

BALANCED BUDGET AMENDMENT
TO THE CONSTITUTION

The PRESIDING OFFICER. The Senate will now resume consideration of Senate Joint Resolution 1, which the clerk will report.

The bill clerk read as follows:

A joint resolution (S. J. Res. 1) proposing an amendment to the Constitution of the United States to require a balanced budget.

The Senate continued with the consideration of the joint resolution.

AMENDMENT NO. 8

The PRESIDING OFFICER. The Senate will resume the debate on the Reid amendment No. 8 until the hour of 6 p.m., with the time equally divided in the usual form.

Who yields time?

Mr. REID. Mr. President, I yield 20 minutes to the junior Senator from Illinois.

The PRESIDING OFFICER. The Senator from Illinois is recognized for 20 minutes.

Mr. DURBIN. Mr. President, first I thank the Senator from Nevada for yielding on this important amendment. It is interesting; if you ask the American people about the balanced budget amendment, they will say in overwhelming numbers it is a great idea. I have to balance my checkbook. Why shouldn't the Federal Government have to balance its books?

But then you say, well, what if in the process of balancing the books the Federal Government jeopardizes the Social Security trust fund? Whoa. Wait a minute. Let us think about this. The people who were overwhelmingly for the balanced budget amendment have second thoughts, as well they should.

The amendment offered by the Senator from Nevada addresses that very real concern. In our pursuit to balance the budget, let us not do it at the expense of Social Security. That is simple. The Senator from Nevada offers this amendment in good faith, asking Members on both sides of the aisle, Republicans and Democrats, to come together and agree on this basic premise: yes, we will balance the budget but not at the expense of Social Security.

Some would say this is a pretty simple proposition. Why are you debating this? Frankly, because there is a very serious difference of opinion, and it gets down to the fundamental flaw in this constitutional amendment. We are debating what is its greatest flaw, the failure of this measure to protect Social Security. The balanced budget amendment includes the Social Security trust fund in the calculation of whether the budget is in balance. That means it uses the Social Security trust fund to balance the rest of the Federal budget in the near term and prevents the proper use of the Social Security trust fund surplus to offset growing benefit payments in the long term. That is not the way to treat Social Security, a program which for 60 years has taken our parents and grandparents and their grandparents before

them out of poverty into dignity. That is why I voted, and I will continue to vote, only for versions of the balanced budget amendment that protect Social Security by excluding the Social Security trust fund.

We hear a lot of witnesses. We have them come before us to talk about this balanced budget constitutional amendment, as well we should. I say to those listening, in 205 years of this Nation's history we have only amended that great document, the Constitution, 17 times. Let us be careful. Let us listen to the counsel of those who come to speak to us.

I was particularly struck by the testimony of one gentleman, called by my friend from Utah, the chairman of the committee, as a witness in favor of this balanced budget amendment. This gentleman was a Wall Street financier who holds a senior position in a major investment firm. He didn't see the issue of Social Security quite the same way that I do. He argued that excluding Social Security from the budget calculation—here are his words—"would be like going on a low-calorie diet but not counting chocolate."

I was struck by that analogy, that this man decided that, in the scheme of life, in the scheme of things, in the scheme of those programs and those things that are important to American families, Social Security was like chocolate candy. For 43 million Americans, let me suggest, Social Security is not like candy. It is not a luxury; it is a necessity.

In my home State of Illinois, visit small-town America, find the widows living in town, the senior citizens living in the highrises, and ask them what Social Security means each month. You know what it means. If you have spoken to your parents and grandparents, you know it is the bread of life. It is what sustains so many people. For this witness, called by the majority, called by those who support the balanced budget amendment, to say that it is like chocolate candy really suggests to me that perhaps financiers, or Wall Street, see life a little differently than people who live on Main Street.

The balanced budget amendment before us—and let me get to the heart of this—includes the trust fund in the budget calculation. It invites cuts in Social Security to balance the budget. That has always been my fear: Down the line the economy goes bad, revenues are decreasing, people are paying fewer taxes because they are out of work, and as a consequence here we are, trying to figure out how are we going to balance this budget next year. We do not have enough money coming in because people are unemployed, for example. So where do we turn? Where is there money? This is serious business. We cannot turn around and raise taxes in a recession. It is not popular at any time; it is very unpopular in a recession. Where do you turn?

Lo and behold, where is the mother lode of Federal money? Open the door

to the Social Security trust fund, billions of dollars being contributed to the fund today by those of us who are working, including Members of the Senate and House of Representatives, to build a balance so when the day comes that this Senator and those of like age turn up to ask for Social Security, the money will be there. Understood.

Future Congresses should not be allowed to raid the Social Security trust fund, take away the savings that we planned for the rainy day that we know is coming, and use it to balance the budget. That is why the Senator from Nevada offers his amendment. Let us play this game fair. Let us say to the American people, "If you put the money in, in each of your paychecks, for Social Security in hopes it will be there for yourself, for your parents, that it be there." It seems so obvious.

Now let us take a look at Social Security in the long term. Those who want to include Social Security in the budget calculation argue that our proposal to protect Social Security would invite future Congresses to run deficits 32 years from now when the trust fund is exhausted. This concern is unfounded. Current law does not allow the Social Security trust fund to run a deficit. If the trust fund runs out of money, it cannot keep writing checks.

Second, Congress has never authorized the Social Security trust fund to run an extended deficit. For a temporary time, around 1982 when there was a pending bankruptcy in the fund, we got close to that proposition, but only for time enough to develop a bipartisan solution.

Third, the American people are not going to allow the Social Security trust fund to be depleted. This is the single most popular program in America today, not just for seniors but for their children. It gives peace of mind to me to know that my mother, 87 years old, who is living on railroad retirement, an analogous program to Social Security, has a monthly check coming in based on her having worked during the course of her life. And it means, for me and my children, less of a concern about her financial security.

We are not going to turn away from that. We are never going to walk away from that. We are not going to allow the Social Security trust fund to be depleted. But we are not going to stand still and allow this balanced budget amendment to create a raid on Social Security. That is why this amendment is being offered. It just stops me cold to hear those on the other side say, "We'll never touch Social Security. Trust us."

I trust the Senator on the floor. I am not sure I will trust his successor, or his successor's successor, who will be bound by this same constitutional amendment. I don't know who they will be. I don't know what they will face. But at a minimum, let us put in this great document, this Constitution, language which protects our values. The Reid amendment does that.

The Congressional Research Service is an interesting group because it's a professional organization, neither Democrat nor Republican. They are here to work for us, and if we have tough questions, we often turn to them to say, "What's the honest answer here? Don't give me the spin from the Republican National Committee or the Democratic National Committee; give it right down the middle, black and white, as best you can determine." They recently identified a critical reason for supporting Senator REID's amendment. "The balanced budget amendment as currently drafted would prevent the proper use of the trust fund surplus to pay extra benefits that the baby boom generation will have earned but which will exceed revenues when they retire."

Here is what it means. We are paying more in Social Security today, and have since 1983, than we need to pay out. As I said earlier, we are building up a surplus because we know down the line, when baby boomers like myself show up for their Social Security, we are going to have more people knocking on the window asking for checks than wage earners paying in. So we are building up a balance, we of this generation, which will inure to our benefit down the line. So this surplus is being built up in the Social Security trust fund. But, if you read this amendment to the Constitution closely, the amendment offered by the chairman of the committee, you will see there is a problem. The problem is you cannot spend that surplus out of the Social Security trust fund without making up for it somewhere else. That is a major flaw. Let me tell you what it means in practical terms.

Suppose I told you that a number of years from now you will face increasing expenses related to your retirement. You might decide to save up some money now so it will be available when that time comes. You might even decide to put the money in a special account in the bank and say, I am going to keep track of it and I am not going to touch it. I am going to need this when I retire.

Now suppose I told you when the day came and the expenses occurred, you were welcome to spend the money that you have personally saved but, one condition, in order to spend the first dollar out of your savings you have to cut a dollar out of your spending, a dollar that you would otherwise spend for food or clothing or rent or utilities.

You say, "Wait a minute, why did I save all this money if when the time comes when I need it I have to cut other expenditures, dollar for dollar, to use it? That is no good. That is no savings. That does not help me." Let me say to my colleagues, that is exactly what is wrong with this amendment. This amendment says: In future generations, if we pass the balanced budget amendment and want to use the surplus in the Social Security trust fund, we can only do it if we cut other spending, balance it out.

Is this something that this Senator came up with? Is this something that the Democrats dreamed up, an interpretation of the balanced budget amendment? No. What I have just described to you comes directly from the Congressional Research Service. It is a fatal flaw in this balanced budget amendment.

You would think that those who would propose an amendment to the Constitution would be open to the possibility—the possibility—that what they want to put in that Constitution is not right and needs to be corrected and changed. But there has been resistance from the start to any amendments to this balanced budget amendment. These are the tablets of Moses, untouched by humans, brought to us, to this floor, to be accepted as is or else.

I don't like that approach when it comes to amending our Constitution. I certainly don't believe it is fair when we are dealing with the fate of 43 million Americans, and I don't believe that we should allow this flawed version of the balanced budget amendment to go forward.

I think the amendment offered by the Senator from Nevada, Senator REID, makes good sense, and I would predict this: If those who are pushing for this balanced budget amendment would, for a moment, stop, count to 10, perhaps accept a little more humble approach to this whole debate and amend in the protection of the Social Security trust fund, they would find a lot of Members coming forward, Democrats and Republicans, who could support it. To date, they haven't done it. But hope springs eternal.

I will be voting for Senator REID's amendment, and I hope my colleagues on both sides of the aisle who value the importance of a Social Security trust fund to the American family will join us.

Thank you, Mr. President.

The PRESIDING OFFICER (Mr. KEMPTHORNE). Who yields time?

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, simply put, Senator REID's amendment would exempt Social Security from section 1 of the balanced budget amendment, which requires that "total outlays for any fiscal year not exceed total receipts for that fiscal year," unless three-fifths of each House of Congress concur. Senator REID, and many of those who favor exemption of Social Security, make rhetorical points that "we shouldn't balance the budget on the backs of the elderly," and that "unless exempted, the Social Security trust funds will be raided." Those are direct quotes from those who have spoken on the other side of the aisle.

The primary paradox of this debate, in a debate full of paradoxes, is the fact that removing Social Security from the protection of the balanced budget amendment will create an over-

whelming incentive to do exactly what these critics of the amendment fear, for this would focus budget pressures on the Social Security trust funds that could destroy the viability of the Social Security program itself. It is a folly that has no real relationship to the goals sought, which should be the protection of the Social Security trust funds. What they are doing is a risky gimmick; it's a riverboat gamble. Frankly, it's a real mistake should this amendment be adopted.

Furthermore—another paradox—exempting the trust funds is simply unwarranted. There already exists an elaborate statutory scheme of firewalls.

Mr. President, I notice the distinguished Senator from Massachusetts is here. I have a rather extensive statement to make. So what I will do, if he cares to make his statement, I will yield the floor at this time, and then I will finish my statement afterward. I ask unanimous consent I not lose my right to the floor following the distinguished Senator from Massachusetts.

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

Mr. HATCH. I will forego, so the Senator can have the floor.

Mr. REID. Mr. President, I yield to the senior Senator from Massachusetts 30 minutes.

The PRESIDING OFFICER. The Senator from Massachusetts is recognized for 30 minutes.

Mr. KENNEDY. Mr. President, I thank the Senator from Nevada for yielding this time, and I join with so many of our colleagues in the Senate, hopefully on both sides of the aisle, as well as our senior citizens all over this country in commending him for the leadership he has provided on this extremely important amendment.

I had the chance to offer a similar amendment in the Judiciary Committee's markup, and we debated some of these issues. But I think the eloquence and the force and the presentation that has been made by the Senator from Nevada has been extraordinarily powerful and increasingly appreciated and understood by the American people, and we thank him for his leadership on this issue and so many others.

Mr. President, Social Security is America's time-honored commitment to senior citizens that we will care for them in their golden years. It says to every citizen that if you work hard and pay into Social Security throughout your working life, Social Security will be there for you when you retire. It will help you pay the rent, buy the groceries, and maintain a reasonable standard of life throughout your retirement years.

Social Security is the most successful social program ever enacted. It is among the most solemn obligations that any government can make to its citizens, and Congress should honor it and not undermine it.

The proposed balanced budget constitutional amendment puts the Social

Security contract with senior citizens in danger. If this amendment is added to the Constitution, no one can guarantee you a Social Security check every month. The Rock of Gibraltar, on which this Nation's senior citizens have depended for over 60 years, would be gone, replaced by shifting political sands. The Reid amendment prevents this unacceptable change by protecting Social Security from the proposed constitutional amendment—no ifs, ands, or buts.

Millions of retired citizens live from Social Security check to Social Security check. They need it to arrive on time at the beginning of each month to pay their bills. Martha McSteen, who headed the Social Security Administration during the Reagan administration and is now president of the National Committee to Preserve Social Security and Medicare, said recently:

Keeping Social Security safe from budget tampering is, frankly, a matter of life and death for millions of Americans.

For 10 million Social Security beneficiaries age 65 and older, their monthly Social Security check amounts to 90 percent or more of their income. Those checks keep 40 percent of America's seniors out of poverty.

But under the proposed constitutional amendment, if Government revenues fall unexpectedly, or if Government expenses go up, payment on Social Security checks could stop.

Republicans say, "Trust us." We reply, in the well-known words of President Ronald Reagan, "Trust—but verify," and the way to verify is by adopting the Reid amendment.

Just 3 months ago, in November 1996, the House sponsors of the balanced budget constitutional amendment agreed that Social Security could be in trouble. As Congressmen SCHAEFER and CHARLES STENHOLM said:

Under the proposed constitutional amendment, "The President would be bound at the point at which the Government runs out of money to stop issuing the checks."

Economists say there is at least a 50-50 chance in any given year that the budget projections will be wrong and that under this constitutional amendment, this Government will run out of money. Economic forecasting is not an exact science. If budget projections are off by as little as 1 percent, this constitutional amendment could put Social Security checks at risk.

Some in this debate have said that the budget that President Clinton just submitted to Congress counts the Social Security surpluses reaching a balanced budget by the year 2002. They said if President Clinton counts Social Security in his budget, then why not count it in the balanced budget constitutional amendment? But the difference between a balanced budget, which we will achieve by 2002, and a permanent constitutional amendment are immense, especially for Social Security.

In the Clinton budget, the laws protecting Social Security from the rest of the budget are still in place. There is

nothing that President Clinton or any other President or Congress can do to jeopardize Social Security. Under the current law, President Clinton and future Presidents and Congresses must balance the budget without affecting Social Security. If they want to change Social Security, they have to change the Social Security law directly. The last thing we should do is change it indirectly by a vague constitutional amendment.

In its present form, this balanced budget constitutional amendment undercuts Social Security. Social Security would have to fight its way on an equal basis with highway construction, defense, welfare, education, and every other Federal program. Congresses have worked for many years, ever since the Reagan administration first tried to cut Social Security, to protect the Nation's senior citizens and Social Security from the annual Federal budget wars.

For 15 years, a solid bipartisan coalition of Republicans and Democrats have agreed that Social Security should be safe from that result. In 1983, the Greenspan commission recommended that Congress should place Social Security outside the Federal budget. The commission said that we need to build up a surplus in the trust funds now in order to have enough funds to provide benefits to the current generation when they begin to retire. Both Democrats and Republicans support that result.

The commission's 1983 recommendations were enacted in a law sponsored by Senator Dole and Senator MOYNIHAN, and their bill required Social Security to be placed off budget within 10 years. In 1985, 2 years later, Congress accelerated the process by placing Social Security outside the rest of the Federal budget. The Deficit Control Act of 1985, the so-called Gramm-Rudman-Hollings law, exempted Social Security from across-the-board cuts of sequestration. That law also said that Social Security could never be included in the unified budget of the U.S. Government. Senator GRAMM emphasized during the Senate debate on the Gramm-Rudman-Hollings proposal, "This bill takes Social Security off budget. So if you want to debate Social Security, go to the museum, because that debate is over. The President cannot submit a budget that says anything about Social Security. It is not in order for the Budget Committee to bring a budget to the floor that does anything to Social Security. Social Security is off budget and is a free-standing trust fund."

