressive Helsinki signatory state, the Soviet Union, who first recognized the liberating potential of the Final Act: Helsinki monitoring groups were organized in Moscow, Ukraine, Lithuania, Armenia, and Georgia. Rather than responding favorably to this genuine citizens' initiative, however, the Soviet authorities responded with their usual paranoia: Today, 50 of the original 76 Helsinki monitors are serving a total of over 440 years in imprisonment.

But the Helsinki idea had already germinated in the minds of people throughout that last vast empire, the Soviet Union. Other citizens' groups were organized: the Christian Committee to Defend the Rights of Believers, the Catholic Committee, and the Adventist Rights Groups joined together with Pentecostal Emigration Councils and Baptist ministers, printers, and prisoners' rights groups; other citizens banded together to espouse the rights of invalids, the victims of psychiatric abuse, and the denial of the rights of Soviet workers; writers' and painters' groups formed which tried to operate outside the constraints of official censorship; samizdat publications, ranging from unorthodox explorations of hidden facets of Soviet history to fervent espousals of Russian Orthodoxy, also flourished.

One may ask why I choose to focus on these citizens' initiatives in the Soviet Union when much larger groups, such as Solidarity in Poland, have been suppressed, or when other groups, such as the Freedom Fighters in Afghanistan, continue to fight and die? To such comments I would say that I am focusing today on relatively small groups of people who have responded to what makes the Final Act a powerful moral force in international affairs: the importance of individual initiative.

As a member of the Commission on Security and Cooperation in Europe—which is mandated to monitor and encourage compliance with the Helsinki Final Act—I have tried to focus on the efforts of the individual to achieve his or her Helsinki rights. One person who particularly impressed me with his brave spirit and compassion for others is Aleksandr Podrabinek, one of the members of the Working Commission on Psychiatric Abuse. Podrabinek and all the other members of the Working Commission are today imprisoned in the Soviet Union.

Podrabinek's efforts, including his remarkable book, "Punitive Medicine," has given hope to hundreds of victims of the continuing Soviet abuse of psychiatry. Such people are routinely locked up for such "crimes" as belief in God (Baptist believer, Anna Certkova, in psychiatric detention since 1974; Orthodox priest, Iosif Mikhailov, in Kazan Special Psychiatric Hospital since 1971; Muslim believer, Annasoltan Kekilova, under medical "treatment" since 1972) the defense workers' rights (despite continuing international protests, Vladimir Kelbanov and Aleksei Nikitin, remain in psychiatric detention) or attempts to emigrate (Pentecostal Fyodor Sidenko and Baptist Vladimir Khailo are both today in psychiatric hospitals).

Despite setbacks, we must continue to speak out in defense of those who cannot. Despite disappointments, we must persevere in utilizing the unique opportunity to defend human rights provided in the Helsinki Final Act.●

IMPORTS CAUSE TROUBLE FOR U.S. MUSHROOM GROWERS

● Mr. HEINZ. Mr. President, I bring to my colleagues' attention an article that was recently published in the Wall Street Journal entitled "U.S. Mushroom Growers Getting Mauled by Flood of Low-Cost Imports From China." This article accurately details the devastating effect imported mushrooms have had on the domestic industry.

Indeed, as the article points out, China shipped 27.4 million pounds of mushrooms last year, compared to a mere 17,000 pounds shipped in 1978. The article estimated that the Chinese will probably export twice that amount to the United States this year, or more than 54 million pounds. It added that "industry officials also expect China to send close to 25 million pounds * * * by way of middlemen in Hong Kong and Macao."

This tremendous increase in imports from China might force nearly a quarter of the Nation's 650 mushroom farms to go out of business, according to American Mushroom Institute estimates. Pennsylvania, where half of the Nation's $350 million crop is grown, is being particularly hard-hit by this surge of imports. In Chester County, Pa., were 60 percent of the State's crop is produced, the number of mushroom farms has dropped 60 percent from last year.

This news particularly distresses me because a number of us predicted it in 1980 when import relief was put into place. At that time, President Carter decided on a tariff rather than the quota recommended by the International Trade Commission, over my ob-

jections, for it was apparent at that time that the Chinese, being a non-market economy unmotivated by normal profit and loss considerations, would absorb the tariff, keep their prices low, and drive other importers out of the market. That is exactly what is happening to the detriment of the American growers.

Later this month, I shall be appearing before the International Trade Commission on behalf of the industry's petition against the Chinese under section 406 of the Trade Act of 1974. I hope other Senators will speak out on this issue as well, along with any other matter in which unfair trade practices have left many in our Nation unemployed. This time it is mushrooms, next time it may be another product. We must enforce our laws and international agreements on unfair trade practices.

Mr. President, I ask that the Wall Street Journal article be printed at this point in the RECORD.

The article referred to follows:

[From the Wall Street Journal, July 23, 1982]

U.S. MUSHROOM GROWERS GETTING MAULED BY FLOOD OF LOW-COST IMPORTS FROM CHINA

(By Paul A. Engelmayer)

KENNETT SQUARE, PA.—The U.S. mushroom-growing industry, which had huge profits as recently as three years ago, is being battered by cheap imports.

"We're just trying to breathe, trying to hold on," says Charles Nigro, a mushroom farmer in Pennsylvania, where half of the nation's $350 million crop is grown. "I've got an 18-year-old son, and I don't want him in the business," he says.

The outlook for growers is particularly grim here in southeastern Pennsylvania's Chester County, which produces about 60 percent of the state's mushroom crop. Kennett Square (population: 5,000), which lies in the heart of the county's gently rolling terrain, still proudly calls itself the mushroom capital of the world. But in this town, where even the gas stations sell mushrooms, more than a title is in jeopardy. "If we have another year like this," predicts Mr. Nigro, "this will be a ghost town."

BLAMING IMPORTS

A quarter of the 650 mushroom farms in the United States might go out of business this year, estimates the American Mushroom Institute, a trade group based here. In Chester County, the number of mushroom farms has dropped 60 percent from last year, to fewer than 100. The industry's slump, ironically, comes at a time when America's demand for mushrooms is greater than ever.

The farmers blame most of their trouble on the deluge of imports from the People's Republic of China. After exporting just 17,000 pounds of mushrooms to the United States in 1978, China shipped 27.4 million pounds here last year. That volume probably will nearly double this year. Industry officials also expect China to send close to 25 million pounds of mushrooms to the United States by way of middlemen in Hong Kong and Macao.

