

the name—as the White House did with Prof. Lani Guinier—or if the person doesn't move forward to a hearing.

I talked to my colleague, Senator JEFFORDS, who chairs the Labor Committee, and Senator JEFFORDS has advised me that he is reviewing the outstanding questions, and the prospects are that there will be a hearing. But after meeting with Ms. Herman and having some say over her Department's activities in my capacity as chairman of the Appropriations Subcommittee, I did want to voice my sentiments on this subject to urge that her nomination go forward. I do not have a final view as to the merits, yes or no. But I think she is entitled to be heard.

Aside from the allegations that have been made about her, she has a very distinguished record. She is a graduate of Xavier University and has worked in the public and private sectors. She has quite a distinguished record as a businesswoman, has served in the administration of President Carter, and has served in the current administration. She may well be qualified, or the contrary may be the case. But I think it ought to be heard so she can have a determination on the merits. I thank my colleagues, Senator HATCH and Senator DODD, for allowing me this time.

I yield the floor.

Mr. DODD. Mr. President, before turning to the subject of my amendment here, let me commend my colleague from Pennsylvania for his comments. I associate myself with his remarks regarding Alexis Herman and the hope expressed by him that a hearing will be held promptly for Alexis Herman. She deserves that hearing.

I have known Alexis Herman for some time. She is eminently qualified, Mr. President, to fulfill the position of Secretary of Labor. There have been issues raised, and the purpose for which we have hearings is to allow those issues to be aired and to give a person an opportunity to respond. In the absence of that hearing, of course, the allegations remain. In many instances, as the Senator from Pennsylvania has pointed out, there is never the kind of opportunity to respond with the same voice and the same positioning with which the allegations are oftentimes made.

Under our system it is absolutely essential in my view that she be given that opportunity. I am totally confident that she will respond to those issues when she is asked publicly to respond to them. It is part of the process here going back years that when people are nominated for high office in any administration they are always advised not to respond or comment but to save their comments for a hearing. Oftentimes it happens that the nominee is left in the position of having to face an assault of questions that are raised and never gets the opportunity to respond because you are advised to the contrary. Then for whatever reason, if you never get that hearing, they stay out there.

So I applaud my colleague from Pennsylvania for coming to the floor

this afternoon and raising this issue. I join with him in urging that our committee—and I sit on the Labor Committee—set up a hearing as soon as possible and move forward. Then, as the Senator from Pennsylvania has pointed out, the committee and/or this body will express its opinion one way or the other. But we will resolve the matter and not leave the individual out there to hang, if you will, in limbo. With all of the appropriate suggestions that the Senator from Pennsylvania has made, as we try to attract people to come serve in our Government and they watch examples like this, it is very difficult to convince people to step forward when they see what can happen to someone who is, in my view, entirely innocent of any of the allegations raised but never gets the opportunity to address them.

So I applaud my colleague.

#### BALANCED BUDGET AMENDMENT TO THE CONSTITUTION

The Senate continued with the consideration of the joint resolution.

##### AMENDMENT NO. 4

The PRESIDING OFFICER. Under the previous order, the Senate will now resume consideration of the Dodd amendment No. 4, with the time between now and 5:30 p.m. divided with 107 minutes to Senator HATCH and 95 minutes to Senator DODD.

Mr. DODD. Mr. President, I rise in support of the amendment I have offered here this afternoon. We have several hours of debate. It may not be necessary to consume all of that time. I will notify my colleagues. Others may want to come over and address the issue. Although we have set a time of 5:30 p.m. for a vote, we may find ourselves having exhausted all of the brilliance on both sides of this amendment and able to move to a vote earlier than that. It would take unanimous consent to vote earlier, but that may happen at some time here this afternoon.

In the meantime, Mr. President, let me state once again what this amendment does. I urge my colleagues and others to pay attention. I will put aside the debate of whether or not we ought to have a constitutional amendment to balance the budget. That matter has been debated and will be debated over the next several days.

The amendment that I raise, Mr. President, does not address the underlying question of whether or not we ought to have a constitutional amendment to balance the budget. But it addresses section 5, and section 5 only, of the proposed amendment. It raises what I believe to be a very legitimate issue in dealing with the national security of this country.

This is an amendment that I offer which you could support and do no damage—in fact, I would think strengthen—the argument in support of the constitutional amendment for a balanced budget. I myself have serious underlying problems with the constitutional amendment. I do not want my colleagues to have any illusions about

that. But I am going to put aside that debate and ask my colleagues to draw their attention to section 5 and an amendment that I will offer that I think addresses a legitimate concern.

My amendment corrects two serious flaws in this section. Let me read this section, if I can. Section 5 of the proposed amendment, not my amendment, the proposed constitutional amendment, says:

The Congress may waive the provisions of this article for any fiscal year in which a declaration of war is in effect. The provisions of this article may be waived for any fiscal year in which the United States is engaged in military conflict which causes an imminent and serious military threat to national security and is so declared by a joint resolution adopted by a majority of the whole number of each House which becomes law.

First of all, this most important section currently contains language, in my view, that would seriously undermine—the distinguished Presiding Officer is a former Attorney General, and someone who has had a serious amount of experience in judicial matters will appreciate that every word in the constitutional amendment is not a casual word. These words must be selected very, very carefully. So I do not treat this lightly at all.

“A declaration of war”—these are the words that are most of concern to me—and “the United States is engaged in a military conflict which causes an imminent and serious military threat to national security . . .”

The provisions of the balanced budget are waived only if war is declared, or if the United States is “engaged.” The balanced budget amendment is quite clear in specifying that our Nation must be engaged in military conflict before a waiver can be granted.

The problem, as I see it, is that prudent foreign policy often requires responding to serious threats before we actually become involved in military conflict. Yet, the language of this amendment is “engaged”—not “might be engaged or there is a threat of engagement”—but rather is “engaged” in military conflict.

Throughout our history this Nation has often found itself necessarily engaged in conflict but yet in situations where immediate action was essential. The gulf war is one example that immediately comes to mind. I will discuss that example and others in the debate shortly.

My amendment removes this section 5 and would lift the provisions of the balanced budget amendment under a declaration of war or if the United States faces an imminent and serious military threat to national security. The requirement of being engaged is dropped.

The amendment that I offer would also clearly define the role of Congress in certifying the existence of an imminent and serious military threat. Under the current language, in section 5 the courts could conceivably be

called on to determine whether or not an imminent and serious military threat to national security exists.

My amendment—the amendment that I offer and is at the desk—makes clear that a resolution passed by Congress is the sole requirement for certifying that such a threat exists.

Finally, the amendment that I have offered restores a reasonable standard for voting. The balanced budget amendment creates a cumbersome, I believe, standard for passing the resolution certifying that a military threat exists. It says a “majority of the whole number of each House” must pass the resolution. In the case of the U.S. Senate, this means that 51 Senators would have to vote in favor of the resolution, no matter how many Senators were present and voting. This could be absolutely critical, particularly in a time of national crisis. When not all Senators are able to reach Washington on short notice, for instance, we could be prevented by our own Constitution from quickly and properly responding to an international emergency.

Furthermore, the “whole number” standard leaves open the question, I point out, of whether or not the Vice President would be allowed to cast a vote should we arrive at a tie of 50–50. My amendment alleviates this problem by requiring a simple majority of those present and voting for passage of the waiver resolution.

Mr. President, I am well aware of the heartfelt support, as I mentioned at the outset, of these remarks on the part of my colleagues who are squarely for a constitutional amendment to balance the budget.

I also know that many of us—myself included, clearly—have underlying problems with the whole balanced budget amendment. But I think we should all be able to agree, regardless of where we are positioned on the issue of a constitutional amendment to balance the budget, we should all be able to agree that any amendment to the Constitution should in no way shackle our country in time of an emergency.

The amendment that I offer, Mr. President, I think helps ensure that the Nation remains prepared and able to respond in time of an international crisis.

For these reasons, I hope that it will enjoy the support of a broad majority of my colleagues.

Mr. President, I want to cite the language of the amendment that we are offering.

Let me recite the copy of the amendment that I am offering:

On page 3, line 7, strike beginning with “is” through line 11 and insert, “faces an imminent and serious military threat to national security as declared by a joint resolution.”

The point being here, if you are not actually engaged, or you don’t have a declaration of war and the Nation, in preparation for such a conflict, wants to exceed the balanced budget requirements, we should be able to do that.

I do not know of anyone who would believe that, as important as this amendment is, it should have a higher priority than the national security interests of the country. Yet, my fear is based on the exact language of section 5—that that is the problem we have posed before us. If it requires a declaration of war, or requires, as the language reads, “is engaged in a conflict,” it seems to me that we would have to wait for one of those two conditions to be met in order to waive any constitutional requirements prohibiting deficit financing.

And so I would urge the adoption of this amendment which says, “faces an imminent and serious military threat to national security as declared by a joint resolution,” so that we do not allow the courts to decide. You can imagine a debate going on here about whether or not an imminent and serious threat existed, someone runs to the Federal courts and says, “I don’t think it is an imminent and serious military threat,” and we have a panel of judges deciding whether or not that threat exists. I do not think any of us want to see that happen. So the joint resolution allows that a simple majority of Senators would be able to declare the threat in order to waive the provisions of the balanced budget amendment.

I mentioned earlier, Mr. President, that there are historical examples for this that I think point out the problem. They are historical and they may be 100 years old or 20 years old. None of us can say with any certainty what we may face tomorrow or next week or next year or the next century. But I will cite five examples to point out the problems.

Imagine, if you will, that this section in a constitutional amendment to balance the budget were in place at the time we faced these five crises. Ask yourself how would we have responded, what would have been the implications, putting aside whether or not you were for or against the particular issue at hand.

The gulf war is one; lend-lease, back in the late 1930’s, early 1940’s, the Cuban missile crisis in 1962, the Panama crisis back under the Bush administration, and the defense buildup during the Reagan administration.

Let me cite, first of all, the gulf war example. Saddam Hussein, as many in this Chamber will recall and, invaded Kuwait on August 1, 1990. We were running a deficit, I would point out, Mr. President, at that time of \$221 billion, on August 1, 1990, putting us in gross violation requirements of the balanced budget amendment. There were only 2 months left in the fiscal year, no time to adjust spending or to raise taxes, I might point out. We were not certain ourselves how we were going to respond to that situation, but an invasion of Kuwait clearly had happened. Saddam Hussein was threatening not only Kuwait where he had invaded but Saudi Arabia, and clearly our security I think. By controlling Saudi Arabia, of

course, he would have become a dominant force in the gulf, and the obvious implications of that for the United States and the West are clear.

We had to deploy troops to protect our allies and our security, and the President did so. But we were not engaged in a conflict, and we had not gone through the lengthy process of making a declaration of war. It was merely a question of whether or not we were going to be able to place those troops immediately in the Middle East in anticipation because an imminent threat certainly occurred, but we were not engaged. It was not until January 16, 1991 that we began the air war. The initial deployment to defend Saudi Arabia, Desert Shield as it was called, was 100,000 troops. The eventual deployment to prepare to invade Kuwait was 500,000 troops. The total cost was \$71 billion. The deficit, as I pointed out, was \$221 billion.

Our action, I would argue, could not have happened under a balanced budget amendment under section 5 because we were not engaged in military conflict. A resolution allowing military action to force out Hussein passed the Senate in January 52 to 47, after a lengthy debate about whether or not we ought to use military force immediately.

My colleague from Utah certainly was here and remembers that debate. My colleagues on both sides of the aisle who supported the action in the gulf ought to remember this and remember what happened.

If the balanced budget amendment had been in effect in 1990, a minority of Senators could have blocked those Senators who supported action and we would not have been able to have the waiver. I do not know what the implications would have been.

In 20–20 hindsight, we say, look, it was clear. As things worked out, there was an imminent threat. There was a debate here, heated debate in the country about what our action should be. You can imagine in addition to the complicated questions of whether or not we ought to respond, we would have had to go through and waive constitutional amendment requirements. This would have been with all of the people in this country divided, as many were, over whether or not we ought to be involved in the Middle East, putting United States servicemen and women at risk. With all the questions, we then either would have had to go through a process of declaring war, which we have not done in 55 years, or go through a process of waiting for an actual engagement to occur. As section 5 says, engaged—not likely to be engaged, not might be engaged, not a threat of engagement. It says you must be engaged.

So my amendment, as I pointed out earlier, which talks about the imminent threat, facing an imminent and serious military threat to national security, is a far better standard and test, it seems to me, in order for us to respond to those situations.

Let me cite the example, if I can, of lend-lease. There is no one in this Chamber who was serving at the time. Our colleague from South Carolina, Senator THURMOND, of course, remembers this debate, I am sure, very vividly, as someone who served in World War II, I believe the only remaining colleague of ours who served in World War II.

Britain was in a crisis. We were highly divided in this country in the late 1930's as to whether or not the United States ought to be involved. In fact, I think surveys at the time indicated most Americans were opposed to the United States being involved in a European conflict. We had in fact America First groups. Charles Lindbergh, I recall, was a leading proponent of the United States staying out of World War II. The conflict in Europe was raging. So we had a significant debate in this country over whether or not we ought to be involved.

I do not know of anyone today who would argue that the leadership of Franklin Roosevelt, putting together the creative lend-lease program, providing the military assistance Britain needed in its great hour of crisis, did not make all the difference in the world. And but for the lend-lease program, the map of Europe might look substantially different, not to mention what might have occurred elsewhere had we not taken that action.

We were not engaged in the conflict, under the standard asked to be met in this balanced budget amendment. You were not likely to get a declaration of war in 1939 given the divisions in the country. And yet we had a deficit. Now, it was not a huge deficit. It was, in March of that year, 1941, \$4.9 billion. It sounds pretty small by today's standards, but as a percentage of the budget it was probably not substantially different than today. And even with someone with the prowess of Franklin Roosevelt, can you imagine if we had to go then through the waiver process in order to get the kind of resources necessary. I do not want to dwell on this particular instance but nonetheless I think the point is quite clear. We would have required a waiver. We were highly divided as a country. As it turned out, lend-lease got a lot of support. In the vote that occurred, actually a majority, a substantial majority here supported lend-lease. But certainly those who are students of history recall the great division in the country on this issue complicating the problem, and the difficulty that Franklin Roosevelt would have had in responding to that situation.

The Cuban missile crisis, in 1962. Again, we were not engaged. There was clearly a threat, in my view, to the security of the United States. We were not going to declare war at that particular point at all. The President had to respond to that situation. We had a deficit of \$7.1 billion in 1962. But under the standards as laid out in the balanced budget amendment, the proposed

language in section 5, the buildup that President Kennedy initiated to respond to that would have required us to go through all these difficulties of requiring waivers. Or you would have had to have the courts decide if in fact it met the standard of an imminent and serious military threat.

The invasion of Panama, again, another example. The deficit in 1989 was \$153 billion. The cost of the operation was \$163 million. Clearly we would have had to go through this process as well.

And the Reagan years of the buildup in defense. Again, you could argue—certainly everyone would have, I think—that there was an imminent danger of conflict with the Soviet Union. We were not going to declare war against them. We were not engaged in a military conflict against them. We had sizable deficits, and we increased defense spending between 1980 and 1988 from \$134 billion to \$290 billion. Of course, we were accumulating \$1.5 trillion in debt at the same time. The amendment says: Declaration of war, engaged in a conflict. Many argue today the ultimate collapse of the Soviet Union was a direct result of our buildup at that time; that it was the Soviets' inability to meet that buildup, although they tried, that caused the kind of economic collapse that resulted in the downfall of the Soviet Union. Yet, we would have gone through this process, and you can only imagine the debate—and there was a significant one, by the way, over whether or not we ought to support that buildup or not—you can imagine what would have been heard around these Chambers about the constitutional amendment to balance the budget and whether or not we ought to be doing this. It could have complicated that process seriously.

I think you could have met the test in 1980 through 1988, of saying the Soviet Union posed an imminent and serious military threat to national security, and then had a joint resolution passed, as my amendment that I am offering today would have allowed us to do, that would have gotten you through the process. That is why I am offering the amendment. I am not just striking section 5, I am offering new language as an alternative.

So the Reagan buildup, I think, is another good example of what could have occurred. I am not arguing for or against it, where people were on that issue, but just imagine the kind of debate that would have ensued.

Let me also point up another argument here that I think deserves mention. One of the difficulties in preparing, of course, is you do not want to give your potential adversary any additional opportunities to take advantage of what is inherently a process that is slow in this country, our legislative form of government, our democracy. If a potential opponent knows that we have this balanced budget amendment, with section 5, that requires a declaration of war, that we have to be engaged, that we need waivers with a

whole House voting, 218 House Members, 51 Senators, that is a pretty significant advantage to give. That is one more set of hurdles that we have to go over in order to respond.

I do not think that is engaging in hyperbole, Mr. President. Why would we in any way try to make it more cumbersome for the Commander in Chief of this country—not necessarily this one, because this amendment will not go into effect until long after this President has left office, but some future Chief Executive of our Nation—to be able to respond to those situations? I am not saying they ought to be able to do it without any check by the Congress, but I think stating the country needs only to face an imminent threat and then get a joint resolution ought to be enough to get a waiver of this amendment. To insist upon a declaration of war or actual engagement seems to me to be setting far too high a standard when the national security interests of this country could be in jeopardy. Yet, that is exactly what we are doing with this amendment.

So, for those reasons I hope my colleagues will look favorably upon this amendment, even if you are for the underlying amendment. I think this improves the underlying amendment. Some have suggested we should not have offered this amendment because, for those of us who have serious doubts about setting fiscal policy in the Constitution, the adoption of this amendment certainly takes away one of, I think, the most significant arguments against the balanced budget amendment. That is that we place the language of this amendment in a higher priority, in a higher standard, than the national security interests of the country.

I see my colleague from Michigan is here. I have some more comments I would like to make in a few moments, but unless my colleague from Utah, who may want to be heard at this particular moment, so desires—I have just been informed, by the way, I made the mistake of saying "Senator THURMOND," and I have quickly been informed by several offices, Mr. President, here—not the senior Senator from Utah, but Senator BUMPERS, Senator CHAFEE, Senator WARNER, Senator INOUE, Senator AKAKA, and Senator HOLLINGS, GLENN, HELMS, ROTH, and STEVENS have been ringing up the phones here. I apologize to my colleagues. I thought they were much younger than that, and assumed they were. How am I doing here? Am I recovering from that faux pas?

However you want to do this. I will yield the floor at this point, and, obviously, the Senator from Utah has priority.

Mr. HATCH. I understand the distinguished Senator from Michigan would like to make his remarks. I have some remarks I would like to make immediately thereafter, so I ask unanimous consent I defer to him so he can make his remarks in support of the amendment of the distinguished Senator from

Connecticut, and then I would like to proceed immediately thereafter.

The PRESIDING OFFICER. How much time does the Senator request?

Mr. HATCH. I ask how much time the distinguished Senator from Michigan needs.

Mr. LEVIN. I ask for 8 minutes.

Mr. HATCH. I ask unanimous consent he be permitted to speak for 8 minutes and then the floor return to me.

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

The Senator from Michigan.

Mr. LEVIN. I thank the Chair, and I thank my friend from Utah.

Mr. President, I support the Dodd amendment because it would simplify the national security exception to the balanced budget amendment before us, and it would do so in a common-sense way that I would think both supporters and opponents of the balanced budget amendment should be able to support.

As currently drafted, the balanced budget amendment before us would limit the national security exception to cases in which the United States is already "engaged in military conflict." This language would seriously limit our defense options by precluding the use of the exception to prepare for imminent military conflict.

The way the amendment before us is written, our troops must actually be engaged in battle in order for the exception to apply. The Dodd amendment addresses this problem by extending the waiver authority to any case in which the United States "faces an imminent and serious military threat to national security, as declared by a joint resolution of Congress," even if we are not yet engaged in military conflict.

Former Secretary of Defense Bill Perry opposed the balanced budget amendment largely because, in his words, of "the total lack of flexibility we would have in dealing with contingencies."

Here is what Secretary Perry said:

Even if threats to America's global interests were increasing or our forces deteriorating, the BBA could lead to deep defense cuts. . . .

The fact that these consequences could be avoided with three-fifths approval of each house of Congress is no safeguard. Preservation of an adequate defense posture would become dependent on exceptional political efforts. . . . Even when a three-fifths majority minus one in either house believed that BBA cuts were unjustified, the minority view would prevail. Not exactly ideal for the world's most powerful democracy and best hope for future peace and stability.

