Mr. BYRD. Mr. President, I ask unanimous consent that Mr. PELL be recognized for 10 minutes, and that he be followed by Senator MURRAY, not to exceed 5 minutes.

I thank Senator HATCH for his gracious manner and his characteristic friendliness and conviviality. He is a fine Senator. I enjoy working with him.

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

MAJORITY RULE

Mr. PELL. Mr. President, I rise in support of the amendment offered by the distinguished and learned Senator from West Virginia [Mr. BYRD] to amend the proposed constitutional amendment to allow a majority, rather than a supermajority to determine when a deficit can be incurred.

The concept of majority rule is so deeply embedded in our society and in almost every organized group proceeding—from fraternal and social groups to corporations large and small and government at the village, county, city, and State level—that many Americans might be very surprised to realize the extent to which the Congress of the United States is sometimes ruled by a minority, and could become more so in the future.

We have before us the balanced budget amendment which contains not just one but two supermajority requirements—one requiring a three-fifths vote of the entire membership of each House to permit outlays to exceed receipts and the other a three-fifths vote of the entire membership of each House to increase the public debt limit.

And we may soon have before us a line-item veto proposal which would subject congressional disapproval of a rescission to a two-thirds supermajority veto override, as opposed to an alternative plan under would a simple majority could block a rescission.

If approved, these supermajority requirements would join others already in place: the Senate cloture rule, the new rule of the House of Representatives on votes of that body to raise income taxes, and the statutory supermajority requirement for waiving points of order under the Balanced Budget and Emergency Deficit Control Act of 1985, better known as Gramm-Rudman-Hollings.

Mr. President, these flirtations with supermajorities are leading us astray from the apparent intent of the wise men who wrote the Constitution two centuries ago. For them the principle of majority rule was so self-evident that they apparently saw no need to state it explicitly.

Since the Constitution provides for supermajorities only in specific instances—such as overriding vetoes, Senate consent to treaties, Senate verdicts on impeachment, expulsion of Members, determination of Presidential disability and amending the Constitution itself—it seems clear that the Framers intended that all other business should be transacted by a majority.

And since the Constitution gives the Vice President the power to break ties when the Senate is ''equally divided,'' Framers again evidenced a clear intent that business was to be transacted by a majority. We carry forward that intent in the structural organization of Congress itself, whereby the party that controls 50 percent plus one seat assumes control.

The time may be coming when the only way to prevent further violence to the Framers intent will be to enshrine this most basic principle of governance—majority rule itself—as a constitutional provision.

Mr. President, I offer these reflections today from the vantage point of 34 years service in this body. As I stated here a few days ago, I have cast 327 votes for cloture during those years, so I am no stranger to the impact and consequences of a supermajority requirement in the Senate.

I would point out, in that regard, that cloture by majority rule would not cancel out rule XXII of the Senate—it would simply lower the margin for invoking cloture to the threshold envisioned by the Founding Fathers for the transaction of business. And we should make no mistake about the fact that the rules of proceedings now have such sweeping substantive effect that they do in fact constitute an important element in the business of the Senate.

Mr. President, in the haste to fulfill the expectations and promises of this new Congress, many of which are of great merit, we must take special care to preserve basic principles of our democracy which may be brushed aside in the rush to reform. The principle of majority rule is the basic cornerstone of the edifice, whether it applies to rules of proceedings or the substance of legislation. It must be preserved and protected from all assaults. Perhaps the time is coming when it too should be enshrined in the Constitution.

I ask unanimous consent that three articles entitled ''The Three-Fifths Rule: A Dangerous Game'' by David Broder, ''Super-Majority Simple-Mindedness'' by Lloyd N. Cutler, and ''On Madison's Grave'' by Anthony Lewis, be printed in the RECORD.

There being no objection, the articles are ordered to be printed in the RECORD, as follows:

[From the New York Times, Jan. 30, 1995]

ON MADISON'S GRAVE

(By Anthony Lewis)

BOSTON.—''Miracle at Philadelphia,'' Catherine Drinker Bowen called her book on the Constitutional Convention of 1787. And it was a political miracle. The delegates produced a document that has ordered a huge country for 200 years, balancing state and nation, government power and individual rights.

The Constitution has been amended 27 times. Some of the changes have been profound: the Bill of Rights, the end of slavery. But none has altered the fundamental structure, the republican systems designed by James Madison and the others. Until now.

Now the House of Representatives has approved an amendment that would make a revolutionary change in the Madisonian system. It is call the Balanced Budget Amendment. A more honest name would be the Minority Rule Amendment.