From that point out, when Congress has adopted the annual Federal budget resolutions, Social Security is not included. The last time Congress voted on a budget that included Social Security was 1985. The Gramm-Rudman-Hollings law was approved by overwhelming majorities, 61-31 in the Senate and a 271 to 154 vote in the House of Representatives.

Then in 1990 some Members of Congress proposed to put Social Security back in the Federal budget, but Senator HOLLINGS and Senator Heinz rejected this unwise suggestion. They insisted that Social Security remain off budget and the Senate approved an amendment to protect Social Security by a 98 to 2 vote. In fact, the Budget Enforcement Act of 1990 speaks forcefully of Congress' intention to continue to protect Social Security.

Section 13-301 of the act reads "Exclusion of Social Security from all budgets"—it says plainly that Social Security shall not be counted as new budget authority, outlays, receipts, deficits, or surplus for the purposes of the budget of the U.S. Government as submitted by the President, the congressional budget, or the balanced budget and Emergency Deficit Control Act of 1985.

In 1995, section 22 of the congressional budget resolution amended the Budget Act even further to protect Social Security in a provision entitled the Social Security Firewall Point of Order. It said that any effort to include changes in Social Security in the Federal budget were subject to a 60-vote point of order in the Senate. The proposed balanced budget constitutional amendment would reverse these 15 years of steady progress in protecting Social Security. It would be turning its back on all of this history and expose Social Security to all the budget battles that lie ahead.

Further, in a major recent study, the Congressional Research Service suggested that the proposed constitutional amendment may actually place the trust funds off limits. The funds will be sitting there and the Social Security Administration will need them to write Social Security checks, but if the balanced budget amendment is adopted the Constitution will say no.

Here is what the Congressional Research Service concluded in its analysis for Senator DASCHLE on February 5:

Because the balanced budget amendment requires that the required balance between outlays for that year and receipts for that year, the moneys that constitute the Social Security surpluses would not be available for the payment of the benefits.

Therefore, the money that had been set aside, the time when more funds are being paid into the Social Security benefits, at the year 2019 when there will begin to be some deficit between the amounts paid in and the amounts that have to be paid out, what the Congressional Research Service is saying is you will not be able to use the surpluses that have been built in all of these next 20-odd years. We will have to only look at the year that the money comes in and that the money goes out. That is, I think, understandable when you look on page 2 of the amendment and under line 7, it says "total outlays for any fiscal year shall not exceed total receipts for that fiscal year." Those are the operative words which led the Congressional Research

Service to that conclusion which puts it in danger not only of the possibility for balancing the budget in terms of any period in the future but risks the surpluses that have been put in place over these next several years.

Now, Republicans asked the Congressional Research Service to clarify its opinion. They hoped, if they asked again, they would get a different answer, but instead the Congressional Research Service reaffirmed the opinion of February 12 that Social Security is at risk under the proposed constitutional amendment. CRS said again that under the proposed constitutional amendment when Social Security payments are estimated to exceed Social Security receipts from payroll withholdings, which is expected to happen beginning in the year 2013, Social Security payments can be made from the trust funds only if spending for other programs is reduced by the same amount. In other words, for each dollar drawn down from the trust fund, a dollar must be cut from education or defense or some other Government program.

Employees have worked hard all of their lives. Social Security has been withheld from their paycheck month after month. They are expecting the money to be available when they retire. But this proposed constitutional amendment suddenly freezes all that money that they had paid in over the years. When this happened, if Social Security is not off budget, we would have only three choices: We could cut Social Security benefits, we could raise taxes, or we can cut billions of dollars from education, health, national defense, other priorities, to keep the Social Security checks flowing. Clearly, Social Security benefits are at risk under the proposed constitutional amendment.

Now, some supporters of the balanced budget constitutional amendment want this result. When the Judiciary Committee was debating this amendment on Social Security, my amendment on January 30, Senator HATCH, the chair of the committee, said that under the constitutional amendment Social Security "would have to fight its way just like every other program." Senator HATCH went on to say that he believed Social Security has the easiest of all arguments to fight its way. But half of the members of the Judiciary Committee rejected that position. I had offered the amendment to protect Social Security during the committee's markup of the proposal. The committee was evenly split on the issue, 9-9. So in the very committee that is responsible for this amendment, half the membership, half of the membership, believed that Social Security is at risk under the proposed constitutional amendment.

Nothing in the proposed constitutional amendment, nothing, assures our senior citizens that their Social Security checks will survive the budget battles that lie ahead. Elderly Ameri-

cans deserve more than expressions of good will by supporters of the constitutional amendment. If those who favor this unwise constitutional amendment are committed to protecting Social Security, they should write that protection in their proposal and adopt the Reid amendment.

President Clinton wrote to the Senate Democratic leader on January 28 about the risk to Social Security, and said to Senator DASCHLE, "I am very concerned that Senate Joint Resolution 1, the constitutional amendment to the balanced budget, could pose grave risks to the Social Security system." We cannot let that happen. I say we must—and we will, balance the budget. We must—and we will take steps to protect Social Security in the future. We should have that debate openly and honestly, but we should not jeopardize Social Security indirectly by subjecting it to the requirements of this blunderbuss constitutional amendment. I urge my colleagues to protect the Social Security by supporting the Reid amendment.

Mr. President, basically, just to sum up where I believe we are, if we look at the record of the Congress since the recommendation of the Greenspan commission of 1983, Social Security amendments in 1983 to put Social Security in order, and the recommendation, the unanimous recommendation was that Social Security was to be considered off budget, and that the commission itself urged them to do that in the next 10 years. Those recommendations were adopted 58 to 14, with 32 Republicans and 26 Democrats. This was a bipartisan effort to protect the Social Security system.

As I mentioned before, with Social Security, unlike other items in the Federal budget, people pay in in order to be able to receive later. I am a great supporter of education, but the students of this country have not paid in previously in order to receive either a grant or a loan. I am a great supporter of medical and biomedical research, but the researchers have not paid in in order to be able to receive funding. I am a great believer in child care, but the parents have not paid in so that they can receive money for child care.

The one program people have paid into in order to receive is Social Security. That is why, Mr. President, we have the recommendations—unanimous recommendations—of the bipartisan commission, supported by the ranking member of the Finance Committee—by Republicans and Democrats alike—that said we should take the recommendations of the Greenspan commission and, within 10 years, adopt a proposal that would effectively put Social Security off budget. We didn't wait 10 years. We waited 2 years. There was Gramm-Rudman-Hollings in 1985, which was adopted by 61 to 31, with 39 Republicans and 22 Democrats supporting. This is what it said: "Exempt Programs, section 255. Social Security benefits shall be exempt from reduc-

tion under any order issued under this part." This is in the Deficit Control Act. What they are saying is that we will not put at risk Social Security. And then a little later in that act, they pointed out that what we had was a sequestration, which meant there was going to be a reduction in various programs and done so on an across-the-board percentage. What happened in the Congress? What was accepted at that time? It said: "The Social Security benefits program shall be exempt from reduction under any order."

So it is saying doubly sure, don't include it, and if somehow it gets in, don't reduce it. This was the overwhelming position. Why? Because, as I stated earlier, it is the solemn pledge and commitment of the United States to our seniors, the lifeline for their lives, their well-being, their ability not to live in poverty, their ability to live with some degree of respect and dignity. These are men and women who have built this country, fought its wars and made it the great Nation that it is.

Then we had the 1990 Budget Enforcement Act, another opportunity to deal with the issues in Social Security. If it was not clear enough previously under the existing amendments, which have been stated, we had an amendment offered by Senators Heinz and HOLLINGS, adopted 98 to 2. "Exclusion of Social Security from all budgets." There it is again. Recommended in 1983, enacted in 1985, clarified again in 1985 under the sequestration. If there is going to be any question about it, in 1990, here is the amendment, 98 to 2, Republicans and Democrats, to take it off budget. And then, in 1995, we have the firewalls, those walls to try to separate the various functions of Government as to what areas could be cut or shifted, in terms of budget allocations. It was very clear again in 1995—Social Security firewall point of order in the Senate. It points out, once again, "Not only is Social Security off budget, but any budget amendments affecting Social Security are subject to a point of order." This is what they call the pay-go provisions.

Once again, every indication, coming from 1983 all the way up to the present time, Republicans and Democrats alike, when it came to the issues of dealing with budgetary considerations and the challenges that we as a country were facing, said Social Security is different. Social Security is different. The reason that it is different is self-evident for, I think, every Member of this body. It is because it is different that we are going to treat it differently from other general budget expenditures. Sure, we are going to have belt-tightening in some areas that many of us would hope that we would not necessarily have. We will have differences on where we ought to tighten the budget. But Republicans and Democrats have repeated time after time after time that we were going to exclude this program and let it be considered on its own, in terms of a trust

fund, because it isn't the Social Security trust fund that has brought us to the kinds of deficits we have had over any period of time, and it is not the fault of our senior citizens.

I am not out here today to review what actions we took in 1981 that set us on a path toward the growth of the large deficits. We can debate that at another time. That is not relevant to this. What is relevant are the actions, in a bipartisan way, that have been taken at every single opportunity when this body has addressed the issues of budget. And now we are being asked in the most significant and important request of all to say that when it comes to a constitutional amendment, we are going to make sure that Social Security is going to be included. We are going to make sure it is going to be included.

How do we know that? Because when we ask to take it out, we are told we can't take it out. The primary sponsors of this program have said that Social Security is going to have to fight it out with the other programs, is going to have to fight it out with education, fight it out with national security, fight it out with other kinds of priorities for the Nation. We have to ask ourselves—some of us have very recent memory when we saw the kinds of potential cuts that were being proposed in Social Security-related programs in the last Congress—cuts in the Medicare Program, not unrelated to Social Security, cuts in the program to pay for tax breaks for the wealthiest individuals.

Are we going to say now that we are going to wrap this potential cut in Social Security in this constitutional amendment, and that somewhere down the road it may be used as a piggy bank for trading off other kinds of budgetary requirements? I say, no. We have a chance to prevent that. This body is either serious about what we have done over the last 15 years and what we have stated to be the position of this institution, in a bipartisan way, and say Social Security is out, or we are telling our senior citizens that Social Security is being put at risk.

Now, Mr. President, we have to understand some other items. There are those who have said, well, if we pass the balanced budget, some of this legislation will still be out there, and it might provide some protection for Social Security. Well, they ought to read the Constitution one more time, because the Constitution is what controls statutes. It is the Constitution that is the law of the land. It is the Constitution that will be the driving factor and force on this particular issue, not what we have done in various statutes, not what we have done in budget orders, not actions that have been taken by other Congresses. It will be the Constitution.

So what we are saying, Mr. President, is we are going to put at risk, if the Reid amendment is not accepted, the future in terms of Social Security. All of these actions and protections

that have existed there, with strong, overwhelming bipartisan support, not just simple majority—98 to 2—all of that is gone with the wind, all of that is past, all of that is sand, all of those pillars of marble that are out there are now effectively dust, in terms of protection.

Now, Mr. President, I know we will hear those who will say, well, the best we can do for our senior citizens is to have a sound economy. That is fine. We are going to work for a sound economy. But let's not put the senior citizens who have paid into this fund at risk in terms of their future and vital needs. This is a lifeline for our senior citizens. It is a fundamental and basic commitment that we have made over the more than 60 years it has been in effect. It has been reaffirmed and reaffirmed in this body. Without the Reid amendment, we are putting the Social Security system at serious and grave risk. That, I believe, is unwise, unjustified, and wrong. I hope the Reid amendment will be accepted.

I thank the Senator from Nevada again, and I thank my friend from Utah for working out the schedule.

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I am always happy to work out the schedule for my colleague from Massachusetts and always enjoy hearing my colleague. I think it is good for the acoustics from time to time, and it is also good for all of us who seem to talk at just a normal level. I always enjoy hearing my colleague, and I have enjoyed hearing him on this today, as bad and as dire and stressful as he seems to think things are. But then again, let's go back.

Simply put, Senator REID's amendment would exempt Social Security from section 1 of the balanced budget amendment, which requires that total outlays for any fiscal year not exceed total receipts for that fiscal year unless a three-fifths vote of both Houses concurs. Senator REID, and many of those who favor exemption of Social Security, make the rhetorical points that we should not balance the budget on the backs of the elderly; that the Social Security trust funds will be raided. Poppycock. The fact is, those funds are going to be invested in the very same bonds, no matter whether it is off budget or on.

The question is, what is the best budgetary approach to take? What is in the best interests of our senior citizens? What is in the best interests of our senior citizens is to understand that everybody in Congress will protect Social Security, and it is better off having it in the unified budget where it has always been protected. Show me a time when it wasn't. It has always been protected, at least in all the time I have been here. Put aside whether it is a riverboat gamble or whether it is a risky gimmick; it is pretty pathetic when you stop and think about it.

We have heard a lot of talk about how our uses of surpluses would be criminal conduct if done by business people and done in the private sector. But no one is going to prison around here. The fact is that removing Social Security from the protection of the balanced budget amendment would be the worst thing we could do to senior citizens. Talk about a risky gimmick, a riverboat gamble.

The primary paradox of this debate, as I have said before, in a debate full of paradoxes is the fact that removing Social Security from the protection of the balanced budget amendment would create an overwhelming incentive to do exactly what these critics say they fear. For this would focus budget pressures on the Social Security trust funds that could destroy the very viability of the Social Security program itself. It is a folly that has no real relationship to the goals sought. And that goal should be the protection of the Social Security trust funds.

Furthermore, another paradox that I will mention is that exempting the trust funds is simply unwarranted. There already exists a statutory scheme of firewalls that protect the trust funds from Presidential and congressional tampering. Nothing in the balanced budget amendment is inconsistent with the statutory firewall scheme that would warrant the firewall protections being declared unconstitutional. The truth is, the passage of Senate Joint Resolution 1, the balanced budget amendment, will be the best protection to Social Security that we can get.

Yet another paradox is that the Reid amendment does nothing to respond to the concern that Social Security benefits will be reduced. There is no language in his proposal that would protect Social Security recipients from either further budget cuts or tax increases. In fact, the Reid amendment expressly reserves the right to cut benefits. Get that. It expressly reserves the right to cut benefits.

Removing Social Security from the protection of the balanced budget amendment would weaken the financial integrity of the Social Security system. Presently, the Social Security program is producing annual surpluses because the huge baby boomer generation is still working and paying FICA taxes into the system. But the surpluses will end no later than the year 2019, when most of the baby boomers retire.

Moreover, under current projections, Social Security will have exhausted the trust funds and will be running a huge deficit by the year 2029. By the year 2070, Social Security will face a startling \$7 trillion annual shortfall. Excluding Social Security ignores this problem and places this system in dire jeopardy. Including Social Security in the budget calculations forces Congress to address the pending crisis in a responsible manner before it becomes too late.

Let me just explain this in more detail. Let me talk about the Social Security exemption that they are asking for here. This risky gimmick of exempting Social Security would open up a loophole in the amendment and siphon off revenues from the trust funds. Placing the trust funds off budget will harm the Social Security program and make balanced budgets a virtual impossibility. The consequences of this could be very dire indeed. Further, I must emphasize that nothing in the Reid amendment protects recipients from either budget cuts or tax increases.

Under the Reid amendment, we would have two budgets. One would be based on sound principles of solvency and the other, the Social Security budget, would not be. One budget would be required to be in balance unless a supermajority votes to allow a deficit. The other, the Social Security budget, if they have their way, would be raided and bloated with costly unrelated projects. Anybody who doesn't believe that has not watched this outfit for the last 28 years as we unbalanced the budgets in each of the last 28 years.

Social Security—don't leave it out. If you leave it out, you are going to have special interest rats eating all the Social Security cheese, whereas if we leave it in, it is protected by the balanced budget amendment. We protect it because we keep a sound, good economy. We all know who these rats are. They are special interests that come in here and buy their way into influence. Taking Social Security off budget will subject funds to Washington special interest scavengers. When you have rats in your house, you need to plug all of the holes. If you do not, they are going to find a way in.

If we leave Social Security off budget, new and old special interest spending initiatives which cannot survive or make their way if they have to compete against other programs, will smell out the scent of Social Security and destroy it just like these high-class rats are destroying the cheese here on this chart. That is what is going to happen to Social Security. We all know it.