This is not an academic issue—the security of our country could be at stake in a very real way. As former Secretary of Defense James Schlesinger testified at the same hearing, "we would have had great difficult winning World War II" without significant deficit spending in the years before we entered the conflict. Dr. Schlesinger explained as follows:

You will recall that the turning point in the Pacific war was the Battle of Midway.

The ships, the carriers that won the Battle of Midway were built as a result of deficit spending during the latter part of the 1930's. It was the consequence of legislation on naval construction under conditions of severe deficit that were embodied in the Vinson-Trammell legislation.

At Midway the battle was won by the *Yorktown*, launched in 1937 after that legislation, the *Enterprise*, launched in 1938, and the *Hornet* in 1941. Those ships would not have been available under strict interpretation of this amendment. Even the battle of the Coral Sea might have been lost in the Pacific war. . . . [A]lmost all of the capital ships of the U.S. Navy had been laid down before the end of 1941, all of our battleships and virtually all of our carriers, the *Iowa* class, most of the *Essex* class, and the like.

. . . I point this out because this Nation was not at war until December 8, 1941, and the relief that was provided in this amendment would not have been applicable until December 8, 1941.

Mr. President, the appropriations bills that funded the construction of the ships that won the Second World War were all enacted at a time when we were running record peacetime deficits, and I say record deficits. The Senator from Connecticut made reference to some of these deficits, and they sound small by current standards, but by any kind of apples-and-apples comparison, they are very large.

In 1939, the deficit was \$2.8 billion, which was over 30 percent of our total outlays. The deficit now, as a percentage of our outlays, is something like 7 percent. But in 1939, the \$2.8 billion deficit was a significant percentage of our outlays, over 30 percent.

In 1940, the deficit was \$2.9 billion, over 30 percent of our outlays. In 1941, the deficit was \$4.9 billion, as the Senator from Connecticut said, and that was about 36 percent of our outlays. Our deficit now, as a percentage of outlays, is only about 7 percent. Plenty large, but still a lot less than it was in those years.

So we would have been in a situation in those years where 60 percent, or three-fifths of the votes, would have been required in order to do deficit financing for those classes of ships which won those battles which won World War II. And that is why Dr. Schlesinger's comments about the outcome of World War II are so significant. These are real-world battles which are determined by those votes.

The Naval Act of 1938, which authorized construction of every category of warships—3 battleships, 2 carriers, 9 cruisers, 23 destroyers and 9 submarines—passed the Senate on May 3, 1938, with 56 votes. Now, that is two votes short of the three-fifths majority that would have been required by the balanced budget amendment, had it been in effect at that time.

So the stakes involved in the Dodd amendment are very significant.

I wonder if the Senator will yield me 2 additional minutes, if that will be all right with the Senator from Utah.

Mr. DODD. Yes.

Mr. LEVIN. Mr. President, those two votes, which determined whether we

would build those ships, had a huge effect on the outcome of this war. There is no reason, if we are serious about protecting our national security, why we should require that we actually be engaged in a conflict. If a joint resolution of the Congress says that conflict is imminent, which it was in 1938 and 1939 and 1940, surely that ought to be enough to allow us to act by majority vote in order to save this country.

Finally, as the Senator from Connecticut has pointed out, the same kind of issues could have been raised during the gulf war that were raised by Dr. Schlesinger relative to World War II.

If I still have time left, I want to finish with one other point that the Dodd amendment corrects. How much time does this Senator have remaining?

The PRESIDING OFFICER. One more minute.

Mr. LEVIN. I thank the Chair.

The Dodd amendment addresses a second problem with the text of the balanced budget amendment. The joint resolution, as currently drafted, requires that the United States be engaged in military conflict which "causes an imminent and serious military threat to national security and is so declared" by Congress.

That word "and" in the current language creates two requirements: First, that there be a declaration by Congress and, second, that there be an imminent and serious threat to national security. In other words, the word "and," creates a second requirement—the actual existence of a threat—which opens this up to judicial review and creates a real problem which is corrected by the Dodd amendment.

The last thing that we need at a time when our Nation faces an imminent and serious threat is to place in question the legitimacy of Federal spending to meet that threat. When our national security is at stake, we cannot afford to wait for the courts to give a stamp of approval to emergency spending programs. The Dodd amendment would address this problem by making it clear that a congressional declaration that an imminent and serious threat to the national security would alone be sufficient to trigger the exception.

Mr. President, most of us hopefully want to bring the budget back into balance, but we must achieve that goal without undermining our ability to defend our vital national interests in the face of imminent threats or danger. Regardless whether we support the balanced budget amendment or oppose it, I would hope that we could all support the Dodd amendment and ensure that we have the flexibility we need to protect our national security where we face an imminent and serious threat.

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER (Ms. COLLINS). The Senator from Utah.

Mr. HATCH. Madam President, I did not realize the distinguished Senator from Connecticut had not finished his remarks. I will be happy to allow him to finish.

Mr. DODD. No, go ahead.

Mr. HATCH. Madam President, I will proceed then on our time. I have to oppose this amendment proposed by the Senator from Connecticut, and I hope all of my colleagues will do the same.

Senator DODD has offered an amendment to section 5 of the balanced budget amendment. I might add, section 5 is a very important part of Senate Joint Resolution 1, the balanced budget amendment. We realize that protecting the security of the Nation is the most important responsibility that we have. Indeed, it is the most important duty for any government. Thus, we have dealt with that problem in section 5 of the balanced budget amendment. In that provision, we allow the requirements of this amendment to be waived in two circumstances. One is "any year in which a declaration of war is in effect." The other is when the Nation is "engaged in a military conflict which causes an imminent and serious military threat to national security and is so declared by a joint resolution adopted by a majority of the whole number of each House, which becomes law."

Those are two very important protections. They protect us from all that the distinguished Senator has been talking about, and, frankly, his amendment, I think, gums this up pretty badly.

The balanced budget amendment, therefore, deals with the two situations in the modern era in which the Nation faces a challenge to its ability to survive, situations in which there is a declared war between this Nation and another country and situations in which there is a military conflict that is unaccompanied by a declaration of war, but that nonetheless causes an imminent and serious military threat to national security.

In those circumstances the authors of the balanced budget amendment believe that the Nation may need greater flexibility than the amendment otherwise allows. At the same time, the carefully balanced text of that provision makes sure that the circumstances in which such a waiver can be more easily accomplished are limited only to those situations in which such a waiver is necessary.

I have the greatest respect for my colleague from Connecticut, Senator DODD. We are very close friends, but his amendment would upset the balance that we have achieved in section 5.

Senator DODD's amendment would permit a waiver of the balanced budget amendment whenever we face a serious military threat by a simple joint resolution, but he explicitly removes the requirement that the resolution become law. That is troublesome in this context. Ordinarily, being silent about such a matter would be of no consequence. After all, any Member of this Chamber, like any Member of the House of Representatives, can introduce a joint resolution or can submit a resolution on this matter. The real work comes in getting a bill or a resolution passed. But here, by removing

the requirement from section 5 of the BBA, [the balanced budget amendment], that the joint resolution "become law," Senator Dodd's amendment could be read by an activist court as eliminating the requirement that the resolution actually become law.

Thus, in order to waive the balanced budget amendment under the Dodd amendment, the President would not have to sign the resolution, would not have to put himself on the line, or herself on the line, and neither House of Congress would have to pass or even vote on the resolution. No committee would have to mark up the resolution. No hearings need be held. Apparently, all that it would require is that any Member of either body merely introduce a joint resolution declaring that the United States faces a serious military threat.

That sole action would apparently suffice to waive the balanced budget rule for the entire fiscal year under the Dodd amendment. Clearly, that would be a bizarre state of affairs. I would be much more impressed with this amendment if it was sponsored by those who literally have been long-time supporters of a balanced budget amendment. Literally, this is an amendment that looks as though it is making every attempt to gut the balanced budget amendment.

Madam President, both the balanced budget amendment waiver for national security and the Dodd amendment use the threshold phrase of "an imminent and serious military threat to national security" as being a situation in which the balanced budget amendment requirements could be waived. Even though both the balanced budget amendment and the Dodd amendment used that phrase, there are two critical differences between the two.

The first critical difference is the following: Unlike the Dodd amendment, this amendment that is currently pending, the balanced budget amendment, Senate Joint Resolution 1, that we want to pass, also requires that the United States actually be "engaged in military conflict" in order to waive the balanced budget rule by less than a three-fifths vote. By contrast, the Dodd amendment does not require that this Nation be engaged in such military conflict. In fact, the Dodd amendment would delete the term "military conflict" from the final balanced budget amendment.

That alone is a significant difference between Senate Joint Resolution 1 and the amendment offered by our distinguished Senator from Connecticut. I understand what a military conflict is. It involves shooting, combat, or the like. By contrast, the term "threat" is far more expansive and far more pliable. That term embraces a broad range of situations that could fall far short of the type of circumstance in which section 5 of Senate Joint Resolution 1 as presently written would allow the balanced budget amendment's requirements to be waived.

It is easy to imagine various events that could occur that would trigger the waiver provisions of the permissive Dodd amendment. For example, last year China fired several missiles in the vicinity of Taiwan, a valuable friend of the United States, as is China. That could have triggered the provisions of the Dodd amendment if somebody merely filed a resolution, pursuant to the Dodd amendment. The United States also has been witness to oil embargoes which also could trigger the Dodd amendment in the future. These events and others—you can go down a long list—would have allowed the Congress to easily waive the requirements of the balanced budget amendment if the Dodd amendment became part of the final, passed balanced budget amendment.

Indeed, ever since the advent and proliferation of nuclear weapons, it could be cogently argued that the United States has "faced an imminent and serious military threat to national security." You can argue that every year in a sense. And that threat would be presented not just by the republics of the former Soviet Union or by China, which are nuclear powers, but also by other countries that may be on the cusp of developing nuclear weapons, chemical weapons, biological weapons, and so forth, by terrorist nations, to say nothing of any other weapons that may come along. So anyone who sought refuge or seeks refuge from the tough choices necessary to balance the budget could invoke this threat and waive the balanced budget rule. So it would never be effective, that is, if the Dodd amendment is adopted. That is just as clear as the amendment.

The second difference between the balanced budget amendment, Senate Joint Resolution 1, the amendment we are trying to pass as written, and the Dodd amendment is closely related to the first. The balanced budget amendment requires that the military conflict cause the imminent and serious military threat to national security. That would be the only circumstance under which the balanced budget amendment's requirements could be waived. The existence of a military conflict, therefore, is not sufficient by itself to allow Congress to escape the requirements of the balanced budget amendment. No. That military conflict also must have a particular effect; namely an imminent and serious military threat to national security.

These two requirements in Senate Joint Resolution 1, Madam President, which the distinguished Senator from Connecticut would like to amend with this permissive language, are two important requirements. As much as we pray that these events do not occur, we must face the reality that there may be times when our Nation is at war. We also must face the reality that there may be times when our Nation is embroiled in a military conflict imminently threatening national security

but unaccompanied by a formal declaration of war, such as occurred during the gulf war. When either such event occurs, the Nation and the Congress may need greater flexibility than the balanced budget amendment would allow. I am sure we all agree that protecting the survival and safety of our Nation is our most pressing responsibility.

Senator DODD's proposal does not serve these goals. His amendment is not designed to allow the military to deal with threats to national security that do not rise to the level already discussed by me. Nor is his amendment limited to permitting the military to increase spending to respond to such a threat. No. His amendment would waive all the requirements of the balanced budget amendment even though Congress has not declared war and even though the President has not committed our Armed Forces to a military conflict. His amendment provides an escape hatch for all other—for all other—situations.

In short, Madam President, the Dodd amendment is a gigantic loophole. Its effect is to weaken and confuse the standard by which the balanced budget amendment may be waived and thus weakens the balanced budget amendment itself. In this age, it is well established that nations with greater economic power stand a much better chance of prevailing in sustained military conflicts. There is nothing that would be better for our economic strength than to pass Senate Joint Resolution 1, the balanced budget amendment.

If we pass this loophole offered by the Senator from Connecticut, it will be abused and thus allow our debt to continue to increase. In years when we should be in balance, the debt will continue to pile up. Our children will be saddled with even more debt, and we will be woefully unprepared as a nation if it is ever necessary to defend our liberty in the future.

By the terms of the President's proposed budget, we would spend nearly as much on net interest in the debt next year as we will on the defense needs of our Nation—just to pay the interest on the debt. That makes the need for the balanced budget amendment about as clear as it can be.

If we continue to allow this debt to skyrocket, if we put loopholes such as this into the balanced budget amendment, if we do not stop this fiscal insanity that currently pervades our Nation, we will simply not have the economic strength to stand on our own militarily or to protect our interests in times of threat. There is nothing better for our Nation's defense than to adopt Senate Joint Resolution 1, the balanced budget amendment, and be certain that we will have the economics necessary to keep our military the best equipped, best trained force in the world.

Indeed, the Dodd amendment could be abused in a way that hurts our mili-

tary preparedness. Congress could purposely underfund the military at the beginning of the fiscal year to use the extra funds for other programs.

In fact, I suspect that is what is really deep down behind this. If we can waive the balanced budget for almost any reason that we call a threat to our national security, without the constraints that we have written in section 5, which is what the Dodd amendment would do, then those who want that to happen and want that loophole so that we can waive it any time we want to under almost any circumstances could spend more on liberal spending programs rather than really doing for the military what needs to be done.

Our amendment requires them to do what is right for the national security interests of this country, if this matter is going to be waived. It requires the President and the Congress to take some responsibility in that matter, and it does not just waive all these obligations that we think have to be there.

But under the Dodd amendment, they could underfund the military, knowing that during the course of the year they could take any international conflict and use it as a justification to waive the balanced budget amendment.

In effect, if we pass this amendment by the Senator from Connecticut, those who support it would generate their own crisis by having purposefully underfunded the military. I mean, if we in fact abuse the way the balanced budget amendment would be used, that is what it would amount to under the Dodd amendment.

Madam President, this sort of gaming of the system shows that the Dodd amendment is a risky gimmick that will endanger both our military readiness and our economic strength.

I might add that the amendment that will come later on Social Security is even a more risky gimmick that will endanger Social Security for all of our senior citizens because they would take it off the budget so that it does not have to be dealt with not just in times of surplus, but in times of tremendous default and in times when there are not enough moneys there to run it. We have to keep it on budget to keep the pressure on everybody to do what is right to keep Social Security going for our seniors.

Let me just take a few moments and elaborate on the military readiness issues.

The Dodd amendment is too vague. It merely acknowledges the status quo—that there exists national security threats that are routinely handled by the readiness components of our defense budget. Its adoption could actually undermine our ability to provide a responsive surge to escalating threats to our vital interests.

The amendment of the Senator from Connecticut does not acknowledge the differences of national security interests, nor does it tell us what is at stake. It is too broad, and by con-

sequence so vague as to allow exceptions to the balanced budget amendment based on the status quo, day-to-day operation of our defense policy.

To quote from former Secretary of Defense William Perry:

Vital U.S. interests can be at risk when the United States or an ally is threatened by conventional military force, economic force, by economic strangulation, or weapons of mass destruction. These threats to vital interests are most likely to arise in a regional conflict and, by definition, may require military intervention.

Madam President, as you can see, the Dodd amendment would allow the waiver of the balanced budget amendment at almost any time in our country's history where there is any kind of military threat that fits within the broad language that the then Secretary of Defense, in contrast, as seen from the statement, says that vital interests can be placed at risk by threat. And he continues, such threats by our vital interests "may require military intervention."

Senate Joint Resolution 1 complies with current defense thinking. It says that when the President takes a step beyond the normal acts of protecting national security interests and places our forces in harm's way, then should Congress, and only then should Congress, consider by majority vote suspending the balanced budget amendment restraints on defense spending.

My next objection is that military spending is not and was never intended to be the only way to meet national security threats. In fewer words, still, Madam President, the amendment does not acknowledge either the multiple military and nonmilitary strategies that meet our national security requirements, nor does it appear to realize that we employ a military strategy only when diplomatic and other foreign policy remedies fail.

Finally, the Dodd amendment contradicts and challenges some basic readiness, budgeting and programming concepts that both the President and the Congress support. The Secretary of Defense says, "The number one priority of the Defense Department is maintaining the readiness and sustainability of U.S. forces."

The concerns of the distinguished Senator from Connecticut are adequately covered by the program-budget process. This is explained by the Secretary of Defense as follows:

The U.S. national military strategy outlines a broad spectrum of commitments, specifically that U.S. forces must be prepared to fight and win the nation's wars, deter aggression and prevent conflict, and conduct peacetime engagement.

The same report goes on to say that "U.S. forces are ready to meet these missions."

Now, Madam President, the day-to-day national security risks that the Dodd amendment worries about are, as we can see, already inventoried and covered in our defense budget.

Let me return to another statement of the former Secretary of Defense, William Perry:

[The] challenge is to make sure the Department of Defense has the right resources allocated to the right purposes in support of readiness.

Here, the Secretary emphasizes the need for the types of priority-making that the amendment before us would eviscerate since, again, everything under the DOD amendment becomes a priority.

But, to balance this debate, let me turn to Secretary Perry, who wisely cautioned:

Even with a solid foundation of readiness funds in the DOD budget, the costs of unbudgeted contingency operations can reduce resources to carry out training, maintenance, and other readiness-related activities.

We share with Secretary Perry the need to stress readiness and the corresponding need to be able to respond to exceptional or contingency threats.

In summary, Madam President, the balanced budget amendment as drafted offers a level of support to current defense planning that strengthens our defense policy. In stark contrast, the amendment of my friend from Connecticut would place our national security interests at a level of great risk by undermining the sound budget formulation, priority-making, and management practices that Congress and the President have worked out over the past decade.

Now, I do not think I need to say anything more about the Dodd amendment. I hope that all my colleagues will vote it down because this amendment would just be another way of eviscerating or doing away with the effectiveness of Senate Joint Resolution 1, once passed by us and ratified by three-quarters of the States. We have adequately protected our national security interests the way article 5 is written, and we do it in a way that does not allow phony loopholes so the people can spend more on liberal projects. I guarantee you, if we adopt the Dodd amendment that will cause the amendment to be waived over for almost any reason. And all the moneys raised will probably not be for the military over the year the amendment is thrown out. Those moneys will be spent on liberal social programs, precisely what we want to emphasize. If we do waive the balanced budget amendment and we provide a means to do that during serious crises, if we do waive it then, we have to stand up and vote to do so and we do it because we have to bolster our military, and it can be done only under very rare circumstances where it really needs to be done. Under the Dodd amendment, it can be done under almost any circumstance, almost any time anybody files a resolution to do so. That would just plain do away with the effects of the balanced budget amendment.

I think that is enough for me to say about the Dodd amendment. I take a few minutes now, because I think it is important to do so, to pay respect to my dear colleague and friend who spoke earlier on the floor, the distinguished Senator from West Virginia.

Everybody knows the esteem that all of us have for the distinguished Senator from West Virginia. The Senate means as much to him as anybody who has ever sat in the Senate. This country means a great deal to him. He feels very deeply about his positions, and he argues them forcibly and eloquently. I really do, indeed, after having thought for quite a while about what he said this morning and early afternoon—he spoke for about an hour and 40 minutes, as I recall—I thought I should at least speak a little bit about that here today if I can.

The balanced budget amendment is appropriate in its subject matter and approach to be included in the Constitution. It establishes a process-based control on the part of the Federal Government's spending abilities, specifically, on its ability to borrow. Inasmuch as borrowing affects all future Americans, our children and grandchildren, it is appropriate to place rules on the Federal Government to protect those Americans who will be affected but are not now represented in this political process.

Now, Madam President, I call myself a student of the Constitution, and I do not undertake to amend it lightly. However, our history clearly shows the need for a balanced budget constitutional amendment if we are ever going to balance the budget. Although the text of Senate Joint Resolution 1 is modest in length, it is very significant. Its language has been worked out by Members of both parties over many, many years of fine tuning, and that language has now reached the point where it is a bipartisan, bicameral approach.

Since constitutional amendments are of such importance, I will take a few minutes to walk through the provisions of the balanced budget amendment and discuss how they will cure us of our addiction to debt. Since the distinguished Senator from West Virginia did walk through these, I would like to maybe do the same. I will have more to say on this later.