The amendment does not prohibit unbalanced budgets. It requires, rather, that a decision to spend more in any fiscal year than anticipated receipts be made by a vote of three-fifths of the whole House and Senate. The same vote would be required to increase the debt limit.

The result would be to transfer to minorities effective control over many, perhaps most, significant legislative decisions. For the impact would not be limited to the overall budget resolution. Most legislation that comes before Congress bears a price tag. If a bill would unbalance a budget, a three-fifths vote would be required to fund it.

In short, a minority of just over 40 percent—175 of the 435 representatives, 41 of the 100 Senators—could block action. It takes no great imagination to understand what is likely to happen. Members of the blocking minority will have enormous power to extract concessions for their votes: a local pork project, a judgeship for a friend. * * *

Just think about the debt-ceiling provision. Even with the best of intentions to stay in balance, the Government may find itself in deficit at any moment because tax receipts are lagging. Then it will have to do some short-term borrowing or be unable to meet its obligations. Instead of a routine vote for a temporary increase in the debt ceiling, there will be a session of painful bargaining for favors.

The amendment is also a full-employment measure for lawyers. Suppose the figures that produce a balanced budget are suspect, or suppose the demand for balance is ignored. How would the amendment be enforced? Sponsors say it would be up to the courts. So this proposal, labeled conservative, would turn intensely political issues over to judges!

It is in fact a radical idea, one that would subvert majority rule and turn the fiscal debates that are the business of democratic legislatures into constitutional and legal arguments. How did a conservative polity like ours ever get near the point of taking such a step?

The answer is plain. The enormous Federal budget deficits that began in the Reagan years have frightened us—all of us, conservative and liberal. We do not want our children and grandchildren to have to pay for our profligacy. We are not strong-minded enough to resist deficit temptation, so we are going to bind ourselves as Ulysses did to resist the lure of the Sirens.

The binding would introduce dangerous economic rigidities into our system. In times of recession government should run a deficit, to stimulate the economy. But the amendment would force spending cuts because of declining tax receipts, digging us deeper into the recession.

The rigidities of the amendment would also inflict pain on millions of Americans. The target year for balancing the budget, 2002, could not be met without savage cuts in middle-class entitlements such as Social Security and Medicare.

''It's a bad idea whose time has come,'' Senator Nancy L. Kassebaum, Republican of Kansas, said. ''It's like Prohibition; we may have to do it to get it our of our system.''

If someone as sensible as Nancy Kassebaum can succumb to such counsels of despair, we have truly lost Madison's faith in representative government. Madison knew that majorities can go wrong; that is why he and his colleagues put so many protections against tyranny in their Constitution. But

they also left government the flexibility to govern.

Their design, the miracle that has sustained us for 200 years, is now at risk.

SUPER-MAJORITY SIMPLE-MINDEDNESS

(By Lloyd N. Cutler)

The Republican majority has proposed amending House Rule XXI to require the affirmative vote of three-fifths of the members present to pass a bill ''carrying a federal income tax rate increase.'' If all 435 members show up, 261 votes would be needed for passage. As Post columnist David Broder and Rep. David Skaggs (D-Colo.) have already observed, such a rule would be unconstitutional. Even if it were constitutional, it would still be unworkable.

It would be unworkable because tax bills usually contain multiple provisions reducing some rates of tax, increasing other rates and adjusting the base numbers—e.g., wages, profits and capital gains less various credits, exemptions and deductions—to which these rates are applied. Almost every two-year Congress enacts major tax revision laws to close loopholes, correct inequities, adjust rates, hold down the budget deficit and manage the economy for noninflationary growth.

If the rules are changed to require a three-fifths affirmative vote, it may not be practicable to pass any major tax bill. Any such bill is bound to contain some provisions that can be called tax rate increases. What about a tax bill that reduces rates for incomes below, say, $200,000 and raises rates for incomes above that figure? What about tax bill provisions eliminating charitable or home mortgage interest deductions, or reducing the allowed exemptions for dependents or lengthening the required holding period for long-term capital gains? Any one of these would have the same effect on many taxpayers as an increase in income tax rates. As a result, the proposed three-fifths requirement could well apply to any major income tax revision bill that follows adoption of the proposed rules change.

Let us suppose that a stubborn minority of 175 members will be mustered to prevent a three-fifths majority and thus defeat any bill including some income tax increases. Let us also suppose that a simple majority (218 if all 435 are present) will vote against an amendment that eliminates any such increase. There is still a budget deficit to contend with, and 218 members may think that a broad reduction in income tax rates should be at least partially offset by some tax increases. In that event, no major tax bill could be passed at all, and the government would be unable to make needed changes in national fiscal policy.