This is a game. The people who are arguing for it, with the exception of a few—certainly, Senator REID is very sincere about this—the people arguing for this hate the balanced budget amendment. It puts the screws to their spending programs, programs that are eating us alive and mortgaging our children's and our grandchildren's future. They want to defeat this amendment at all costs. And, therefore, they use these phony arguments that taking Social Security off budget is going to protect it when everybody knows it will not. This loophole will not only blow a hole in the balanced budget amendment, but it would also seriously harm Social Security.

Senator REID and supporters of the Reid amendment incorrectly contend that including present day Social Secu-

rity surpluses in the unified budget would "raid" the trust funds. This is a complete misnomer. Here is how it works. The people pay the FICA tax. The Social Security Administration gets it and then sends it to the Treasury. All FICA tax proceeds are commingled with the general funds. The Social Security Administration receives Treasury bonds in recognition of the debt—and those bonds are the greatest redeemable securities in the world, United States bonds. They buy them to be redeemed later. The only way they are going to be redeemed is if we have a sound economy. The only way we are going to have a sound economy is if we live within our means. We clearly are not living within our means.

These documents are just 28 years. If we put the 58 years of the last 66 years, my goodness, what we have done to America is criminal. That is the where the real criminals are: people who continue to spend.

The fact is if you are looking for people who have committed wrongs, then look to Congress, and it would be a double wrong if we moved Social Security out the protection of the balanced budget amendment, where it is vulnerable, where it is out there open, where all these special-interest rats can attack it because it is the only thing left to be able to spend and spend and spend. That is exactly what is going to happen here if we do not watch out. The FICA tax, moneys that they get from the bonds of Social Security, are going right now for entitlement spending and discretionary spending. Many of these programs are critical programs. If you take this Social Security off budget in the sense they want to in the Reid amendment, every one of the important social spending programs we have in this country, every one of them is going to be hurt. And in the end Social Security will be hurt because then there will be that much more of a push to go to that nice big second budget there that is not subject to balanced budget requisites and hang all these programs on it. If that happens, mark my word, senior citizens, every one of you are going to be hurt.

Social Security receipts are by law used to purchase interest-bearing securities, as I have said. Nothing in Senate Joint Resolution 1 would change the Social Security program, but if Social Security were removed from the protection of the Senate Joint Resolution 1 balancing requirements, the trust fund really would be raided. Under the Reid amendment, Social Security receipts would not be designated as "receipts" or "outlays," as under the balanced budget amendment. Spending Social Security surpluses, therefore, would not have to be offset by other receipts as it must if there is no exemption. This creates a powerful, yet perverse, incentive for Congress to spend the surpluses by redesigning other programs as Social Security.

That is what they will do to you. You know that. They want it off so they

can redesign other programs, call them Social Security and eat up the surpluses and add to the deficit that we are all dying from right now.

Look, it is the biggest con job I have ever seen. Sincere or not, it is a con job. Let me just say this. This would be real raiding because what constitutes "Social Security" will be expanded, with the present day surpluses funding newly relabeled programs, only they will be called Social Security, and they will just continue to spend just like we have been doing for 58 of the last 66 years. This is only 28 of those unbalanced budgets, the last 28.

If projects are not immediately redesignated Social Security as I just discussed, thereby consuming accumulated Social Security surpluses, surplus proceeds would be used in the only possible manner that would avoid section 1's prohibition on outlays exceeding receipts, and that is to make debt repayment.

Normally, this would be wonderful, but, in fact, it creates a dangerous mechanism for the Congress to continue deficit spending if we adopt the Reid amendment. If the surplus is used to pay down the public debt, the total debt level will be reduced, creating a gap between the public debt total and the statutory debt ceiling. As a result, Congress would then be able to increase spending out of Social Security, which is not constrained by a balanced budget rule, without immediately bumping into the statutory debt ceiling. This would in essence allow a future Congress to again increase the Nation's debt without facing the balanced budget amendment's required three-fifths vote. Thus, any surplus generated by Social Security and used to pay off the debt would be squandered because the Congress could simply deficit spend under the Social Security exemption until the statutory debt ceiling is reached. This scenario would not be possible if Social Security was not exempted from the balanced budget amendment.

This secondary loophole constitutes an indirect way of using surplus Social Security receipts.

So, Mr. President, through one loophole or another, the Reid amendment would drain off the Social Security surpluses in the short term and fail to protect Social Security from tremendous deficits in the long term. Consequently, the Reid amendment not only fails to protect Social Security but is a risky gimmick, a riverboat gamble that will endanger the trust funds.

The net effect of the loopholes will be the depletion of the trust funds years early. When the balanced budget amendment does take effect in the year 2002, the trust funds will stop growing as all annual surplus funds would be reallocated for programs that have been redesignated Social Security. So instead of growing from 2002 to 2019, the years the trust funds are estimated to stop growing, the system

would become stagnant. Exemption of Social Security from the balanced budget amendment will consequently speed up the system's demise.

If you do not believe that, then you have not watched Congress over the last 28 years. I think there might be some logic to what they say if you really stretched the cord, if you did not have the good old 28 years of unbalanced budgets sitting here, knowing the Congress cannot stop spending unless there is something in the Constitution that says we have to stop; you have to start living within your means; you have to start budgeting; you have to start doing what is right for the American people and especially the future of our children.

Removing Social Security from the protection of Senate Joint Resolution 1 would make balancing the budget virtually impossible. Based on the gimmickry of the past, the most likely scenario Congress will follow is to pass legislation to fund any number of programs off budget through the Social Security trust funds. The budget could be balanced simply by shifting enough programs into the Social Security trust funds. Where would the senior citizens be then? You would be the ones who are being ripped off. You talk about criminal conduct.

Congress could simply add to an exempted Social Security enough budget items to make up any deficit from the official budget. Congress could then eliminate the deficit by simply transferring costly programs to the exempted Social Security program. We would have a balanced budget but on paper only. Talk about a risky gimmick.

FICA taxes have grown significantly over the years. Odds are that the loophole would only accelerate this increase. In fact, all kinds of new "Social Security" taxes would be enacted such as a "Social Security" income tax or a "Social Security" value-added tax. As this process continues, the loophole created by this exemption by the Reid amendment would easily swallow both the spending and taxing provisions of the balanced budget amendment.

The balanced budget amendment will allow the use of Social Security surpluses to fund benefits.

Some Senators have proffered another argument in support of removing Social Security from the protections of Senate Joint Resolution 1. They allege that the very wording of the balanced budget amendment will not allow the use of surpluses in following years. This is so, they claim, because in succeeding years the spending for benefits from the saved surpluses becomes "outlay" under the constitutional amendment. They created quite a storm when they claimed that a CRS memorandum confirmed this. The only problem with their elaborate theory is that it is wrong.

Simply put, Mr. President, I must say once more that passage and ratification of the balanced budget amendment will not harm the Social Security

Program. In fact, the very passage of Senate Joint Resolution 1 will help stabilize the program. CRS never concluded that the balanced budget amendment will harm Social Security. I believe that the Congressional Research Service memorandum my friend from Nevada was alluding to was, unfortunately, quoted out of context.

Let me explain. The CRS memorandum, dated February 5, that my colleague was alluding to, did not conclude in any way whatsoever that the balanced budget amendment would harm Social Security. All the CRS memorandum concluded was that, assuming the Social Security surplus survived through to the year 2019, the year Social Security will start running huge annual deficits, this previously accumulated surplus could be used to help pay for future deficits but only if it is offset by revenue or budget cuts.

Now, despite what my good friend asserted, under the balanced budget amendment, assets of the Federal Treasury could be drawn upon to ensure payments to beneficiaries when the system starts running deficits, annual deficits, that is.

To clear up any confusion, the Congressional Research Service produced another memorandum dated February 12, 1997, at Senator DOMENICI's request. This memorandum stated "We," that is, the Congressional Research Service, "are not concluding that the trust fund surpluses could not be drawn down to pay beneficiaries. The balanced budget amendment would not require that result."

So where is the problem? In the near future, when Social Security runs in the red, the Congressional Research Service concluded that under the balanced budget amendment, "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 the securities with whatever moneys it has available."

Senator MACK and I also requested that the Congressional Research Service clear up any confusion concerning the use of the February 5 CRS memorandum. CRS stated, in a letter dated February 14, that its memorandum was quoted out of context, and reiterated that under the balanced budget amendment, Federal receipts, including Social Security surpluses, could be used to pay for Social Security benefits.

I ask unanimous consent that the letter dated February 14, 1987, be printed in the RECORD at this point.

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

CONGRESSIONAL RESEARCH SERVICE,
THE LIBRARY OF CONGRESS,
Washington, DC, February 14, 1997.
Hon. ORRIN G. HATCH,
U.S. Senate,
Washington, DC.

DEAR SENATOR HATCH: This letter is in response to inquiries made by you and Senator Mack about the conclusions CRS was reported to have reached in various responses to requests about the impact of the pending

Balanced Budget Amendment (BBA) on the Social Security program. We note that you were engaged in a debate about these responses on the Senate floor on February 12, 1997.

Let me first say that CRS will always seek to respond to the specific needs of the congressional requestor, but will do so in a manner consistent with our obligation to provide research and information that is accurate and nonadvocative. We place the highest importance on these characteristics of our work and make every possible effort to maintain them. I want to assure you that CRS has applied these principles in responding to requests on the question of the BBA's effects on Social Security.

Although the National Journal's "Congress Daily AM" report of February 12, 1997 and other subsequent press accounts suggest that CRS drew a conclusion in a February 5, 1997 memorandum to Senator Daschle that Social Security would be threatened by the enactment of the Balanced Budget Amendment (BBA), we did not.

In fact, we were careful in that memorandum to make sure the reader understood that there was a range of possible outcomes. We realize that considerable attention was drawn to the following statement in the memorandum:

"Because the BBA requires that the required balance be between outlays for that year and receipts for that year, the moneys that constitute the Social Security surpluses would not be available as a balance for the payments of benefits. [The word 'surpluses' here was referring to the accumulated securities held by the Social Security trust funds.]"

The reader, however, only needed to go to the next and final paragraph of the memorandum to know that we were not concluding that this would be a problem for Social Security. It stated:

"Now, of course, this does not mean that Social Security benefits could not be paid. If the rest of the receipts into the treasury for a particular year exceed outlays, this amount could be used to offset the Social Security deficit. And, again of course, tax or expenditure provisions, or both, could be altered to create a new balance."

We came to realize from the immediate Congressional inquiries we received that there was a perception among some Members and staff that the statement, when taken in isolation, meant that if the BBA were enacted, the Social Security trust funds could not be drawn down to pay benefits if in any year the program was running a deficit. The statement in question simply was referring to how the drawdown from the trust funds would be scored under BBA accounting rules, not to what would happen to the program or trust funds. Nevertheless, in responding to subsequent congressional requests, we addressed this perception. In a February 12, 1997 memorandum prepared for Senator Domenici, which he inserted in the Congressional Record the same day, we pointed out first that

"the Trust Funds will be drawn down to cover the Social Security deficit in that year, and that the Treasury will have to make good on those securities with whatever moneys it has available." [Congressional Record, February 12, 1997, pp. S1294, 1295.]

We further pointed out that the earlier statement—that the drawdown from the trust funds would not count as receipts under BBA scoring rules—was not a conclusion by CRS that the trust Funds surpluses could not be drawn down to pay benefits. In fact, we said that the BBA would not require that result.

In both instances, CRS was asked specific questions on the same issues, but from different Members with different perspectives,

and we gave consistent answers. I further would point out that in a CRS memorandum for general congressional distribution prepared February 7, 1997 for the purpose of discussing the impact of the BBA on Social Security generally, where we did not have to respond to a specific question from a Member, we made a similar statement about the topic:

"Regardless of whether Social Security is included in calculating the budget, under the intermediate projections [of the 1996 Social Security trustees' report] its outlays must be reduced or its revenues increased to avoid insolvency in 2029. Whether it is more or less likely that these changes would occur if Social Security were or were not included in the Balanced Budget Amendment is a matter of conjecture." [Memorandum entitled "Analysis of effects of the balanced budget amendment on Social Security, including the effect of enactment of H.R. 3636," by Geoffrey Kollmann, February 7, 1997]

With numerous CRS staff from different disciplines responding to questions from many Members and offices with varying perspectives, which is a common occurrence on major legislative issues, we are conscious of the possibility that we could approach and respond to questions about an issue inconsistently. Consequently, we expend considerable effort to coordinate our analyses and responses, particularly through the extensive CRS review process. On this particular issue, I believe we have taken a consistent position on what we do know and don't know about the impact of the BBA on Social Security, both in responses to specific questions from individual Members and in our general products.

In closing, I would emphasize again the importance CRS attaches to its unique role as a source of accurate and balanced research and information. I trust this communication has demonstrated our commitment to preserving the reputation for integrity that we have earned from the Congress over eighty years.

Sincerely,

DANIEL P. MULHOLLAN,
Director.

Mr. HATCH. Furthermore, to nail the point home, the nonpartisan Concord Coalition entered the fray. In a memorandum dated February 18, 1997, the Coalition concluded that the Senate position—that if the balanced budget amendment does not exempt Social Security it will somehow nullify Social Security benefits and prevent payments of benefits to retired baby boomers—is, and I quote, "nonsense." Let me quote further.

"What the balanced budget amendment would do is to raise national savings, and thus make Social Security—along with the myriad other claims on tomorrow's economy—more affordable. It would be ironic indeed if concern about funding Social Security, whether real or pretended, turns out to be the issue that sinks the balanced budget amendment."

"Let us be clear," they go on to say, "The balanced budget amendment would in no way alter the status of the Social Security trust funds."

I ask unanimous consent that an article entitled "Facing Facts, The Truth about Entitlements and the Budget, A Fax Alert from The Concord Coalition," dated February 18, 1997, be printed in the RECORD at this point.

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

[From the Concord Coalition, Feb. 18, 1997]

MORE NONSENSE ON SOCIAL SECURITY AND THE BBA

Last week, Senator Byron Dorgan and several like-minded colleagues held a news conference at which they warned that if the balanced budget amendment (BBA) does not exempt Social Security it will somehow nullify the program's trust-fund surpluses and prevent Congress from paying promised benefits when Boomers retire. This conclusion, they said, has been corroborated by the Congressional Research Service (CRS).

All of this is nonsense. What the BBA would do is to raise national savings and thus make Social Security—along with the myriad other claims on tomorrow's economy—more affordable. It would be ironic indeed if concern about funding Social Security, whether real or pretended, turns out to be the issue that sinks the BBA.

A DEFICIT TIME BOMB

Let's be clear: The BBA would in no way alter the status of the Social Security trust funds. After enactment of the BBA, the Treasury IOUs held in the trust funds would be precisely as meaningless as they are today. With or without the BBA, these "assets" can only be redeemed if Congress hikes taxes, cuts other spending or borrows more from the public to raise the cash. The BBA, by requiring that the unified budget be in balance in every future year, would simply curtail the borrowing option—which, in effect, is all CRS says.

Apparently, what the senators really want is some guarantee that Congress translate Social Security's trust-fund surpluses into genuine economic savings by running unified budget surpluses of equal size. This may be a laudable policy goal—and there is nothing in the BBA to prevent Congress from pursuing it. But embedding trust-fund accounting in the Constitution by exempting Social Security from the BBA is a terrible idea.

Why? While the Social Security trust funds are officially projected to run modest surpluses until 2019, thereafter they are due to run ever-widening deficits. And once the deficits begin, the BBA-cum-exemption would allow Congress to run a unified budget deficit equal to the Social Security trust-fund deficit every year. By 2025, the allowable annual unified budget deficit would rise to \$315 billion; by 2040, it would rise to \$2.1 trillion. If the economy takes a dip, moreover, deficits could begin much sooner—by 2007, according to the Trustees' high-cost projection. In this case, a BBA that goes into effect in 2002 would guarantee very little near-term addition to national savings—but would allow a Niagara of deficit spending in future years.

And even this assumes that legislators won't redefine "Social Security" so that the exemption becomes an immediate highway for any amount of deficit spending. With the White House now proposing to keep Medicare "solvent" by shuffling outlays between its trust funds, such shenanigans hardly seem farfetched.