The Chinese ship only processed mushrooms and haven't attempted to sell fresh mushrooms in the United States. But the mom and pop farmers here accustomed to growing for the processed market find it hard to convert quickly to selling fresh produce. Processors lack even that option. When Oxford Royal a major cannery in Chester County, closed earlier this year, about 1,000 workers lost their jobs. Rocko Pugliese, executive director of Pennsylvania Food Processors, a trade group, expects more will go out of business soon. "We can't compete," he says.

The problems for U.S. growers began in early 1980, shortly after China received most-favored-nation status. In spite of a 1979 pledge not to dump mushrooms, the growers say, the People's Republic quickly targeted mushroom farming, which is very labor-intensive, as an ideal export industry through which to acquire foreign exchange.

"I wish they'd picked string beans," says Jack Kooker, the Mushroom Institute's executive director. Chinese embassy officials refuse to comment on the dispute.

The institute has called for import quotas like those imposed by the European community. Its case is argued by the Congressional Mushroom Caucus, a group of legislators from some of the 28 states that grow mushrooms. The International Trade Commission, whose call for quotas in 1980 was rejected by President Carter, is expected to repeat its support.

The mushroom caucus is sponsoring bills to label and promote domestic mushrooms and, along with the institute, has started an advertising campaign to stimulate demand. Meanwhile, more individual growers are marketing fresh produce. Product differentiation among farms, a grower says, will soon be "a necessity."

Growers are vulnerable for several reasons. Mushroom cultivation requires dark, dank, windowless concrete houses, where workers wearing head lamps cure and prepare the mushrooms and their compost. Farmers in trouble can rarely sell such facilities except to other mushroom farmers—few of whom are eager to invest now.

They are also being hurt by tight credit. Gary Kline, a senior loan officer at the Federal Land Bank, Avondale, Pa., says his agency has sharply restricted credit to farmers. Many farmers overextended themselves in the late 1970s, when 10 percent to 30 percent annual profit margins were common. Mr. Kline says the bank has started repossessing some farmers' equipment.

Growers who leave the industry are rarely prepared for other work. Often they have been mushroom farmers since they left school, having been taught the trade by their fathers. Richard Giancola inherited his mushroom farm near here from his father 25 years ago and reaped nearly $30,000 a year at the height of the mushroom boom. But this winter, he closed his family farm, advised by his accountant that the farm would be lucky to bring in $8,000 this year.

Today Mr. Giancola is earning about $5 an hour sifting mushrooms for another company. He hopes to leave Kennett Square for a new start. He is trying to sell his farm and two-story stone home for two-thirds of their assessed value of $335,000. But so far, there aren't any takers."I'm really going to take a beating," he says slowly. "I'm just negotiating whatever I can get."

Mr. Giancola, like many former growers, couldn't shift his production toward fresh mushrooms in time to escape the Chinese onslaught of processed ones. Growers of mushrooms for processing are being dealt a double blow from the Chinese imports and from America's growing preference for fresh mushrooms.

Fresh mushrooms now account for 57 percent of sales, up from 30 percent in 1969. The switch to fresh produce isn't easy; growers say it takes time and luck. Fresh mushrooms rely on eye appeal. Shoppers usually buy only snow-white, unscathed ones, and many of the highly perishable fungi discolor when exposed to light.

CHANGING JUST IN TIME

Growers aiming for the fresh market must adjust soil and other conditions to discourage less appealing brown or cream-colored produce. Learning to grow what's called "a tight, white mushroom" is "an attitude that's got to be instilled in your workers," grower Rick Malchione says.

With his father and uncle, he runs a farm that escaped the processed-mushroom industry just in time. Three years ago the farm got what the father, Mario, calls "a kick in the pants" from the imports when, within a month, processed-good prices fell to 47 cents a pound from about 67 cents. "It was enough to make us change our whole business," says Mario Malchione, who started the family farm 37 years ago.

Today the Malchiones send 80 percent of their produce to the fresh market, compared with none three years ago. The transition years were lean, but Mario Malchione concludes he was lucky. Ticking off the names of neighboring farmers who have gone out of business, he proudly examines a small case of shiny, white mushrooms and recollects: "We saw it coming . . . We said, the hell with cream."

Less foresighted growers are collecting unemployment benefits or leaving Chester County and their idle farms for wage labor. "A lot of people take this personally. They feel like failures," says the Mushroom Institute's president, Joseph Versagli, himself a grower since high school. "Most of them try to get out of the area because of the shame they feel."●

PROGRAM STABILIZES SUGAR PRICES; ULTIMATE WINNER U.S. CONSUMER

● Mr. JOHNSTON. Mr. President, I bring to the attention of the Senate an article which appeared recently in the Arkansas Gazette. When the Senate debated the 1981 farm bill's sugar provision, many of us tried to explain the peculiarities of the sugar market. This article does as good a job of describing that market, and its impact on both farmers and consumers, as any piece I have seen. I hope all Senators will have a chance to read it and that it will prove as enlightening to them as it has to me.

Mr. President, I ask that this article be printed in full in the RECORD.

The article follows:

[From the Arkansas Gazette, July 25, 1982]

PROGRAM STABILIZES SUGAR PRICES; ULTIMATE WINNER U.S. CONSUMER

(By Leland DuVall)

Arkansas farmers do not grow sugar beets. They concentrate on soybeans, rice, cotton, wheat, corn and a variety of specialty crops. Therefore, it might seem that people in the state would have little or no interest in the

kind of "sugar program" the Agriculture Department might offer.

The whole system under which commodities are produced and marketed in this country is interrelated—economically and politically—and farmers may be able to use the "sugar model" to help them understand such factors as how we got a farm program in the first place, the effects of government market intervention, and the reaction of the nonfarm population to the production-marketing system.

The "sugar title" of the Agriculture and Food Act of 1981 commanded special treatment, which removes it from the mainstream of farm legislation. President Reagan needed the votes of a few members of Congress to get approval for his "larger" program. He "struck a deal" with a few lawmakers who represented sugar growing districts and promised price supports for the crop in return for their vote.

Under the present sugar program, the price is supported at 17 cents a pound. Given the other factor that go into wholesale markets, this was expected to mean that sugar would reach the market at a price of about 20 cents a pound. Actually, the "delivered" price of raw cane sugar at New York is about 22 cents a pound, refined beet sugar at Chicago is about 27 cents a pound, the price of refined cane sugar at New York is 33 cents, and the world price of raw sugar is 7.5 cents a pound. Quotas limit our sugar imports.

No special understanding of markets is needed to see that the United States offers an attractive premium over the world price. If sugar moved freely, imports would hit the trade centers in such volume that the price would come down to meet the slightly strengthened world price. Raw sugar might be available at 10 cents a pound, instead of 22 cents. Those who argue the government has no business tinkering with the market make the case that the support program is adding 12 cents a pound to the "cost" of sugar at the retail level, at a time when people are concerned about inflation.