With the House floor debate on the proposal about to begin, it may also be useful to spell out the main reasons why a super-majority requirement for the vote on passage of a bill is unconstitutional. In *United States v. Ballin,* decided a century ago, the Supreme Court said that a simple majority governs ''all parliamentary bodies,'' except when the basic charter requires some form of super-majority, which our Constitution does in five cases (plus two added by subsequent amendments) and no others. The seven exceptions are: the overriding of a presidential veto, the Senate's consent to a treaty, the Senate's verdict on an impeachment, the expulsion of a senator or congressman, an amendment of the Constitution, the 14th Amendment vote on removing the disqualification for office of participants in a rebellion and the 25th Amendment vote on whether to allow a disabled president to resume his office. All of these are special cases, not involving the mere passage of a bill or resolution for presentation to the president.

Except in these cases, the Framers were against allowing a minority of either house to block legislative action. That is the reason why Article I, Section 5, states that ''a Majority of each [house] shall constitute a quorum to do Business.'' As James Madison explained, the Framers rejected a proposal that a super-majority be required for a quorum because: ''In all cases where justice or the general good might require new laws to be passed, or active measures to be pursued, the fundamental principle of free government would be reversed. It would be no longer the majority that would rule: the power would be transferred to the minority.'' (The Federalist Papers, No. 58.)

The vote of the House on whether to pass a bill is certainly the doing of ''Business.'' And contrary to the Framers' intent, a super-majority requirement would certainly give a minority the power to rule over such business.

Another constitutional provision confirms this understanding of the Framers. Article I, Section 3, states that the vice president shall be the president of the Senate, ''but shall have no vote unless they be equally divided.'' The Framers must have intended that in the Senate at least, a simple majority was sufficient to pass a bill. The Federalist Papers strongly support this view. According to Hamilton, the vice president was given the tie-breaking vote in the Senate ''to secure at all times the possibility of a definitive resolution of that body.'' (Federalist No. 68.) There is no logical reason why the Framers would have thought differently about the House. And a ''definitive resolution'' of the House could not be ''secured'' under the proposed three-fifths rule.

Proponents of a super-majority requirement will make two points in rebuttal. One is to say that they are following a precedent of Senate Rule XXII, which has long required super-majority votes to close debate and proceed to a vote on a bill or an amendment of a Senate rule. As I have argued on a previous occasion, Rule XXII itself is constitutionally suspect. But even if Rule XXII passed constitutional muster, that would not save the proposed House rule. It applies to the up-or-down vote on a bill, while Senate Rule XXII, as its defenders take pains to point out, applies only to a procedural motion to *close debate* on a bill. Here is arch-defender George Will, writing on this page in April 1993:

''The Constitution provides only that, other than in the five cases, a simple majority vote shall decide the disposition by each house of business that has consequences beyond each house, such as passing legislation or confirming executive or judicial nominees.''

Will Newt Gingrich flout George Will?

The proponents' second point will be that the Gramm-Rudman-Hollings Act includes Senate and House rules changes that require a super-majority to pass any bill that ''breaks'' a budget law or resolution previously enacted. This provision is also constitutionally suspect, but at least it lacks the critical vice of making it impossible to enact any budget resolution in the first place. This still requires only a simple majority.

The biggest question of all is why a majority party with 230 of the 435 seats would want to adopt a super-majority rule requiring 261 votes to pass a tax bill. Such a rule could prevent the Republicans from passing a major tax bill favored by a simple majority it could readily muster, even though it might be unable to muster a super-majority of 261. One is tempted to conclude that the present majority party does not expect to keep its majority for very long.

The Republicans have also proposed an even more egregious change in House Rule XXI, one that would prevent the House from even considering any measure that would retroactively increase tax rates, even if three-fifths of the members were in favor. This would deprive the House, and therefore the entire Congress, of its most fundamental express power under the Constitution, the power to lay and collect revenues including taxes on income. It would also have the effect of overruling the numerous Supreme Court decisions upholding the constitutionality of retroactive tax laws, subject only to a due-process standard.

Both of these proposed rules changes are so manifestly unconstitutional that they should not be adopted. If the Republicans use their majority to adopt them anyway, the courts would have ample reason to set them aside.