TIME TO WAKE UP

It's time we focus less on process and more on substantive economic results. Trust-fund accounting is (and always has been) an arbitrary legislative artifact. Whether a trust fund is in surplus or deficit has little economic relevance. What does matter is the net difference between total federal revenues and outlays, otherwise known as the unified budget balance.

The senators should wake up and look around. The principal effect of their exemp-

tion would be to allow the nation to run huge unified budget deficits at a time when a massive age wave will be straining the productive capacity of America's younger generations.

Yes, it probably is sound policy to run unified budget surpluses today to boost our lagging savings rate and prepare for the coming demographic transformation of our society. But let's not do so merely to fulfill some narrow trust-fund logic—and especially not as way to justify and allow massive budget deficits in the future.

Right now we find ourselves waist deep in deficit water. The purpose of the BBA is to require Congress to raise the deck above water and keep it there. The Social Security exemption would defeat this purpose. As for running budget surpluses, nothing in the BBA prevents Congress from doing so whenever it so decides.

Mr. HATCH. Even more important, yesterday, the very same Concord Coalition revealed a major analysis studying the effects of exempting Social Security from the unified budget.

This is the Balanced Budget Amendment and Social Security, the Concord Coalition Issue Analysis, 97-1, dated February 24, 1997, as of yesterday. Because of the significance of the analysis, let me quote its major conclusion:

Trust fund accounting is, and always has been, an arbitrary legislative artifact. Whether a trust fund is in surplus or deficit has little economic relevance. What does matter is the net difference between total Federal revenues and outlays, otherwise known as the unified budget balance.

Although some Senators and Representatives mistakenly believe that exempting Social Security from the balanced budget amendment would protect boomer retirees, it would, in reality, do nothing to guarantee future Social Security benefits, which would remain mere statutory promises, subject to change by Congress at any time.

"Instead," and let me go to this next chart—"Instead," it says:

... legislators should focus on how the balanced budget amendment without an exemption for Social Security would strengthen the Social Security program and the ability of our Nation to finance retirement benefits not only for the baby boom generation, but for succeeding generations as well. The BBA, the balanced budget amendment, would raise national savings and thus make Social Security—along with Medicare and other claims on tomorrow's economy—more affordable.

That's a statement of the Concord Coalition, *The Balanced Budget Amendment and Social Security—6*, in 1997.

The Concord Coalition is a nonpartisan group made up of Democrats and Republicans, business people and nonbusiness people, people who are concerned about fighting these budget battles in an appropriate way. They do not have any axes to grind except they are leading the fight to try to balance the budget. They are not playing games with the letters from the Congressional Research Service. Which really has occurred in this matter.

"Right now we find ourselves waist deep in deficit water," the Concord Coalition goes on to say.

The purpose of the balanced budget amendment is to require Congress to raise the deck above water and keep it there. The Social Security exemption would defeat this purpose.

I ask unanimous consent to have the Concord Coalition's Issue Analysis 97-1, the Balanced Budget Amendment and Social Security, printed in the RECORD at this point.

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

[From the Concord Coalition, Feb. 24, 1997]

THE BALANCED BUDGET AMENDMENT AND
SOCIAL SECURITY
Issue Analysis 97-1

On February 5, 1997, the American Law Division of the Congressional Research Service (CRS) issued a one-page memorandum (Appendix 1) evaluating whether the proposed balanced budget amendment (S.J. Res. 1) would preclude, at a future time, the use of Social Security trust fund surpluses to pay out benefits. This memorandum was Exhibit One at a press conference held by Senator Byron Dorgan and several like-minded colleagues to warn that the balanced budget amendment to the Constitution (BBA) would somehow nullify the program's trust-fund surpluses and prevent the payment of benefits when the baby boom generation retires.

In fact, the CRS memorandum did not buttress the Senators' point. After explaining that payments from the trust fund would, indeed, count as federal outlays, the CRS memorandum stated explicitly:

"... this does not mean that Social Security benefits could not be paid. If the rest of the receipts into the Treasury for a particular year exceed outlays, this amount could be used to offset the Social Security deficit."

Because the point of the February 5 memorandum was so widely misreported to say the opposite of what the author intended, CRS issued a second, clarifying memorandum on February 12. (Appendix 2) The second memorandum stated,

"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, in as much as the United States has a unified budget, *other receipts* into the Treasury would have to be counted to balance the outlays form 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."

These two CRS memoranda make clear that the Senators' allegations are nonsense.

A DEFICIT TIME BOMB

Let's be clear: The BBA would in no way alter the status of the Social Security trust fund. After enactment of the BBA, the Treasury IOUs held in the trust fund would be precisely as meaningless as they are today. With or without the BBA, these "assets" can only be redeemed if Congress hikes taxes, cuts other spending, or borrows more from the public to raise the cash. This bears repeating: even if the BBA is never enacted, when the time comes to draw several hundred billion dollars from the Trust Fund in a particular year in order to pay benefits, the money to turn the government bonds held by the Trust Fund into cash will have to be found somewhere, and it will have to be found in that year. These funds can come from only three sources: raising taxes, reducing other spending elsewhere in the budget,

or borrowing from the public. The BBA, by requiring that the unified budget be in balance in every future year, would simply curtail the borrowing option—which, in effect, is all the CRS memoranda say.

Apparently, what some Senators and Representatives really want is some kind of guarantee that Congress translate Social Security's short term trust-fund surpluses into genuine economic savings by running unified budget surpluses or equal size. This is a laudable policy goal—and there is nothing in the BBA to prevent Congress from pursuing it. In fact, the Concord Coalition hopes that Congress will run substantial surpluses during extended periods of peacetime prosperity, and we invite Senators and Representatives to work with us on budget plans that not only reach balance by 2002 but contain credible, equitable, and politically realistic policies to achieve annual surpluses shortly thereafter roughly equal to Social Security surpluses.

But embedding trust-fund accounting in the Constitution by exempting Social Security from the BBA is a terrible idea.

Why? While the Social Security trust funds are officially projected to run modest surpluses until 2019, thereafter they are due to run ever-widening deficits. These deficits will not be a temporary phenomenon that will subside once the period of the baby boomers' retirement is over. The boomers' retirement marks the abrupt beginning of what will be a permanent demographic shift. The analogy is not a python trying to swallow a pig; the analogy is a python trying to swallow a telephone pole.

While one might be able to make a case for borrowing money to ride out a temporary crisis, no one can justify trying to borrow our way out of a permanent change. Once the deficit begins, the BBA with the Social Security exemption would allow Congress to run a unified budget deficit equal to the Social Security trust-fund deficit every year. By 2025, the allowable annual unified budget deficit would rise to \$315 billion; by 3040, it would rise to \$2.1 trillion. If the economy takes a dip, moreover, deficits could begin much sooner—by 2007, according to the Trustees' high-cost projection. In this case, a BBA that exempts Social Security that goes into effect in 2002 would guarantee very little near-term addition to national savings—but would allow a Niagara of deficit spending in future years.

And even this assumes that legislators won't redefine "Social Security" so that the exemption becomes a superhighway for any amount of deficit spending. With the White House now proposing to keep Medicare "solvent" by shuffling outlays between its trust funds, this hardly seems farfetched.

TIME TO WAKE UP

It's time we focus on substantive economic results. Trust-fund accounting is (and always has been) an arbitrary legislative artifact. Whether a trust fund is in surplus or deficit has little economic relevance. What does matter is the net difference between total federal revenues and outlays, otherwise known as the unified budget balance.

Although some Senators and Representatives mistakenly believe that exempting Social Security from the BBA would protect boomer retirees, it would, in reality, do nothing to guarantee future Social Security benefits, which would remain mere statutory promises subject to change by Congress at any time. The principal effect of the exemption would be to allow the nation to run huge unified budget deficits at a time when a massive age wave will be straining the productive capacity of America's younger generations.

Yes, it is sound policy to run unified budget surpluses today to boost our lagging na-

tional savings rate and prepare for the coming demographic transformation of our society. But let's not do so merely to fulfill some narrow trust-fund logic—and especially not as a way to allow and justify massive budget deficits in the future.

Instead, legislators should focus on how the BBA without an exemption for Social Security would strengthen the Social Security program and the ability of our nation to finance retirement benefits not only for the baby boom generation, but for succeeding generations as well. The BBA would raise national savings and thus make Social Security—along with Medicare and other claims on tomorrow's economy—more affordable. It would be ironic indeed if concern about funding Social Security, whether real or pretended, turns out to be the issue that sinks the BBA.

Right now we find ourselves waist deep in deficit water. The purpose of the BBA is to require Congress to raise the deck above water and keep it there. The Social Security exemption would defeat this purpose. As for running budget surpluses, nothing in the BBA prevents Congress from doing so whenever it so decides.

APPENDIX 1

CONGRESSIONAL RESEARCH SERVICE,
THE LIBRARY OF CONGRESS,
Washington, DC, February 5, 1997.

To: Hon. Thomas A. Daschle, Attention: Jonathan Adelstein.

From: American Law Division.

Subject: Treatment of Outlays from Social Security Surpluses under Balanced Budget Amendment

This memorandum is in response to your inquiry for an evaluation of an argument made in connection with interpretation of the proposed Balanced Budget Amendment (BBA), now pending in the Senate as S.J. Res. 1. Briefly stated, the contention is that the terms of the proposal, if proposed and ratified, would preclude, at a future time when Social Security outlays in a particular year begin to exceed Social Security receipts in that particular year, the use of surpluses built up in the Social Security trust funds to pay out benefits.

At the present time, surpluses are being accumulated in the Social Security trusts funds, at least as an accounting practice, as a result of changes made in 1983. It is expected that when the receipts into the funds fall below the amount being paid out that moneys from the surpluses will be used to make up the differences.

The BBA would have its impact on this legislated plan because under §1 of the proposal "[t]otal outlays for any fiscal year shall not exceed total receipts for that fiscal year. . . ." Under §7 of the BBA, the two terms are defined thusly: "Total receipts shall include all receipts of the United States Government except those derived from borrowing. Total outlays shall include all outlays of the United States Government except for those for repayment of debt principal."

Therefore, under the BBA's language, there is mandated a balance in each year of the outlays that year and the receipts that year. Payments out of the balances of the Social Security trust funds would not be counted as Government receipts under the BBA, when in the year 2019, or whenever the time occurs, the receipts in those particular years into the Social Security funds are not adequate to cover the outlays in those years. That is, payments out of the trust fund surpluses could not be counted in the calculation of the balance between total federal outlays and receipts. Because the BBA requires that the required balance be between outlays for

that year and receipts for that year, the moneys that constitute the Social Security surpluses would not be available as a balance for the payments of benefits.

Now, of course, this does not mean that Social Security benefits could not be paid. If the rest of the receipts into the Treasury for a particular year exceed outlays, this amount could be used to offset the Social Security deficit. And, again of course, tax or expenditure provisions, or both, could be altered to create a new balance.

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

APPENDIX 2

CONGRESSIONAL RESEARCH SERVICE,
THE LIBRARY OF CONGRESS,
Washington, DC, February 12, 1997.

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, & I would mandate that "[t]otal outlays for any fiscal year shall not exceed total receipts for that 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. HATCH. The Reid amendment will make it harder to balance the budget. And it will harm not only Social Security, but other social programs.

Furthermore, in another paradox, the exclusion of the present-day surpluses in the budget would make it extraordinarily difficult to balance the budget by the year 2002, the date Senate Joint Resolution 1 mandates balancing. Be-

tween now and the year 2002, the surplus is estimated to be over \$500 billion; over \$500 billion. On this chart we have 10 years of the surplus. You will notice at the bottom the surpluses are worth \$1.067 trillion, that is 10 years from now. Mr. President, \$1.067 trillion is more than our expenditure this year on Medicare, education, veterans' benefits, the environment, national defense, Social Security, transportation, and infrastructure and national resources combined. In fact, between the year 2002 and 2019 when Social Security outlays will exceed receipts, the trust fund is expected to earn more than \$1.9 trillion.

Where do supporters of the Reid amendment propose to come up with the money necessary to cover this supposed shortfall? This is an annual surplus average of approximately \$100 billion each year. According to current budgetary figures, \$100 billion per year is more than our current annual expenditure on education, the environment, transportation and infrastructure. Where will we come up with the money if this goes off budget to fund these programs if we exclude Social Security surpluses from the unified budget, and if we are serious about getting to a balanced budget by the year 2002? Show me the money. We are going to have to come up with \$1.067 trillion, and it is going to have to come out of these programs that are critical programs, if you follow this amendment that the distinguished Senator from Nevada has filed here.

Federal programs would have to be cut under his amendment, or taxes raised by that amount to reach the balanced budget goal. If the American people think they are taxed enough now, wait until they have to be taxed to make up part or all of \$1.067 trillion in the next 5 years. Keep in mind, the fact of the matter is, Social Security goes from the people to the Social Security Administration, funds go into the Treasury, and then they are invested, the surplus funds are invested in bonds that go back to the Social Security Administration to be redeemed later. They happen to be invested in the most important securities in the world. The only way we are going to be able to pay those bonds is if we have a balanced budget amendment without any gimmickry or games, and especially risky gimmicks at that, that literally help us to have a good enough economy to redeem those bonds.

If we do not do that, then many of these discretionary spending programs such as Head Start, education, entitlement spending programs such as veterans' pensions and benefits are going to be seriously harmed. It is just that simple.

Additionally, I have to point out again, not all of President Clinton's budgets have included the Social Security surpluses in their calculations. Doesn't that bother you, that the President says, "Oh, I think we ought to take Social Security out just like

Senator REID does?" Why doesn't he? Why doesn't he take it out? Because he knows he cannot even make a claim to getting close to a balanced budget without those surpluses and he also knows he would have to cut most of the expensive social welfare programs that he and most of us up here would like to keep going in the best interests of people.

Indeed, Secretary Rubin, the Secretary of the Treasury, testified in a recent judiciary hearing, that without including the surpluses in budget calculations, it would be virtually impossible to arrive at a balanced budget. In his recent press conference President Clinton admitted the same when he confessed, and this is what he said, "Neither the Republicans nor I could produce a balanced budget tomorrow that could pass if Social Security funds cannot be counted." And the reason is because those surpluses are now being used to help balance the budget. But the obligation will be the same. The bonds are still going to be there. It will still be invested in bonds, whether the Reid amendment passes or whether we continue the same system. So, to say if we were in the private sector doing this we would all go to jail is not only a misnomer, or a misstatement, the fact is that we are putting them into the securities that are the only great securities in the world.

But they are only as great as this country is. And if this country continues to spend into bankruptcy, we will not have the money to redeem those securities. If we do what the distinguished Senator from Nevada wants done here, we will not have the monies. Then you really will harm those trust funds by putting them out there all alone, not subject to balanced budget requisites, not subject to any reforms that need to take place with regard to the whole budget as a whole, but out there, vulnerable to the special interest rats who come along and eat it like cheese.

The Social Security trust funds consist not of cash but of debt securities, as this chart shows. And they will be, whether this amendment passes, the Reid amendment passes, or not. But these debt securities have to be paid back.

How do you pay them back if you don't get the country's spending under control? If you look at reality—that is these 28 budgets that have been unbalanced since 1968—how are we going to get spending under control so we can pay back those bonds and redeem those bonds and pay back that money to the Social Security fund?

Part of the problem in addressing the Social Security issue in this debate results from the confusing terminology used by our opponents. They complain that the present trust fund surplus will be "raided" if we have a unitary budget that includes Social Security. But the fact is the Social Security trust funds are not a giant wallet of \$100 bills or \$1,000 bills or gold, for that matter. The

FICA tax receipts come from the people to the Social Security Administration, and the bonds are given to the surplus, which are used to balance the budget today, and it will be the same system if the Reid amendment is adopted. The only difference is there is no balanced budget amendment. That is the only difference.

(Mr. GORTON assumed the chair.)

Mr. HATCH. The Social Security FICA tax receipts are used to pay benefits, and any excess is, by law, loaned to the Treasury to pay other Federal obligations in exchange for Treasury bonds. These bonds are interest-bearing bonds. That is all. They are evidence of the debt the Federal Government owes itself.

The most important question for future retirees is whether the Federal Government will be able to pay off its debts. The only way they will be redeemed in the future is if a budget is balanced and we have enough revenue to redeem the securities.