Since per capita consumption of sugar in the United States is about 80 pounds, an analyst might be tempted to multiply that amount by the 12 cents that is supposed to be the premium extracted because of the sugar program to determine how much the law adds to the cost of living. That works out to $9.60 cents a year per person in a higher cost for all food and drinks that contain sugar.

Nothing is that simple. Different people consume different quantities. Retail prices seldom come down just because the ingredients are cheaper. Once in place, the higher prices remain because consumers have become accustomed to the prices and volume would not be increased significantly by price cutting.

This tendency of retail prices for consumer goods to be highly sensitive to rising prices of raw materials and to ignore collapses in the market is the basis for arguments in favor of a "stabilized" commodity price. In the case of sugar, and of many other commodities, the role of the United States is that of the balancer.

1. This country is the world's major wheat producer and the supplier of grain where shortages develop. Large subsidies are offered in the European Common Market and in many other growing regions with the argument that the users do not want to rely exclusively on imports. The price of wheat grown in the European Community may be twice the price received by American farmers. Without import limits, the Europeans argue, United States would bury their farmers, force them out of business, and monopolize the market. Therefore, the amount of wheat bought in this country is determined by a formula designed to hold imports to the amount needed to assure adequate supplies—after their own wheat is marketed. Purchase in this country is at the lowest available price, but the resale to the mills is at the European premium price.

The same situation applies to many other commodities grown in abundance in this country and purchased around the world.

2. In the case of sugar, the roles are reversed. The United States currently produces about 55 per cent of the sugar consumed in this country and imports the remaining 45 per cent. Sugar is grown in at least 100 countries and all of them expect to export their surpluses. On balance, about 80 per cent of the world sugar supply is consumed in the country where it is grown.

The average cost of producing sugar (world basis) has been estimated at about 19 cents a pound. Farmers in the United States apparently just about match that level or they may be a little ahead of the game. Obviously, they could not hope to stay in business by meeting head-on the price at which the other producing countries are willing to sell their "surplus," or the amount left over after they have taken care of domestic needs. The simple truth is that the major sugar producing countries are prepared to sell their surplus at the price that will move the product.

This leaves American sugar farmers in position to be whipsawed between their production costs and the price at the ports for the "surplus" of other producing countries or, under current conditions, 7.5 to 10 cents a pound. Maybe next year or the year after, other sugar-producing countries would experience crop failures as they did prior to 1974 when the price soared to 65 cents a pound. In the absence of a "Sugar program," we might be able to buy raw sugar this year at 10 cents a pound or less.

If that happened, sugar production in the United States would be abandoned by reason of wholesale bankruptcy and we would depend entirely on foreign supplies. Remember that each producing country with excess capacity takes care of its own needs first then exports the "surplus" at the price needed to move the commodity. This summer, it is 7.5 to 10 cents, next year and the year after, there might be a smaller supply and a larger demand, with the United States bidding for virtually all its supply. The result could be "1974 with an adjustment for inflation." Maybe we need all the stability we can get in the commodity markets.●

DR. ABRAM N. SHULSKY

● Mr. GOLDWATER. Mr. President, I rise today to recognize the contribution of Dr. Abram N. Shulsky, minority staff director of the Senate Select Committee on Intelligence, who will be leaving our staff this month after 5 years of outstanding and dedicated public service. Abe Shulsky joined the Senate Select Committee on Intelligence in the spring of 1977, 1 year after it was set up under the provisions of Senate Resolution 400, and he has served the committee loyally and in an outstanding fashion since that time.

Before coming to our committee, Abe had a distinguished academic career. He graduated from Cornell University in 1964 with distinction in all subjects, and went on to earn an M.A. and Ph. D. in political science from the University of Chicago. The topic of his doctoral dissertation was "The 'Infrastructure' of Aristotle's Politics." From 1968 to 1970, he was assistant professor of government at Cornell University teaching courses on political theory; while from 1972 to 1974, he was assistant professor of politics at Catholic University here in Washington, D.C. From 1974 to 1977, Dr. Shulsky served as a political analyst for the Center for Naval Analyses, and wrote papers on naval planning, the political use of naval forces, and Soviet perceptions of the strategic arms race. Abe has written half a dozen works on political and military subjects.

During Abe Shulsky's 5 years with the Senate Select Committee on Intelligence, he made many important contributions to our oversight mission. Originally hired as a professional staff member, Dr. Shulsky has received repeated promotions within the committee. Although many of the activities with which Dr. Shulsky was involved are classified, and cannot be discussed in a public forum, his important contribution to our work is reflected in the strong endorsement he received from our current vice chairman, the distinguished senior Senator from New York, DANIEL PATRICK MOYNIHAN, in February 1981 when he was promoted to the position of minority staff director.

It is my understanding that Dr. Shulsky will be going on to the Department of Defense where he will be Director of the Office of START Policy. His judgment, scholarship, and knowledge of the Senate have been of great value to the members and staff of our committee, and these characteristics will be sorely missed in the future. However, the Senate's loss is the Defense Department's gain, and I think it is a reflection of Dr. Shulsky's capabilities that he is going on to such an important job.

On behalf of all the members of the committee, past and present, who have benefited from their association with Dr. Abram Shulsky, I want to express my personal thanks to him for his support of our activities over the years. He has shown exceptional dedication, loyalty, integrity, and service to the Select Committee on Intelligence, to the Senate, and to the Congress of the United States. We are grateful to him for his contributions and we wish him the very best in his future endeavors.●

FIGHTING TO KEEP AMERICAN JOBS FOR AMERICAN WORKERS

● Mr. MITCHELL. Mr. President, the strength and stability of our American society is founded in the fact that prosperity and opportunity are broadly available in our country, not the privilege of a chosen few. I know from personal experience that the opportunities in this Nation are the key to a better life.

My mother was an immigrant who worked all her adult life in textile mills in the Waterville area. The textile industry gave her work, and through that work my mother brought up five children who have enjoyed a far larger share of the American dream.

It is doubtful if my mother could have that same opportunity today. Jobs in textile mills, shoe factories, and countless other industries are disappearing, as more and more American jobs are lost to countries with cheaper labor. As a result, more and more Americans without technical or professional skills find themselves squeezed out of the labor market.

The textile and clothing plants in our Nation are our largest manufacturing employers. Nearly 2¼ million people work directly in this sector. Many hundreds of thousands more depend on it as a market for their raw products.

I am deeply concerned that we are in the process of exporting jobs in these industries for very minor returns.