[From The Washington Post, Dec. 18, 1994]

THE THREE-FIFTHS RULE: A DANGEROUS GAME

(By David S. Broder)

Among many useful and well-designed reforms proposed by the new Republican majority in the House, one suggested change bespeaks neither confidence nor foresight. It is the proposal that future income tax rate increases would require a three-fifths vote for passage.

The purpose is plainly to make it harder for Congress to boost taxes. Since revenue measures must originate in the House of Representatives, the three-fifths, rule would hamper future majorities in both the House and Senate from enacting such measures.

Some question the constitutional propriety of such a rule. Rep. David Skaggs (D–Colo.) has circulated a letter to his colleagues arguing that ''the principle of majority rule has governed this nation for over two centuries and is fundamental to our democracy.'' Skaggs asserts that the three-fifths rule is unconstitutional. Bruce Ackerman, a professor of law and political science at Yale, has expressed the same view in a New York Times op-ed article. Common Cause and congressional scholar Norman Ornstein also have taken up that side of the argument.

Others disagree, Rep. Jerry Solomon (R–N.Y.), who will be the new chairman of the Rules Committee, argues that when the Constitution says that ''each house [of Congress] may determine the rules of its proceedings,'' the authority is intentionally broad. Lawyers and experts inside congress and out, to whom I put the question, say it would be difficult to predict how the courts would regard such a rule—or even whether they would accept jurisdiction if its constitutionality were challenged.

The experts I consulted agree that there is no precedent for Congress requiring a super-majority for final action on any measure, except where specified by the Constitution. The Constitution says it takes a two-thirds majority to override a presidential veto, ratify a treaty, remove an official from office, expel a representative or senator or propose an amendment to the Constitution.

The other instances in which Congress itself has required more than a majority for some action all involve procedural matters. The House requires a two-thirds vote to suspend the rules and pass a measure without delay; the Senate requires a three-fifths vote to impose cloture or end debate. In the last decade, budget resolutions have required a three-fifths vote to override a point of order against any change that would increase the deficit beyond the agreed-upon target for the year. This is a procedural motion, but it clearly affects the substance of economic policy decisions, and sponsors of the new House rule claim it as a model for their proposal.

But abandoning the principle of majority rule on final passage of a bill is not something the House should do lightly—or rest on a questionable precedent. If the three-fifths rule is intended as a safeguard against rash tax-raising by this incoming Congress, it seems unnecessary. Republicans will have a 25-seat majority in January and they have promised tax cuts, not increases. The president has joined them and so has the leader of House Democrats, Rep. Richard Gephardt (Mo.). So where is the threat?

Fiddling with the rules always arouses suspicion. Two years ago, when the majority Democrats changed the rules to allow the delegates from the District of Columbia, American Samoa, Guam and the Virgin Islands and the resident commissioner from Puerto Rico (all Democrats) to vote on the House floor on everything but final passage of bills, I said they were tampering with the game. Such criticism forced the Democrats to agree that there would be another vote—without the five delegates—on any issue where their votes decided the outcome. The federal courts upheld that version of their rule, saying that the change the Democrats had made was merely ''symbolic'' and essentially ''meaningless.''

That cannot be said of the proposed three-fifths rule. It is consequential—and unprincipled. The Republicans themselves juggled the wording to create loopholes for shifting other tax rates by simple majority.

The precedent they will set is one they will come to regret. If this Congress puts a rules roadblock around changes in income rates, nothing will prevent future Congresses with different majorities from erecting similar barriers to protect labor laws, civil rights laws, environmental laws—or whatever else the party in power wants to put off-limits for political purposes.

There is something fundamentally disquieting and even dishonorable about the majority of the moment rewriting the rules to allow a minority to control the House's decisionmaking. You can easily imagine future campaigns in which politicians will promise that if they gain power, they will abolish majority rule on this issue or that—a whole new venue for pandering to constituencies that can be mobilized around a single issue.

This is a dangerous game the Republicans are beginning. And it raises questions about their values. Let them answer this question: Why should it be harder for Congress to raise taxes than declare war? Does this proud new Republican majority wish to say on its first day in office: We value money more than lives?

Mr. PELL. I yield the floor.

Mrs. MURRAY addressed the Chair.

The PRESIDING OFFICER. By a previous order of the Senate, the Senator from Washington is recognized for 5 minutes.

Mrs. MURRAY. Mr. President, I ask unanimous consent to speak as in morning business.

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

DR. HENRY FOSTER, SURGEON GENERAL NOMINEE

Mrs. MURRAY. Mr. President, Dr. Henry Foster has been nominated by President Clinton to be the U.S. Surgeon General. I rise today to express my support for Dr. Foster, and to urge my colleagues to give him a full and fair hearing.