Mr. DODD. Will the Senator yield, to respond to a couple of issues raised by the pending amendment?

Mr. HATCH. Yes, I yield if I do not lose my right to the floor.

Mr. DODD. I thank my colleague for that. I want to respond to a couple of provisions. The amendment we have before us, the amendment that I offered here, requires that we face an imminent and serious military threat to national security as declared by joint resolution. I was informed "as declared by joint resolution" does not mean someone really introducing a resolution, but that a joint resolution would have to pass both Houses. But I am fully prepared to offer an amendment. It would take unanimous consent to clarify any ambiguity about my intention here. This is not a declaration by an individual Member, but a decision by both Houses that an imminent and dangerous situation exists. I will mod-

ify my amendment so as to remove any question of my intention here and what the legislative office, in drafting this, informed this Senator that the language "declared by joint resolution" certainly means. If there is any doubt in anybody's mind, I'll do that. The last thing I want to do is have any one Senator able to offer a resolution that would trigger a waiver of the balanced budget amendment.

Second, I think it is important because the Secretary's name has been raised by my friend from Utah on numerous occasions. Allow me, for the benefit of my colleagues, to read from prepared testimony from the Secretary of Defense:

We are here today not to give you a comprehensive discussion of the balanced budget amendment, but rather to discuss specifically one very important aspect, which is the effect it would have [the balanced budget amendment] on our national security and particularly the effect it would have on our defense programs. Almost any reasonable assumption of how the balanced budget amendment would be implemented in spinning budgets and in specific programs would affect the defense programs in a fundamental way and I believe would fundamentally undermine the security of the Nation.

Let me emphasize that and repeat it:

... I believe it would fundamentally undermine the security of the Nation. In addition to that, the balanced budget amendment would threaten frequent interruptions of many long-term processes that are essential to maintaining a prudent defense posture.

The statement goes on longer, but those particular words certainly don't leave any doubt as to where the Secretary of Defense stands on this issue.

Third—and then I will allow my colleague from Utah to pick up where he wanted to—I urge my colleagues to read the report language in section 5 of the Judiciary Committee on this amendment, as it gives an explanation of what section 5 means. On page 22, Madam President, I am quoting, and it is dated February 3, 1997:

This section, as amended, guarantees that Congress will retain maximum flexibility in responding to clear national security crises, such as in declared war or imminent military threat to national security.

Now, if that is what it did, I would not offer this amendment. But it does not. It should take into consideration the declaration of war or imminent military threat to national security. But that is not what the amendment says. The amendment says in section 5, which is before us:

... the United States is engaged in military conflict, which causes an imminent and serious military threat to national security.

It is the "engaged" part that I have such difficulty with here, because if it just said "imminent military threat to national security," then you could say, fine, I understand that. We have a threat out there; we are not engaged yet, but we have a threat. So we ought to be able to pass a joint resolution here that declares that threat to exist, and the waiver then would apply. But

this is not flexible. My colleagues ought to understand that. It is not flexible. You must have a declaration of war and/or this Nation must be engaged in military conflict, and it requires all 218 House Members and all 51 Senators—not 49 to 48, but 51—to then waive the provisions.

I think that is so restrictive. As important as my colleagues believe this amendment is in dealing with the fiscal matters of this country—and I am not here to argue that point today, Madam President, because that is an ongoing debate. I accept the sincerity of those who propose this amendment. But I hope no one would suggest that, as important as the fiscal matters of this country are, we would make it so restrictive for the Nation to respond to a military crisis that we would require a declaration of war or actual engagement in a conflict before we could decide to waive these provisions in order to respond to them. I think that is threatening.

This is a dangerous section, as written, regardless of how one feels about the constitutional amendment. This is dangerous. This is clearly dangerous. I ask my colleagues—this is not report language now. We are talking about the actual words included in the organic law of our country, the organic law. Every word, every letter is important. It is not insignificant. These are not casual words. To require a declaration of war or to be actually engaged in military conflict before you can waive the provisions of this constitutional amendment, I think, is dangerous indeed. I am offering an amendment which does not strike it altogether but which says “faces an imminent and serious military threat to national security as declared by a joint resolution.” That way, if there is an imminent threat to our national security, a majority of us here and in the other body can pass a resolution that declares that to be the case, and then we ought to be able to waive the provisions and respond to them.

My colleagues know as many examples as I do where we have not met the threshold of a declaration of war or been engaged in a military conflict. Examples where we, the overwhelming majority, I suspect, would have assumed there was enough of an imminent threat out there that we should have responded. We also see a highly divisive country when we see that. I do not offer this lightly, as others have suggested, as somehow a back-door approach for liberal spending programs. This goes right to the heart of our Nation's response to a crisis and whether or not we elevate the importance of fiscal prudence here to such a status that it exceeds the ability of the Nation to respond under its primary, essential function, and that is to protect the security of our Nation.

I suggest, Madam President—in fact, I will read this. On page 22, the last section—they define, by the way, in these sections what each word means. The bottom of page 22 of the report.

... is engaged in military conflict.

Here is how the report defines those words:

“... is engaged in military conflict,” is intended to limit the applicability of this waiver to situations involving the actual use of military force which nonetheless do not rise to the level of a formal declaration of war.

This isn't my language. This is the report language. I am not interpreting this language. It must involve the actual use of military force before they meet the threshold of imminent danger.

There are just hundreds of cases where something that does not involve actual use of force can meet the threshold of imminent danger. Yet, the authors of the section, very clearly—and you can imagine a Federal court, some day in the next century, reading this language as to what the words mean, and it doesn't say likely use of force or maybe a use of force, but actual use of force. We have the awkward situation, to put it mildly, of this Nation responding to its primary function—that is, to protect its citizenry when placed under threat.

Again, I will offer at the appropriate moment—I don't know why I need to, but if certain people think I have drafted this in a way to suggest that any one Member can offer a resolution and that is going to trigger a waiver—again, I submitted my language to the legislative offices here to prepare this, and they tell me that the “declared by a joint resolution” meets that standard of what the intent is here—clearly, not just any one Member offering a resolution, but obviously both Houses passing it. I haven't gotten to the language in the amendment about the whole House, in terms of having 51 people. We have seen situations where Members don't get back, for whatever reason, where some crisis faces the Nation and Members can't get here. What a ridiculous situation to place this body in. I know we're not living in the horse-and-buggy age here, when Members couldn't get here and where they sat around and waited for enough Members to arrive which would allow a majority of both Houses to respond. But we sat here and determined that somehow meets purity, and insisted upon the whole of both Houses, and then, of course, I believe we excluded the Vice President from casting a vote in a tie. You have to have 51 votes of the Members, and the Vice President while the Presiding Officer is not a Member of this body. And I think that is a shortcoming as well. It is minor compared to the actual language here that requires a declaration of war, or as the report language defines is engaged in military conflict, it must involve the actual use of military force. I think that standard is way too high for us to be able to waive the provisions of this balanced budget amendment to respond to a security crisis in this country.

You can vote for my amendment, and you can be for the balanced budget

amendment. It does not threaten the underlying purpose of a balanced budget amendment. I believe it is a lot wiser to be cautious on all issues of national security. This is not some secondary or collateral issue. This is the primary function of any government. The primary function is to protect the security of the people. We have set a standard here that I think places that primary responsibility in some jeopardy.

So for those reasons, I urge my colleagues to accept this amendment. And I will be glad to yield the floor at this point. I will raise a couple of additional issues in a few minutes. But let me yield the floor.

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Madam President, of course the underlying amendment of the Senator from Connecticut threatens the very purpose of the balanced budget amendment. Even if he does make this small change of adding language that makes the resolution become law, this certainly would improve his amendment. That is a small matter. The reason he would have to do that, if his intention is that the resolution be passed by both bodies and signed by the President, is because he has deleted specifically our requirement that any resolution become law, meaning it passes both Houses and it is signed by the President.

So there is no other way the court would construe it other than the way I have suggested it. But that is a small matter because Senator DODD's new amendment, assuming that he modifies his current amendment, clarifies his intent in one regard. He would make it clear that a joint resolution must become law. That would be an improvement.

But my other criticisms remain. There would be too many instances in which Senate Joint Resolution 1's requirements could be waived. Today, any action by a foreign nation can pose an imminent and serious military threat to our Nation. Under Senator DODD's amendment, any such action would allow Congress to engage in increased social spending, and waive this balanced budget amendment.

To me that is ridiculous. It isn't a protection. It is just another way to continue business as usual. I frankly am not for that, and I do not think most others will be either.

Look closely at the Dodd amendment that allows all spending to increase—not just military spending. The ostensible purpose is to protect us militarily and our national security. But it waives the budget for all spending. It makes one wonder why. And it allows virtually any action by any country—certainly countries like Russia or China—to justify increased social spending.

I have to admit that my colleagues are ingenious at wanting to keep the status quo going, and that is their

right to unbalance the budget and spend and spend and spend so they can go home and claim, "Look at what we are doing for you." They are putting us into bankruptcy. And all of us are doing it, both parties, without any restraint. Now they want to remove this restraint. To be honest with you, I think basically what people want to do is just keep business as usual.

Secretary Perry in accepting the Dodd amendment would admit that the readiness principles are wrong that he articulated. For example, he would be saying that current threats are not covered. The Dodd amendment has no plan for a contingency. National security is always a justifiable budget buster regardless of the crisis of the moment.

Let us just read the language that the Senator would change. The way the original amendment, the underlying amendment, Senate Joint Resolution 1 reads, section 5 says, "Congress may waive the provisions of this article for any fiscal year in which a declaration of war is in effect." That is the same. "The provisions of this article may be waived for any fiscal year in which the United States is engaged in military conflict which causes an imminent and serious military threat to national security and is so declared by a joint resolution adopted by a majority of the whole number of each House which becomes law." That is what the current amendment says. That is a tremendous protection. Declaration of war or waiver by a joint resolution passed by the whole number, a majority of the whole number of both Houses, meaning a constitutional majority, which becomes law and signed by the President. Under those circumstances this balanced budget amendment can be waived.

There are those who are strong supporters of the balanced budget amendment which didn't want this language in here. Senator Heflin and a number of us worked this out so that both sides would feel that they are adequately taken care of. But it is no secret. There are a lot of people who do not want this section at all because they believe that a patriotic group of Senators and Congresspeople would naturally waive the balanced budget amendment by a higher vote, by the three-fifths vote necessary to do it to put us into more debt to pay for it. But we have made it a much lesser standard. It will be a constitutional majority required by both Houses.

Look at the way the distinguished Senator from Connecticut would have this read. "The Congress may waive the provisions of this article for any fiscal year in which a declaration of war is in effect." "The provisions of this article may be waived for any fiscal year in which the United States is engaged in military conflict which causes" but in which the United States "faces an imminent and serious military threat to national security." And then he strikes "and is so," and then just says "as declared by a joint resolu-

tion," period. I imagine he is willing to modify his amendment and add "which becomes law." The "which becomes law" would make this amendment a little bit better. But, frankly, it doesn't solve the problem of the easy ability anybody would have for anything that can be called "facing an imminent and serious military threat to our national security" which can include almost anything. That would be the easiest way to waive this amendment at any time any social spending becomes the desire of the people and the Congress. And, by the way, that is what is causing our problems for 28 straight years now—social spending.

I am so afraid I am going to knock these over sometime and squash somebody, and they would squash somebody. It would probably break somebody's leg. I have been told by a number of Senators that we are violating OSHA. Too bad OSHA doesn't have control over this separated power. But there is no other way to show to the American people just how really bad it is—28 straight years of unbalanced budgets. And now we are going to put changes in this amendment that would allow us to go to 29, 30, right up to 68 years, or more. We will never get it under control, if we have amendments like this. So we have to stand up and do what is right.

Mr. DODD. Will my colleague yield for a question or so?

Mr. HATCH. Yes.

Mr. DODD. First of all, I raised the issue about the Vice President because it is unclear.

Mr. HATCH. The Vice President would not have a right to vote here, but he doesn't have a right to vote for this amendment either.

Mr. DODD. Let me ask my question. Under section 5, as drafted in the proposed constitutional amendment, then the vote by the whole of both Houses would exclude the vote by the Vice President. Is that correct?

Mr. HATCH. That is correct, just like a vote for this constitutional amendment excludes the Vice President, and countless other votes exclude the Vice President.

Mr. DODD. We are talking about a waiver issue here.

Mr. HATCH. In any event, he would be excluded.

Mr. DODD. Is there any other situation which my colleague from Utah can cite in which we have excluded the vote of the Vice President in a tie vote?

Mr. HATCH. Every constitutional amendment that has ever been passed.

Mr. DODD. I am talking about a matter that would come before this body.

Mr. HATCH. Sure. On cloture votes; all cloture votes. You will have to have 60 votes.

Mr. DODD. That is a procedural vote.

Mr. HATCH. Procedural or not, that is what this vote would be.

Mr. DODD. To waive.

Mr. HATCH. Sure. That would be both procedural and substantive. Cloture votes are substantive and procedural.

Mr. DODD. A cloture vote is not a tie vote. There you have to have a number of votes.

Mr. HATCH. Neither would they be. In other words, what we are doing—

Mr. DODD. You don't get cloture 50-50.

Mr. HATCH. No, you get cloture at 60—

Mr. DODD. Right. On matters that require a simple majority, will my colleague cite a single example where a simple majority is required in this body where the vote of the Vice President would be excluded?

Mr. HATCH. Yes. Every vote where it is not 50-50.

Mr. DODD. I am saying where the vote is 50-50.

Mr. HATCH. Well, where the vote is 50-50, where that is required, yes, but we are talking about a constitutional amendment.

Mr. DODD. I am not talking about the amendment. I am talking about a provision—

Mr. HATCH. Let me finish.

Mr. DODD. That requires that this body act, and that is the provision of the constitutional amendment, requires that the whole House of both Chambers vote.

Mr. HATCH. That is right.

Mr. DODD. And it requires 51.

Mr. HATCH. Right.

Mr. DODD. My question is, can my colleague from Utah cite a single example where a supermajority is not required, where there is a 50-50 tie, that the vote of the Vice President would be excluded in that situation?

Mr. HATCH. Yes. In every vote in the House of Representatives.

Mr. DODD. No, in the Senate.

Mr. HATCH. Let me finish. I cannot cite a single example in the Senate, but that is irrelevant. The fact is the reason we are writing the constitutional amendment is to provide a means whereby you have to have a constitutional majority, without worrying about the Vice President, who is not a Member of this body other than to preside, if he wants to, and break majority vote ties. We are saying that we need a constitutional majority of at least 51 Senators to resolve this problem, and at least 218 Members of the House. And since it is a constitutional amendment, we would be changing the current method of budgeting to require higher majority votes in order to waive the balanced budget amendment requirements. That is what we are doing.

Mr. DODD. Let me ask my colleague a couple other questions.

Mr. HATCH. Sure.

Mr. DODD. Under the language of this amendment, would the decision to send 100,000 troops to the gulf—

Mr. HATCH. Will the Senator yield?

Mr. DODD. Certainly.

Mr. HATCH. Because I do think I just need to make a couple more comments on the Vice President.

Mr. DODD. I am sorry.

Mr. HATCH. Just to make the record. The question does arise, as the Senator

phrased, as to how Senate Joint Resolution 1 affects the obligations of the Vice President, as President of the Senate, to vote in case of a tie vote in the Senate. The answer is that a balanced budget amendment does not change the Constitution's basic reliance on simple majority votes or the Vice President's role in casting a vote in those cases where Senators are equally divided.

Article I, section 3 of the Constitution provides that "The Vice President of the United States shall be President of the Senate, but shall have no vote, unless they be equally divided."

By the plain meaning of this provision, the Vice President is not a member of the Senate. He is merely the Presiding Officer, the President of the Senate, a neutral empire, and thus cannot vote or take part in the deliberations of the Senate. And even though our current Vice President is a former member of the Senate, he is no longer a member of the Senate. He is a member of the executive branch. But he does have that function.

The only exception to this is where there exists a tie vote. In that case to "secure at all times the possibility of a definitive resolution of the body, it is necessary that the Vice President should have only a casting vote."

That was taken from Federalist Paper No. 68 written by Hamilton.

But the situation where the Vice President can break a tie vote only applies to a simple majority vote, the run-of-the-mill ordinary vote of the Senate. It very seldom happens but it can happen under those circumstances. Where the Constitution, however, provides for a supermajority vote, in situations where the Framers of the Constitution feared the passions of the majority rule would retard reasoned deliberation, there really is no occasion for a tie vote, and therefore the Vice President may not vote.

These include the two-thirds requirement of each House to override a veto. When the President formally rejects legislation passed by both Houses of Congress, the drafters of the Constitution contemplated the simple democratic majoritarian rule does not serve the best interests of this country. A constitutional majority will not even do in that instance. Congress may override the President's veto only by a supermajority vote.

The two-thirds vote requirement of the Senate to give its advice and consent to treaties and the two-thirds vote requirement of the Senate to convict on impeachment are other examples where the Vice President has absolutely no vote whatsoever.

I add the votes on cloture. You are going to have at least 60 votes in order to invoke cloture. You could go on I think.

In each of these cases the Vice President has no role in casting a deciding vote.

The balanced budget amendment supermajority provisions, whether the

three-fifths number of the whole number of each House of Congress—that section 1 waiver to allow outlays to exceed receipts; section 2 waiver to increase the limit on the debt, or the constitutional majority provisions—a majority of the whole number of each House—section 4 requirement to raise revenue, section 5 requirement to waive amendment when the United States is involved in military action that is a threat to national security—would work the same way as the Constitution's other supermajority provisions.

Because these supermajority provisions require a majority vote of the whole number of each House of Congress, and it is clear that the Vice President is not a Member of either House, these provisions, like the two-thirds vote in the Senate for treaties, is an exception to the simple majority vote general rule that the Vice President may vote in cases of a tie in the Senate.

Moreover, with a supermajority requirement, a tie vote is meaningless. For instance, 60 votes in the Senate would be required to raise the debt ceiling, where a three-fifths vote is required under section 2 of this amendment, and 51 votes would be needed to raise taxes as required by section 4. A 40 to 40 vote or even a 50 to 50 vote does not meet that requirement. Therefore, the Vice President would have no role in casting a deciding vote. But that does not in any way diminish his constitutional authority.

Madam President, what we are debating here is very important. What the balanced budget amendment does is establish a constitutional requirement that Congress live within its means, that we quit doing this to America, as represented by these 28 years in a row of unbalanced budgets since 1969. All the supermajority requirements are saying is that if Congress wants to waive the Constitution, a simple majority will not do. You have to have a true majority—in the case of the section 4 requirement to raise revenue and section 5 requirement to waive the amendment when the United States is involved in a military action that is a threat to national security—or a supermajority in the case of the section 1 waiver of the balanced budget requirement or the section 2 waiver of the debt limit. And every Senator and every Congressman must be on record and thereby accountable to his or her constituency.

Now, I have at least 3 or 4 hours more that I could go on on this subject.

Mr. DODD. I am not going to press my colleague. The point I wanted to make, if my colleague will yield further, is that we are creating an unprecedented exception. The waiver provision—put aside the constitutional amendment. I am not debating that. I am debating this one section.

Mr. HATCH. All right.

Mr. DODD. Under this one section we are carving out a unique exception for

the first time in the history of this country. Section 5 says adopted by a majority of the whole House and its Members. We exclude the Vice President in a 50–50 tie.

Mr. HATCH. Right.

Mr. DODD. In casting a vote.

Mr. HATCH. That's right.

Mr. DODD. We do not do that under any other circumstance in the 208-year-old history of this Republic—

Mr. HATCH. Other than the ones I have listed.

Mr. DODD. I say to my colleague. It is not a supermajority here. It is a dangerous precedent in my view. So on a 50 to 50 vote on whether we met the other standards would fail and the President of the United States would not be able to act.

Let me ask my colleague from Utah just a couple quick questions. I cited examples earlier, putting aside whether you agreed or disagreed with the action taken. In August 1990, when President Bush sent 100,000 troops to the Middle East, were we in actual—to quote the language of this section 5, were we engaged, in the Senator's opinion, in military conflict at that point?

Mr. HATCH. Sure.

Mr. DODD. Were we engaged at that point in August 1990 for the United States—

Mr. HATCH. When we sent troops to Saudi Arabia?