Twenty-five years ago, fewer than 4 of every 100 garments sold in this country were imported. Today, for every 100 American-made woolen sweaters sold, 270 are foreign made. For every 100 American-made blouses sold, 160 foreign made ones are sold. In the 10 years between 1969 and 1979, imports of finished clothing increased 151 percent. In just that sector of the industry alone, almost a quarter million American jobs were lost.

Last year, when the President had the option of continuing a modest import relief system for the shoe industry, I strongly urged him to do so. Not only did our own Government agency, the International Trade Commission, recommend continued import relief, the clear facts of the case did so, as well. By last year, imports had captured about 50 percent of the nonrubber shoe market in the country.

But when he had the chance to decide in favor of American workers, the President chose to terminate the import relief program instead. By March of this year, shoe imports had captured fully 62 percent of the U.S. market. Since that Presidential decision, 16,000 jobs have been lost in the shoe manufacturing sector alone.

This year we are faced with two separate issues, both of which will affect the livelihood of Americans working in the shoe and textile industries. We will negotiate an agreement with the People's Republic of China to cover textile imports from that nation. And the President has proposed that virtually all goods from Caribbean nations be permitted to enter the United States duty-free, as a way to help those nations develop their industries and economies.

Textile imports to our country are governed by the Multi-Fiber Agreement (MFA), which sets the conditions within which we make trade agreements separately with each importing country

Last year, MFA was extended with a proviso that instead of letting imports increase by 6 percent per year, they would be held to the same rate of increase as the domestic market. In practice, this means the major importers—Taiwan, Korea, and Hong Kong—will maintain import volumes almost level, while less-developed nations will be allowed to increase their imports up to the overall limit. This is designed to make sure that imports do not grow faster than the market itself.

The modification in MFA was a substantial gain for textile manufacturers and workers. But its effectiveness relies on the will with which it is pursued and implemented. And there lies a serious question, since China has not signed the Multi-Fiber Agreement.

China today exports relatively small quantities of textiles to the United States. But the speed with which that giant nation can take advantage of trade relaxation is shown in the fact that last year imports to the United States of Chinese goods rose 75 percent above 1980. With any inducement in terms of lowered tariffs, there is no question at all that China could and would flood our market with its products. If that is allowed to occur, thousands more American jobs will be lost, and thousands more American families will find that more rungs in the employment ladder have been eliminated.

The President's proposal for a Caribbean Basin foreign aid package will provide $350 million in direct aid. It will encourage American industries—and jobs—to move to the Caribbean. And it will eliminate tariffs for imports from those nations except for textiles. I am grateful that this industry was given some protection, at least. But the protection given to textile workers will not protect shoe industry workers. I will be offering a similar exemption for these workers when the Senate Finance Committee considers its portion of the Caribbean Basin Initiative, as this proposal is called.

The Caribbean is an important part of the world. Its proximity to the United States makes it of particular concern to us. Because of the generally less-developed nature of Caribbean nations, well over 80 percent of their exports to the United States are already granted preferential trade treatment by U.S. law. The items not now given preferential treatment are, of course, those which are sensitive to imports. So the net effect of this initiative will be to expose import-sensitive industries and jobs they provide to direct competition as part of a foreign aid package.

This is ironic, because the U.S. sugar quotas the President supports restrict imports of the most important commodity produced by these nations. As long as our sugar quotas prevent the import of their most important export, the relaxed trade conditions will be nothing but a bandaid for Caribbean problems while inflicting yet another wound on American shoe workers. We can develop better foreign policies than to aid our neighbors at a cost that harms ourselves.

It is well past time that this administration stopped looking at American jobs as expendable bargaining chips in its foreign policy efforts.

It is time our Nation considered more seriously the full impact of its trade policy in today's world.

The United States has used its wealthy domestic market as a way to help many nations improve their economies, beginning with Japan and Germany after the Second World War. The system of preferences that lets less-developed nations sell us their goods on a reduced-tariff basis continues that policy today. The United States has long taken the lead in working to free trade from controls, and to encourage trade among nations in place of narrow nationalist protectionism. The experience of the Great Depression, which was aggravated by the virtual drying up of international trade, made our Nation recognize the long-range and adverse consequences of stifling the exchange of goods in the international marketplace.

At the same time, the reality today is that many nations, including such strong trading nations as Japan, have not only allowed the United States to lead in freeing its own market to imports, but have acted vigorously to protect their domestic societies from the disruptions caused by competing imports.

Our trade policies have not, in my view, taken these developments sufficiently into account. We cannot and should not allow entire industries in the United States to be effectively eliminated simply because a Third World nation finds the development of a shoe industry a helpful development tool. We should not allow the fruits of our technological genius to be used against us in the form of foreign imports, as was the case with television manufacture. And our Government ought not to encourage the export of U.S. jobs as part of its foreign policy initiatives.

The fact of the matter is that our Government must recognize that national wealth depends as much on job opportunities and prosperity for our people as it does on growth in foreign markets.

We should not be unthinkingly adopting policy that forces thousands of workers into premature retirement, that wastes skills learned over decades, and that can mean the virtual death of small communities which depend on a shoe factory or a textile mill.

The costs to our Nation of allowing such disruptions are huge. There are financial costs to the national treasury when people are thrown out of work. And there are costs to the Nation's productivity when the work and skills of a lifetime are suddenly and abruptly rendered superfluous. We will not remain a strong, resilient society if some of our people are faced with the threat that their skills and their efforts may unpredictably be no longer of value.

It is a fact that today we use the market mechanism of trade to pursue foreign policy goals. The Caribbean Basin Initiative and imports from China are both efforts to use trade leverage for foreign policy goals.

We have a real interest in helping Caribbean nations achieve stable, prosperous, economic growth. It will enhance our security. We have a real interest in maintaining good relations with China, the world's largest nation. It helps maintain the power balance in the world.

But it is time we contemplated our domestic policy goals in the context of trade law and trade agreements as well. We are in danger of using trade as a foreign policy lever without recalling at all its very serious and real impact for domestic policy.

Our economy is large enough and flexible enough to adapt to changes in world markets, industries, and technologies. But we should not take actions that accelerate such transitions without considering all the costs. As it stands, many smaller rural communities absolutely depend on textile and shoe plants to provide jobs. Many hundreds of thousands of American workers do not have advanced training or the likelihood of acquiring new skills. Many millions of dollars have been invested in textile, clothing, and shoe plants, resources that should be used, not allowed to lie idle while some other nation builds up its manufacturing plant.

It is an unbalanced trade policy which does not count the very real domestic costs of increased imports, particularly in industries which have already absorbed huge import surges in recent years.

