It is like the line-item veto. It was never going to happen, but it did, thanks to Senator MCCAIN and COATS and others on the other side of the aisle.

But this issue is the right one for America. And one day the balanced budget amendment to the Constitution will be passed in accordance with the wishes of the overwhelming majority of Americans. As for today, at least every American will know exactly where each and every one of us stands on the issue, and every American will know exactly where President Clinton stands on the issue.

In a few moments, Mr. President, we will have one last vote on whether we can finally pass the balanced budget amendment and send it to the States for ratification. Remember, no single action here in the U.S. Senate is the end of the line.

The final decision about whether or not the balanced budget amendment will go into effect rests with those outside Washington. The Founding Fathers decided to give the ultimate authority over constitutional amendments to those who are closest to the people—the men and women who serve in State houses around the country.

Let's trust the States and put our faith in the American people. Let's go through the constitutional process that our Founding Fathers so wisely set up. There's a word for that process. And that word is democracy.

Passing the balanced budget amendment is the singlemost important thing we can do to ensure that Nation's economic security and to protect the American dream for our children and grandchildren.

In this vote we address the fundamental principles of government, and we should, each of us, consider ourselves bound by Jefferson's admonition to be mindful of posterity, and discharge our moral debt to future generations of Americans.

The PRESIDING OFFICER. Under the previous order, the hour of 12 noon having arrived, the Senate will now proceed to vote on the passage of House Joint Resolution 1. The question is, Shall the joint resolution, as amended, pass? The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. FORD. I announce that the Senator from Rhode Island [Mr. PELL] is necessarily absent.

I further announce that, if present and voting, the Senator from Rhode Island [Mr. PELL] would vote ''no.''

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

The yeas and nays resulted—yeas 64, nays 35, as follows:

[Rollcall Vote No. 158 Leg.]

YEAS—64

Abraham	Bond	Campbell
Ashcroft	Breaux	Chafee
Baucus	Brown	Coats
Bennett	Bryan	Cochran
Biden	Burns	Cohen
Coverdell	Helms	Pressler
Craig	Hutchison	Robb
D'Amato	Inhofe	Roth
DeWine	Jeffords	Santorum
Dole	Kassebaum	Shelby
Domenici	Kempthorne	Simon
Faircloth	Kohl	Simpson
Frist	Kyl	Smith
Gorton	Lott	Snowe
Graham	Lugar	Specter
Gramm	Mack	Stevens
Grams	McCain	Thomas
Grassley	McConnell	Thompson
Gregg	Moseley-Braun	Thurmond
Harkin	Murkowski	Warner
Hatch	Nickles	
Heflin	Nunn	

NAYS—35

Akaka	Feinstein	Levin
Bingaman	Ford	Lieberman
Boxer	Glenn	Mikulski
Bradley	Hatfield	Moynihan
Bumpers	Hollings	Murray
Byrd	Inouye	Pryor
Conrad	Johnston	Reid
Daschle	Kennedy	Rockefeller
Dodd	Kerrey	Sarbanes
Dorgan	Kerry	Wellstone
Exon	Lautenberg	Wyden
Feingold	Leahy	

NOT VOTING—1

Pell

The PRESIDING OFFICER. On this vote, the yeas are 64, the nays 35.

Two-thirds of the Senators voting, a quorum being present, not having voted in the affirmative, the joint resolution fails of passage.

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, we knew this was a foregone conclusion. I just have to say that today the liberal politicians have won again, and the American people have lost. We knew that was going to happen. We had no illusions about it. But it is simply amazing to me that, yesterday, some on the other side spent time attacking Senator DOLE, who sincerely has brought this amendment to the floor on a number of occasions. The only time it has ever been brought to the floor with a real chance of passing is when Republicans were in the majority of the U.S. Senate.

But what happened here is that some have tried to use this critical, historical debate, which will affect the future of our very children and grandchildren, for political ends and personal gain. I feel badly about that. Some have used the phony excuse of protecting Social Security. Those protectors have now left Social Security and all of our security open to the mercy of the big spenders.

Look at the current problems we face with Medicare. We said, a few years back, that we had to do something to fix it. Really, there has been little or no effort by this administration to do it. We told them Medicare was going broke. They laughed. Now their people have confirmed that we were right and they were wrong.

So when is the charade going to stop? When are the American people going to realize that the balanced budget amendment was defeated today because there are taxers and spenders here who do not want to be fiscally responsible? They won the day, and the American people, our children, and our grandchildren have lost.