Mr. DODD. Yes. By the way, the interpretation of engaged is actual use of military force.

Mr. HATCH. Well, we already had had attacks by the Iraqis and we were there to protect our people. I would say that.

Mr. DODD. How about lend-lease, under President Roosevelt?

Mr. HATCH. One thing about lend-lease that I felt was very important is that during that period of time if we had any deficits at all, they were very minor.

Mr. DODD. They were large. They were 36 percent of the overall budget, much larger than they are today.

Mr. HATCH. Before that they were minor in comparison to what we have today.

Mr. DODD. The point I am trying to get at here is the question of actual—the language here of section 5 is "is engaged in military conflict." I make a strong case to the Senator here that in those situations we were not engaged in military conflict.

Mr. HATCH. Sure, we were.

Mr. DODD. We ultimately became engaged.

Mr. HATCH. They were moving forces and materiel and—

Mr. DODD. That's not engagement.

Mr. HATCH. It may not be, until we shot the first shot, but the fact is that is what happened, and when it did happen, I cannot imagine either House of Congress not voting to provide a constitutional authority to provide whatever help the military needed.

Mr. DODD. Doesn't it make more sense to leave out your declaration of

war language here and then have the threshold as an imminent threat? We all have to vote here. It's not as if it happens by one person. But at least you could respond without a court. Because I could imagine you might take the position in the Persian Gulf that that could have been the outcome. Let us say I disagreed with you. I run to Federal court. I read the language there and I cite the report language and the report language says, under this section, "is engaged in military conflict involving the actual use of military force."

My point to the court would be that is not actual use of military force. Therefore you cannot waive this provision.

Mr. HATCH. You don't think moving billions of dollars worth of military force into the Persian Gulf—

Mr. DODD. I think actual use of military force is my interpretation. I don't understand—

Mr. HATCH. That might be an argument in this body. If it is, then those who want to increase military spending or waive this budget, all they have to do is get a constitutional majority to do so. We are just saying it should not be easy to waive the constitutional amendment.

Mr. DODD. I don't think this is easy, as you are suggesting it is. But you are putting a straitjacket, in my view—

Mr. HATCH. Hardly.

Mr. DODD. Putting a straitjacket on the ability of this country in future years to respond to a threat to national security by insisting on a declaration of war and actual conflict—actual conflict.

Mr. HATCH. Hardly. What we are saying is if it's an actual conflict and something that deserves the United States of America risking its soldiers and its young men and women, then the President ought to declare a war or come up here and say, "I want a constitutional vote to support me."

Mr. DODD. My colleague knows how mischievous people can be in utilizing things like this.

Mr. HATCH. Not when it comes to our young men and women. Give me a break.

Mr. DODD. If you are short of a conflict and try to get ready for it and try to get the votes to prepare for it, we have seen the debates that rage here.

Mr. HATCH. True, and those debates—

Mr. DODD. And you are offering, I suggest, to a potential enemy a wonderful arrow, an additional arrow in their quiver, where they can sit there and say, "They are at the end of the fiscal year. These people have difficulties. They'd have to rearrange their budget. It is going to require votes of the whole House. People could not show up." I see this as an advantage. You are subjugating, I say with all due respect to my wonderful friend, you are subjugating national security interests to the fiscal concerns you raise in this budget. Your priorities are switched.

As important as fiscal matters are, to place in jeopardy the ability of the United States to respond quickly and efficiently to an imminent threat to its national security, for the life of me, I don't understand why we would be risking that.

Mr. HATCH. If I could regain my control of the floor?

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. We are saying precisely the opposite. We are saying to keep this country secure, to have this country remain the greatest country in the world, quit spending it into bankruptcy and put some fiscal mechanism in the Constitution that requires us to quit spending it into bankruptcy. If we want to have a strong military, then, by gosh, let us be willing to stand up and vote for it.

I have to tell you, this Senator for 21 years has been a strong supporter of a strong national security. I voted for virtually everything that would help this country and protect our young men and women. I think, in a time of imminent threat to this country, I have never seen a case since I have been here where liberals, moderates and conservatives alike would reject protecting our young men and women. We are not going to see it in that case.

But I will tell you this, there is no justification whatsoever to put into this amendment the changes that the distinguished Senator from Connecticut wants, which would allow the amendment to be waived for almost any circumstances and, frankly, waived for what? Because they are going to spend more money on the military? Give me a break. It is going to be so they can continue spending the way they always have, so they can continue to build this mountain of paper, of national debt that we have had for 28 straight years, and out of the last 66 years, 58 years of debt.

That is what we are trying to stop. If we want a strong military, if we want strong national security, if we want to protect ourselves from imminent threats, if we want to protect ourselves from war, if we want to protect ourselves from being invaded, if we want to protect ourselves and our allies, then by gosh we better get spending under control. And this balanced budget amendment is about the only thing the vast majority of us in Congress right now can think of that will help us to do it.

Mr. DODD. If my colleague will yield?

Mr. HATCH. What the amendment of the distinguished Senator from Connecticut would do is it would just plain make it so anybody could waive the balanced budget amendment for any reason at any time. And I guarantee it will not be waived to increase military spending.

Mr. DODD. If my colleague will yield, my colleague had read this amendment. My colleague is getting a bit emotional. If he would read the amendment—

Mr. HATCH. I am not getting emotional.

Mr. DODD. "Faces an imminent and serious military threat to national security as declared by joint resolution."

Mr. HATCH. I read that.

Mr. DODD. Is my colleague suggesting, that the majority would go along willy-nilly with this resolution because they wanted to spend more on the program. Are we not faced with the perverse situation of having Presidents declare war in order to meet the standard of some imminent threat here?

Mr. HATCH. I don't think so.

Mr. DODD. This language is very clear. It is pointed at a very important situation that would be before us. And to suggest somehow this is a back-door attempt to fund spending programs on domestic issues, does my colleague really believe the majority in the Senate here today would vote for a back-door domestic spending increase—

Mr. HATCH. No, I don't think it would.

Mr. DODD. On the grounds there was imminent threat to our national security?

Mr. HATCH. I don't think a majority would vote to do that. But I am saying that is what this amendment would allow a majority to do, a simple majority. We are saying that is wrong. We have provided enough of a safety hatch to protect the country the way the amendment is written. If we adopt the amendment of the distinguished Senator from Connecticut, my goodness gracious, we could have the balanced budget amendment waived for a year any time we want to and it would just nullify the effectiveness of the balanced budget amendment.

I do not see anything wrong with the President either declaring war or coming up here to make a case he needs more money for the military, but he or she ought to come up here—

Mr. DODD. If my colleague will yield, that is what the amendment says.

Mr. HATCH. No, I am not yielding here. I want to finish my comments.

Mr. DODD. I thought the debate was kind of healthy.

Mr. HATCH. I will yield to my colleague, but I would like to be able to at least finish a sentence now and then, or at least once in a while.

I think it is very important that Presidents make their case, and I think Presidents can make their case, whoever the future Presidents would be. I think we would be very loathe to reject a President's case that the national security is being threatened. I cannot imagine the Congress doing that, to be honest with you, since the Second World War. Up to then we kind of blithely went along, acting like nothing is ever going to happen because we are way over here. This is now a very small world, and our country knows we have to back keeping ourselves strong because we are, frankly, the bulwark for freedom all over the world.

One thing I really don't think we should do, and I think a vast majority

in this body will also not think we should do, is to make it possible to waive this amendment at the mere majority vote of some future Congress, just because somebody alleges, through a resolution, that there is some imminent threats.

I yield to my colleague from Idaho.

Mr. CRAIG. I thank the chairman for yielding.

Mr. President, the Dodd amendment is more loophole than law.

Whatever the Senator's intentions, this amendment actually would put a two-step loophole in the balanced budget amendment and in the Constitution:

Step one: Declare a military threat with a simple majority;

Step two: Deficit spend as much as you want, on whatever you want.

That's it. The plain words of this amendment actually do nothing to help military preparedness.

The relevant wording of the amendment, as it would be amended by Senator DODD's words are as follows:

The provisions of this article may be waived for any year in which the United States faces an imminent and serious military threat to national security as declared by a joint resolution.

Nothing in the Dodd amendment requires its deficit spending to be dedicated to defense. Nothing in the Dodd amendment requires its deficit spending to be dedicated to meeting the "imminent and serious military threat." After declaring a military threat, Congress could then vote to cut defense spending—maybe with the argument that a gesture of peace and good will would defuse that imminent military threat. Then Congress could vote, by simple majority, for unlimited deficit spending for any and all non-military spending programs. Would Congress use this loophole cynically as an excuse to deficit spend? I'm reminded of the movie, "Field of Dreams," in which the lead character was told, "If you build the ball field, they (the players) will come." When it comes to the hard choices of balancing the budget, you could say, "If you build the loophole, they will borrow and spend."

The Dodd amendment still follows that old, status quo, borrow-and-spend mentality. There are those who really cannot conceive of a world without deficit spending.

They believe the American people want to have their cake, eat it too, and send a big credit card bill to the next generation. They believe you can have everything, if only you keep deficit spending. The trouble is, if we don't stop deficit spending, we will lose everything: our prosperity, millions of jobs, economic security for our senior citizens, and the American Dream of a better life for our children.

I suggest we really can have an adequately prepared defense and regularly balanced budgets, too.

In fact, the more we balance our budgets, the more we will have to spend on defense—and every other priority—because of a healthy, growing

economy, because we'll stop devoting about 15 percent of our annual budget just to net interest payments.

And, in fact, at the very height of the cold war, during the 15½ years of the Truman and Eisenhower administrations, we still managed to balance the budget 7 times before spending on domestic social programs really took off in the 1960's.

The debt is the threat to defense. Escalating interest payments crowd out all other priorities. In 1976, 7.2 percent of the Federal budget went to make interest payments on the Federal debt. In 1996, net interest consumed 15.5 percent of the budget. As a result, Defense and other programs have already felt the budget knife.

According to the report of the National Entitlement Commission chaired by our colleague Senator KERREY of Nebraska, and our former colleague Senator Danforth:

By 2012, unless appropriate policy changes are made in the interim, projected outlays for entitlements and interest on the national debt will consume all tax revenues collected by the federal government.

That means no money left for defense—or capital investment, education, the environment, national forests and parks, law enforcement, science, or other domestic discretionary programs.

The balanced budget amendment is the best friend our national defense could have. The Congressional Budget Office estimates that moving toward a balanced budget during fiscal year 1998-2002 will reduce Federal debt service costs over that period by \$36 billion and improve economic performance enough to produce a "fiscal dividend" of another \$77 billion in revenues and interest rate savings, making more money available over the long-term for priorities within a balanced budget.

Committing to a balanced budget—and it's not a convincing commitment without this constitutional amendment—actually helps pay for itself.

The balanced budget amendment places trust in the people—the Dodd amendment distrusts the people. I am willing to risk my priorities under a balanced budget. That's the whole point of balancing the budget—it requires us to set priorities.

When former Senator Simon used to join us on this floor in sponsoring the Balanced Budget Amendment, he was quite clear in his priorities under a balanced budget:

Raise taxes, cut defense, increase social programs. And I have been quite clear in my priorities under a balanced budget: Restrain the overall growth of spending; cut wasteful domestic social programs; safeguard our national defense; and cut taxes to be fairer to families and spur economic growth, if possible.

But Paul Simon and I both felt it was so imperative that we require balanced budgets, that we were both willing to risk our individual priorities for the greater good—the economic survival of

our Nation and the security of our children. If we balance budget, we take the risk that our individual priorities may or may not prosper. If we don't balance the budget—if we don't pass this amendment—we risk the future of our Nation and our children. I trust the American people to have the right priorities—and to elect Senators and Representatives who reflect those priorities, at last, in a series of balanced budgets.

The balanced budget amendment—Senate Joint Resolution 1 unamended—already takes national security into consideration. Look back at our history.

Traditionally, our Nation ran deficits during wars and paid back its debts during peacetime. Senate Joint Resolution 1 would restore exactly that norm of behavior. Only in the last few decades has the Government borrowed and spent in good times and bad, in war, peace, and cold wars.

Senate Joint Resolution 1 is careful and precise: A waiver may be had by a simple majority in the case of a declared war. There are serious consequences—both to the people here at home and in terms of international law—when you declare war. It is an act of survival, an act of the highest urgency.

Next, Senate Joint Resolution 1 requires a vote by a "majority of the whole number"—a constitutional majority—to deficit spend if we are actually in a military emergency and engage our armed forces. This is a slightly higher threshold—added by former Senator Heflin, who was both a deficit hawk and a defense hawk—and it is appropriate, since we are talking about a conflict here that is still legally not a declared war.

Finally, in all other cases, we require a three-fifths vote to deficit spend because deficit spending has become a cancer on our economy and it should be hard to run up ever-higher debt.

Mr. President, what the amendment does, and I think the Senator from Connecticut is well aware, is it returns us to the traditional pattern of defense spending. We used to, in times of war and national emergency, deficit spend only to pay it off afterward because we believed in the fiscal solvency and the fiscal importance of a balanced budget. Somehow, about three decades ago, we went screaming away from that idea. We borrowed through World War I and then we paid it back. We borrowed through World War II, and we worked every effort to pay it back. That is exactly what the constitutional amendment does. In neither of those cases did we find ourself in imminent danger, other than our own philosophy as a nation.

But, when it came to rally to the cause of human freedom for this country, we deficit spent. But we paid it back afterward. The tragedy of today is that we fail to recognize that form of fiscal responsibility.

Mr. DODD. Will my colleague yield?

Mr. HATCH. I will be happy to yield for a question, but could I yield on your time?

Mr. DODD. Please. I am not suggesting here—let us put aside the underlying debate on the constitutional amendment to balance the budget. Even if my amendment were to be adopted, I say to my colleague from Utah, he knows I have serious reservations with the underlying amendment. I merely wanted to address this one section here.

Mr. HATCH. I understand.

Mr. DODD. The language—I urge again my colleague to read it—I am not making the language up and writing the report language—says, “in which a declaration of war is in effect,” and, also, “The provisions of this article may be waived for any fiscal year in which the United States is engaged in a military conflict.”

Put aside the issue of how we vote here. The language says “is engaged in a military conflict.” I turn to the report language that defines those words. On page 22, it says it must involve the actual use of military force.

I just know my colleagues can think of numerous examples—not phony ones, not insignificant ones—where there was imminent threat, the national security of this country was in jeopardy, we were not engaged, we were not actually using military force, but we would have wanted to waive the provisions of this particular section in order to respond to it.

Whether you are for or against the constitutional amendment, it seems to me is a collateral issue at this point. The question I raise is: This language is so restrictive, it requires a declaration of war or actual engagement. Courts will interpret every word of this language in the constitutional amendment.

My suggestion is not to get rid of this altogether. Keep in the declaration of war, but add or replace the language “engaged” and talk about the imminent threat to the national security and require a resolution to be adopted by both Houses so that it isn’t just one person’s interpretation, but that a majority of those present and voting in both Houses.

That is not a slight hurdle to overcome, particularly when it amounts to waiving the provisions of a balanced budget amendment. I presume my colleagues will take that seriously. But we ought to be able to do it short of actual engagement in a conflict, and if we don’t, I think we restrict this Nation’s ability to respond to future conflicts that could jeopardize our national security and the people of this country.

We do not take our jobs lightly. We would have to meet that threshold. We would understand by doing so, we would waive the provisions of the Constitution. That is a very serious matter to undertake. It is not just a casual resolution. But it seems to me we ought to be able to do so in preparation

for something that may involve the engagement of our men and women, our forces, and prepare them for it and prepare the Nation for it. We cannot do that under section five as presently written.

The PRESIDING OFFICER [Mr. FAIRCLOTH]. The Senator from Utah.

Mr. HATCH. Mr. President, my colleague, as I can see, feels very deeply about his position. I am not casting aspersions on him. I know he is very sincere in what he is doing here today, but all we are saying is unless the President declares a war, which he has in his amendment, that this article can’t be waived for a fiscal year, for any fiscal year unless the United States is “engaged in military conflict which causes an imminent and serious military threat to national security and is so declared by a joint resolution adopted by a majority of the whole number of each House, which becomes law.”

If we take what the distinguished Senator from Connecticut wants, then it would be a tremendous loophole. It would allow people who are not as sincere as he is to come in here and waive, on simple majority vote, the whole balanced budget amendment for almost any reason at all it will ruin our chance for fiscal responsibility.

The Senator from Connecticut is confusing the question of congressional authorization of military action with spending measures. The balanced budget amendment has no effect on the ability of Congress to approve actions like Panama. It has no effect at all. What the balanced budget amendment does require is that when it comes to paying for those actions, that we act responsibly and only waive the amendment in the case of a declaration of war or if we have a three-fifths vote of both bodies to do so. It is just that simple.

Or, if we actually are “engaged in a military conflict which causes an imminent and serious military threat to national security and is so declared by a joint resolution adopted by a majority of the whole number of each House,” in other words, by a constitutional majority, that is all this amendment does.

I think to a degree, the distinguished Senator from Connecticut is mixing the President’s Commander in Chief authority to act with congressional authority to provide resources. The Commander in Chief can act. There is nothing that stops the Commander in Chief from acting, and if the moneys are there, he can act in ways that utilize more money. But the fact of the matter is, if the moneys are not there, he or she is going to have to come up here and make a case, and I can’t imagine where there is an imminent and serious military threat to national security that the Congress will not provide the necessary votes. We do not challenge the President’s authority. Rather, the balanced budget amendment opponents resist congressional control over all spending, including defense, and that is

really what is the thrust of this amendment, in the eyes of many.

I respect my colleague from Connecticut. Yes, I get a little excited about these kind of amendments, too. The whole purpose of a balanced budget amendment is to give us some mechanism to try and stop this charade, and, frankly, I think most people in America, if they really look at it, become very cynical about Congress, because they see this charade that’s been caused over 28 straight years now. They see us trying to find every way we can to spend more and more. Some are so cynical that they believe people around here spend so they can keep themselves in office and go home, beat their breasts, and say, “Look what I have done for you.” They never say “with your own money, your own borrowed money.”

We are trying to stop this charade. We are trying to at least put some dents in it, and the balanced budget amendment might do that.

Mr. LEAHY. Mr. President, I think that Senator DODD has put his finger on a very serious flaw in the language of the proposed constitutional amendment.

Section 5 of the proposed amendment requires the United States to be engaged in military conflict before a waiver may be obtained. The military conflict must be one that causes an imminent and serious military threat to national security. Moreover, the Senate report’s section-by-section on this language compounds the problem by indicating that only certain kinds of military conflict may qualify. Only military conflict that involve the actual use of military force may serve as a basis for this waiver.

I hope that this is not what the authors, sponsors and proponents of this constitutional amendment truly intend. If it is, they are creating constitutional circumstances that make military spending and preparations easier only when military force is actually used and military conflict ensues. Arming to deter aggression would no longer be the preferred course, aiding allies in a conflict rather than dispatching U.S. military forces would no longer be as viable and alternative and rebuilding our military capabilities after a conflict would no longer be possible without a supermajority vote of three-fifths of the Congress. I cannot believe that anyone in the Congress would propose such restrictive measures.

I have spent much of my time in the Senate working with Republican and Democratic administrations to avoid the actual use of military force. This amendment is written in such a way that it serves to encourage such use. Nothing that would serve to place our men and women in harm’s way more quickly or leaves them less well equipped or prepared should garner the support of this Senate. I hope that all Senators will consider favorably Senator DODD’s important amendment. I

urge the manager and the sponsors of the resolution to abandon their no-amendments strategy and consider the merits of the Dodd amendment.

Mr. HATCH. Mr. President, I think maybe we spent enough time on this. I would like to spend a few minutes replying to Senator BYRD, who I respect deeply and who is one of the people I most admire in this body. He spoke for about an hour and a half, an hour and 40 minutes this morning in a very intelligent and eloquent way, but I think there are a number of things about his remarks that do need to be clarified.

Like I say, the text of section 1 of this amendment before the body is modest in length. It is very significant. It is language that has been worked out over many years in a bipartisan, bicameral way. Constitutional amendments are of great importance, and I would like to just take a few minutes to walk through the provisions of the balanced budget amendment and discuss how they would cure our so-called addiction to debt.