We have a real interest in maintaining existing jobs in a deep recession. We have a strong national interest in maintaining the diversity of our industrial base. We should not allow ourselves to reach the point where we virtually rely on foreign nations for such fundamentals as shoes and clothing. We have a real national interest in making certain that entry-level jobs exist until we reach the point where each American worker can have advanced training in highly skilled work. We have a real interest in making transitions from one kind of industry to another without abrupt dislocations that devastate communities, waste investments in existing plants, and force families to uproot themselves.

In the Senate Finance Committee, I will be working to make certain that domestic policy considerations are given as high a priority as foreign policy concerns when trade issues are taken up. Only in that way can we develop a trade policy that serves the goal of easing the international exchange of goods for long-term prosperity, while maintaining the immediate shorter term stability of our own workers and industry.●

ON IGNORANCE, IDEOLOGY, AND ENERGY

● Mr. JACKSON. Mr. President, today's Washington Post contains an op-ed by Jospeh Kraft entitled, "Ignorance, Ideology and Energy." With one exception, I think Mr. Kraft is right on target in his analysis of the administration's energy policy or lack thereof. I am particularly glad that he noted the opportunity the U.S. Government lost in not moving to stimulate natural gas production in the region around Norway and thereby offering our European allies a real alternative to Russian natural gas.

I take exception to Mr. Kraft's assertion that in filling the strategic petroleum reserve the administration has performed well. Certainly in fiscal year 1981, their achievement of an average rate of fill of 292,000 barrels per day was a laudable accomplishment. However, as for fiscal year 1982, while the Congress appropriated sufficient funds to fill the strategic petroleum reserve at 300,000 barrels per day, the administration will in fact achieve an average rate of only about 193,000 barrels per day, according to the GAO. The average fill rate is dropping off rapidly in this fiscal year. The GAO projected, as of July 15, 1982, a fill rate of only 97,000 barrels per day in the month of July 1982.

The administration defends its record by arguing, correctly, that the fill rate of the strategic petroleum reserve is now limited by the availability of permanent storage capacity in the strategic petroleum reserve. On that basis they justified their 44-percent cut in the fiscal year 1983 budget request for filling the strategic petroleum reserve, as compared to the fiscal year 1982 appropriations. However, while the strategic petroleum reserve caverns have limited storage space, the private sector is glutted with it. The Congress has taken the initiative on this point. Last week the House and Senate adopted the conference report on S. 2332, the Energy Emergency Preparedness Act, over the initial objections of the administration. This bill would permit the use of surplus storage capacity in the private sector as interim storage until sufficient permanent storage is available. The use of interim storage will enable us to avoid the constraint of available storage capacity as a limitation on the strategic petroleum reserve fill rate. We are now waiting to see if the President will approve this legislation.

It should also be noted that while the administration was pleading lack of storage capacity as the reason why they could not fill the strategic petroleum reserve faster, they also attempted to defer $52.9 million in fiscal year 1982 funds for construction of strategic petroleum reserve storage facilities. This deferral would have delayed completion of the 750 million barrel strategic petroleum reserve from 1989 to 1990. Fortunately, Congress has resisted this effort, also. The House voted last week to deny the requested deferral.

Therefore, I reserve judgment on this administration's performance in filling the strategic petroleum reserve. If the President does not veto S. 2332, and if he aggressively pursues filling the strategic petroleum reserve at 300,000 barrels per day or more by using interim storage in fiscal year 1983, then and only then will we be able to commend the administration in his area.

Mr. President, I submit for the RECORD the article by Joseph Kraft entitled, "Ignorance, Ideology and Energy."

The article follows:

[From the Washington Post, Aug. 3, 1982]

IGNORANCE, IDEOLOGY AND ENERGY

(By Joseph Kraft)

Continued fighting in the Middle East draws new attention to the matter of energy security. Only now the country has a new and unusually candid spokesman on the perplexing subject. Secretary of the Interior James Watt has revealed an approach so hooked on free enterprise that it compromises this country's most vital foreign connections and weakens its energy security.

Watt showed the administration's hand in a letter to liberal members of Congress. His congressional letter is not to be confused with his letter to the Israeli ambassador, for which Watt apologized at the behest of the White House. On the contrary, at his news conference last week, President Reagan endorsed the congressional letter. In it, Watt wrote:

"It would be easier to explain to the American people why we have oil rigs off our coasts than it would be to explain to the mothers and fathers of this land why their

sons are fighting in the sands of the Middle East . . ."

The unmistakable implication is that the United States can unload its security responsibilities in the Middle East by finding more oil at home. But what engages the United States in the Middle East is not the oil need of this country. In fact, the United States currently brings in less than 5 percent of its oil from the Persian Gulf.

Japan, in contrast, imports over 80 percent of its oil from that part of the world. Western Europe brings in about 70 percent from that source. If the Persian Gulf fell to the Soviet Union, there would take place a major shift in the world balance of power. So it is for reasons of global security, intimately involving the welfare of our most important allies, that the United States commits itself to defend the Persian Gulf.

Ignorance of that basic fact is not confined to Watt. It pervades the approach of the administration to all the problems of energy and security. Witness particularly the current fight with the West European allies about their project to build a gas pipeline from Russia.

A good case can be made against the Russian pipeline project, and particularly the granting of easy credit terms to Moscow. But the administration's present policy of trying to apply sanctions against European firms engaged in the project is clearly not going to head it off. On the contrary, that policy only works to make bad blood between this country and France, Germany and Britain.

The right way to have scotched the project was to develop an alternate source of natural gas by increasing production in the North Sea territories adjacent to Norway, Britain and Holland. That requirement was made known to Reagan administration officials early in 1981. But almost nothing was done. Why?

Because the president, as he has repeatedly said, sees unleashing private enterprise as the answer to the energy problem. In keeping with that creed, the administration is dismantling the Department of Energy. First to go in the dismantling process was the international division of the department. But it was precisely the international division that had the know-how and interest necessary to set in motion the project for developing alternate gas sources in the North Sea.

So the free-market approach landed the administration in its present pickle on the Soviet pipeline deal. It delivered, as Watt still delivers, the message that the United States doesn't care about the energy requirements of its major allies.

Even this country's energy security, moreover, has not been well served by complete reliance on the market. The oil glut has made it difficult to use the price mechanism as an incentive for new production. In the past six months alone, the number of rigs active in this country has dropped from 4,500 to 2,900. To stimulate new ventures in oil and gas and coal, Watt practically has to give away the mining rights.

Still, the administration has moved to destroy various programs for synthetic fuel production and research into solar energy. Even the drive for nuclear energy—which the president favors—has been compromised by ineptitude in developing programs for waste disposal, and for more rapid certification on the design and siting of nuclear power plants.