Mr. President, the best protection for Social Security is passing and ratifying Senate Joint Resolution 1. This would create the needed discipline to balance the budget. Payments on debt interest would be substantially reduced. The chance for Government default would be significantly diminished. The economy will grow at a brisker pace, repayment of Social Security obligations will be more secure, and we will end this process of never-ending mounting national debts, which have been continuing since—well, 58 of the last 66 years, but 28 of the last 28 years.

As I stated, the Social Security system is facing a future crisis. By the year 2029, the system will be bankrupt. We will put that chart up and you can see, when you get up to 2029, the system is bankrupt and we go into very serious deficit. Sadly, the Social Security trust fund's board of trustees estimates that by the year 2070, Social Security will be facing a \$7 trillion annual deficit. In 1996 dollars, that amounts to more than \$1 trillion in deficits each year. Our current total annual Federal budget is only \$1.5 trillion. Where will we get the revenue to redeem the Social Security securities, then, unless we plan and budget for it as required under our balanced budget amendment?

The trust fund securities are only a claim on the General Treasury funds with no capital to back up that claim. If the country ever defaults on its debts, the Social Security trust funds will suffer. For this reason alone, Social Security recipients, both current and future and those who are concerned about them, should strongly support the balanced budget amendment—for that reason alone.

The biggest threat to Social Security, therefore, is our growing debt and concomitant interest payments. The Government's use of capital to fund debt slows productivity and income growth and, thereby, lessens the pool of revenues available to fund Social Se-

curity. The real way to protect Social Security benefits is to pass Senate Joint Resolution 1. The proposal to exempt Social Security will not only destroy the balanced budget amendment, or any plan to balance the budget, but in all probability will also pose a real risk to the Social Security system.

Section 13301 of the Budget Enforcement Act of 1990 does not require that Social Security be placed "off budget." Supporters of exempting Social Security argue that section 13301 of the 1990 Budget Enforcement Act literally exempts Social Security trust funds from the President's and the Congress' budget calculations. They claim that the balanced budget amendment would change this because it requires a unified budget.

These critics of the balanced budget amendment are wrong on both counts. Under section 13301(a) of the Budget Enforcement Act, the receipts and outlays of the Social Security trust funds are, indeed, not counted in both the President's and Congress' budgets, but only for certain specific purposes. The primary purpose for this exclusion was to exempt Social Security from sequestration by the President under the Gramm-Rudman-Hollings procedures and from the act's pay-as-you-go requirement.

In addition, as added protection, sections 13302 and 13303 of the Budget Enforcement Act also created firewall point of order protections for Social Security trust funds in both the House and the Senate. All this is made clear by the conference report accompanying the 1990 act.

Indeed, the 1990 Budget Enforcement Act does not preclude both Congress and the President from formulating a unitary budget that includes Social Security trust funds for national fiscal purposes. Surely the opponents of the balanced budget amendment are not suggesting that the President of the United States and the Congress have been flouting the law when they include the Social Security trust funds in their respective budget calculations. Look, we all know that Social Security will need reform if it is to continue to be viable over the long haul. This chart shows that. There is no way that we can continue to go the way we are going without reforming Social Security.

We all know that, but the problem is not the inclusion of Social Security trust funds in the budget. The problem is that at the time of the retirement of baby boomers, there will not be enough FICA taxes to fund their retirement. Moreover, the surplus Social Security taxes being collected today will not cover the future cost of the system. Most of the current Social Security taxes are used to cover benefit payments to present retirees.

Outlays will exceed receipts of the system in about the year 2019, maybe even before. The guarantee of future benefits, therefore, will depend on the Federal Government's future ability to pay benefits.

Not including Social Security in the budget would harm the program. Congress could redesignate programs as part of the exempted Social Security system. The distinguished Senator from Nevada yesterday said Social Security is statutorily defined. Let's understand what that means. When something is statutorily defined, a subsequent statute can change the definition of it, and that only takes a simple majority in both Houses of Congress to do. Anybody who doesn't understand that doesn't understand the legislative process.

Let me tell you, if you don't include Social Security in the budget, the program is going to be harmed. Congress could rename anything "Social Security," as they have done before, by a simple majority vote. If they just name it Social Security and use the FICA taxes to fund these programs, then you will really see the program raided.

The problem that the Reid amendment raises in reality is not with the balanced budget amendment, but with the problems that the Social Security Program faces. We need to fix that, and adopting the balanced budget amendment and getting rid of these unbalanced budgets is a heck of a good start.

The balanced budget amendment does not overturn existing statutory protections for Social Security. In a related argument that seeks to justify the exemption, some have argued the balanced budget amendment will override the existing statutory protections for Social Security. Contrary to this assertion, it is clear that the current statutory protections for Social Security would not be eliminated by the amendment. Of course, the supremacy clause of the Constitution provides that any legislation contrary to a constitutional provision must fail. As the great Chief Justice John Marshall held in the landmark 1803 decision of *Marbury versus Madison*: An act of the legislature repugnant to the Constitution is void."

But what critics fail to mention is that there is absolutely nothing in the balanced budget constitutional amendment that is inconsistent with current statutory schemes. The Social Security statutory protections are not legislative acts "repugnant to the Constitution" as amended by Senate Joint Resolution 1. Congress, under the balanced budget amendment, can also create statutory protections for the Social Security Program.

Further, the Reid amendment has absolutely no protection against Social Security benefit cuts. The plain fact is that the best thing we can do for Social Security, the best thing we can do for retirees, and the best thing we can do for all Americans is to enact the balanced budget amendment without loopholes, without exemptions, and bring fiscal sanity and a little common sense back to Government.

Opponents of Senate Joint Resolution 1 who argue for a Social Security exemption contend that the balanced

budget amendment will not in reality produce a balanced budget because gross debt will still rise. This is clever but it is misleading.

Mr. President, the balanced budget amendment does indeed require a balanced budget. Outlays must not exceed receipts under section 1 of Senate Joint Resolution 1. But it is also true that gross debt may still increase even if the budget is balanced. That is because the Government's exchange of securities for incoming FICA taxes is counted as gross debt. It is merely an accounting or bookkeeping notation of what one agency of Government owes another agency. It is analogous to a corporation buying back its own stock or debentures. Such stock and bonds are considered retired obligations that once paid have no economic or fiscal significance. Thus if we enact the balanced budget amendment the debt the United States owes to everyone but itself will stop growing.

This is very different from obligations owed by the Federal Government to the public. This type of debt—termed net debt or debt held by the public—is legally enforceable and is what is economically significant. If net debt zooms—because of interest payments of debt—which last year amounted to more than \$250 billion—budget deficits balloon with all the dire economic consequences. To assure that budgets will be balanced unless extraordinary situations arise, debt held by the public cannot be increased unless three-fifths of the whole number of each House concur.

That net debt is considered to be of far greater economic significance than gross debt is a widely held truism among economists. Indeed, in the study "Analytical Perspectives: Budget of the U.S. Government Fiscal Year 1998," the Clinton administration no less concludes that net debt or "borrowing from the public, whether by the Treasury or by some other Federal agency, has a significant impact on the economy."

On the other hand, the study also maintains that gross debt or debt issued to Government accounts "does not have any of the economic effects of borrowing from the public. It is merely an internal transaction between two accounts, both within the Government itself."

Now, it is true that the balanced budget amendment does not by itself reduce the \$5.3 trillion national debt. But what it does do is straighten out our national fiscal house and make it orderly. Passage of Senate Joint Resolution 1 will increase economic growth and allow us to run surpluses. With this, our national debt may be decreased if Congress desires to do so in the interest of national economic stability and prosperity. Without Senate Joint Resolution 1, this would be and will be an impossibility.

The Reid amendment, on the other hand, adds nothing to protect the trust funds from accumulating debt. In fact,

by creating this loophole, this risky gimmick, this riverboat gamble, the Reid amendment may cause the trust fund to dry up sooner and run deeper deficits. Thus, the Reid amendment is a risky gimmick that endangers Social Security.

The Reid amendment is confusing and its application is going to harm Social Security. Let me just say, finally, Mr. President, the Reid amendment should be rejected because it is confusing. As I have said, its application may harm the Social Security Program, the very thing the Reid amendment claims to protect. The amendment exempts the Social Security trust funds from the balancing requirement, but it also includes the proviso "as and if modified to preserve the solvency of the Funds."

Explicitly exempting Social Security by placing it in the Constitution may "constitutionalize" the program in perpetuity unless a subsequent constitutional amendment provides for the program to be altered or abolished. As a result of the Reid amendment, do minor technical changes to Social Security every year require amendments to the Constitution? The constitutional amendment process was designed by the Framers to be lengthy, to prevent specious changes to the Constitution. If we must go through this time-consuming process for every change to Social Security because we have written specifically a statutory scheme into the Constitution, a statutory program into the Constitution—even minor technical alterations—I fear major needed reforms to Social Security will come far too late if at all.

Similarly, does the proviso language mandate the solvency of the Social Security system, or does that language merely allow the Congress to take such steps? If the answer is that Congress must take measures to assure solvency, does this require mandated tax increases or benefit cuts?

Frankly, this proviso language strands us in uncharted territory. We do not know exactly how this language is going to be interpreted. Once it becomes part of the Constitution, assuming this amendment would pass, this language could also very well mean that the scope of Social Security as a constitutional provision could be amended by statute. For instance, in 1965, Social Security was broadened by a statute to include hospital insurance. That is, part A of Medicare. My question is this: If under the Reid amendment Social Security can be variously modified by statute, would we be constitutionalizing a massive loophole through which we could constitutionally enforce spending on any program redesignated as "Social Security?" If, on the other hand, we can only modify Social Security by constitutional amendment, will that not require a two-thirds Senate vote, approval of 37 States, and a 7-year delay to enact even the most minor changes?

All of this demonstrates the danger that the Reid amendment as a whole

creates—that Congress ought to be responsible and not amend the Constitution to include specific statutory programs like Social Security. A constitutional amendment should be timeless and reflect a broad consensus and not make narrow policy decisions. We should not place technical language or overly complicated mechanisms in the Constitution and undercut the simplicity and universality of the balanced budget amendment. Explicitly exempting Social Security may constitutionalize the program in perpetuity unless a subsequent amendment provides for the program to be altered or abolished. It would also invite, in the opinion of many, gaming, and I can tell you it will invite gaming and endless litigation as the terms of the program are altered.

Former Assistant and Acting Attorney General Stuart Gerson and attorney Alan Morrison, on different sides of the fence, both have extensive experience litigating constitutional issues and testified in a Judiciary Committee hearing on Senate Joint Resolution 1. Although the two disagree about the wisdom of the balanced budget amendment, they agree that exempting Social Security is a bad idea, and both strongly oppose exempting Social Security from the balanced budget amendment. Stuart Gerson is for the balanced budget amendment. Alan Morrison was against. But both agree Social Security should not be exempted. Nothing should be. It ought be in the unified budget, to approach it intelligently.

According to Alan Morrison, a liberal, against the balanced budget amendment, a litigator with Public Citizen who opposes the balanced budget amendment and testified for the minority:

Various proposals have been floated to exclude Social Security from the amendment, presumably as a means of attracting additional votes. Given the size of Social Security, to allow it to run at a deficit would undermine the whole concept of a balanced budget. Moreover, there is no definition of Social Security in the Constitution and it would be extremely unwise and productive of litigation and political maneuvering to try to write one. If there is to be a balanced budget constitutional amendment, there should be no exceptions.

That is pretty important testimony given before the Judiciary Committee by a person who, although he hates the balanced budget amendment and does not want it as a liberal, nevertheless believes it would be tremendously detrimental to the Constitution if we put a statutory scheme in the Constitution.

In conclusion, Mr. President, the biggest threat to Social Security is our growing debt and concomitant interest payments. Debt-related inflation hits hardest on those on fixed incomes, and the Government's use of capital to fund debt slows productivity and income growth and siphons off needed money for worthwhile programs. The way to protect Social Security benefits is to

pass Senate Joint Resolution 1, get rid of the year after year of unbalanced budgets, get us living within our means. The proposal to exempt Social Security will not only destroy the balanced budget amendment, but in all probability would also cause the Social Security trust funds to run out of money sooner than they would have without an exemption, perhaps mortally wounding the very program the Reid amendment was designed to protect. That would be the paradox indeed.

Let me just finally conclude, anyone who believes Social Security will not be harmed are simply wrong.

The Reid amendment is a risky gimmick. The Reid amendment is a gamble. Special interest scavengers will sniff out Social Security. Before long, we will be using Social Security to fund all sorts of perks like the S.S. Social Security battleship. If we can put that chart up to make the point. We can see it happening. Now, that is bizarre but not nearly as bizarre as what has been done for 28 years, with all these unbalanced budgets. There is nothing in the Reid amendment that protects Social Security. Indeed, the Reid amendment threatens Social Security. It is a risk, it is a gamble, and it should be defeated.

I reserve the remainder of my time.

Mr. LEAHY. Mr. President, will the Senator from Utah entertain a unanimous-consent request? I will explain it. I was going to ask that we lay aside the Reid amendment, call up the Kennedy amendment No. 10, have it considered, then lay that aside and go back to the Reid amendment.

Mr. HATCH. Let me first suggest the absence of a quorum with the time to be divided equally.

I suggest the absence of a quorum and ask unanimous consent that the time be divided equally.

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

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

UNANIMOUS-CONSENT AGREEMENT

Mr. LEAHY. Mr. President, I ask unanimous consent that the amendment of the distinguished senior Senator from Massachusetts, [Mr. KENNEDY] amendment No. 10, be deemed as qualified and having been brought up, but without altering the order of other amendments in their normal course or by unanimous consent.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

AMENDMENT NO. 10

(Purpose: To provide that only Congress shall have authority to enforce the provisions of the balanced budget constitutional amendment, unless Congress passes legislation specifically granting enforcement authority to the President or State or Federal courts)

Mr. LEAHY. Mr. President, I send an amendment to the desk on behalf of

Mr. KENNEDY and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Vermont [Mr. LEAHY], for Mr. KENNEDY, proposes an amendment numbered 10.

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

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

The amendment is as follows:

On page 3, at the end of line 14, insert the following: "Unless specifically otherwise provided by such law, Congress shall have exclusive authority to enforce the provisions of this Article."

AMENDMENT NO. 8

Mr. LEAHY. Mr. President, I yield the floor and the control of the time on the Reid amendment to the distinguished Senator from Wisconsin, [Mr. FEINGOLD].

The PRESIDING OFFICER. The Senator from Wisconsin is recognized.

Mr. FEINGOLD. I thank the floor manager. I yield myself such time as is necessary.

PRIVILEGE OF THE FLOOR

Mr. FEINGOLD. Mr. President, I ask unanimous consent that Susanne Martinez, Sumner Slichter, Mary Murphy, and Michael O'Leary, of my staff, be granted the privilege of the floor during Senator Joint Resolution 1 and all rollcall votes thereto.

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

Mr. FEINGOLD. Mr. President, I rise to support the Reid amendment. I want to commend my friend and the distinguished Senator from Nevada for offering it.

Mr. President, Social Security is unlike any other program in the unified budget. In fact, the surpluses generated by Social Security are the principal reason that the unified budget was created in the first place.

Social Security is, fiscally and politically, a special program, and those special traits require us to separate it out from the rest of the budget. Social Security is singular as a public contract between the people of the United States and their elected Government.

What happened here with Social Security, Mr. President, is that the elected Government promised that if workers and their employers paid into the Social Security fund, they would be able to draw upon that fund when they retire—a simple proposition. But the singular nature of Social Security and the special regard in which it is held by the public, Mr. President, does not flow from some fleeting sense of nostalgia. Rather, Social Security has provided real help for millions of seniors.

According to AARP, Social Security keeps 15 million beneficiaries of all ages out of poverty. Today, 13 percent of recipients rely on Social Security for all of their income; 1 in 4 count on it for at least 90 percent of their income; 3 in 5, Mr. President—60 percent—depend on it for at least half of their income.

For those seniors, and for millions of others, the Social Security contract is very real and a vital necessity, and anything other than partitioning Social Security off from the rest of the budget risks a breach of that public contract, Mr. President.

Beyond the issue of our moral obligation to such a contract and keeping our promise, there are critical fiscal reasons for making a special distinction in this new constitutional budget structure.