Yesterday, I had the pleasure of meeting with Dr. Foster, and I am very impressed.

Dr. Foster is a physician with vast experience who has dedicated his life to maternal and child health. He is a man who speaks from the heart, a person who cares deeply about the health of families across this Nation.

Dr. Foster is one of the country's leading experts on preventing teen pregnancy and drug abuse, as well as reducing infant mortality. He is a public health professional with vision.

I urge my colleagues to meet with Dr. Foster, to talk with him, to ask him tough questions. I have. I believe they too will be very impressed.

Dr. Foster has tested his ideas about public health interventions that can greatly benefit this Nation. He wants to continue his career-long focus on maternal and child health, on adolescents, and the on prevention of teen pregnancy. He wants to fight AIDS, and combat the epidemic of violence that has taken hold across our Nation.

I also want to stress the importance and relevance of Dr. Foster's practice area. For far too long, women's health concerns have been neglected by this Nation. I am heartened that our next Surgeon General can be a physician who has dedicated his life to women's health—an obstetrician/gynecologist.

Women's health is critical to every family—every man, woman, and child—in this Nation. As a woman, and a mother with a son and daughter, I find the selection of Dr. Foster reassuring. I urge my colleagues to stop and think about the importance of women's health to families everywhere.

I look forward to working with my colleagues on the Labor Committee as they prepare hearings for Dr. foster. I believe when my colleagues and the American public get to know Dr. Foster, they will be as excited as I am to have him as our Nation's next Surgeon General. You, too, will recognize his honesty, his passion, and his commitment to children and families.

I thank you and yield back the remainder of my time.

BALANCED BUDGET AMENDMENT TO THE CONSTITUTION

The Senate continued with the consideration of the joint resolution.

Mr. HATCH. Mr. President, we are now in our 14th day of debate. I was very interested in the chart of the distinguished Senator from New Hampshire, ''Statutes Don't Work.''

I hear people on the other side constantly saying we ought to just do it; we ought to just balance the budget; we ought to have the guts to do it. Almost invariably they are the people who are the biggest spenders around here. Almost invariably.

It is the biggest joke on Earth, after 26 straight years of not balancing the budget, to have these people tell us, we just have to do it ourselves. That is the biggest joke around here to everybody who knows anything about budgetary policy in the Federal Government.

Do not think the people are stupid out there. They know what is going on. They know doggone well that if we do not have this balanced budget amendment, we will never get fiscal control of this country, we will never make priority choices among competing programs, and we will just keep spending and taxing like never before.

I have heard Senators on the other side of this issue, and some who even support us, beat their breast on how they voted for that large tax increase last year, and that deficit spending thing they did. Anytime you increase taxes, if you can hold on to spending at all, you are going to bring down the budget deficit. The problem is that at best, their approach starts up dramatically in 1996 and really dramatically at the turn of the century to a $400 billion annual deficit.

These people are always saying we just have to do it. They are the same people who say we could do it with the Budget and Accounting Act of 1921, the Revenue Act of 1964, the Revenue Act of 1968, Humphrey-Hawkins in 1978, the Byrd amendment in 1978. I was here for most of those. From 1978 on, I was certainly here, and I have to tell you, I voted for that Byrd amendment and I was really thrilled. Here is the U.S. Senate, this august body of people who mean so much to this country, voting to say that in 1980, we are going to balance this budget.

Back then, we probably could have if we had really gotten serious about it. But it was almost the next bill that came up that a 51 percent majority vote changed that. The distinguished Senator from New Hampshire really makes a great point here.

The debt limit increase, why, I was here for that, too. We promised, ''Boy, we're going to balance the budget.''

The Bretton Woods agreement; again, Byrd II; recodification of title 31; Byrd III; Gramm–Rudman-Hollings, I remember what a fight that was to get that through. My gosh, at last we are going to do something for this country; we are going to get spending under control; we are going to help our country. It helped a little bit, darn little.

We had to go to Gramm–Rudman-Hollings II, II because the little it did help was just too much for these people around here, just too much for these budget balancers who say we simply ought to do it.

Let me tell you, I am tired of saying we simply ought to do it. I heard it from the White House. What do we get from the White House? A budget for the next 5 years that will put us over $6 trillion; that the annual deficits for the next 12 years are $190 billion a year plus.

Now tell me they mean business. No way in this world. This game is up. Those who vote for this are people who are serious about doing something for our country, about getting spending and taxing policies under control. I