In one area, to be sure, the administration has performed well. The Defense Department has been active in filling the Strategic Petroleum Reserve, so the United States is less vulnerable to an emergency cutoff in oil supplies.

Otherwise, the Reagan administration has made zero progress in improving this country's energy security. To calculate that any foreign policy objective ought to be subordinate to that energy program, is to calculate that something is less than nothing. It is sheer thoughtlessness. But, of course, the case against ideological zealots is precisely that they don't think.●

FROM THE ECHELONS OF POWER TO THE COUNTRY NEWSPAPER

● Mr. MITCHELL. Mr. President, the town of Ellsworth, Maine, is a quiet picturesque, unpretentious New England community. Like many other small communities, it has the benefit of having its own weekly newspaper, which dispenses to the townspeople news about other townspeople.

But the Ellsworth American is different. It has as its publisher, editorial writer, and sometimes reporter a man whose name many of you remember. He is James Russell Wiggins, former editor of the Washington Post, who, rather than retire, started a new career in the weekly news business in Maine in 1969.

I have the good fortune of knowing "Russ" Wiggins personally, and although we are not always on the same side of the issues, he always provides thought-provoking, well-founded, and stimulating arguments.

I wish to share with my colleagues a recent profile of James Russell Wiggins, which appeared in the August 2 edition of New England Business, which I submit for the RECORD.

The profile follows:

FROM THE ECHELONS OF POWER TO THE COUNTRY NEWSPAPER

Few things are harder to part with than power. So it's no surprise that for many executives retirement is a tough adjustment. Without the boardroom to kick around in, the company car to whiz about in, and the Wall Street Journal on the desk each morning, some executives are at a loss how to fill the hours. Hence the concept of the second career. Not as ambitious as the first, surely. Perhaps some consulting work, or a small business. For a newspaperman, the choice is easy. The retired city editor who leaves the hustle and bustle to run a nice, manageable country weekly is almost a legend.

At age 78, James Russell Wiggins is acting out the legend in rural Ellsworth, Maine, and he's properly overqualified for the part. For one thing, he's the former editor of the Washington Post, which makes him something of an oddity among the small newspaper crowd. And for another thing, his long journalistic career has left him more at ease with and troubled by the affairs of the world than the doings of the local Planning and Zoning Commission.

Financial position also sets Wiggins apart. Unlike most publishers of independent newspapers who have to hustle to break even, the Ellsworth American was subsidized by Wiggins for many years, appearing each week regardless of its profitability. "Russell supported it," says former Editor Jeff Beebe. In a move toward generating extra revenue, Wiggins changed the letter press to an offset press and now prints 13 weekly papers and a campus daily in addition to the American. Now, says Wiggins, the American is in the black.

The newspaper habit dies hard with Wiggins and he admits to spending more time than he thought he would in the American newsroom. He bought the paper in 1966 for $45,000 and began operating it in 1969, when he moved yearround to his former summer home in Brooklin, Maine, 24 miles from Ellsworth. "Newspapers are like dope, you know; they're addictive," he says with a grin. Nonetheless, not all newspapers are the same, and the American is hardly the arena for world politics Wiggins knew at the Post. "That was the peak of my business career," he says of his 21 years at the Post, adding, with characteristic understatement. "This is a very different operation. . . . We have 15 employees, and I don't know how in the hell many the Post has now, but they're legion." Wiggins joined the Post in 1947, after a stint as assistant to the publisher of the New York Times. Wiggins established a reputation at the Post as a demanding, ethically minded editor with a zeal for protecting the public's right to know, and he hasn't changed his standards at the 132-year-old American. He has, however, recognized the limitations of a rural weekly. "You can't put out the New York Times," he says. "But after all, the local people aren't necessarily stirred by great exercises of ingenuity anyway. They know what they want. They want to learn about town news." Wiggins writes the editorials, a column, an occasional news story and, with the license that comes with being his own boss, frequently contributes a poem or two of sentimental verse, usually about nature.

Desite his influence in Washington, particularly during the Lyndon Johnson administration and for a brief period in late 1968 and early 1969 when Johnson appointed him U.S. ambassador to the United Nations, Wiggins has a sense of how fleeting that influence might be. "I suppose everybody aspires to the esteem of their fellows and of society as a whole," he reflects. But he believes the fame of the journalist is fleeting, "a snare and a delusion. . . . The anonymity of the average life is pretty astonishing." While personally keeping a low profile, Wiggins is more than ready to take a strong editorial stand. When the Teamsters union came to town in 1976 to organize the police department, the American campaigned against it on the editorial page and must have had some impact. The paper was named in a Teamsters' suit as a force acting on behalf of the town to prevent the union activity. The suit was dropped.

Wiggins grew up in Luverne, Minn., the son of a building contractor, and his forebearers came from Baldwin, Maine. Self-educated, he has a voracious appetite for reading and is a serious historical scholar. His first job was on a small weekly in Minnesota. He later went to Washington as a correspondent for the St. Paul Dispatch, then served a stint as a combat intelligence officer in the Air Force in World War II. From there he went briefly to the Times and then to the Post. As the editorial voice of the Post during the Johnson administration. Wiggins was an ardent supporter of the Vietnam War, support much appreciated by Johnson, who once commented that Wiggins and his editorials were worth two military divisions. Now, in the boondocks of

Maine, Wiggins says he doesn't miss that power. "I never construed [the editor's job] as being a shaker and a mover's power to influence a particular situation," he says. The effect of the editorials, he says, was cumulative and couldn't be separated from the editorials of other papers.

Wiggins is at ease in his Maine newsroom, operating with a combination of formal good manners and exuberance. At his corner desk, he chats about town affairs with locals who stop by and he solemnly shakes hands with the children who tag along with their parents.

James Russell Wiggins' silver white hair is neatly slicked down, and his suit jacket stays on all day. If the jacket signals a concern for propriety, his smile is disarmingly boyish. No, the Ellsworth American is not the Post, but Wiggins is one for doing things right and having a pretty good time while he's at it.●

ANTI-FEDERALIST FALLACIES

● Mr. LAXALT. Mr. President, last January in his state of the Union message, President Reagan outlined the principles of his Federalism proposal. With a goal of revitalizing our Federal system, the President proposed the most sweeping realinement of Government activities since the New Deal.

During the last 6 months, the President and his staff have held extensive consultations with State and local leaders. These consultations have produced a fine tuning of the President's initial proposal. In the near future, the President's complete Federalism package will arrive on Capitol Hill to undergo the scrutiny of the legislative process. I am anxious for this process to begin.