Most obvious is the enormous temptation Social Security will provide to those who might seek to raid the trust fund to alleviate the deficit. This scenario is not hard to imagine. It is not some kind of a nightmare or a pipe dream. We already do it now. A unified budget masks the true, on-budget deficit. This is not a weakness of one party or one branch of Government. But it is a problem that we need to address, and it is a problem we need to address quickly. If we do not, the Social Security surpluses will be used to distort the true deficit picture, and it will undercut the deficit reduction that needs to be done. In fact, what will happen is we will pretend that we really have a balanced budget. But we will not because we will have used Social Security dollars to make it look in balance.

So, Mr. President, we have to begin to rid ourselves of the addiction to the Social Security trust fund and to begin to learn how to balance the budget without it if we are to fulfill the promise we made to today's workers that the Social Security benefits would be there for them when they retire; that those benefits will be there for them when they need it.

Some may argue that current law provides adequate protection for Social Security; or, many say, that, if the balanced budget amendment is ratified, Social Security can and will be protected though passage of implementing legislation. There are several responses to those claims.

First, let us recall that many of those who make that argument are also the people who maintain that mere statutory mandates are insufficient to move Congress to do what it has to do. The argument, when it comes to the subject of balancing the budget, is that only constitutional authority is sufficient to engender the will necessary to reduce the deficit.

Let's use the reasoning of these supporters. Using their reasoning, the willpower needed to resist the temptation to raid the Social Security "cookie jar" can presumably only come from

a constitutional mandate, or, more specifically, a specific reference in this amendment that protects Social Security. Those who oppose giving extra constitutional protection for Social Security often suggest that there is no practical need for the protection because "Social Security will compete very well * * *" with other programs.

I heard the distinguished chairman of the Judiciary Committee reassure us time and again during the committee proceedings of this claim that we don't have to worry; that once we pass the balanced budget amendment Social Security is going to do very well; nothing to worry about.

Mr. President, Social Security should not have to compete with anything. As many have noted, it is a separate program with a dedicated funding source intended to be self-funding.

In addition, any assessment of the political potency of any particular program is going to have to be reappraised if we ever enter the brave new world of the balanced budget amendment.

Mr. President, let us take a look at the current environment to get a clue as to what might happen after the balanced budget amendment is passed, ratified, and implemented. In the current environment, it isn't even Social Security that receives the most preferred treatment. In the last 2 years that status, the greatest preferential status, has been reserved for military budgets that receive billions more than the Pentagon even asks for. That higher status has also been reserved not for Social Security but for corporate tax loopholes which were specifically exempted from the new line-item veto authority that many of us supported and sent on to the President last year.

What is more important, Mr. President, the proposed constitutional amendment imposes a new burden on Social Security that it doesn't even impose on other programs. Not only is Social Security not exempted, or protected, but it has the problem the way this amendment is drafted that other programs don't face. Because outlays cannot exceed receipts in any year, we are effectively barred from drawing on savings built up to fund future outlays. It is the very approach that we have to rely on to fund the expected ballooning of Social Security benefits as generations such as the baby boom generation reach older age.

Mr. President, the surplus of Social Security revenues produced today contribute to the equivalent of a giant savings account which will have to be used to pay for the expected bulge in beneficiaries when the baby boomers begin to retire. By 2002 the combined Social Security trust fund balance will exceed \$1 trillion. By 2010, the balance will exceed \$2 trillion. And by the year 2020, Mr. President, that figure will approach \$3 trillion. All of this money is intended for and is supposed to be for Social Security benefits. And we are going to need it. But the proposed constitutional amendment would impose a

three-fifths majority requirement on that financing structure, and no statutory approach would be able to overcome the problem. It will have been enshrined in the Constitution.

So, if we want to address the problem, if we want to be able to use that surplus fund to pay for these benefits in the future, it has to be done as part of the constitutional amendment itself.

So, Mr. President, the bottom line on this proposed constitutional amendment is—that is right—that it does not treat all programs alike. Programs like Social Security which require a build-up of savings into the future somehow have to reach the higher standard and muster a three-fifths majority. But the defense budget, special interest spending done through the Tax Code, and corporate welfare all get a free pass in the brave new world of the balanced budget amendment.

So, Mr. President, unless this is altered along the lines perhaps of the amendment proposed by the Senator from Nevada, the proposed constitutional amendment will not only enshrine the current practice of using Social Security surpluses to disguise the size of the budget deficit, it will actually make it nearly impossible to use those surpluses for Social Security when we need them. It will turn a bookkeeping gimmick into a \$3 trillion heist.

Mr. President, I urge my colleague to support the Reid amendment and at least give Social Security the same chance every other program has.

Thank you, Mr. President.

Mr. DOMENICI addressed the Chair.

The PRESIDING OFFICER. Who yields time?

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

Mr. DOMENICI. I do not recall how much I had.

Mr. HATCH. I yield such time as the Senator needs.

I yield 15 minutes to the distinguished Senator from New Mexico.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Mr. President, and fellow Senators, I note that my good friend, Senator REID, is on the floor. Let me say that it is with great reluctance that I say to the Social Security recipients across America that the Reid amendment threatens Social Security. Let me repeat. The Reid amendment threatens Social Security. Senator Reid and others have introduced their own version of a balanced budget amendment which would require a balanced budget in 2002 excluding the Social Security trust fund.

It is interesting right off. The President of the United States opposes the constitutional amendment for a balanced budget. One of the reasons he gives is that Social Security ought to be off budget. Everyone should know the President has been touting to all Americans that he has a balanced budget. And he said to the Republicans, "Why don't you work with me, and

maybe together we can have a balanced budget by 2002?" Everybody should know that the President does that balanced budget with Social Security on budget—not off budget. He has never once ever said in a budget document that he sends up here that we ought to take Social Security off budget so we will protect Social Security. Never, never, never has he done that.

The people on the other side of the aisle have proposed their own balanced budgets in the past, and I am going to say, since I am not sure of one those budgets, that every single one ever offered included Social Security on budget—not off budget. Isn't it interesting when the time comes that you are really going to insist that the American people are protected in the future from big Government and big deficits that now the excuse is Social Security should not be on budget. It should be off budget.

Those same people argue that Social Security in the balanced budget effectively authorizes the raiding of the Social Security trust fund and the surpluses that are in that trust fund for purposes of balancing the budget.

Mr. President and fellow Senators, I believe the argument that is being made, and this argument in particular and the Reid proposal in particular, is nothing more than a smokescreen. It is intended to divert public attention from the real issue—constitutionally required fiscal discipline. It provides an excuse for some who supported the balanced budget in the past to vote against it now, now that their vote really matters, for this is obviously within one or two votes at the most of leaving the Senate and going to the House, after which there is a real chance it will go to the sovereign States to see if three-fourths of them want constitutionally imposed fiscal restraint.

Let me repeat. Now that the chips are down, that a vote is a real vote, excuses are coming forth from the walls in abundance, and the biggest excuse and risky gimmick is that we should leave the largest program of the Federal Government, into which the largest amount of American taxes are entrusted, that we should not have it on the budget. I believe the American people will ultimately see through this smokescreen because it is obviously a charade. It is not about Social Security. It is about defeating the balanced budget amendment to the Constitution.

It is clear to me that it is their version of a balanced budget that would lead to the so-called raiding of Social Security, while our balanced budget would protect the trust funds. Let me repeat, it is very, very interesting to note that the argument is being made that you must take Social Security off budget or you will harm Social Security when as a matter of fact from what I can tell, and I think I understand budgeting, to take it off is to put it more at risk. Let me see if I can explain why.

Make no bones about it. The Social Security trust fund, who gets paid and how much they get paid, what is subject to the trust fund and what can they pay out of it, is not enshrined in the Constitution. It is totally, purely, Mr. President, legislation. Social Security is defined by whom? It is not defined by God. It is not in the Ten Commandments. It is written by legislators. They define it. They write into that law who can get money, what programs might be within the Social Security trust fund, and here we go.

The Reid amendment says balance the rest of the budget but leave this very large trust fund to float hither and yon on its own, subject to what, Mr. President? Subject to what Congress wants to do with it. Senior citizens, you are being duped, if you are coming here in large numbers telling us to leave it off the budget. Leave it off the budget, for what? For what? So that Congress can do with it what it wants without regard to the budget.

Now, I am not suggesting that any Member of the Senate has that in mind, I say to the Senator from Oklahoma. I am not suggesting that my great friend from the State of Nevada has that in mind, but I am suggesting that when you enshrine in the Constitution a balanced budget that leaves Social Security out of the budget, you then have to ask the question over time, what might happen to that trust fund? I submit, in the past 15 years on at least one occasion that I am aware of, believe it or not, the now bankrupt Medicare fund, a trust fund, had a surplus, I say to my friend from Oklahoma, and Social Security was hurting. So guess what we did under the leadership of the chairman of the Finance Committee, Russell Long. We borrowed money from the Medicare fund and put it in the Social Security fund.

We made up for that later. But now what we are going to do is take Social Security and put it out there all by itself. Guess what is going to happen in the next decade. The Social Security fund has a lot of money in it. It is growing. It has a lot of surplus. And guess what. Its sister fund for hospitalization for seniors is diminishing. We are all running around saying let us keep it from bankruptcy. What if we do not keep it from bankruptcy, I say to my friend, the occupant of the Chair? What if we do not keep Medicare from bankruptcy and in 8 years it is desperately in need of money? Where do you think Congress might look to get the money? This budget that has Medicare on it will be a tough budget because it has to be in balance. So I think it will be as easy and as axiomatic as anything that goes on, like day following night, Congress will say, let us take it out of the trust fund. Then somebody will rise up and say, but what about the balanced budget? Then some will stand up and say, well, we did not put it in that balanced budget because we wanted to protect it. Then somebody will say, protect it?

Let us use it. So they will borrow from it. Or in fact make the payments for Medicare out of it saying we will fix it later.

Now, frankly, I truly believe there is a higher probability of that happening than there is the probability that when the Social Security trust fund needs the cash that its reserves represent, that we have borrowed for the Federal Government, there is a higher chance of harming it by taking money out of it than there is the chance we will not have the money when the time comes that the surpluses have to really be turned into cash available.

Then, might I suggest, if the whole purpose of a constitutional amendment—and I do not deny the sincerity of those who propose a constitutional amendment other than ours, than the one we propose. My friend from Nevada probably really wants a constitutional balanced budget, but the truth of the matter is the purpose of that is so that you get to the point in time, fellow Senators, the point in time when you cannot borrow any more money. Right? That is the whole purpose of this constitutional amendment. It is structured in that way and there is no question about it.

Now, I ask you to just take a look at this one chart. I will use no more than this one. You see the black dotted line. That comes down to about 2020. That is the period of time when there will be a surplus that Congress can play with and spend if they would like because it is sitting out there, and in the Reid constitutional amendment it is subject to no limitation.

Now, if the purpose then of the balanced budget amendment that my friend, Senator REID, introduces is to say we are not going to be borrowing more money after we get to balance, then I ask what is going to happen in 2022 when that trust fund starts going in the red and you need to borrow money if you have not fixed the program? That is the red line. If we do not fix Social Security out there in the future, the difference between that green line and that red line, that great big triangle, is the amount of money that would have to be borrowed if we do not fix Social Security.

Now, let us assume that it is sitting out there in 2024. That is not farfetched because the constitutional amendment is supposedly forever, right, for 100, 200 years. Now, here we are. The whole purpose of the Reid constitutional amendment is to put us in the position where you cannot borrow any money after you are in balance.

I ask the Senator from Utah [Mr. HATCH] what happens when Congress says, well, we need \$650 million for Social Security; it is going in the red? So somebody proposes, why, America has a great, strong economy. Let us borrow the money. Right?

Mr. HATCH. Right.

Mr. DOMENICI. What will there be in the constitutional amendment, if the Reid amendment became law, that says

we cannot borrow that money? Nothing, Senator NICKLES. It can be borrowed. So we have kind of a charade going. You write a constitutional amendment that says when you finally get to balance you cannot borrow any more money, right? But that is only on that budget. On this other budget that is floating over here, there is no limitation on borrowing. I ask, if you are trying to protect the American economy and future generations from borrowed money, is there any difference between the borrowed money that might go into the first budget as compared with borrowed money that might go into the Social Security fund? I think not. I think both have the same negative effect on the future of our children and the growth and prosperity of the Nation.

So, if we want to stop at \$5 trillion in deficits, when we finally get to balance under the Hatch constitutional amendment, we are saying we should not borrow any more money. But if the Reid amendment becomes law, we are not saying that. We are saying, for Social Security purposes you can borrow as much as you want. If that isn't a sorry state of affairs, after we have adopted a constitutional amendment if we were to adopt the Reid constitutional amendment, then I have not seen one; a situation which is more dissimilar after the fact than this. For after the fact there is no limitation on borrowing money.

Having said that, I choose, today, not to take up the second part of my comments other than to say we are struggling here today—have I used all my time?

The PRESIDING OFFICER. The Senator's 15 minutes have expired.

Mr. DOMENICI. May I have an additional 2 minutes?

Mr. HATCH. I yield 2 minutes.

Mr. DOMENICI. We are struggling today to see if we can make a deal with the President of the United States. We are trying to get a balanced budget by the year 2002. It is hard to do. The President struggled, he said, with putting one together and said how hard it was. We are now looking at how we would do it and we say the President's is not a very good budget, but still we have to get there.

If, in fact, we got a constitutional amendment like the one my friend from Nevada offers, it says you will be balanced in 2002 without Social Security surpluses being counted. I will just tell you what the President would have to add to his budget in order to be in balance under that definition by 2002: \$75 billion more in Medicare cuts. We are having trouble, arguing between \$120 billion in savings and \$160 billion in savings. But you would have to add \$75 billion to the President's. Mr. President, \$35 billion more in Medicaid; \$28 billion more in civil service, military retirement, and other mandatories, and \$158 billion more in education, environment, law enforcement and discretionary spending. Mr.

President and fellow Senators, we all know that cannot happen. I mean, we cannot even settle on a balanced budget using the unified budget. It is difficult to get done.

So I must submit, in all deference and with as much respect as possible, that the Reid amendment is not intended to become the law of the land. It is not intended to become the constitutional amendment that goes to our sovereign States for ratification. For, if it was, it would have no chance of being ratified, for who would support it under the circumstances I have described?

I thank the Senate and thank Senator HATCH for yielding and I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. NICKLES. Will the Senator yield me 8 minutes?

Mr. HATCH. I yield 8 minutes to the distinguished Senator from Oklahoma.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. NICKLES. Mr. President, first I wish to compliment my colleague, Senator HATCH from Utah, for his leadership in this bill as well as Senator DOMENICI for his excellent statement. I hope our colleagues had a chance to listen to the Senator from New Mexico. He probably knows more about the budget than most all of us. He made an outstanding presentation.

I urge our colleagues to vote against this amendment. I recognize this amendment may be good politics. It sounds kind of good. I have heard some people say, "If you vote for this amendment you are going to protect Social Security." I totally disagree. As a matter of fact, I think it may have just the opposite result, or opposite conclusion. But it looks good. And, if it is reported by the press, "Well this one amendment was trying to protect Social Security," if they write it like that, some people are going to assume that is correct. I think it has just the opposite result.

I think, if we pass a constitutional amendment that says we are going to balance the budget, we are not going to spend any more than we take in but, oh, incidentally, we are going to exempt the largest and most popular program in Government, in other words we want to be in balance except for this very important, popular program, you just gutted the balanced budget amendment. There is no reason to have a balanced budget amendment. The amendment would say we are going to exclude the old age and survivors and Federal disability insurance program. You could include a lot of other things. Why not include Medicare? A lot of people think Medicare is the same thing as Social Security. It is all paid for by a payroll tax. Right now American citizens pay 12.4 percent for Social Security, which includes retirement and disability. And they pay another 2.9 percent in Medicare. There is no reason why we would not include that.

You could define that as Social Security.

As a matter of fact, in the President's budget he takes home health care—basically he takes it out of the Medicare trust fund and moves it over from part A to part B, and then says it is all going to be paid for by the Federal Government.

My point is, you can shift around trust funds and I think you would find a multitude of programs running to be defined as Social Security. Let us throw in Medicare. Let us throw in welfare. Let us throw in anything else, and it will all be exempt from the balanced budget amendment requirement. That makes the balanced budget amendment a facade, it makes it a fraud, it makes it worthless.