Mr. President, I feel badly that we have lost this today. Knowing that we were going to, it has been somewhat philosophically accepted. But the fact is, it is not going to go away. We are going to have to put fiscal discipline into the Constitution if we ever want to get the spending practices under control. All Republicans but one voted for the amendment, and we had 12 Democrats vote for the amendment. I am personally grateful for those 12 Democrats who stood up and voted for this amendment. It means a lot to me personally, but I think it means more to the country. I hope that in the future we will get more on that side. This is the last chance to really keep America on sound fiscal footing.

DIFFERENCES IN JUDICIAL PHILOSOPHY

Mr. HATCH. Mr. President, I want to talk about another matter very near and dear to my heart. For some time now, I have been discussing the differences in judicial philosophy between the judges selected by Republican Presidents and the Presidents from the other side of the aisle. These differences can have real and profound consequences for the safety of Americans and their neighborhoods, homes, and workplaces. These differences, I might add, have serious consequences.

During these various speeches that I have given, I called attention to certain Clinton judges who have long track records of being soft-on-crime, liberal activists. One of these judges is Judge H. Lee Sarokin, a Clinton appointee to the U.S. Court of Appeals for the Third Circuit. Judge Sarokin has displayed an undue and excessive sympathy for criminals and is too willing to impose his own moral beliefs onto the law and onto our communities.

Judge Sarokin is the judge, this body may recall, who, before he was elevated by President Clinton to the third circuit, ruled that a homeless man could not be barred from a public library because of his body odor even though it was offending everybody in the library.

Judge Sarokin also issued several other activist decisions as a district judge, including some released convicted murderers from jail. I opposed his elevation to the third circuit because I believed he would continue his own special brand of judicial activism. My prediction has been proven true time and time again as Judge Sarokin voted to aggressively expand double jeopardy and to overturn several murderers' convictions.

This week Judge Sarokin informed President Clinton that he will retire at the end of July after 22 months as a circuit court of appeals judge. Judge Sarokin claimed that he was retiring because of the criticism that I and others have made against his activist decisions.

In his letter he wrote that he and others on the judiciary were being ''Willy Hortonized.'' He went on to write, ''I regret that there are those who are willing to sacrifice my life's work and reputation for their own political gain.'' Judge Sarokin also claimed that he ''had intended to remain on the court so long as I was fiscally and mentally able. But the constant politicization of my tenure has made that lifetime dream impossible for me.''

Give me a break. Mr. President, Judge Sarokin has illustrated once again his failure to appreciate the proper role of a judge. As a sitting judge he has issued a partisan political screed. But the partisanship of Judge Sarokin's letter is also illustrated by what the judge fails to mention. As early as March 4, 1996, this year, it was reported that Judge Sarokin wished to take senior status and that he wanted to move to California so that he could be near his family. Yet this fact is not mentioned by the judge in his letter to President Clinton. According to a March 4 article in the New Jersey Law Journal ''Sarokin confirmed through a secretary that he will take senior status effective September 1st.'' This article appeared long before my March 29 floor speech which called attention to Judge Sarokin's activism on the third circuit. In fact, in my speech, I mentioned the judge's plan to step down because it had already been announced and articulated. Essentially, Judge Sarokin had hoped that he could take senior status which would have reduced his workload to 25 percent of an active judge's caseload and move his chambers to California—In other words, from the third circuit on the east coast to California on the west coast.

In other words, Judge Sarokin wanted quasi-retirement in California, the State of his choice. Unfortunately for Judge Sarokin, his colleagues on the third circuit were not thrilled with his early retirement plans, and on the 22d unanimously voted to deny Sarokin's request to move his chambers to California.

I take that out of the Recorder of May 6, 1996.

As one unnamed colleague on the court told a reporter, ''It took a lot of chutzpah for him to leave after only 22 months on the bench.'' Boy, do I agree with that statement. Former law clerks and colleagues told the press that prior to the third circuit's decision Sarokin had already sold his home in New Jersey—in short, prior to his stirring announcement Judge Sarokin wanted to reduce his workload and was intent on moving to California. Yet, Judge Sarokin failed to make any reference to this episode or these matters in his letter to President Clinton. In fact, Judge Sarokin had the nerve to say that he ''had intended to remain on the court so long as he was physically and mentally able.'' Bear in mind his request to take senior status had been denied just 6 weeks ago. Perhaps Judge Sarokin thought he could escape scrutiny for this obvious lack of forthrightness.