The core provision of Senate Joint Resolution 1 is contained in section 1, which establishes, as a fiscal norm, the concept of a balanced budget amendment. That section mandates that:

Total outlays for any fiscal year shall not exceed total receipts for that year, unless three-fifths of the whole number of each House of Congress shall provide by law for a specific excess of outlays over receipts by a rollcall vote.

This section does not require a particular process the Congress must follow in order to achieve a balanced budget. There are many equitable means of reaching that goal. Each program will have to compete on its own for the resources available. Thus, the balanced budget amendment, Senate Joint Resolution 1, does not dictate any particular fiscal strategy upon Congress.

Section 1 also provides reasonable flexibility by providing for a waiver of the balanced budget amendment. In order to invoke this waiver, both Houses of Congress must provide by law for a specific default which must pass by a three-fifths rollcall vote. This careful balancing of incentives creates enough flexibility for Congress to deal with economic or other emergencies. However, the waiver will not be easy when a future Congress is simply trying to avoid the tough choices necessary to balance the budget. Many supporters of the balanced budget amendment have suggested that in the future it might be in the Nation's interest to plan to run a reasonable surplus to ensure easier compliance with its terms and to be able to begin to pay down the debt with any surplus funds.

Another important aspect of this section is that in a year that the Congress chooses to waive the balanced budget rule, it must do so "for a specific excess of outlays over receipts . . ." That means that the maximum amount of deficit spending to be allowed must be clearly identified. By forcing Congress to identify and confront a particular

deficit, this clause will prevent a waiver for a specific purpose, such as an economic downturn, from opening the door to a whole range of deficit-funded spending.

Another key feature of section 1 is that it requires any waiver to be by rollcall vote. A rollcall vote will be required to ensure the required three-fifths vote has been recorded so that the American people will be able to see who stood for fiscal responsibility and who for adding more debt on our children's and grandchildren's heads. The balanced budget amendment will increase accountability in Government. Gone will be the days of late-night unrecorded voice votes to spend away America's future. If there is to be a deficit, the American people will know who wanted it and why they wanted it. They can make their own judgment as to who has the right priorities.

Section 2 provides that:

The limit on the debt of the United States held by the public shall not be increased, unless three-fifths of the whole number of each House shall provide by law for such an increase by a rollcall vote.

So that is pretty clear. Section 2 works in tandem with section 1 to enforce the balanced budget amendment. Section 2 focuses public attention on the magnitude of Government indebtedness.

To run a deficit, the Federal Government must borrow funds to cover its obligations. If borrowing will go beyond a previously enacted statutory limit, the balanced budget amendment will require a three-fifths vote in order to raise that limit.

This section acts as an incentive to not only balance the budget in good times, but to start paying down the existing debt that is so high now that it is mind-boggling. By doing so, Congress will provide more flexibility for itself by opening more breathing room between the actual debt and the debt limit. This is, in truth, what we should have been doing for years.

We hear so much about the recent and temporary decline in the annual deficit. It is amazing to me that some people consider a smaller increase in the debt a reason to celebrate. I do not think it is. The debt is still increasing. We must balance the budget. It is over \$100 billion this year, that deficit.

We must balance the budget and stop increasing the debt at all. Indeed, our goal should be to run a surplus during prosperous times so that we can start paying down the debt and meet threats to our national security.

I wonder how a credit card company would respond if I told them that although my debt was more than three times my annual income, I overspent by less this year than I did last year. They would sure as heck cut me off, as they would any of us.

Section 3 provides:

Prior to each fiscal year, the President shall transmit to the Congress a proposed budget for the United States Government for that fiscal year, in which total outlays do not exceed total receipts.

That is important. While this may not seem important to some people, consider how long it has been since we had a balanced budget—28 solid years now. These are all unbalanced budgets for 28 years. That is why this stack of books next to me is so high.

The President's budget does not balance this year either. He claims it will get us to balance by 2002. I hope we can work with him to do that. But without a balanced budget amendment, I fear it is not going to happen. If you look at his budget, 75 percent of the cuts are in the last 2 years, when he is out of office. So it is pretty clear to me that it is not as sincere an attempt as I would like to see it. The President understands this game. His budget, like I say, saved 75 percent of the cuts for only after he leaves office—another plan to leave it to the future and let the next guy pay the bill.

It is time for us to break our habit of deficit by default. People propose deficit spending in Washington without a second thought. I believe that by the simple action of having the President propose a budget that balances in that fiscal year, we will go a long way towards changing the debt-happy attitudes in this town and that, in turn, will help us stay in balance after we reach it.

Section 4 requires approval by a majority of the whole number of each House by a rollcall vote for any bill to increase revenue. This will provide a responsible and balanced amount of tax limitation and improve congressional accountability for revenue measures. It is important to stop borrowing, but to unduly borrow burdens hard-working Americans and would also be deleterious to the Nation and to its citizens.

Section 4 will help us to curb spending and taxing by requiring a majority of the whole Congress, not just those voting at a given time, and by forcing Members of Congress to go on record with a rollcall vote. These reforms are a crucial part of putting our fiscal house in order.

Section 5 guarantees—and I will not read it; we have been reading that—but it guarantees that Congress will retain maximum flexibility in responding to clear national security crises such as a declared war or imminent military threat to national security.

This section provides a balance between the need for flexibility to react to a military threat to the Nation and the need to keep the balanced budget amendment strong. Clearly, if the United States is involved in a declared war, the situation is serious and the waiver of the balanced budget rule should not be overly difficult. Unless clear situations, but still in instances of military conflict, the threshold is slightly higher.

In order to waive the balanced budget rule Congress must pass the waiver by a majority of the whole number of both Houses and it must become law, must

be signed by the President. This prevents the balanced budget amendment from being too easily waived.

Thus, taken together, section 5 allows the country to defend itself but also protects against a waiver that is borne more of a desire to avoid the tough choices needed to balance the budget than of military need.

Section 6 states:

The Congress shall enforce and implement this article by appropriate legislation, which may rely on estimates of outlays and receipts.

This section makes explicit what is implicit. The Congress has a positive obligation to fashion legislation to enforce this article. Section 6 underscores Congress' continuing role in implementing the balanced budget requirement. This provision precludes any interpretation of the amendment that would result in a shift in the balance of powers among branches of Government.

We have heard from time to time claims by opponents of the balanced budget constitutional amendment that the President or the courts will become unduly involved in enforcing the amendment. This section, together with the plethora of legal precedent and documents, shows that such claims are misplaced.

This provision also gives Congress appropriate flexibility with which to fashion the implementing legislation by permitting reliance on estimates. Since obviously no one can predict the future with absolute certainty, we must rely on estimates when we plan budgets. This provision recognizes that we must rely on estimates to make the constitutional amendment workable.

Section 7 defines "receipts," "outlays."

Section 7 defines receipts and outlays. Receipts do not include money from borrowing—it is high time we stopped thinking of borrowing as a normal source of income. Outlays do not include money used to repay debt principle. This will further encourage future Congresses to start to pay down our mammoth debt.

Perhaps more than any other section, opponents try to change this one most often. By altering the definitions of receipts and outlays they know they could tear a giant loophole in the balanced budget amendment. So they come forth with a parade of exemptions, for every interest under the sun, and each would provide those who are addicted to debt a way to get their fiscal fix. We must not allow it. The supporters of honest, fiscal responsibility should not be distracted from their goal of balancing the budget in spite of the desires to respond to all manner of sympathetic political causes.

Finally, section 8 states that the amendment will take effect in 2002 or 2 years after it is adopted, whichever is later. This will allow Congress a period to consider and adopt the necessary procedures to implement the amendment, and to begin the process of balancing the budget.

In conclusion, Mr. President, let me reiterate that the balanced budget amendment is the only way we are going to be able to balance the budget. We have tried statutes, they don't work. We have tried mustering the political will, it hasn't worked. And we have tried just letting the debt grow, that can't work. We need to end our cycle of debt with a hard and fast rule, that cannot be easily discarded when it becomes inconvenient. We need the balanced budget amendment.

Mr. President, let me respond to a few charges which have been leveled against the amendment.

Some suggest a conflict between the general requirement of balance and the allowance for a waiver.

Allowing for a waiver by vote is not inconsistent with the purpose of Senate Joint Resolution 1, which is to make it harder to borrow as a general matter, yet provide flexibility to borrow in case of need demonstrated by the appropriate consensus.

Section 6 of Senate Joint Resolution 1 provides that "Congress shall enforce and implement this article by appropriate legislation, which may rely on estimates of outlays and receipts." To be sure, reliance on good faith estimates is necessary to make the balanced budget amendment workable. No budget cannot be balanced to the penny; particularly the \$1.6 trillion Federal budget.

Opponents of the balanced budget amendment contend that this reliance on estimates is improper because CBO budgetary estimates are not always precisely accurate, specifically if you compare the estimates for the beginning of the fiscal year with what the actual numbers are at the end of the fiscal year. It seems to me that by definition an estimate is not necessarily going to match up to the exact figures at the end of the year. But that is no reason to stop using estimates. They are a reasonable and logical way to approach the uncertainty inherent in trying to predict the future.

The balanced budget amendment will still function smoothly even given this lack of absolute certainty at the beginning of the year. If, over the course of the fiscal year outlays exceed receipts in a way not previously anticipated, we have two choices. We can either pass a reconciliation bill to bring the budget back into balance, or, if necessary, we can waive the balanced budget rule for that year as provided for in the text of the amendment.

Further, under the Budget Act, both OMB—for the President's budget estimate—and CBO by law must provide for three budgetary estimates: one at the beginning of the fiscal year, the second as a mid-course correction, and the last before the end of the fiscal year. Thus, there exists a statutory fine-tuning process that assures a degree of accuracy—not perfect accuracy—but one that provides for workable budgetary estimates. If we see during the course of the year that our

estimates are going to be off, we have time to make the necessary corrections.

I believe that reliance on estimates is both reasonable and sound. If we did not permit a reliance on estimates, I have little doubt that someone on the other side would be on the Senate floor arguing that the balanced budget amendment would be unworkable because it does not let us rely on estimates.

The bottom line is that at the beginning of the year, we have no crystal ball, only reasonable estimates to work from. The balanced budget amendment accepts that plain truth and accordingly provides for the use of estimates. We use budget estimates in Congress every day. The President just sent a budget that he claims will balance by 2002. That is an estimate. We will pass a budget resolution here in the Senate, and that will rely on estimates. The balanced budget amendment merely continues this time-honored, logical, and reasonable practice.

If the opponents of the balanced budget amendment succeed, we will be condemning our children to even higher debt, even higher taxes, and even lower wages, by any estimate. I hope that everyone in the Senate will keep that in mind as this debate continues.

The Senator raises two points that were discussed in the committee report that accompanied Senate Joint Resolution 1. While I understand the concerns, I believe that they are based on a misreading of the report.

The report allows that, "Congress could decide that a deficit caused by a temporary, self-correcting drop in receipts or increase in outlays during the fiscal year would not violate the article." This does not mean that the budget will be out of balance at the end of the year. It simply states that the budget need not be in perfect balance every second of the year. And there is nothing in the text of the balanced budget amendment to indicate that it should. However, the temporary condition described in the committee report must be self-correcting by the conclusion of the fiscal year, in order to avoid a three-fifths vote. I see no harm in allowing this flexibility during the course of the year.

Additionally, the report states that Congress could permit negligible deviations be made up in the next year. Again, this is not nearly as remarkable as some have made it out to be. We all know that sometimes the very last few outlays and receipts of the year are not known until after the fiscal year is over. The balanced budget amendment neither requires nor envisions that this logistical truth become a problem. In such an event, the Congress could provide itself with the flexibility to make up any negligible deficits to be made up the next year. What is crucial is that the funds must be made up, thus keeping us in balance. It simply would not make any sense to bring the Government to a halt over a 4-cent deficit.

And the balanced budget amendment does not require that we do. That is all that this statement in the committee report is saying.

Some opponents claim that the BBA is too inflexible. It has been repeatedly referred to as a "straightjacket." On the other hand, we also hear that the BBA is not stringent enough. In fact, the balanced budget amendment strikes just the right balance between strict provisions to counter the strong incentives in Congress to deficit spend and the reasonable flexibility necessary for the amendment to function in the real world.

What we need to do is focus on the problem—our national debt is over \$5.3 trillion and climbing. Only the balanced budget amendment will put us in a position to end that climb.

Meeting the requirements of the balanced budget will require a heightened vigilance of Congress; it will require that the Federal Government be more aware of and concerned about our borrowing and spending habits. No, it will not be as easy as simply spending and then borrowing if we did not plan well. It will require that we plan better and be better stewards over that plan. I think that is appropriate, given the importance of the problem, and of our duty.

The point has also been raised that Congress will not know precisely if we are in balance of the size of the deficit to the dollar before the end of the year. That is why we have the workable flexibility of relying on estimates, yet we will need to plan and administer the process with care.

Congress may and should shoot for a small surplus to avoid a last minute unforeseen deficit, and if the estimates near the end of the year suggest we will run a deficit, we can approve a deficit at the high end of the estimates. If we approve an estimate that is slightly larger than we needed, it is not like we actually spent the money.

While some may say that relying on estimates creates a loophole, I submit that the risks of this provision are substantially less than our current process of simply spending and borrowing as a matter of course.

#### DEBT CEILING SUPER MAJORITY

Concerns have also been raised that under section 2 it will be too hard to get the three-fifths currently required and that a minority in Congress will be able to hold us hostage with the threat of forcing a default. For one thing, threatening default is not likely.

This Nation has never defaulted on its debt. And let me tell you, if this country ever reached a point where there were 41 Senators, nearly the entire current Democratic membership of the Senate, who were so militantly disillusioned with this Nation that they were truly willing to let us default on our debt, the 60-vote requirement to raise the debt ceiling would be the least of our problems.

Now, the opponents of the three-fifths requirement cite the budget bat-

ties of last Congress as evidence that it is sometimes difficult to raise the debt limit. But Mr. David Malpass, an expert on financial markets who testified at the Judiciary Committee's hearings, showed that those very budget battles—where the word "default" was being bandied about with regularity—were seen by the markets as a very positive step. Indeed, he noted that "The U.S. bond market had a very strong rally from August 1995 through January 1996, with yields falling from 6.9 percent to 6.0 percent." He termed this as a very significant positive development for the economy.

Through all the tumult and uncertainty of those budget battles, American investors were excited and encouraged that Congress was finally moving towards a balanced budget. That encouragement manifested itself in lower interest rates, which in turn is the kind of market conditions that can help us balance the budget and strengthen the economy.

Mr. Malpass was prescient enough to foresee this very objection to the balanced budget amendment when he wrote:

Financial markets are practical. [T]he threat of a default would not be taken seriously as long as both the Administration and Congress expressed the intention not to default. The requirement of a super-majority would not affect this calculation.

A step toward fiscal discipline like passing a solid balanced budget amendment would similarly be viewed positively by the markets. Enacting a weakened one, one like the proposal before us contemplates, with no real debt limit restraint, would undermine the amendment's credibility and its effectiveness.

We have a choice—we can either continue on the downward spiral of more debt, higher interest rates, higher taxes, and lower incomes, or we can move ahead with the balanced budget amendment and lower interest rates, lower taxes, with greater job growth and a stronger overall economy.

Mr. President, we already have several supermajority requirements in the Constitution. Some were in the original text, some have been added by amendment. The one thing they have in common is that they were all meant to come into play in unusual circumstances. That is what we expect of the balanced budget amendment, that the vote to raise the debt of this Nation be an unusual circumstance.

Those who believe the supermajority vote will be the rule rather than the exception betray their mental habit of thinking in terms of deficit spending. We must break this habit and make deficit spending the exception instead of the rule. The balanced budget amendment does not require a supermajority to pass a budget—only a budget that is out of balance. The balanced budget amendment creates a positive incentive for current majorities to avoid borrowing to avoid supermajority votes and risking the kind of

intrigue opponents say could happen when supermajorities are required. This is wholly appropriate and reasonable to break Congress of its borrowing habit.

The debt ceiling has sometimes been raised by supermajorities and often it has been raised by simple majorities. What is important is that we have never defaulted. When we have had to have the votes, the necessary votes have always been there. When votes are tallied, it is easy for Members to vote against raising the debt ceiling, knowing that the ceiling will be raised. I expect when we are living under the balanced budget amendment, once again, the necessary votes will be there, but not many more than necessary, because Members may wish to vote against it knowing the necessary votes are there.

Let me conclude with some comments on the objections to supermajorities in Senate Joint Resolution 1.

According to Prof. Harvey Mansfield, Jr. of Harvard, in his scholarly book "The Taming of the Prince," the real genius of our Constitution is that having placed all power in the hands of its citizenry, the American people consented to restraints on that power. Understanding that direct or pure democracies in history were inherently unstable and fickle, the Framers placed restraints on popular rule and congressional power—what we now call supermajority requirements.

Let me mention some of them: Article I, section 3, the Senate may convict on an impeachment with a two-thirds vote; article I, section 5, each House may expel a Member with a two-thirds vote; article I, section 7, a Presidential veto is overridden by a two-thirds vote of each House; article II, section 2, the Senate advises and consents to treaties with a two-thirds vote; article V, a constitutional amendment requires two-thirds of each House or a constitutional convention can be called by two-thirds of the State legislatures, and three-quarters of the State legislatures must ratify; article VII, the Constitution itself required ratification of 9 of the 13 States; the 12th amendment requires a quorum of two-thirds of the States in the House to choose a President and a majority of States is required to elect the President, the same requirements exist for the Senate choosing the Vice-President; the 25th amendment, dealing with the President's competency and removal, requires that if Congress is not in session within 21 days after Congress is required to assemble, it must determine by two-thirds vote of both Houses that the President is unable to discharge the duties of his office.

The Constitution requires that a supermajority approve a constitutional amendment. To pass the balanced budget amendment, we must have 67 Senators vote for it. Is this inappropriate? Or should we allow some number between 26 and 51, or 50 with the Vice-

President casting the tie-breaking vote to approve the balanced budget amendment? The Constitution requires that three fourths of the States ratify the balanced budget amendment. Perhaps our majoritarian friends would prefer that some number of States between 26 and 51 ratify the amendment, with the District of Columbia, Puerto Rico, or Guam casting a tie-breaking vote if the States are evenly divided.

Mr. President, if majority rule were the fundamental principle of our Government, as I have heard some in this debate say, we would not have the Government we do. We would have a unicameral parliamentary system without judicial review, and indeed without the Bill of Rights or a written Constitution, because each of those features of our Government is an intrusion into the principle of majority rule. And they are certainly not the only examples.

The first amendment does not say Congress shall not abridge free speech unless a flitting majority wants to. It does not say that Congress shall not interfere with the free exercise of religion or establish a religion, unless a majority of those present and voting want to. The first amendment takes those options away from even supermajorities of Congress, except through constitutional amendment. Shall we tear up the Bill of Rights and the Constitution because they contain checks on the power of transient majorities? I do not think so.

As I have said, as Thomas Jefferson said, as even Professor Tribe has said, the power of transient majorities to saddle minorities or future majorities with debt is the kind of infringement on fundamental rights that deserves constitutional protection. The Framers wished to protect life, liberty, and property; they reacted harshly against taxation without representation. As I have pointed out throughout this debate, our deficit spending taxes generations which are not now represented; it takes their property and their economic liberty. It is wholly appropriate that we at least increase the consensus of those currently represented to allow them to shackle those who are not—future generations—with the debt, the taxes, and the economic servitude that go with citizenship in a country with high national debt.

Mr. President, opponents of the balanced budget amendment charge that supermajority requirements will create some new kind of sinister bargaining among factions to gain advantage in return for supporting the necessary consensus. This objection strikes me as strange because that kind of negotiation is as old as the legislative process. It happens now in the search for a majority.

Mr. President, under the balanced budget amendment, majorities will continue to set budget priorities from year to year. Only if the majority attempts to borrow money from future generations to pay for its priorities

would there have to be a supermajority vote. This allows a minority to play the conscience of the Nation and protect future generations from the type of borrowing sprees we have seen in recent decades.

I would note, Mr. President, that those who believe the supermajority vote will be the rule rather than the exception betray their mental habit of thinking in terms of deficit spending. We must break this habit and make deficit spending the exception instead of the rule. The balanced budget amendment does not require a supermajority to pass a budget—only a budget that is out of balance. The balanced budget amendment creates a positive incentive for current majorities to avoid borrowing to avoid supermajority votes and risking the kind of intrigue opponents say could happen when supermajorities are required. This is wholly appropriate and reasonable to break Congress of its borrowing habit.