I am not saying this is from the sponsor of the amendment, but I think a lot of people who are going to vote for the amendment want that to happen. There are a whole lot of people who are going to vote for the amendment of the Senator from Nevada—not that they hope it will pass, they do not support a balanced budget amendment anyway. And I would include President Clinton in this category. He does not support a constitutional amendment to balance the budget. But now he raises the specter of Social Security, maybe to scare people into thinking that is a good way to kill the amendment; to kill the constitutional amendment to balance the budget. I regret that.

I looked at a statement President Clinton made on January 28 at a press conference. He said, dealing with whether or not we should exclude Social Security that we couldn't right now. "Neither the Republicans nor I [and the Congress] could produce a balanced budget amendment tomorrow that could pass if Social Security funds cannot be counted," if you will, as part of the budget.

So the President is saying: Wait a minute, I use Social Security surpluses right now in my budget to get down to zero in the year 2002. So do the Republicans. President Clinton has in every single budget that he has had in the past. So have other Presidents. My point being he is now saying we will try to pass that amendment because he knows it is a killer amendment, not because he believes it is good policy. He knows it is bad policy. I think everybody, if they were asked legitimately, is this good policy, they would say, "No." Is it good politics? They may say, "Well, it may be." It might be good politics but it certainly is bad, bad policy.

You should not have a constitutional amendment that says we are not going to spend any more than we take in and exclude the largest program in Government. You should not open it up to a program that is not really defined by the Constitution, and therefore every other program in Government could be added as part of Social Security. All of which would be excluded from the constitutional requirement.

I think, frankly, when you are talking about the Constitution you should not be trying to write in the Constitution an exclusion for a particular Federal program. That does not fit. Again, it may fit for political purposes but it does not fit in the Constitution. It does not belong in the Constitution.

So, Mr. President, I mention this, I have the greatest respect for my colleague and friend from Nevada. I am afraid a lot of people will be looking at this amendment and saying it has a lot of political appeal but substantively it should not be in the Constitution. We are dealing with serious business. We are right on the throes of having the vote to pass a constitutional amendment to balance the budget. I hope that we will in the next few days. We will not, in my opinion, I will tell my colleagues, we will not if we come up with this amendment.

I have heard some people say if we just agree to this amendment I would vote for it in a minute. I don't think they would, not if they looked at what the results would be, not if they looked at the changes that would have to be made. I don't think that is accurate. This Senator would not vote for it because I think of it as a fraud. I think it would be misleading the American people and I don't want to do that. I think we should be serious in our legislating and I think we should be doubly serious when we are talking about a constitutional amendment in any form, and certainly one to balance the budget.

So, Mr. President, with all respect I urge my colleagues to vote "no" on the Reid amendment and, hopefully, it will go down and then we will be able to pass a constitutional amendment to balance the budget in the next few days.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. REID addressed the Chair.

The PRESIDING OFFICER. The Senator from Nevada has 46 minutes 35 seconds remaining.

Mr. REID. And my friend from Utah?

The PRESIDING OFFICER. Thirteen minutes forty-seven seconds.

Mr. REID. Mr. President, I wrote a letter to a number of people in Nevada, and this is what I said in the last paragraph of the letter:

There is no question Congress must face up to the tough task of balancing the Federal budget. I'm the first to accept responsibility for this task, but I draw the line on devastating the Social Security trust fund to accomplish this task.

Franklin D. Roosevelt, upon signing the Social Security Act, said,

We can never insure 100 percent of the population against 100 percent of the hazards and vicissitudes of life, but we have tried to frame a law which will give some measure of protection to the average citizen and to his family against the loss of a job and against poverty-ridden old age.

I received numerous responses after writing this letter, but one response I received, as I mentioned on the floor yesterday, was from Helen Collins who said:

I have been a widow since age 21. I never considered applying for any kind of welfare assistance. I worked, and raised and educated my son. He got a master's degree. Sad to say, at age 71, I am totally on my own on quite a limited budget. By being very careful, I get by. However, I do worry about getting more seriously ill and losing Social Security. For many of us, these are not the golden years. But I, for one, thank God that good people like you are helping us maintain our dignity and independence.

That is what this debate is all about. It is about the Helen Collinses of the world, not the people who are running full-page ads in the New York Times and the Wall Street Journal. The people on Wall Street want this to pass because it gives them an easy opportunity to balance the budget.

Mr. President, I heard my friend, my good friend, with whom I serve on a subcommittee—I am the ranking member of the subcommittee, and I have served on the Appropriations Committee with him since I have been in the Senate—I heard my friend, the senior Senator from New Mexico, say that what we are trying to do is keep Social Security on its own. That is absolutely true, we are. We are trying to keep Social Security on its own. It is not part of the unified budget. It shouldn't be part of the unified budget. We have passed laws in this body so it would not be part of the unified budget.

Here is what happened over the last decade: The Greenspan commission, where we established, by a majority vote, a bailout of the Social Security system, and it was to last to the year 2060; in 1985, we passed the Deficit Control Act, which further strengthened Social Security; in 1990, we passed the Hollings-Heinz amendment which took Social Security off budget.

What right do we have to suddenly start including it in the unified budget? We don't have any right to do that. Everyone has said you can't balance a budget unless you use Social Security. That is my whole point. If we are going to balance the budget, we should do it the right way, the hard way.

I think the most telling thing, Mr. President, was when my friend from New Mexico came and gave this very well-meaning speech—he is a sincere man, but I think it is glaring that he did not respond to the statements that I have made and the junior Senator from South Carolina has made over the last 2 days about his own words from 1990. These were his own words:

I voted for Senator Hollings' proposal because I support the concept of taking Social Security out of the budget deficit calculation. But I cast the vote with reservations.

What were his reservations that he came to this floor and did not respond to? His reservations:

We need a firewall around those trust funds. . . .

That is what this amendment is all about.

We need a firewall around those trust funds to make sure the reserves are there to pay Social Security benefits in the next century. Without a firewall or without the dis-

cipline of budget constraints, the trust fund would be unprotected and could be spent on any number of costly programs.

It is here, and that is what my amendment is all about. Social Security should not be used to pay—in the words of the present chairman of the Budget Committee, "the trust funds would be unprotected and could be spent on any number of costly programs." These moneys should be spent on one thing and one thing only: paying old-age benefits.

Silence is golden. My friend from New Mexico did not, in his 20 minutes on the floor, even respond to the statements he gave in 1990. They are in the CONGRESSIONAL RECORD. Not a word.

Mr. President, we received today almost a million signatures from a group of senior citizens who signed these petitions in the last few days. They have a right to do that. Of course they do, because, Mr. President, American seniors are exercising a powerful right to stop a devastating wrong. The right to petition our Government for wrongs is guaranteed in the first amendment of the Constitution. This right is a cornerstone of our democracy and deserves to be enshrined in the Constitution, and it was. Giving Congress and the courts the power to permanently raid Social Security should not be guaranteed by the highest, most powerful legal document in our country.

So, Mr. President, I believe that what is taking place here is a cheap, easy, deceitful way to balance the budget. It is contrary to law to take the Social Security surpluses and use them for other purposes. And even if it weren't law, you shouldn't do it because it is a trust fund, and a trust fund should not be spent for any purpose other than for what the trust fund was established.

My friend from Utah, the chairman of the Judiciary Committee, talked about the Concord Coalition and others who last Congress said we would protect this program through enabling legislation. What they were saying in the last Congress is maybe what we can do is have a statute to preserve Social Security. I am sure they must have checked with somebody who is in their first year of law school who told them that a statute will not override the Constitution. And after having checked with a first-year law student, they came up with a new pitch, and that is, "Let's go along with it. Let's just raid Social Security." And that is what they have said.

Mr. President, my good friend from Utah has also said the Congressional Research Service changed the memo the second time, it doesn't really say what they said it says. The Center on Budget and Policy Priorities disagrees. The Center on Budget and Policy Priorities, among other things, says, all three memos, the two from CRS and theirs, explain that under the Hatch balanced budget amendment, outlays in any year, including outlays for benefits paid from the Social Security trust fund, may not exceed receipts in that

year. All three memos note that any funds drawn down from the accumulated Social Security surpluses to help pay for Social Security benefits of retired baby boomers would not count as receipts in those years.

They go on to say:

Under the balanced budget amendment, the Social Security surplus could not be tapped and interest earnings on the surplus could not be used unless there was offsetting surplus in the rest of the budget.

Mr. President, we have a number of other people saying that, and one person saying it is not a first-year law student but a graduate of one of the finest universities in America today, the person who is in charge of the Office of Management and Budget, a person who has a great reputation, Franklin D. Raines.

Franklin Raines said, in writing this letter to Senator DASCHLE, the minority leader:

DEAR MR. LEADER: I am writing in response to your inquiry regarding the February 5, 1997, Congressional Research Service memorandum entitled "Treatment of Outlays From Social Security Surpluses Under a Balanced Budget Amendment."

That memorandum noted that the 1983 Social Security reforms called for accumulating those surpluses to allow payments even when annual trust fund income is no longer sufficient to make those payments. It concluded that, under S.J. Res. 1 and without further congressional action, accumulated trust fund surpluses could not be used for the full payment of Social Security benefits in any year when outlays would otherwise exceed receipts. That conclusion is correct.

Under current law, expenditures from trust funds are governed by the amount of funds available in the trust fund balances and by congressional spending authorizations. This general rule applies to the Social Security trust funds. . . .

S.J. Res. 1 would require overall federal government cash flow balance on a year-by-year basis. In the event that revenues are projected to fall below outlays for a given year, outlays would need to be adjusted for the remainder of the year. Such a shortfall would most likely occur toward the end of a fiscal year, when only a limited base of discretionary outlays would be available for reduction. Consequently, programs with monthly payments would be unable to avoid exposure to such reductions.

All entitlement expenditures—including Social Security—would be treated as expenditures under S.J. Res. 1 and, thus, would be exposed to reductions. This would mean that, due to operation of the proposed constitutional amendment, the government might not be able to make payments from trust funds with both available balances and full congressional authority to make expenditures from the trust fund. Reductions in entitlement spending would have a particularly perverse effect if the revenue shortfall was caused by a recession, and where payments subject to limitation are part of the automatic stabilizers.

So, Mr. President, it is very clear that the underlying amendment would devastate Social Security. Well, there are some who say, "Why are you trying to protect Social Security, there are other trust funds?" Mr. President, the reason I am trying to protect Social Security is that is where the money is. The other trust funds are pittance.

They are bits and kibbles. There really is not much money there. Social Security is the finest social program in the history of the world, and I feel an obligation, a moral obligation, to protect it.

The reason that there has been all this emphasis on Social Security is they are going after the moneys just as Senator DOMENICI in 1990 said we should try to prevent. "We need a firewall around those trust funds," said Senator DOMENICI, "to make sure the reserves are there to pay Social Security benefits in the next century. Without a firewall of the discipline of budget constraints, the trust funds would be unprotected and could be spent on any number of costly programs."

That is a direct quote.

So, Mr. President, I think we have to narrow the focus of what this is all about. The focus is whether or not we are going to allow the Social Security trust fund to be raided on a yearly basis until it runs out of money and then, of course, Social Security would be wiped out.

I say, Mr. President, that I suspect, and I feel that I cannot direct this to anybody in the Senate because I do not know, but there are people in the leadership in the House of Representatives who believe the Social Security program is a bad program. Again, I do not think you have to be real bright to figure out that is how they feel. This is a statement from the majority leader, the present majority leader of the House of Representatives. Again, I quote: "Social Security is a rotten trick. I think we are going to have to bite the bullet on Social Security and phase it out over time."

Now, does that appear to be somebody that is pushing a balanced budget amendment and wanting to protect Social Security? Would you trust someone of that philosophy to try to draft a statute to avoid a constitutional provision? First of all, you cannot. But even if you could, would you trust someone with that philosophy? I think not. There are people supporting this amendment, recognizing that doing so will wipe out Social Security.

I think we should not do that. I think we should look at the Helen Collinses of the world and say the money that she is talking about is just a small amount of money. We have a number of letters here that my staff has brought me. One woman talks about getting 300-some-odd-dollars a month. That gives her a little bit of independence. This amendment protects her interest by excluding Social Security from the calculations of the balanced budget amendment. It protects the interest of the Helen Collinses of the world.

Social Security is, therefore, not at fault for the deficits that have been accumulated. Not a single Social Security recipient is the cause of the deficit. Social Security is not running up deficits. In 1983 we passed legislation to forward fund Social Security. The reason this amendment is so important to

some people is that is where the money is. They do not want to balance the budget the hard way.

We heard statements here from President Clinton saying it is going to be real hard to balance the budget if you do not use Social Security. No kidding. I understand that. We all understand that. But if we pass my amendment we would have a true balanced budget and we would also preserve Social Security. I think that is a pretty good deal and I think it is worth the risk.

The Social Security trust fund is being used to mask the size of the deficit. Each time the Government dips into the Social Security trust fund to help pay for the deficit it hurts Social Security. We should stop that.

Because the Constitution will require the Federal Government to balance the budget, Social Security moneys will have to come from one of four places.

I see my friend from Florida. Does he care to make a statement? I am happy to withhold and allow my friend from Florida to make a statement.

Mr. MACK. If you want to take a few more minutes to finish your thought, fine. However I would like to have the opportunity to speak.

Mr. REID. Please go ahead.

Mr. MACK. Mr. President, again, I thank my colleague for allowing me to take this time to address the Senate on the issue of the balanced budget amendment.

I have spoken many times in the past years on this issue, both in the House and here in the Senate. I think it is a vital one. It is truly a debate about whether we are committed to the belief that the era of big Government is over. The reason there is such a debate about this issue is because it really is fundamental to that.

Before I make some additional comments I think I might just make a statement or two with respect to the issue of Social Security. I represent the State of Florida, and therefore I think it is fair to say I am pretty sensitive to the retiree, the elderly vote in my State and their concerns about Social Security. I make the claim that probably the most significant way to protect Social Security is, in fact, to pass a balanced budget constitutional amendment.

My feeling is that, in fact, it is a risky gimmick, I think, to be taking Social Security off budget. For that matter, I think it is to be proposing that a whole series of programs be taken off budget. We need to address the balanced budget constitutional amendment from the standpoint of all the expenditures, all the income and all the expenditures of the Federal Government, not separating them off into different accounts and considering only one group of expenditures at a time. Again, I think it is a risky gimmick to take Social Security off budget.

Mr. President, over the last couple years I had the opportunity to read

several books on the Constitution. One written by Catherine Drinker Bowen, and maybe this comes back to my mind after having watched the special on Thomas Jefferson that was on PBS last week. I thought it was a terrific 3-hour presentation and discussion about the roots of our Government, the roots of this Nation. Catherine Drinker Bowen's book, called "Miracle at Philadelphia," was all about the debate about the establishment of the Constitution. I know that some have said, "Well, the Constitution did not have a balanced budget amendment or a balanced budget requirement as part of it." Therefore, people would make the claim if they did not feel it was important then, and they were certainly some of the brightest minds we have ever experienced in Government, who are we to claim that there needs to be an amendment to the Constitution to address this issue, the need for a balance within our expenditures?

I think that the people who make that claim fail to take into consideration how our Constitution has been amended over the years and the fact that the Senate used to be appointed. I believe it was either in 1912 or 1916—I have forgotten the specific date—when the Constitution was changed to require a direct vote on Members of the Senate. Well, there was an intricate balance that the writers of the Constitution came up with that was changed, with the result of the Senate being directly elected by the people. If you will remember, the fear that many had in those days was that the House, directly elected by the people, would be off pursuing many different ideas of great popular support, and that there needed to be some kind of restraint that would be placed on the people's House, and that would come from the Senate. Again, that has been changed. So some of the restraint was built into the system to be able to say, no, we don't think we ought to pursue that particular program or that particular expenditure. That was taken out as a result of the change in the direct election of Members of the U.S. Senate.

I think it is fair to say that we ought to address the particular point that, today, there is a tendency to think of this debate as being a debate about economics. The reality is this is about human behavior and how we are going to control the desire on the part of some people to support all the different initiatives that might come from our constituents. So I think, from a constitutional perspective, one can say that the conditions have changed significantly, to the point where it is completely legitimate to be arguing today that we need an outside restraint on the ability of the Members of the Congress to spend our taxpayers' dollars. I have supported the constitutional amendment since I have entered Congress, which was back in 1982.