As debate progresses, I have no doubt that opponents of this bold initiative will attempt to argue that State and local governments are ill equipped to handle programs currently administered by the Federal Government. Furthermore, the critics will argue that the President's plan will somehow hurt the poor and less fortunate. In the current issue of Policy Review, Richard S. Williamson, Assistant to the President for Intergovernmental Affairs, meets these arguments head on.

Mr. Williamson's essay is both timely and informative. Mr. President, I ask that Mr. Williamson's essay be printed in the RECORD.

[From the Policy Review, Summer 1982]

ANTI-FEDERALIST FALLACIES

(By Richard S. Williamson)

The Reagan Federalism Initiative calls for a reordering of priorities, and a sorting out of responsibilities among the various levels of government. Revenue resources will be returned to the states and municipalities to finance programs best handled by local governments, as the federal government phases out its role in these areas. This is a grassroots initiative.

Essentially the issue is simple. Do we defend the status quo of a big, federal government which costs too much and produces too little? Or do we show progress, change, and new solutions by moving forward and returning programs and resources to the people? Critics of this approach have nevertheless succeeded in establishing certain fallacies about the President's Federalism Initiative. How well do they withstand scrutiny?

Fallacy: State and local governments are less inclined than the federal government to provide adequate benefits for the poor.—The President's Federalism Initiative calls for a basic safety net of welfare programs. But much more importantly, this Administration is not so cynical as to feel that voters, when electing Congressmen and Senators, judge them on their compassion; but when electing state and local officials ignore this trait.

As Vermont Governor Richard Snelling recently wrote: "Today, state governments spend a larger share of their resources than does the federal government (even when defense is excluded) to meet the needs of the most unfortunate members of our society—the poor, the handicapped, the mentally ill and retarded, the socially maladjusted and lawbreakers."

Some have suggested that the minority poor will not receive adequate attention. This ignores not only the Voting Rights Act to assure universal suffrage, but also Supreme Court "one-man, one-vote" rules mandating apportionment in state legislatures to accurately reflect a state's entire population. It's noteworthy that a higher percentage of Blacks hold seats in the nation's state legislatures than in the Congress, and in many cities they dominate important government offices.

Fallacy: Income maintenance can only be appropriately handled by the federal government.—One of the purported problems of state and local governments assuming all welfare responsibilities is that it will cause a disparity of benefit levels. Yet that is already the case. The federal government does not administer Medicaid and Aid to Families with Dependent Children benefits now, it only provides matching funds to the state. They determine the dollar amount of payments, and it is different in every state. State and local governments can determine benefit levels consistent with the cost of living in their area. They can assure that needs tests are not artificial or manipulative, and that only persons entitled to assistance by genuine need receive it. They can institute work requirements, and they can eliminate the duplication of services. They can streamline administration and enact meaningful reforms.

Fallacy: State and local governments cannot be expected to assume new responsibilities after the cuts they have already received under the Reagan Administration.—In actual dollars, federal grants-in-aid to state and local governments totaled $24 billion in 1970. In one decade, that amount almost quadrupled so that by President Carter's last budget (fiscal year 1981), the total was $95 billion in federal aid. Now the President has proposed a reduction to $81 billion in fiscal year 1983. That will be the same level of aid—in constant dollars, adjusted for inflation—that state and local governments received in fiscal year 1972.

Fallacy: The poor will migrate to states with high welfare benefits.—Are we to assume that what motivates the poor is the desire to stay poor? People don't migrate for welfare, they migrate to get off welfare—to get a job. We reject the idea that there are significant numbers of freeloaders in this country who just want to stay on the public dole.

Data shows that there is absolutely no positive correlation between welfare benefit levels and population shift trends. If anything, they are inversely related. The South, for example, is a region of the country where welfare benefits are generally low. Yet because of a rapid growth in jobs, from 1967 to 1977, the region had a net immigration of low-income persons, and retained most of the poor population it already had. In turn, great numbers in this income group were converted to nonpoor status as they moved into the work force.

That we can go on with an ever-mushrooming federal government and business as usual is such an obvious fallacy as to not need answering. The opportunity to make government work again is much bigger than an accounting problem. We must seize this opportunity to reverse a trend that has begun to choke the federal government.●

THE INTERNATIONAL PEACE GARDEN

● Mr. BURDICK. Mr. President, we were privileged to have present in North Dakota, James C. Gildea, Assistant Postmaster General, who participated in the first day issue ceremony for the International Peace Garden Commemorative Stamp, at Dunseith, N. Dak., June 30, 1982. The occasion also marked the 50th anniversary of the International Peace Garden in my State of North Dakota. I submit for the RECORD the remarks of Mr. Gildea.

The remarks follow:

REMARKS OF JAMES C. GILDEA

Thank you and good morning ladies and gentlemen. I am delighted to be able to share this occasion with you.

I have heard so much about the International Peace Garden . . . about how beautiful the grounds are . . . and, frankly, I expected to be somewhat disappointed. I thought nothing could possibly live up to such acclaim. But, I was wrong.

Now that I am here and have seen for myself, I know that no words—or photographs—can do justice to this magnificent scene. Indeed, the beauty of this locale goes beyond the physical setting. It includes its purpose and its meaning. The International Peace Garden represents the noblest ideals of humankind—and, even more importantly, its very existence proves that these ideals are capable of achievement.

This garden is evidence that two countries which share a border—a border without fortifications—can respect one another and live in harmony as good neighbors for a long period of time, each dedicated to preserving this valued symbol of peace and friendship.

How wonderful it would be if the whole world could enjoy this kind of serenity and security . . . If no one ever again had to experience the pain of war, the agony of battle, the scars of conflict.

Wouldn't it be marvelous if we could channel the energies involved in hostilities toward increased understanding and cooperation among all peoples?

It would be marvelous indeed to have a sure method to inbue the world with the sense of trust and friendship that make this garden of peace possible.

As we gather here today, in celebration of this garden and all it represents, I cannot help but feel a sense of awe and profound hope for the future of human nature. I wish

that every American—every Canadian—I wish that every human being—could have the opportunity to come here. The International Peace Garden is inspirational. It is a place where one can actively rest.

What do I mean by "actively rest"?

I mean "rest" in the truest sense of recreation—to create anew, to restore and to refresh one's strength and spirit. And this kind of recreation or revitalization is hardly passive. It is an active kind of coming to peace with one's self, a coming to peace that can result in new enthusiasm for one's tasks . . . An enthusiasm that can permeate every phase of one's life with determination to do all one can to bring about a better and more peaceful world.

I have a personal interest in this particular stamp. I feel strongly that we should publicly acknowledge and celebrate symbols of enduring cooperation and peace between countries.

We should honor the places that speak of the beauty of peace.