Mr. President, it is absolutely clear that to restore the constitutional concept of limited government and its protection of liberty—as well as to restore fiscal and economic sanity—we must pass this balanced budget amendment. We need the supermajority provisions of Senate Joint Resolution 1—a modern day “auxiliary precaution” in Madison’s words—to put teeth into the balanced budget amendment—to be a force to end business as usual here in Congress—and most important, to foster the liberty of limited government that the Framers believed to be essential.

Mr. BYRD. Mr. President, would the Senator yield for a question?

Mr. HATCH. I would on the Senator’s time. I think our time is running down. I know some others want to speak. I would be happy to yield.

Mr. BYRD. How much time do I have?

Mr. HATCH. Mr. President, how much time is remaining for both sides?

The PRESIDING OFFICER. Forty-three minutes for Senator HATCH and 40 minutes for Senator DODD.

Mr. HATCH. I will yield on that basis, that this—

Mr. BYRD. Be attributed to the Democratic side.

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

Mr. BYRD. He might prefer to finish before entertaining questions—

Mr. HATCH. I would like to. Listen, my friend from West Virginia, I am happy to accommodate him any time I can. I know how sincere he is. I know the efforts that he put forth this morning in making his eloquent statement. I am happy to yield, if he desires me to, at this time.

Mr. BYRD. Is the Senator undertaking to—

Mr. HATCH. Under those circumstances.

Mr. BYRD. Is the Senator addressing the concerns I expressed this morning, as I went down the amendment section by section, or is he merely reading the various sections?

Mr. HATCH. I am undertaking to explain some of them. I believe that I will do so some more tomorrow or when we get back from recess. But I am making an effort to do some explanation here today. And, hopefully, I am explaining away some of the difficulties that the distinguished Senator has raised.

Mr. BYRD. Mr. President, will the Senator yield?

Mr. HATCH. I will say that I will make more specific responses later.

Mr. BYRD. Would the Senator explain to me why the Judiciary Committee, in its analysis of section 6, took the pains to explain that “estimates,” for example, “means good faith, responsible, and reasonable estimates made with honest intent to implement section 1,” without also indicating in the committee report the definition of what is meant by “good faith,” what is meant by the word “responsible,” what is meant by the word “reasonable” in connection with the word “estimates”?

Mr. HATCH. I believe any reasonable interpretation of section 6 knows that there is no way—and the distinguished Senator was right when he made the comment earlier in the day—that there is no way of absolutely being accurate on estimates. We have to do the best we can to estimate the outlays and receipts at the beginning or at some time during each year for the next succeeding year. There is just no question about it, because there is no way we can absolutely predict what will happen in the future. But I think through implementing legislation we can resolve the budgetary problems with regard to estimating outlays and receipts in a way that would be workable. And we would have to do so under this amendment.

Mr. BYRD. Mr. President, will the Senator yield?

Mr. HATCH. Under the same terms I would, on the Senator’s time.

Mr. BYRD. May I ask the distinguished Senator, who is going to be the judge of whether an estimate has been rendered in good faith, whether it is a responsible estimate, or whether there is a reasonable estimate?

Mr. HATCH. I think the terms of the committee report should be given the ordinary dictionary meaning. I think that is the way we would have to do it. But Members of Congress would be responsible. Members would define them.

Mr. BYRD. Members of the Congress will be the judge as to whether an estimate is responsible?

Mr. HATCH. We are today, of all of the estimates. We will have to be.

Mr. BYRD. If the Senator will allow me to use a chart, this chart shows the estimated revenues annually from 1980 to 1996. If the Senator will notice, in each of these years, keeping in mind that the green line means that the estimate was right on target—

Mr. HATCH. Or above target?

Mr. BYRD. No. The green line means the estimate was, indeed, right on target. It was not above or below the line. It was not too high. It was not too low.

Would the Senator agree with me that based on this chart, in every year from 1980 to 1996, the estimate was wrong? It was off. It was not correct. In some years the revenues were more than estimated and in some years they were less than estimated. The point of the chart being to show that the estimates have never been absolutely correct. In many instances they have varied; in one instance here, \$78 billion. The estimate was off \$78 billion. In another instance, the estimate was off \$65 billion.

This is the record. This is not a Member's estimate here of what should have been in each of those particular years. This is the record. These bars indicate what went wrong, by how much the estimate was off for each year. Would the Senator tend to believe that in the future the estimates are going to be better than they have been on this chart, which represents 17 years of experience?

Mr. HATCH. Let me answer the first question. Here are 28 years of similar inaccurate estimates. Wait, wait, let me make my point. Here are 28 years of missed estimates. We have been wrong every time in 28 years and we have been wrong because these are all unbalanced budgets.

I agree with the Senator on the second question. Yes, from 1980 to 1996 we have been wrong every time on estimates. On a couple of occasions not very wrong, but during all of that period, the whole 28 years since 1968 and during all of the period between 1980 and 1996 we did not function pursuant to a balanced budget amendment.

Mr. BYRD. What makes the Senator believe—

Mr. HATCH. If I could finish my remarks.

Under the Budget Act, CBO and OMB give estimates each year. CBO is the Congressional Budget Office; OMB is the Office of Management and Budget. They correct the estimates twice during the year as they acquire new data. Congress ultimately has to decide how you balance the differences.

Now, we should plan to get above balance, as the usual course. Most years we should try to stay above balance with regard to estimates and try to stay on the course by amended estimates through the year. That is what we will have to do. I think the implementing legislation will do that.

Let me make another comment, and I will turn back to my dear colleague. Meeting the requirements of the balanced budget amendment will require a heightened vigilance of Congress. It is apparent it will make us get tough on budgets. During those years we had five different statutory balanced budget approaches that led us to that morass and this morass. What we are saying is that the balanced budget amendment will require us to have a heightened vigilance in the Congress. It will require that the Federal Government be more aware of and concerned about borrowing and spending habits. No, it

will not be as easy as simply spending and then borrowing if we do not plan. It will require that we plan better and that we use better standards in that planning. I think it is appropriate, given the importance of this problem and the duty we owe to our country.

Now, I think what I am saying is, I agree with my colleague. He makes a very compelling point here that we have not been very accurate in estimating receipts, in estimating outlays and receipts through the 16 years, although I say through 28 years, or 58 of the last 66 years, we have run unbalanced budgets. One reason is we have relied on statutory schemes that have been circumvented in every one of those years, none of which have really worked. The distinguished Senator, by the way, to his credit, pointed out that some of those statutory schemes at the time would not work. I believe some of the rest of us felt that way as well.

What we are saying is from 1997 on, or whenever this amendment is ratified and becomes law and part of the Constitution, by the year 2002 on, and really before that if we can get it ratified before then, we are going to no longer have the luxury of these inaccurate estimates. We will have to do a better job. We will have to be more vigilant. We are going to have to heighten that vigilance, and we will have to meet the requirement of a balanced budget or face the music of having to stand up and vote for higher deficits or more spending by supermajority votes.

I think comparing this time and saying, because we have been inaccurate during times when statutory methods have not worked, with post-balanced-budget-amendment-enactment times where we will have to be more vigilant and we will have to come up with a way of being accurate during the year—right, OMB and CBO now only check that twice. We are going to have to do a much better job.

Now, can we be absolutely accurate? Everybody knows we cannot.

Mr. BYRD. That is the point.

Mr. HATCH. There is no way you can. I do not want to keep going with this system and then this system when we have an alternative that really would put some fiscal discipline in the Constitution that makes us get serious.

Mr. BYRD. Will the Senator yield?

Mr. HATCH. I yield under the same set of circumstances.

Mr. BYRD. The Senator does not want to continue with this system. He refers to this system as a statutory system. And yet—and yet—the amendment itself tells us who will enforce this amendment once it is in the Constitution.

I will read it from section 6:

The Congress shall enforce and implement this article by appropriate legislation.

So we are going to continue to enforce it. We are going to continue to operate under a statutory system. That is what I am saying. We have been operating under a statutory system. This amendment says we will continue to

operate under a statutory system because it says that the Congress will enforce this amendment by appropriate legislation.

What makes the Senator feel that under the new statutory system, that the estimates will be any better than they have been under the old statutory system when both systems are going to be the work of the Congress?

Mr. HATCH. You mean under the new constitutional system if this becomes—

Mr. BYRD. There will not be any different system because the Congress itself will enforce that amendment by appropriate legislation.

Mr. HATCH. Let me answer that question. You have raised a point that Congress will not know precisely if we are in balance or a deficit to the exact dollar before the end of each year. That is why we have the workable flexibility of relying on estimates. Yet we will need a plan to administer that process with care.

Now, Congress may, and I think this would become the norm, instead of now just planning on deficits, Congress may and should plan for a small surplus to avoid a last-minute, unforeseen deficit. If the estimates near the end of the year suggest we will run a deficit, we can approve a deficit at the high end of the estimates. If we approve an estimate that is slightly larger than is needed, it is not like actually spending the money. While some may say relying on estimates creates a loophole, I submit that the risks are substantially less than our current process of spending and borrowing, and that is exhibited by these 28 years of unbalanced budgets. That has been the matter of course. I think we have to change course, and I think the normalcy—I think the distinguished Senator from West Virginia, if I know him as well as I think I do, would be leading the fight to have at least small surpluses each year to take care of any fluctuations that might occur. I don't think he would permit us to get into this mess, which neither he nor I have been able to prevent under the current statutory scheme. But under a balanced budget amendment, we are going to have to be real.

Mr. BYRD. This is not going to be real—section 6. It is not real. It talks about estimates. Now we are going to switch from section 1, which says total outlays shall not exceed total receipts in any fiscal year. In the first place, how do we know whether the outlays have exceeded the receipts before the end of the fiscal year, or even two or three weeks subsequent to the end of the fiscal year? That is number one. Number two, then, we switch to estimates. Why do you proponents of the amendment purport to do two things—one, in the first section, balance outlays with receipts—no ifs, ands, or buts—to the exact dollar. But in section 6, they say, well, just forget about section 1 and balance the estimates. We have all seen how the estimates run.

The estimating is going to be done by the very same people, under the amendment, as have been doing the estimating prior to the adoption of the amendment.

The proponents are promising, absolutely pledging to the people of the United States, that this amendment will balance the budget. That is what they are promising. The Senator just said that. We cannot possibly get the estimates right. The Senator just said that. We can't possibly get the estimates right.

Well, then, may I ask the Senator, are we not misleading the American people with these elaborate claims that we are going to balance the budget when what we are really going to balance is the estimates? Then the Senator admits that we can't be accurate in these estimates. We never have been, and we never will be. There won't be any computers made that will come up with the correct estimates.

Mr. HATCH. This amendment does not mandate a balanced budget as the only option. This amendment requires us to move toward a balanced budgets, because it requires a balanced budget or supermajority votes if we are going to run deficits. So the pressures—

Mr. BYRD. Will the Senator yield on that?

Mr. HATCH. If I could be allowed to finish. So the pressures will be on us to try to have surpluses rather than continue to spend, because sooner or later we have to face the music. Let me make this point. The accuracy of estimates is self-correcting, because OMB and CBO must, by law, correct their estimates twice a year, under current practices. Usually, the original estimates are always off by OMB and CBO. Under the current system, there is not nearly as much pressure to be accurate as there will be under the constitutional amendment system, if we pass this by the requisite two-thirds vote of both Houses and it is ratified by three-quarters of the States. So what if CBO and OMB correct it? The balanced budget amendment does nothing to correct that procedure. It puts pressure on them to, maybe, do more than twice a year corrections.

The balanced budget amendment actually will further budgetary discipline. Congress is the one that must always enforce the system. Every one of us take an oath to uphold the Constitution. If this becomes part of the Constitution, we will have to live up to that oath. We will have to devise a system that really does it. We will still operate under a statutory system of implementing the constitutional rule. We can't order perfection; not even we can order perfection. But the balanced budget amendment will put the appropriate amount of pressure on Congress, which is not there now, as easily can be seen by the Senator's very important chart. It will put the pressure on Congress to ensure truthfulness.

Public reactions will punish those who act cowardly. Everybody will

know because we will always have to vote. We can't do it on voice votes anymore, or hide it in the dead of the night, which I know Senator BYRD understands well and does not approve of, as I don't. We would all have to stand up and vote, and the public will know who has voted which way. They are going to expect us to do a far better job than that which has done and than these 28 years of unbalanced budgets.

Let us be honest. There is no way anybody can absolutely, accurately tell what the outlays and receipts are going to be in advance. When we say "total outlays of any fiscal year shall not exceed," it has to be written that way because that is the force that says, Congress, your estimates better be good, a lot better than these statutory estimates we have had in the past, because then we will be under a constraint to balance the budget, or vote by a supermajority vote not to balance it. That is the difference.

Mr. BYRD. If the Senator will yield, Mr. President, permit me to say that I have the utmost admiration for the distinguished Senator from Utah.

Mr. HATCH. And vice versa.

Mr. BYRD. I marvel at his equanimity, his characteristic, and his never-failing courtesy. This is the way he has always been with me. But I must say that, notwithstanding that, I am amazed to hear the distinguished Senator stand on the floor this afternoon and admit that this amendment doesn't require a balanced budget.

Mr. HATCH. It doesn't—it's not the only option.

Mr. BYRD. What about that, he said it again. It doesn't.

Mr. HATCH. It doesn't. We can do whatever we want to. We just have to vote to have an unbalanced budget by the required supermajority or margin.

Mr. BYRD. What about all the Senators coming to the floor and saying the sky is falling, debt is bad, interest on the debt is bad, deficits are bad, and we have to do something about it and take the burden off our children, and vote for a balanced budget amendment?

The Senator has been perfectly honest. He says this amendment doesn't require a balanced budget. Well, let's quit saying, then, that it requires a balanced budget. He is saying that the estimates here are wrong. He may be implying that the people who make the estimates, once the constitutional amendment is adopted, will have greater expertise than those, who are the best in the world right now, who made these estimates.

Mr. HATCH. Will the Senator yield on that point?

Mr. BYRD. The Senator has the floor, so I am glad to.

Mr. HATCH. I appreciate that, to make a comment. I believe there is no question that they would do a better job, because there won't be the same number of games played on budget matters if everybody knows that we have the constraint of either balancing the budget, or voting on a super-

majority not to balance it. We all have to face our electorate. Right now, we do a lot of these things for by voice votes and other shenanigans that help to cause these things. When I say "we," I would rather say "they," because I try not to, and I know the Senator tries not to. But it's apparent in that our current system isn't working. I think your chart makes one of the best arguments for the balanced budget amendment of any chart we have had up here in this whole debate, because it shows that what we are doing right now, and what we have done for 28 solid years, doesn't work.

Mr. BYRD. Well then, why are we going to wait 5 years to do something better if the Senator has something better?

Mr. HATCH. We are not. If we pass this through the Senate—hopefully, within the next week or so—by the requisite two-thirds vote, and it passes through the House by the requisite two-thirds vote, that is a notice to everybody in these two bodies that we better start hustling to get a real balanced budget by 2002, where all of us know that the only part of the President's budget that really counts is next year's budget.

It is not the budget as extrapolated out to 2002, especially since 75 percent of it is balanced in the last 2 years after he leaves office. No, it is this next year, and each year thereafter. If we passed this and it is submitted to the States, I can't predict what the States would do. I believe they would ratify this amendment if we have the guts to pass it through both Houses of Congress. And if they ratify this amendment, then, by gosh, I have to tell you that I think the game will be over. We will not be able to do this anymore. There will have to be rollcall votes under the same terms.

Mr. BYRD. Mr. President, will the Senator yield?

Mr. HATCH. Certainly.

Mr. BYRD. Mr. President, the Senator speaks of guts. It doesn't take guts to vote for this thing. It takes guts to vote against it.

Mr. HATCH. I think it takes guts both ways.

Mr. BYRD. It takes guts to vote against it because the great majority of the American people have been bamboozled about this amendment. They support this, and they are very much in favor of it. So it takes guts to vote against it.

Why does the distinguished Senator think, No. 1, that we are going to be any better at our estimates once this amendment is adopted than we have been in the past? That is No. 1.

Then he talks about—he said something to the effect that once we get this amendment in place, as I understood he was saying to the effect that we will not be able to find ways around it, or some such.

Mr. HATCH. We will not be able to get around these things with voice votes. We will have to stand up and vote by rollcall.

Mr. BYRD. We can vote now by roll-call vote.

Mr. HATCH. But we don't, and there is nothing that requires us to do so, necessarily.

Mr. BYRD. Except the Constitution, if one-fifth indicate that they want to vote. That doesn't happen often. That is very seldom on raising the debt limit. That is very seldom on passing the final budget here.

Mr. HATCH. Let me answer the distinguished Senator's question. It is a good question.

The reason that I think we will be more accurate afterwards is because the incentives will switch. The incentives will switch because unless we balance the budget year after year and start working toward surpluses and not working on deficits, we are going to be in real trouble constitutionally, and we all know that. There will no longer be the game that occurred during the 1980 and 1996 years, as shown by the Senator's very interesting chart. I think that makes one of the best cases I have ever seen for the balanced budget amendment, because the current system is not working.

Mr. BYRD. Mr. President, will the Senator yield?

Mr. HATCH. Always.

Mr. BYRD. I think the committee report language that was prepared by the committee, of which the distinguished Senator from Utah is chairman, makes one of the best cases against this amendment. He says there won't be any more games played. Take a look at this report. It tells you what games to play.

Let me read it. Talking about the estimates of outlays and receipts, it says, "Estimates means good faith, responsible, and reasonable estimates made with honest intent to implement section 1, and not evade it. This provision gives Congress an appropriate degree of flexibility."

We have got more and more ways to play games.

It "gives Congress an appropriate degree of flexibility in fashioning necessary implementing legislation. For example, Congress could use estimates of receipts or outlays at the beginning of the fiscal year to determine what the balanced budget requirement of section 1 would be so long as the estimates are reasonable and made in good faith."

Now we are going to play games about who is reasonable, what is reasonable, and what isn't.

"In addition, Congress could decide that a deficit caused by a temporary self-correcting drop in receipts or increase in outlays during the fiscal year would not violate the article. Similarly, Congress could state that very small or negligible deviations from a balanced budget would not represent a violation of section 1."

Will the distinguished Senator indicate to me what would be considered "negligible," what would be considered "small," and what would be considered

"not small," and "not negligible"? We have a budget now of \$1.7 trillion. Let us say it is off by \$50 billion. Would that be "negligible"? Would that be "small," \$50 billion?

Mr. HATCH. I think the Senator is very logical. But he also has to allow the logic to take into account that Congress may, as I said before, and should shoot for a small surplus—the incentives will be to have surpluses to avoid a last-minute unforeseen deficit. And if the estimates near the end of the year suggest that we are going to run a deficit, then it would be a simple matter for us to approve a deficit at the high end of the estimates. If we approve an estimated deficit that is slightly larger than we need, it is not like we actually spent the money.

Again, I will say some may say that relying on estimates creates a loophole. But there is no other workable way to do it. I submit that the risks that might arise from those provisions in the constitutional amendment are substantially less than our current process, which is clearly not working, of simply spending and borrowing with no restraints whatsoever.

I go back to my point. The distinguished Senator may be right in this regard. Perhaps Senators should not come out here and say, "This is going to always make us balance the budget." I think, more accurately, it should be said that the incentives will be toward balancing the budget, because you will have supermajority votes of three-fifths in order to run deficits, or you will have to increase taxes, which means at least 51 Senators would have to vote for it, and at least 218 Members of the House. That puts pressure on Members of both parties to be accurate, and it puts pressure on them to try to get surpluses rather than deficits. It puts pressure on them in writing implementing legislation to make sure you have legislation that really does work rather than the five failed plans that we have had since 1978, none of which have worked. My friend and colleague knows that. I don't know of anybody more intelligent and more concerned about these matters than the distinguished Senator from West Virginia.

Mr. BYRD. Mr. President, will the Senator yield?

Mr. HATCH. If I could just finish this one sentence, but I have to say that his chart makes my case better than I have made it. I congratulate him for it, and I am grateful that he has put the chart up, because I don't know how anybody can argue for the current system when you look at that chart.

Mr. BYRD. Mr. President, will the Senator yield?

Mr. HATCH. Of course.