Judge Sarokin's letter, its assertions as well as its omissions, demonstrates how some view Federal judges as philosopher-kings whose decisions and prevarications should never be challenged. I personally do not hold this view, and I do not think anybody in this body does.

I have no ill feelings for Judge Sarokin personally, and I wish him much happiness in his retirement. But it should be pointed out that he served darned little time on the third circuit Court of Appeals, and will receive higher retirement because he went from the district court to the Third Circuit Court of Appeals. And we went through an awful situation as he was elevated to that court. Mr. President, but I do not wish him any harm, and I wish him happiness in his retirement. But what is far more important at this point is not Judge Sarokin's retirement but who will replace him.

The American people will decide this fall who will be our President, and along with that choice comes the choice of the President's judges. The choice this fall will be between judges who will be tough on crime and judges who are softer on crime, judges who will apply the law and not legislate from the bench, or judges like Lee Sarokin who have been activists from the day they got on the bench.

Mr. President, I just want to mention one other thing. This week there was the very important argument in the Supreme Court by the President's Solicitor——

I ask that we have order. This is very important.

The PRESIDING OFFICER. The Senate will be in order.

The Senator from Utah.

Mr. HATCH. This argument before the Supreme Court was made by the President's Solicitor General, who I know was pushed into this position by others who apparently have enough power in the Solicitor General's Office beneath him to force him into this untenable situation.

No sooner—in a little over a month—after enacting the antiterrorism bill, with clearly the most part of that bill being habeas corpus reform, the Solicitor General walks into the Supreme Court and undermines that very reform, with an argument that would create a tremendous loophole, by hoping to convince the Supreme Court that they can ignore Marbury versus Madison and grant themselves jurisdiction that the Constitution does not grant and neither does the Congress. And, frankly, I could not believe it when I heard the Solicitor General make the argument that he did. I feel badly that I did not argue for our side in Court but I just did not want to have it look like I was grandstanding, or something like that.

The fact of the matter is that, if the Solicitor General's position is accepted, there will be a direct appeal to the Supreme Court mentioned nowhere in the Constitution, nowhere in statutory law because we are not allowed under Marbury versus Madison to expand the jurisdiction of the Supreme Court, or to detract from it. I will surprised if the Supreme Court grants that. But there was not an effective argument in my opinion against that position in the Supreme Court even though the law is pretty clear. The Constitution is clear. That Marbury versus Madison, the all-time most important, or at least one of the most important, Supreme Court cases is pretty clear. The result and the effect of that argument by the Solicitor General was that the Solicitor General sided with the convicted murderer in that case, who is now 13 years in prison after he was condemned to death but through multiple habeas corpus appeals to the Court, and there is basically no reason to believe that he is not the murderer, has avoided his sentence. Naturally, every one of these murderers claim—not every one, but a great many of them claim—they never did it. But the facts bespeak otherwise.

It was really something to watch the Solicitor General in there arguing on behalf of the convicted murderer who has 13 years on death row and multiple appeals. This is precisely what the President told me he wanted to end, and I did end it while still protecting their constitutional rights and giving them a direct appeal all the way up to through the State courts, a collateral habeas corpus appeal all the way up through the States courts, both of them all the way to the Supreme Court, and then a full right to take a separate Federal habeas corpus appeal all the way up to the Supreme Court, and then a protective right by a three-judge circuit court of appeals panel, if they have newly discovered evidence that could not otherwise have been recently uncovered, or there is some retroactive opinion of the court that applies. That is what bothers me.

So who picks these judges and who picks these Solicitor Generals? Who picks leadership in anticrime in this next Presidential race is extremely important. I do not think you need a better example than Lee Sarokin in this country today to show the importance of that particular choice to all Americans, nor do I think you need a better prime example than the Supreme Court argument of this administration and this Solicitor General before the Supreme Court this last week.

Mr. President, I yield the floor.

Mr. LOTT addressed the Chair.

The PRESIDING OFFICER. The Senator from Mississippi.

UNANIMOUS CONSENT REQUESTS—H.R. 3103 AND S. 1028

Mr. LOTT. Mr. President, I seek recognition to propound a unanimous-consent request momentarily. I know the distinguished Democratic leader is