To do so, is to focus attention on one of the most worthy of human ideals and goals. Such places are indeed deserving of wide recognition. A postage stamp is a fine way to bring this about. Millions of people around the world see and use and save postage stamps—stamps often encourage people to engage in research to learn more about the subjects depicted by them.

That is precisely what I hope happens in this instance.

As the beautiful International Peace Garden Stamps travel about the world, I hope they interest people in—and attract them to this incomparable setting.

The International Peace Garden Stamps can be acquired nowhere else in the world today—only here in Dunseith. Tomorrow, when they become available at post offices throughout the country, thousands of people will write to Postmaster Doeling to request the first day of issue cancellation that identified this day, this place and this auspicious event.

This stamp now becomes part of philatelic history.

This is a good time to think about the history of the garden itself.

How wonderful it was that in 1928, Dr. Henry J. Moore of Islington, Ontario, envisioned a garden on this international boundary line . . . and that the National Association of Gardeners of the United States, meeting in Toronto in 1929, approved his plan and selected this site.

How marvelous that the State of North Dakota and the province of Manitoba ceded more than 2,300 acres of land for this purpose. And of equal magnitude is what you have done here. You have nourished this park with time and effort, patience and care. You have made it a living emblem of the joy of peace, a precious treasure both of our nations cherish, one in which we can all take pride.

We of the U.S. Postal Service are very proud of our 206—very nearly 207—year record of delivering our Nation's mail, we take pride as well in providing the country with meaningful as well as attractive postage stamps. Stamps are often referred to as "our Nation's calling cards," because they represent us around the world—they not only have value as postage, they have important symbolic value as well.

And symbols of worthy ideals and noble purpose are no less important today than they were in 1932 when the International Peace Garden was dedicated.

In closing, I would like to say that I hope we will all live to see the day when all human beings share the pledge that was part of the dedication ceremony 50 years ago. It is inscribed on the cairn at the entrance to this park and closes this way: ". . . that as long as men shall live, we will not take up arms against one another."

Thank you.

Now it is my pleasure to present several albums containing the International Peace Garden Commemorative Stamp to the following distinguished persons:

The first, by tradition, goes to the President of the United States, and Mr. Reagan's will be delivered to the White House.●

PROPOSED INTRODUCTION OF BILL RELATING TO CRIMINAL LAW

Mr. THURMOND. Mr. President, I send a bill to the desk and ask that it be read the first time.

The PRESIDING OFFICER. The clerk will report.

Mr. ROBERT C. BYRD. Mr. President, what is the nature of the bill?

Mr. THURMOND. Mr. President, I send a bill to the desk——

Mr. ROBERT C. BYRD. Mr. President, I object to the introduction of the bill on this day.

Mr. THURMOND. Mr. President, I conferred with the Parliamentarian and I am following the procedure he outlined. Is it proper, Mr. President, for me to send the bill to the desk and ask that it be read, that it have first reading?

The PRESIDING OFFICER. A Senator may object to the introduction of a bill.

Mr. ROBERT C. BYRD. Mr. President, may I say to the distinguished Senator I personally have no feeling on this particular bill, but I do think that Senators on my side have expressed concern about this bill and they ought to at least have the opportunity to know that it is being introduced. It is only for that reason that I interpose the objection to the introduction of the bill on this legislative day.

Mr. THURMOND. Mr. President, I just want to say this: The distinguished Senator from Georgia, sitting on that side of the aisle, and the distinguished Senator from Florida, sitting on that side of the aisle, every morning have recited case after case that has been tried in State courts and later ends up in a Federal court and maybe they release the defendant entirely or grant a new trial after 8, 10, 15, or 20 years. It is a matter the Chief Justice of the Supreme Court has talked about. It is a matter the Attorney General of the United States has talked about. It is a very important matter from the standpoint of criminal law. It is very important from the standpoint of law enforcement.

If we want to do something about crime, this is an example of how to do it. I am introducing the very bill to try to carry out what the distinguished Senator from Georgia wants and what the distinguished Senator from Florida wants.

I merely want to introduce it and then let the Senate do with it what it pleases.

Mr. ROBERT C. BYRD. Mr. President, I may very well be very supportive of the bill. I do not know. What the distinguished Senator from South Carolina is attempting to do is get this bill on the calendar under rule XIV. I have no objection to that.

The Senator from Georgia is not here; the Senator from Florida is not here. I hope that the distinguished Senator will desist in attempting to introduce the bill tonight. Tomorrow, I might have no objection.

Mr. THURMOND. Mr. President, I withdraw it tonight, then—

Mr. BAKER. Mr. President, will the Senator withhold for a moment? Will the Senator yield to me?

Mr. THURMOND. I shall be very pleased to yield.

Mr. BAKER. Mr. President, it is my hope that tomorrow, the distinguished Senator from West Virginia, the minority leader, will withdraw his objection to the introduction of the bill at this time.

May I inquire of the Chair, has the Senator from South Carolina placed himself in a position to qualify for the introduction of a bill on the calendar today?

The PRESIDING OFFICER. The Senator has.

Mr. ROBERT C. BYRD. Mr. President, he certainly has a right to do so. Since I have objected to the introduction of this bill on this legislative day, on a new legislative day, he could introduce it and there may be no further objection. I hope the Senator will allow me, and he has indicated that he will, to talk to the two Senators whose names he has mentioned on my side of the aisle. There may be no objection. In that case, I shall have no objection.

Mr. THURMOND. I thank the Senator very much.

Mr. President, in view of that, I withdraw the bill.

Mr. BAKER. Mr. President, what is the status of the bill? Is the Senate now on notice that the Senator may introduce it on a later legislative day as a matter of right?

The PRESIDING OFFICER. The Senate is on notice that the Senator from South Carolina has attempted to introduce the bill, an objection has been heard, and therefore, on the next legislative day, the Senator may introduce the bill as a matter of right.

Mr. BAKER. I thank the Chair.

Mr. THURMOND. Mr. President, shall I withdraw it physically at this time or leave it at the desk?

The PRESIDING OFFICER. The Senator need not withdraw it.

CONCLUSION OF MORNING BUSINESS

Mr. BAKER. Mr. President, may I inquire, or will the Chair inquire if there is further morning business?

The PRESIDING OFFICER. Is there further morning business?

If not, morning business is closed.

RECESS UNTIL AUGUST 4, 1982, AT 9 A.M.

Mr. BAKER. Mr. President, since I see no other Senator seeking recognition and the distinguished minority leader indicates he has no further business, I now move, under the previous order, that the Senate stand in recess until 9 a.m.

The motion was agreed to, and, at 12:12 a.m., the Senate recessed until Wednesday, August 4, 1982, at 9 a.m.