Mr. BYRD. Let's take a look at this chart. The green line, the horizontal line, means that the estimated revenues were right on target. They were not overestimated. They were not underestimated. The revenues were ex-

actly estimated to be exactly on target.

Note the chart which the Senator says makes his case. The chart says that in only one year, 1987, did the estimates even come close to being on target. They were off just \$2 billion. So the chart makes my case.

The committee says you can do it by estimates. "Estimates of outlays shall not exceed estimates of receipts in any given fiscal year." The chart shows that you cannot depend upon the estimates, that the people who have the most expertise of any in the world cannot be accurate in their estimates. Why? Because we cannot foresee what the unemployment rate is going to be, we cannot foresee what the rate of national economic growth is going to be, and we cannot see what interest rates are going to be in a year or more down the road. That is why people cannot be accurate in their estimates.

So this committee language makes my case—makes my case when it turns to the use of words like "estimates," and then defines the word "estimates" as meaning "good faith, responsible, and reasonable estimates made with honest intent to implement section 1."

Let me ask the question of my dear friend, who will be making up these estimates?

The Congress will make the estimates. The Congress will enforce the amendment. So what assurance is there that the Congress is going to make estimates that are correct?

What encouragement does that give to the American people to believe that this amendment, which the distinguished Senator from Utah says does not say we are going to balance the budget, what assurance can the American people have when it is even worse than that by saying that the estimates of outlays will not exceed the estimate of receipts?

Mr. HATCH. Frankly, I think if you have the incentives to produce more accurate estimates of receipts and outlays, there will be an incentive to have the top line have the bars going up every time, where right now we do not have that incentive. We have every incentive to just spend today. There is no restraint on spending whatsoever. The balanced budget amendment would not mandate that you balance the budget if a supermajority is willing to vote not to, but it does change the incentive so that literally you will not want to go into deficit because sooner or later you are going to have to pay the piper under that amendment. Again, I think the Senator's chart makes my case.

Mr. BYRD. What makes the Senator—

Mr. HATCH. I do not think I need the Senator's chart to make the case that our country is in trouble, that we are not doing what is right, that we are continuing to spend us into bankruptcy. And even though there are arguments made that we are only going to have a \$107 billion deficit in 1997, that is still a deficit of over \$100 billion.

Mr. BYRD. Mr. President, if the Senator will yield, what makes the distinguished Senator believe, when we have a constitutional amendment, Senators are going to have any more backbone than they have now?

Mr. HATCH. Because I believe Senators will live up to the constitutional mandate and the oath of office that they take to do what is right, where at this particular point there is no constitutional mandate to live within budgetary constraints, and it is apparent.

Mr. BYRD. They did not live up to it last year.

Mr. HATCH. Well, there was not—

Mr. BYRD. When they voted for the conference report on the line-item veto. They voted to shift the power of the purse away from the legislative branch to the executive. What makes the Senator believe that they will live up to the Constitution anymore nearly and dearly once this language is in it?

Mr. HATCH. Although I tend to share the Senator's view on the line-item veto, I think the Senator would have to admit there is a question whether that is going to be judged constitutional or not. If we pass a balanced budget amendment, it will become an official part of the Constitution, which is a considerably different situation.

Mr. BYRD. Will Senators be more inclined to vote to increase taxes once this is part of the Constitution than they are now?

Mr. HATCH. Senator Simon thinks so. One reason why he—

Mr. BYRD. Mr. Simon isn't a Senator anymore.

Mr. HATCH. I understand. What Senator Simon argued last year as the leading proponent of this amendment was that he felt there would be a greater propensity to increase taxes to solve these problems. I have to say that I do not believe that is so, but that is what he felt. I do not think that is so. I think it would be very difficult to get constitutional majorities to increase taxes except where they are clearly needed to be increased, and that is why we put in a constitutional majority. Now, it is no secret, and my friend knows this, that there are those on my side who do not think that is adequate.

Mr. BYRD. Do not think what?

Mr. HATCH. Do not think that is adequate. They want a three-fifths majority before you can increase taxes. But the reason we have a constitutional majority is because my friends on the Democratic side would not agree with the three-fifths majority.

Mr. BYRD. Would not what?

Mr. HATCH. Would not agree that it should be a three-fifths majority to increase taxes. I happen to believe that this has to be a bipartisan amendment. It is even though there are, as a percentage, less Democrats supporting it than Republicans. But Democrats have helped to formulate this amendment, and I have to give credit to those who are standing here with us. I think they have guts to stand up under the cir-

cumstances and vote for this amendment, as they should.

Now, that does not mean that those who vote against it do not have guts, too, because there is a price that will be paid for voting against this amendment. We all understand that. And let me just say this. I happen to believe that the distinguished Senator from West Virginia has never lacked intestinal fortitude. In fact, I have been through a lot of experiences here that prove that as a matter of fact to me. I could not have more respect for anybody than I do for him as a U.S. Senator.

But again, I think he makes our case. I think these 28 unbalanced budget volumes make our case. I think it is apparent our system is not working. I think if we keep going this way, our children and grandchildren's futures are gone. I know the distinguished Senator is a great family man. I know that he loves his children and grandchildren, as I do mine. We are expecting our 16th and 17th grandchildren within 2 weeks, Elaine and I. I want them to have a future as we have had. But right now with what is happening in accordance with the chart of the distinguished Senator from West Virginia, it is pretty apparent their future is being bartered away because we are unwilling to make the tough choices. I would lots rather have the balanced budget amendment helping us to estimate receipts and outlays than to have this system estimate them, I will tell you that right now. And it is a better system to have a balanced budget amendment.

Mr. BYRD. Well, the Senator is very disarming when he talks about how I love my family and my children and grandchildren.

Mr. HATCH. You do.

Mr. BYRD. He is correct about it. But he still has not answered my question as to why the committee and the proponents of the amendment felt after saying in section 1 that total outlays shall not exceed total receipts in any fiscal year, which is pretty straightforward language, which says that the budget has to be balanced every year, it says that the budget has to be balanced every year, why do we take an approach which says, on the one hand, the budget must be balanced—and that is what I have been hearing from the speakers who are proponents of this legislation—why did they say in the first section that the budget will have to be balanced every year and then in section 6 say, as it were, "Well, you do not really have to believe that first section? We are not going to hold you to it. We know it will be difficult, if not impossible some years, to hold you to that. So we are not going to require you to equal the outlays with the receipts. But what we are going to do is this. We are going to let you get by by just balancing the estimates."

Who makes the estimates? Cannot the estimates be cooked? The administration cooked the numbers when they

were sending up budgets in the early part of the Reagan administration. They cooked the numbers. These numbers can be cooked once this constitutional amendment becomes a part of the Constitution. They can be cooked. The estimates can be cooked. When can the American people believe us and believe that we mean what we say?

That is all I have been saying here. I have been saying that we do not mean what we say in this amendment. We do not mean what we say in section 1. So what are the American people to believe?

I compliment the distinguished Senator for coming to the floor. He is a man after my own kidney, as Shakespeare would say. He is a man after my kidney. He came to the floor. And I had suggested that someone should come and give us an analysis of these sections and explain how they are going to work and what are we expected to do to make them work.

Well, he came to the floor, and he has been reading the sections of the amendment one by one, which was not exactly what I asked for. I do not have any more faith in the amendment now than I had to begin with. I can read the sections.

I read the sections a number of times. And the distinguished Senator has prepared a chart here so that we can read them over and over again. I want somebody to explain to me how they will work and what is there about that amendment that can assure those people who are looking through the electronic eye that this budget is going to be balanced if this amendment is adopted—the budget is going to be balanced.

Mr. HATCH. Well, I have to ask the distinguished Senator from West Virginia, if this balanced budget amendment passes, as much as he wishes that it would not, and it is ratified by the States, would the Senator from West Virginia, once it is placed in the Constitution, not do his level best to comply with the constitutional requirement, if the amendment is adopted, to meet these estimates that are in there, as he suggested that I would do my duty under the Constitution? I think what I am saying is this: Both charts that the Senator has put up, show that the current system is not working.

Mr. BYRD. Is the Senator—

Mr. HATCH. The reason I point out the current system is not working is because there are not the same pressures to make it work that there would be under a balanced budget amendment.

Second, if we have these wild fluctuations under the balanced budget amendment, there is going to be an awful lot of heck to pay to our voting populace, because they are going to hold us responsible for these wild fluctuations.

Mr. BYRD. You bet they are. They are going to hold you responsible.

Mr. HATCH. They are not doing it now because they do not know who is

responsible for them. If we have to stand up and vote and make supermajority votes to spend and borrow more, then they will know who is doing it to them. If we have to make a constitutional majority to increase taxes, they will know who is doing it to them.

I have to say, if we do not, as a congressional body, have our CBO do better numbers, and the OMB as the executive body do better numbers, then there are going to be changes that will get them to where they have to do better numbers.

Will they always be accurate? There is no way we will always be completely and absolutely accurate.

Mr. BYRD. I have a couple of things to say to what the Senator has said, Mr. President, if the Senator will yield?

Mr. HATCH. Sure, under the same circumstances.

Mr. BYRD. Is he asking me whether or not I will do everything I can, everything in my power, to help to balance the budget? Was that the force of his question?

Mr. HATCH. I am sorry, I missed the question. Excuse me.

Mr. BYRD. Was he asking me that, if this amendment becomes a part of the Constitution, will the Senator from West Virginia do everything he can do to help to balance the budget and get the deficit down? Is that what he was asking me?

Mr. HATCH. Well, let me put it this way. I don't have to ask that question. I know the distinguished Senator from West Virginia would. But I asked it rhetorically because I know that the distinguished Senator from West Virginia would do all in his power to live up to the Constitution, even though he disagreed with the provision of it, once it is part of the Constitution. As would I.

And, frankly, I think that he is not alone. I think there are as many as 535 others in Congress who would, likewise, try to live up to the constitutional amendment.

Mr. BYRD. Mr. President, will the Senator yield and let me answer his question?

Mr. HATCH. Sure. I will be happy to.

Mr. BYRD. I have proved that I will do everything I can to balance the budget. But not only this Senator. They are standing in rows on this side of the aisle.

In 1993, they voted to lower the deficits by almost \$500 billion. Working with the President, we had a package to reduce the deficits. I voted for that package. The Senator from Connecticut voted for that package. Many other Senators on this side of the aisle voted for that package. Not one—not one—Senator on the other side voted for that package, to bring down the deficits.

So we do not need a constitutional amendment. We just need the courage to vote for it. I do not know what there is in this constitutional amendment that will give us any more courage and

backbone than we already have. I do not know how many will figure that out.

Mr. HATCH. Let me just respond to that. Even, in spite of the reductions in deficit that have occurred over the last 4 years after the enactment of one of the largest tax increases in history—some on our side say the largest tax increase in history; it is debatable, but it is one of the two largest tax increases in history, both of which, I think, were motivated by Members on the other side of the aisle—we are still in hundred-plus billion dollar deficits, going up to \$188 billion and on up beyond that by the year 2002.

The fact of the matter is, if it was up to the distinguished Senator from West Virginia and the Senator from Utah, we would have the will.

Mr. BYRD. If it were up to the Senator from West Virginia, we would not have any tax cuts this year.

Mr. HATCH. I was saying, if it was up to the Senator from West Virginia and the Senator from Utah, I believe we would have the will to do what is right.

Mr. BYRD. Would the Senator vote with me to increase taxes?

Mr. HATCH. Let me just finish. But the problem is, it is not up to just the two of us. It has been up to everybody in Congress for 28 years of unbalanced budgets. I know that people do not like these two stacks because they are embarrassing. It is embarrassing to me to have to point to these and say for the 21 years I have been here, these have been unbalanced. For all of those 21 years I fought for a balanced budget amendment. But I have to say, we do not have the will. It is apparent and we are not going to have the will unless we do something about it constitutionally, where everybody will have to face the music.

Right now they do not. And where some on our side love more defense spending and some of the Democrat side love more social spending in ways that may be irresponsible, under the balanced budget amendment I think we are going to all have to be more responsible.

I just wish—this is an erstwhile wish, I understand—but I wish my colleague from West Virginia were on our side on this, because I think it would be a much easier amendment to pass.

But I understand why he is not, and I know how sincere he is. But, like Paul of old—

Mr. BYRD. Like who?

Mr. HATCH. Like Paul of old, who held the coats—

Mr. BYRD. A great Apostle.

Mr. HATCH. The man who held the coats of the men who stoned the first Christian martyr, he is sincerely wrong.

Mr. BYRD. Paul was?

Mr. HATCH. Paul was, yes, for holding the coats of those who stoned the first Christian martyr, Stephen. Paul was sincere. He meant what he said. He really was sincere. But he was wrong.

Mr. BYRD. Mr. President, we are getting off the track.

Mr. HATCH. I don't think so. Sometimes going back in history is a very good thing to do.

Mr. BYRD. Mr. President, the Senator from Utah wishes I were on his side?

Mr. HATCH. I do. I would feel much better.

Mr. BYRD. I am on the Constitution's side.

Mr. HATCH. So am I.

Mr. BYRD. I am on the Constitution's side. And I do not want to see that Constitution prostituted by an amendment that is nothing more than a bookkeeping manual on accounting principles. It has no place in the Constitution. It is not going to give this Senator or any other Senator any more backbone than the good Lord gave to me in the beginning to stand up and vote the tough votes.

I do not want to see the faith of the American people in this book—forget the stack of books there, ever so high. This is the book. I do not want to see the faith of the American people in this Constitution undermined. And it is going to be undermined when we write that language into it and the budgets do not balance.

Let me at least thank the Senator for being honest to the point that he says that this amendment is not going to balance the budget.

Mr. HATCH. No, I didn't say that. I said the amendment does not mandate a balanced budget. I think this amendment will lead us to a balanced budget.

Mr. BYRD. It does not mandate it.

Mr. HATCH. But let me say this. I happen to believe that this little booklet that contains the Constitution of the United States, without the balanced budget amendment, will hopefully have a balanced budget amendment in it. Because, if we do—and I know that sincerely dedicated people like my friend from West Virginia will be voting for more fiscal responsibility and restraint than we do now. And he will have more leverage on not only his side, but our side, to get people to stand up and do what is right.

I do not think that these comments, "Let's just do it"—I have heard that now for 21 years. "Let's just do it. Let's just have the will to do it."

Here is the will of the Congress of the United States. Mr. President, 28 years of unbalanced budgets. I think these volumes speak worlds of information for us, of how ineffective we have been in doing what is right. The Constitution provides, in article V, for ways of amending it when it becomes necessary in the public interest to do so. I cannot imagine anything more necessary in the public interest than a balanced budget amendment, Senate Joint Resolution 1, if you will, a bipartisan amendment, bicameral bipartisan amendment, that literally, literally puts some screws to Congress and some restraints on Congress and makes Congress have to face the music.

Right now, we don't face any music. Let's have the will? Give me a break,

we haven't had the will in almost 66 years, but certainly not in the last 28 years, as represented by these huge stacks of unbalanced budgets of the United States of America.

I have to pay respect to my colleague, because I care for him so much. He is sincere, he is eloquent, and he is a great advocate, and I respect him. In fact, it could be said I love him. The fact of the matter is, I think he is wrong. He thinks I am wrong. But I think his charts are very, very good reasons why, and these books are very good reasons why something has to be done. We cannot just keep frittering away our children's future and the future of our grandchildren. I know he shares that view with me, and I just wish we could do more together to protect their future. I am doing everything I can with this amendment.

Mr. BYRD. You are being honest about it, too—

Mr. HATCH. I am being honest.

Mr. BYRD. Saying it doesn't promise a balanced budget.

Mr. HATCH. I think it promises a balanced budget, I don't think it mandates one. It gives us the flexibility to do whatever we want to do, as long as we comply its requirements.

Mr. BYRD. To cook the estimates.

Mr. HATCH. No, no, it gives us the flexibility to do whatever we want to do, but we have to stand up and vote to do it by supermajority votes. If you want to increase the deficits, you have to stand up and vote by a supermajority to do it. If you want to increase taxes, you can do it, but you have to vote on a constitutional majority of both Houses, to do it. That is a considerably different situation from what we have today where there are no constraints and, in many cases, or some cases that are very important, at least over the last 21 years, no votes. It has been done in the dead of the night, to use a metaphor, a metaphor that is all too real. These budget volumes are real. These are not mirages. These volumes are actually real. They represent 28 years of unbalanced budgets, 8 years longer than I have been here, and I see many, many more in the future if we don't pass this balanced budget amendment.

Mr. BYRD. Mr. President, here is the mirage, right here. This is the mirage, this amendment to the Constitution. The Senator says that we should write two or three more supermajority requirements into the Constitution. It already requires eight, including the three amendments—five in the original Constitution and three amendments, 12, 14 and 25. Now we are going to write some more in. This is going to head us more and more in the direction of minority control—minority control. This is a republic, which uses democratic processes. This is a representative democracy, a republic for which it stands. A republic.

I just close by saying this amendment is a real gimmick—a real gimmick. It is not going to cause us to bal-

ance this budget any more than if we didn't have it; may even make it more difficult to balance the budget.

Moses struck the rock at Kadesh with his rod. He smote the rock twice and water gushed forth and the people's thirst and the thirst of the beasts of the people were quenched. This amendment is not the rock of Kadesh. You won't be able to smite that amendment. The waters of a balanced budget are not going to flow from that piece of junk. I say that with all due respect to my friend. But that will not work. That's the long and the short of it, and it is misleading the people. It is misleading the people. The amendment doesn't require us to balance the budget, it only requires us to balance the estimates. So there we go again. There is a wheel, and we seem to be on it, around and around. Balance the estimates. We have seen the estimates.

So we can see by looking at this chart where the estimates have been wrong—always wrong—in the past, and we should know by that lamp that they are going to be wrong in the future.

So what faith can we have in this kind of an amendment? The Senator says we would be under greater pressure to balance the budget. Why not start now? Why wait 5 years, at least 5 years, perhaps even longer under that amendment? Why wait for pressure? The pressure is just as great today and we will be even deeper into the hole by 2002 than we are now.

Mr. HATCH. Let me just say this, Moses also struck the rock at Meribah and gave water and was forbidden from entering the promised land after 40 years of traveling in the wilderness.

Mr. BYRD. Struck the rock at Horeb.

Mr. HATCH. That's right, Horeb. The fact of the matter is that he was following, in a sense, the same pattern, but without God's will. And I am tired of following the same pattern which I cannot believe is God's will. I am sorry that we have 28 years of unbalanced budgets in a row, and we are looking at 28 more because we are unwilling to do what is right.

Now, look, the balanced budget amendment moves us toward a balanced budget by requiring supermajority votes if we want to unbalance the budget or increase the taxes to balance it. It requires a balanced budget unless there are emergencies in which we need a three-fifths majority to waive balanced budget requirements.

In all due respect, my friend from West Virginia is actually arguing that one should oppose the balanced budget amendment because it doesn't require utopia, because we can rely on estimates. Well, utopia, means "nowhere." But relying on good faith estimates, as the report does say, is "somewhere," rather than "nowhere." And it will lead us to balanced budgets.

The first Congress and the States ratified the Bill of Rights. If we took the Senator's line, one should have opposed them, let's say, the first amendment, for instance, free speech, because

it did not define free speech or show how free speech was going to be enforced. But we all know that's ridiculous, and I believe it's ridiculous, but I believe we should be better equipped to deal with estimates of outlays and receipts with a balanced budget amendment in the Constitution that all of us are sworn to uphold.

Mr. BYRD. Mr. President, will the Senator yield?

Mr. HATCH. Sure.

Mr. BYRD. Senator DODD needs to speak on his amendment a bit more, so I am going to leave the floor for now.

Mr. HATCH. Well, I will miss my colleague.

Mr. BYRD. I beg your pardon.

Mr. HATCH. This has been a good colloquy. I will miss my colleague, and he teaches me a lot every time he comes to the floor.

Mr. BYRD. I would like to hear the distinguished Senator explain how the States balance their budgets and how they operate, not only on a budget that provides for the operating expenses of Government from day-to-day, but also on the capital budget, and why under this amendment the Federal Government will not be able to have a capital budget.

Why does not someone explain that the States operate on two budgets? Not only an operating budget, but also a capital budget. And then why do we continue to say that the Federal Government should balance its budget like the States do, without the explanation that there are capital budgets in States?

Mr. HATCH. I will not go into that very much right now, but I think the Senator makes a very good point.

One reason is the States do not print the money. No. 2 is some States cannot do much in the capital way because they do not have the money and they do not balance their budgets the way they should. No. 3 is that there are rating systems that make it possible for States to borrow on bonds, and they discipline the use of bonds by the States. There would be no similar system for the Federal Government. No. 4 is that, frankly, the Federal Government can create surpluses that should work. No. 5 is that the States, at least 44 of them, have balanced budget amendments. If they did not have their balanced budget amendments, many of them would not be balancing their budgets either, even with the capital budget. And they have done better than the Federal Government at restraining their borrowing.

So there is no real comparison between the Federal Government and the States. There is nobody to keep the Federal Government in line without a balanced budget amendment. I think that is what this balanced budget amendment is all about. I appreciate my colleague. We have had a good debate. He certainly always raises very interesting issues and very pertinent issues and I think adds to the quality of the debate around here every time

he comes on the floor. So I personally appreciate it.

With regard to capital budgets, let me say OMB, CBO and GAO, among others, have opined that debt-financed capital budgets are not a good idea for the Federal Government. All of them have said that. See, for example, President Clinton's fiscal 1998 proposed budget. The Analytical Perspectives volume, I think on page 136, there are some remarks on this.

The Clinton administration said, "The rationale for borrowing to finance investment is not persuasive" and that a "capital budget is not a justification to relax current and proposed budget constraints." I agree.

Besides the fact that the U.S. Government does not need to borrow to finance its investment, it is not subject to the constraints that families, business and States face.

Families and businesses are disciplined by markets. States are disciplined by bond ratings. A Federal capital budget is bound to be abused. Future Congresses could redefine many kinds of spending as capital. It would be a monstrous loophole in the balanced budget amendment.

Let me just say that I do agree with OMB, CBO, the Office of Management and Budget, the Congressional Budget Office, the General Accounting Office, that a Federal capital budget is not a good idea. Especially, I think, in the context of a constitutional amendment. So that is all I will say about it today. But I hope that is enough because a capital budget is really not the way to go constitutionally. But this amendment, Senate Joint Resolution 1, is the right way to go. It will help us to make some dents in what has been going on for the last 28 years at least, or should I say 58 of the last 66 years where we have had unbalanced budgets.

Could I ask the Chair, how much time remains on both sides?

The PRESIDING OFFICER (Mr. ABRAHAM). The Senator from Utah has 14 minutes, 25 seconds, the Senator from Connecticut has 1 minute, 32 seconds.

Mr. DODD. Can I get 6 or 7 minutes?

Mr. HATCH. Go ahead.

Mr. DOMENICI. Would the Senator yield some time? Two minutes?

Mr. HATCH. Could I yield to the budget—

Mr. DOMENICI. Go to him first.

Mr. DODD. I would like to make some concluding remarks on my pending amendment. So if the Senator from New Mexico wants to take a couple minutes to do that, and then I would like to wrap up on my amendment before the vote at 5:30.

Mr. HATCH. I yield such time as he needs.

Mr. DOMENICI. Two minutes.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. I might say to the distinguished senior Senator from West Virginia, Senator BYRD, I did not hear your entire argument with reference to

estimates, but I would suggest that in due course—I have difficulty getting time on this floor because when there is time I cannot be here and then when I get here, eminent Senators are using all the time. I am not complaining.

But I would like tomorrow to explain a bit about estimating. I would just suggest that we need not use the estimating that has taken place to produce that chart. There is another way to estimate it. You can estimate right up close to the end of the period of time, and you get estimates that are pretty close.

I would also suggest that whether it is red or whether it is black—

Mr. BYRD. Will the Senator yield? But there, they are still estimates.

Mr. DOMENICI. That is correct.

I will talk about it tomorrow. And everything about us, the Government, is built on estimates. We rely on it very, very much.

Mr. BYRD. Will the Senator yield?

Mr. DOMENICI. Yes.

Mr. BYRD. We rely on it and the charts show how much we fall short.

Mr. DOMENICI. Half that red and half that black is not estimates at all. Half or more is based upon programs that cost more than you estimate. Frankly, that has nothing to do with economic estimates. It has to do with us not doing a good enough job figuring what programs are going to cost. That could be fixed. In fact, we are doing much better at it already in terms of that.

But my last observation has to do with a thought you had as you captured the notion that this would make this budget so unreliable that you called it all a gimmick.

Frankly, I want to make sure that everybody knows that the best use of the word gimmick for anything going on on this floor has to do with the gimmick that some on that side of the aisle are using when they speak of taking Social Security off budget so you will assure Social Security's solvency and the checks. That is a gimmick of the highest order. For you do that, and there is no assurance that Congress will not spend the trust fund surpluses for anything they want. It is no longer subject to any budget discipline. It is out there all by itself.

Second, there is no assurance that programs for senior citizens that are not Social Security would not be moved there, and that that trust fund becomes more vulnerable then when it is subject to the discipline of the give-and-take of a budget. And on that I am certain.

And last, some Senators today got up and said that the Congressional Research Service had given them all they needed because it had apparently said that you risked Social Security in the outyears. Well, that did not sound right to any of us. We called them up and they have issued a correction. It could not conceivably be what they said and what was implied from it. They are now saying—and I quote:

We are not concluding that the Trust Funds surpluses could not be drawn down to pay beneficiaries. The [balanced budget amendment] would not require that result.

So it does not stand for the proposition that was used. They made a mistake in the translation, in the way they interpreted and we can debate that a little tomorrow. But I just thought we ought to make sure that we understood that.

Now, I know that my friend from West Virginia is a proponent of the Constitution. And when you speak of amending it, he stands on it. But let us face it, you cannot stand on it when you are talking about amending it. Because that would have meant none of the amendments that were added to it would be there. You would have held up the old Constitution when it was first drawn with no amendments and said, I stand on it.

Mr. BYRD. Oh, no, no, no, no.

Mr. DOMENICI. You could.

Mr. BYRD. No, no, no. The Senator was quite right he was not here to hear my statement.

Mr. DOMENICI. I do not have any additional time.

Mr. President, I ask unanimous consent that the memorandum from the Congressional Research Service be printed in the RECORD.

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

CONGRESSIONAL RESEARCH SERVICE,

THE LIBRARY OF CONGRESS,

Washington, DC, February 12, 1997.

To: Hon. PETE V. DOMENICI; Attention: Jim Capretta.

From: American Law Division.

Subject: Treatment of Outlays from Social Security Surpluses under BBA.

This memorandum is in response to your inquiry with respect to the effect on the Social Security Trust Funds of the pending Balanced Budget Amendment (BBA). Under S.J. Res. 1 as it is now before the Senate §1 would mandate that "[t]otal outlays for any fiscal year shall not exceed total receipts for the fiscal year. . . ." Outlays and receipts are defined in §7 as practically all inclusive, with two exceptions that are irrelevant here.

At some point, the receipts into the Social Security Trust Funds will not balance the outlays from those Funds. Under present law, then, the surpluses being built up in the Funds, at least as an accounting practice, will be utilized to pay benefits to the extent receipts for each year do not equal the outlays in that year. Simply stated, the federal securities held by the Trust Funds will be drawn down to cover the Social Security deficit in that year, and the Treasury will have to make good on those securities with whatever moneys it has available.

However, §1 of the pending BBA requires that total outlays for any fiscal year not exceed total receipts for that fiscal year. Thus, the amount drawn from the Social Security Trust Funds could not be counted in the calculation of the balance between total federal outlays and receipts. We are not concluding that the Trust Funds surpluses could not be drawn down to pay beneficiaries. The BBA would not require that result. What it would mandate is that, inasmuch as the United States has a unified budget, other receipts into the Treasury would have to be counted to balance the outlays from the Trust Funds and those receipts would not be otherwise

available to the Government for that year. Only if no other receipts in any particular year could be found would the possibility of a limitation on drawing down the Trust Funds arise. Even in this eventuality, however, Congress would retain authority under the BBA to raise revenues or to reduce expenditures to obtain the necessary moneys to make good on the liquidation of securities from the Social Security Trust Funds.

JOHNNY H. KILLIAN,  
Senior Specialist, American  
Constitutional Law.

Mr. DOMENICI. I yield back to the chairman. I will be glad to come down and discuss this in more detail.

Mr. BYRD. I will be happy to join the Senator.

Mr. DODD. I wanted to yield to my colleague from West Virginia, who wanted to make a comment on the pending amendment.

The PRESIDING OFFICER. The Senator from Utah has 9 minutes and 21 seconds remaining, and the Senator from Connecticut has 1 minute and 32 seconds.

Mr. HATCH. How much time does the Senator need?

Mr. BYRD. Three minutes.

Mr. HATCH. Mr. President, I yield 3 minutes of my time to the distinguished Senator from West Virginia, and then I have the Senator from Nebraska waiting to speak.

Mr. BYRD. Mr. President, I thank the distinguished Senator from Utah for his courtesy in yielding time.

Mr. President, I commend the distinguished senior Senator from Connecticut for his amendment, and for his very thorough explanation of it. There is, as he has said, no higher duty than this body has than to safeguard the security and liberties of the American people. This is the height of pernicious legislative mischief to provide the ready and robust forces when the Nation faces a serious threat to our national security. Can we define the specific nature of such threats that might face us? Of course not. Do we need the flexibility to react in time, in advance, and with sufficient credibility so as to show down all such conceivable threats to our security? Of course, we should.

The Constitution should not be used as a straitjacket which has the effect of throwing into doubt our ability to perform this most basic of our duties. Thus, the Dodd amendment is a very useful one, as essential improvement to the constitutional proposal which is before the body. The definition of "imminent and serious military threat to national security," as a test for waiving the requirements of the balanced budget, as proposed by the distinguished Senator from Connecticut is a valuable improvement to the amendment offered by the Senator from Utah, and I strongly encourage my colleagues to support it.

I again thank my friend from Utah, who is my friend, who is a fine Christian gentleman, who is always fair and courteous. I salute him for that, and I thank my colleague from Connecticut.

Mr. HATCH. How much time remains?

The PRESIDING OFFICER. The Senator from Utah has 6 minutes and 42 seconds

Mr. HATCH. I yield 3 minutes to the Senator from Connecticut.

AMENDMENT NO. 4, AS MODIFIED

Mr. DODD. Pursuant to a discussion earlier, I ask unanimous consent to send to the desk a modification of my amendment along the lines we discussed earlier. I ask unanimous consent my amendment be allowed to be modified.

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

The amendment (No. 4), as modified, is as follows:

On page 3, line 7, strike beginning with "is" through line 11 and insert "faces an imminent and serious military threat to national security as declared by a joint resolution," which becomes law."

Mr. DODD. Mr. President, let me briefly sum up, if I can, this amendment. I think the handwriting is on the wall. It is one of those moments, the wave is moving here, and I deeply regret it.

I have the feeling my colleagues have just not read section 5 as carefully as we should. I emphasize again and draw their attention to this not based on the argument that I asked them to not support the constitutional amendment to balance the budget, but merely that we improve this section to reflect, I think, what ought to be the priorities of a nation; that is, to be able to respond to an imminent threat to our national security and be allowed to do that in a way that would permit us to waive the restrictions of this amendment. The priority of responding, I think, is a higher one than the issue of the constitutional amendment to balance the budget.

I draw the attention of my colleagues to some pivotal words in this section, "a declaration of war," or the United States must be "engaged in military conflict," particularly that latter one, Mr. President. It does not talk about imminent danger. We must actually be engaged.

It is ironic in many ways that we can have a declaration of war which can be reached by a simple majority here. A simple majority of Senators present and voting can declare war. You do not require that all Members be here to declare war. No vote we ever cast could ever be more profound than to commit our Nation to war. Yet, to waive the budget requirement of this amendment requires a special parliamentary proceeding which excludes the vote of the Vice President, and requires a majority of all Members regardless of who is present in order to waive the restrictions of this so we can respond to a conflict. How ironic that in the very same section you have a declaration of war that can be reached by a simple majority of Members present and voting, and yet to waive the restrictions of this amendment requires a "super" number, if you will, beyond that which is necessary to commit this Nation.

So I urge my colleagues to look at this amendment that will be at the desk when you come to vote in a few minutes. We replace this language by saying that the Nation faces an imminent and serious military threat to national security as declared by a joint resolution that is passed into law. We must vote that we are facing that imminent threat. If we vote accordingly, that we are facing an imminent threat, then it seems to me that to waive the restrictions here is the only sensible thing to do. To require today that we have a declaration of war, the perverse idea that a President and Congress, in a future time may declare war just to avoid the restrictions of this amendment, or to actually be engaged in a conflict and not allow our Nation to prepare for a likely conflict, concerns me deeply.

Mr. President, I urge my colleagues, and I thank my colleague from West Virginia for his support of this amendment, but I urge my colleagues to please read this amendment and read this section and realize what great harm and danger we could be creating for our Nation if we adopt this amendment with this section as written, which I think places this Nation in an unrealistic and dangerous straitjacket.

I thank my colleague from Utah for yielding the time.

Mr. HATCH. Let me take 1 minute of my remaining time, and that is to say that this amendment will have a loophole in the balanced budget amendment second to none, and a loophole for any kind of spending—not military spending, any kind of spending. It means more of the 28 years of unbalanced budgets. I hope my colleagues will vote down this amendment.

I yield back the balance of my time.

Mr. DODD. I yield back my time.

Mr. HATCH. I move to table, 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.

The PRESIDING OFFICER. The question is on agreeing to the motion to lay on the table the amendment, as modified, of the Senator from Connecticut.

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

The bill clerk called the roll.

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

The result was announced— yeas 64, nays 36, as follows:

[Rollcall Vote No. 10 Leg.]

YEAS—64

Abraham	Chafee	Enzi
Allard	Coats	Faircloth
Ashcroft	Cochran	Frist
Baucus	Collins	Gorton
Bennett	Coverdell	Graham
Bond	Craig	Gramm
Brownback	D'Amato	Grams
Bryan	DeWine	Grassley
Burns	Domenici	Gregg
Campbell	Dorgan	Hagel

Hatch	McCain	Smith, Bob
Helms	McConnell	Smith, Gordon
Hollings	Moseley-Braun	Snowe
Hutchinson	Murkowski	Specter
Hutchison	Nickles	Stevens
Inhofe	Reid	Thomas
Jeffords	Robb	Thompson
Kempthorne	Roberts	Thurmond
Kyl	Roth	Warner
Lott	Santorum	Wyden
Lugar	Sessions	
Mack	Shelby	

## NAYS—36

Akaka	Feingold	Lautenberg
Biden	Feinstein	Leahy
Bingaman	Ford	Levin
Boxer	Glenn	Lieberman
Breaux	Harkin	Mikulski
Bumpers	Inouye	Moynihan
Byrd	Johnson	Murray
Cleland	Kennedy	Reed
Conrad	Kerrey	Rockefeller
Daschle	Kerry	Sarbanes
Dodd	Kohl	Torricelli
Durbin	Landrieu	Wellstone

The motion to lay on the table the amendment (No. 4), as modified, was agreed to.

Mr. HATCH. Mr. President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

## WELLSTONE AMENDMENT NO. 3

Mr. KOHL. Mr. President, yesterday the Senate voted on the first of several potential amendments to exempt certain programs from the balanced budget constitutional amendment. I greatly appreciate the comments made on the amendment by the Senator from Minnesota regarding the importance of programs that benefit our children. Senator WELLSTONE spoke passionately and I could not agree more that we must protect our children.

However, I disagree with the notion that we should exempt certain categories of programs from the strictures of the balanced budget amendment. I don't see balancing the budget and helping our children as two mutually exclusive goals. In fact, these are two of my highest priorities and they are critically linked.

I heard the compelling arguments about the difficult spending cuts that occurred during the last Congress. I agree that more should be done to balance the burden of spending reductions in the future. As a society and as a government, we must maximize our commitment to the well-being of our children or suffer the consequences in the world economy. But what's more important, if we fail our children, we fail as a people.

Mr. President, I am committed to the concept of the balanced budget amendment. I am committed to the idea that the financial security of this Nation rests on the ability of the Federal Government to curb the practice of spending beyond its means. And I am deeply committed to the belief that our Nation's future depends on the investment we place in our children. In reviewing the fiscal history of this Nation over the past 25 years, it has be-

come clear to me that the will to exercise the necessary spending restraint does not exist within this body without a strict requirement. I believe that the balanced budget amendment provides such a framework, and that is why I support it.

The Wellstone amendment was certainly difficult to vote against. But I strongly believe that the very arguments made by the proponents of the amendment are exactly those that will help preserve critical children's programs from future budget cuts. Our children are already saddled with a tremendous debt burden created by past federal budget excess. It makes no fiscal sense to further hinder their ability to pay off that debt by short-changing their education or health. The very viability of our economy depends upon the opportunity of our children to flourish.

We clearly can not afford to ignore the needs of our children. But if we are serious about passing a meaningful balanced budget amendment, then we must reject efforts to dismantle that effort through piecemeal exclusions of programs, however worthy the particular program. I fear that such exemptions will lead to a cascade of further exemptions and ultimately leave little room to create a truly fair and balanced budget. That is exactly the scenario that has caused us to get to a 4 trillion dollar Federal debt.

I have sought to protect funding for child care resources, public health and education and will continue to do so in the context of a balanced budget. When it comes to the annual appropriations process, of which I am an active participant as a member of the Senate Appropriations Committee, I will remain front and center fighting to protect children's programs. But as a supporter of the balanced budget amendment, I must object to blanket exclusions.

Mr. LOTT addressed the Chair.

The PRESIDING OFFICER. The majority leader.

Mr. LOTT. Mr. President, for the information of all Senators here and back now at their offices, there will be no further votes this evening. I understand there are—

Mr. FORD. Mr. President, may we have order, please.

The PRESIDING OFFICER. The Senator from Kentucky makes an excellent point. The Senate will come to order.

The majority leader is recognized.

Mr. LOTT. There will be no further votes this evening, but I do understand there are several requests for morning business in the morning. In light of those requests and the memorial service for Ambassador Pamela Harriman, I expect the Senate will be conducting morning business only until around 2 p.m. on Thursday.

Following morning business, there is a possibility for consideration of a resolution regarding milk prices, and there is the possibility of another resolution but we are trying to see if that

resolution has been filed and, of course, we will need to clear it with the Democratic leader.

There are rollcall votes possible during tomorrow's session but we do not have an agreement on that yet.

Mr. President, I ask unanimous consent that when the Senate resumes consideration of Senate Joint Resolution 1, the balanced budget amendment, on Monday, February 24, the Senate resume consideration of Senator BYRD's amendment No. 6 beginning at 3:30 p.m.

I further ask that there be 2 additional hours of debate equally divided in the usual form prior to the vote on or in relation to the Byrd amendment and finally no amendments be in order to that amendment.

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

Mr. LOTT. Again, so that Senators will have this information, the agreement allows for a rollcall vote then on Senator BYRD's amendment at approximately 5:30 on Monday, February 24.

Mr. FORD. Mr. President, I know the majority leader loves to hear himself talk. The rest of us would like to hear him, too.

Will you have order in the Chamber.

Mr. LOTT. I am highly complimented and appreciative of the Senator's comments.

Mr. FORD. The reason I did that, Mr. President, is because the majority whip does not want to do that. He likes to hear me do it.

The PRESIDING OFFICER. The majority leader is recognized.

The Senate will come to order.

Mr. LOTT. Mr. President, there will be a vote then on Senator BYRD's amendment at approximately 5:30 on Monday, February 24, which is the date the Senate returns from the Presidents Day recess.

I have discussed these Monday afternoon votes with the Democratic leader. We are agreed we will have votes quite often on Monday afternoons. We will try to tell you as far in advance as we can. It does seem to get the Members back and ready for work. It allows us to get committee work done on Monday afternoons or certainly on Tuesday mornings. And also I should remind Senators that that week after we come back after the Presidents Day recess, in order to complete our work on the balanced budget amendment there is a good possibility we will have to stay in late on Tuesday, Wednesday, and Thursday. That is not definite yet. It will depend on how many amendments and time agreements. We will work with the leader on that. But we have been very aggressive in trying to keep our schedule reasonable. If we need to do some late nights that week to finish our work so that we can do other things that are pending, including nominations, then we would be prepared to do that. But we will advise you in advance when we are going to have to be in session at night.