I want to take just a moment or two to talk about the benefits that are derived. Again, all too often we find ourselves talking about some very intricate aspect of this debate, and we fail to address what I believe are the important benefits that come from a constitutional amendment to balance the budget, a requirement that we balance the budget. I believe, in the long term, we will end up with lower taxes, higher growth, more jobs, less Government, and lower interest rates.

Again, lower interest rates can, I think, produce some very tangible benefits to our constituents. We have made estimates, for example, that lower interest rates would save the average family \$125 a month. Now, some people might say that is not a great deal of money. I say to my colleagues, then go stand out in front of a grocery store and ask the individuals coming out whether they think an extra \$125 a month is meaningful. I believe it is. We believe the way they can save that kind of money is, again, because of lower interest rates. Mortgage payments would be lower, automobile loans would be less expensive, student loans would be more affordable. That is a direct benefit that is passed on to our constituents.

Again, I have a tendency to think at this time about the kinds of people that will be affected by what we do. I again ask my colleagues to consider the folks back home—the mother who might have two jobs who is being asked to support funding of all these various programs at the Federal level, the family where the husband and wife both work. In fact, I remember one particular individual coming up to me and explaining that he works all week and comes home and takes care of the children over the weekends while his wife works over the weekend. These are the kinds of people who we are asking to pay taxes to the Federal Government to fund the various programs. I can only think of one way we can finally put some restraint, again, on the Members' ability to spend their money, and that is to pass a balanced budget constitutional amendment.

At this point, Mr. President, I yield the floor.

Mr. REID. Mr. President, I yield 5 minutes to my friend, the Senator from North Dakota.

Mr. DORGAN. Mr. President, I was listening to my friend from Florida, Senator MACK, someone for whom I have great regard and affection. The interesting thing about this debate is that we essentially agree that we ought to balance the budget. There is no disagreement about the goal here. There is a disagreement about the methods of achieving that goal.

Earlier this afternoon, I heard someone come to the floor of the Senate and speak of the Reid amendment. He said that the Reid amendment actually threatens Social Security. Well, that is the most byzantine argument I have heard, perhaps, in all the time I have

served in the U.S. Senate—the Reid amendment injures or threatens Social Security. The Reid amendment is designed to make sure that we do two things at once—balance the Federal budget by exacting the discipline needed to do that in the Constitution, but while we do it, keeping our promise to those who we made a promise to with the Social Security system, saying that you are paying taxes into the system, that taxes are dedicated for one purpose, and we are going to honor that. That is what the Reid amendment is about.

Without the Reid amendment, this constitutional amendment doesn't balance the budget. I came here this morning at 9:40 and spoke in favor of this amendment. I asked a question, and I am going to ask the Senator from Nevada, who has been on the floor all day because he has been managing his amendment, whether anybody has come to the floor to respond to that question. I asked this question, and the question itself strips naked the proposition that what is on the floor from the majority party requires a balanced budget. If we passed this proposal, just like that, 20 seconds from now, and if we then passed a proposal to balance the budget, as offered by the majority, just like that, 20 seconds later, and it is the year 2002, why then does the budget require that the Federal Government increase its debt limit by \$130 billion in a year in which the proponents claim the budget is balanced? I have not heard anyone respond to that. If the budget is balanced, why is there a requirement to increase the Federal debt limit by \$130 billion?

I know the answer, but I am asking it of the other side because I want to hear them say what I know to be the case. The reason you have to increase the debt limit by \$130 billion when you claim the budget is in balance is because the budget isn't in balance, precisely because of the kind of thing Senator REID is trying to address. You take, on that side, the Social Security revenues and add them in over here and say, look what we have done, we have balanced the budget, implying somehow there is no obligation over here to use those moneys in Social Security when the baby boomers retire.

The Senator from Nevada offers an amendment that says if we are going to do this, let's do it the honest way. I suspect there are not the votes in the Senate to pass the amendment of the Senator from Nevada. I intend to vote for it. But I suspect it will be defeated so we can have the same old same-old here of claiming to balance the budget when, in fact, the Federal debt limit continues to increase.

I ask the Senator from Nevada, has anybody come and answered the question of why, using this approach, enshrining this practice into the Constitution, when they say they have balanced the budget, why the Federal debt would then increase by \$130 billion in the very year they claim they balanced the budget?

Mr. REID. I left breakfast early so I could be here early to hear all the debate. The Senator has asked this question more than one time, and I thought this would be an appropriate time for someone to respond to the question. You have asked it at least a half dozen times. I thought that, with all the power behind this underlying amendment, Senate Joint Resolution 1, someone would come and be prepared to answer your question. There has not been a single word spoken in response to your question.

Mr. DORGAN. I think the reason for that is that this is a giant dance that goes on. The farther they get from the truth, the faster they dance. I am talking about those who are suggesting to us that they have an approach that will balance the budget, even as that balanced budget requires the Federal debt to continue to increase.

There was a hearing on this subject. I went and testified at the hearing. At the hearing they had the debt clock. That is the neon clock with the numbers that keep increasing that shows how the Federal debt is increasing. I made the point that debt clock actually reinforces what I was asking. I said, it is interesting. When you say that you have balanced the budget that debt clock is going to keep increasing. Until you turn the debt clock into a stopwatch you have not balanced the budget and nobody in my home town thinks you are going to balance the budget.

So, if you accept the Reid amendment, which is a perfecting amendment to the underlying constitutional amendment that balances the budget, you will solve that problem. It is not so hard to do. Accept the Reid amendment, and I think we can enact this constitutional amendment to balance the budget with 70 to 75 votes, mine included. But this is important because it relates to the underlying question of are we really about balancing the budget, or are we about altering the Constitution so that we can claim we have done something that we have not in fact done? That is what is at the root of this issue.

Mr. President, we will have an opportunity to vote for a perfecting amendment that Senator Reid is offering. If we lose that, we will have the opportunity to vote for a substitute constitutional amendment which incorporates the Reid amendment that I will offer.

So we will have two votes on this. If those who study this subject decide that they don't want to change it so that we do this in a way that really does balance the budget, which does require a balanced budget, and which does not increase the Federal debt after you have claimed the budget is in balance—if they don't want to do that, then I guess there will not be a constitutional amendment. If they want to do it, all they have to do this afternoon is accept the Reid amendment. This is not just on our side of the aisle. Congressman NEUMANN, Senator SPECTER,

and many other folks said the same thing that Senator REID and I are saying. So this is not just a group of folks who are on one side of the political aisle that makes this case. This is a \$1 trillion issue over the next 10 years. It is very important to a very important program. It is also important in terms of the question of whether we actually are going to balance the budget and at the same time meet our obligations for Social Security in the years ahead.

I appreciate the Senator from Nevada yielding to me.

Mr. REID. Mr. President, the chairman of the Judiciary Committee and I had an agreement that I would have the last 5 minutes and that he would have 5 minutes prior to that. So will the Chair notify me when I have about 5 minutes left on my side?

The PRESIDING OFFICER (Mr. BROWNBACK). The Chair would be happy to.

Mr. REID. Mr. President, when I yielded to my friend from Florida, I was saying at that time that if it passes it will require the Federal Government to balance the budget and Social Security moneys after that will have to come from four places.

No. 1, raise the payroll taxes in order to cover the difference; No. 2, cut benefits to beneficiaries; No. 3, cut Government expenditures and other needed programs to pay its debt to Social Security; and No. 4, because of the language in the constitutional amendment, to get a three-fifths majority of each House to constitutionally raise the debt.

That is a pretty rough row to hoe.

Also, it is quite clear that because there is no vote required to borrow from the Social Security trust funds that there is a powerful incentive to borrow from those funds to pay for general programs.

So I believe we should pass a balanced budget, which is not a gimmick. It isn't going to make it easy. I acknowledge that. If my amendment passes, it is going to be extremely difficult to balance the budget. But when we do, it will be a fair way to balance the budget. We will not be using the surpluses out of Social Security to balance that budget.

Mr. President, last Saturday the President gave his weekly statement to the American public over the radio. He said in that radio address:

Over the last several weeks, we've received the full data on our country's economic progress for the last four years. The economy created 11.5 million new jobs, for the first time ever in a single term. That includes a million construction jobs and millions of other good paying jobs.

In fact, Mr. President, 60 percent of the jobs were high-paying jobs.

Entrepreneurs have started a record number of new businesses, hundreds of thousands of them owned by women and minorities. We've the largest increase in home ownership ever, a big drop in the poverty rate, and a big increase in family income. And just this week, we learned that the combined rate of unemployment and inflation over the last

four years is the lowest for a Presidential term since the 1960's.

That is a direct quote from the President's address.

There is more that he said. But, among other things, he said, if this amendment passes, that:

... it could force the Secretary of the Treasury to cut Social Security, or drive the budget into courts of law when a deficit occurred when Congress was not working on the budget. In a court of law, judges could be forced to halt Social Security checks, or raise new taxes just to meet the demands of the constitutional amendment.

I say that isn't very pleasant.

Also, there are millions of people out there young and old who believe that this Senate Joint Resolution 1 is bad. For example, the National Committee to Preserve Social Security stated in a February 11 letter that my amendment will preserve the integrity of the Social Security fund under a balanced budget constitutional amendment. Borrowing from a reserve to finance the current debt will place a heavy burden on future generations because the debt to the trust fund must be repaid with interest.

The American public support my position. Almost 75 percent of the people in the polling data in the last week say we want a constitutional amendment to balance the budget, but not if you include Social Security.

The argument being used by the proponents of this amendment is Orwellian. They are saying that because we have been stealing money from the Social Security trust fund in the past that we should go ahead and stick it in the Constitution. We are saying exempt it. That is what should be done.

I know that my friend, the minority whip, wishes to speak. I am very happy to have him speak. But I want to just say, Mr. President, that this is not a group of Democrats only. Maybe in the Senate. But in the House we have some courageous Republicans—most of them sophomores—who have said we are not going to be taken down the path to destroy Social Security, and we will not vote for a balanced budget amendment unless we can vote on an amendment like Senator REID is propounding.

This is what Congressman DAVID MCINTOSH, a sophomore Republican House Member from Indiana, said, "Republicans cannot allow us to be defined as cutting Social Security even as we move forward with the balanced budget amendment."

I say that Congressman MCINTOSH has it right. We should follow his lead. Some of the people on the other side of the aisle and over here should follow this courageous young man and vote for my amendment.

Mr. President, how much time does this side have?

The PRESIDING OFFICER. Seventeen minutes and thirty seconds.

Mr. REID. I yield 5 minutes to the Senator from Kentucky.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. FORD. Mr. President, I thank my friend from Nevada for allowing me the time to speak. I compliment him for his courage, for his ability, and for his tenacity. We have seen that before. We have never needed it any more than we do right now.

Mr. President, just before I came up I was going through some letters that came into my office today. You always see something personal which just happened. Here is a fellow—I will not use his name—who said, "I truly am concerned about my future as a citizen of the United States of America." He also adds, "I am worried about my future. Will there be any Social Security money left for me to have and live on after I am retired?" The concern is there. If you want a balanced budget, vote for the Reid amendment.

Tomorrow you will have 70-some-odd votes. Now we are scrambling to get one more trying to pass it and force it down people's throats.

In 1983, I had to cast a very, very hard vote. That is when we increased the taxes on Social Security. We did it so it would be there for the so-called baby boomers. We developed a surplus on purpose so they would be taken care of in the outyears. Now we find that, if this balanced budget amendment is passed as is without the Reid amendment, it will be a piggy bank that will not stand the crowbar of balancing the budget. They will break that piggy bank and use that Social Security money like it is going out of style. And I will not vote for a balanced budget amendment that desecrates the Social Security vote I cast in 1983.

How many would have voted with Senator Dole when he came from that commission if he had told us that someday this money will go for welfare reform, that someday this money will go for foreign aid, and for other programs? I doubt seriously if it would have passed at that time.

No. Here we are now with a balanced budget amendment that says to those that we have committed to—the senior citizens—that we are not going to cut them. But what happens to those that come after those that are on Social Security now? They are almost there. What about your children and my children that are 45 and 48 years old? They have been required to pay higher taxes. Some of them pay more Social Security than they pay withholding taxes. Now we are saying to them that in your older age for Social Security retirement it will not be there if this passes.

There is one thing that ought to make everybody shiver. There is a possibility of the courts telling the legislative bodies to raise taxes and not to issue checks. So then we come subervient, and we are not a three-part Government any longer. Under this amendment the courts can tell a legislative body what to do. If that doesn't send chills up your spine, if that doesn't tell the people of this country that non-elected, appointed-for-life people, are

going to tell a legislative body, the Congress, what to do—that ought to send shivers up and down the spine of every American.

We have been here for over 200 years; the best and strongest country in the world. And we are about ready to say the system that brought us to this point is about to be eliminated; the system that brought us to this point today is about to be eliminated because of the possibility of the courts telling the Congress to raise taxes and not to issue checks; things of that nature. Oh, we will hear the crocodile tears, the Reagan-Bush memorial over here on my right, you know. We hear all of that. But I say to my friends that I made a commitment. It is called the Social Security trust fund, and I gave my word, and the trust of the people of this country in this Congress ought to be upheld.

In the last Congress, the Senate voted 83 to 17 to adopt a sense-of-the-Senate amendment stating that Social Security should not be cut in order to balance the budget.

Protecting the Social Security trust fund is not just a seniors issue, according to this letter from this young person. We have promised not to reduce benefits for current Social Security beneficiaries in order to balance the budget, but what about this young person's concern about whether they will be able to secure Social Security based on what we have in this balanced budget amendment.

Let me just go back to the possibility of what the courts might do. I do not think there is anyone in this body who wants the courts telling us what to do and how to do it. They will interpret whether it is constitutional or not. That is their prerogative. That is the way the system works. But I tell you when we pass an amendment that says the courts have the authority to run this country—unelected, appointed for life—I have some real concerns.

"Will there be any Social Security money left for me when I retire?" this young person writes. "I am truly concerned about my future as a citizen of the United States." I say to that young person, my vote will secure Social Security for her or him or whoever it might be out there, and I want their future as a citizen of the United States to be brighter. We can balance the budget, as the President says, if we cast the vote.

I yield the floor.

The PRESIDING OFFICER. The Senator from Nevada has 10 minutes remaining.

Mr. REID. I extend my appreciation to the Senator from Kentucky, a man who not only has served with distinction here in this body but who has balanced a few budgets as Governor of one of the biggest, most populous States in the Nation, the State of Kentucky. We respect his work on budgetary and other matters.

Mr. President, I would ask the Chair to advise me when I have 5 minutes remaining.

The PRESIDING OFFICER. The Chair will so advise.

Mr. REID. Mr. President, my amendment is not one I want to direct to big numbers, even though that is what this body has talked about during these past few days. But I want to draw your attention to small numbers, people who draw Social Security checks on a monthly basis. They do not understand the billions and trillions of dollars we are talking about. They understand the hundreds of dollars they receive on a monthly basis because the check they receive represents the difference between retirement with dignity and retirement in poverty.

The reason President Roosevelt signed the bill in August 1935 was to give seniors dignity, and, Mr. President, that is what Social Security has done. I repeat, it is the most successful social program in the history of the world. And we are about to give everyone an opportunity to see how they stand for Social Security.

We have had people come to this floor and say, well, I am a big supporter of Social Security. I have a lot of seniors in my State.

I have no doubt that is true. But if you want to protect Social Security, exclude it. Why? Because to do otherwise, these funds will continue to be raided and the Social Security trust fund will be a slush fund.

Most, as I have indicated, express public support for continued maintenance of Social Security. But this is the test right now. Vote to support a balanced budget amendment, a true, honest, nondeceptive balanced budget amendment. Those who say they will not use Social Security to balance the budget cannot have it both ways. You cannot say we are not going to use Social Security, we are going to protect Social Security and say that we are going to do it. And I agree with the chairman of the Budget Committee when he said in 1990 there should be a firewall developed to protect Social Security. I want that firewall, and that is what this amendment is.

We have communication from the Congressional Research Service, the President of the United States, the Office of Management and Budget, think tanks, who say if you pass this amendment, you are going to destroy Social Security. Absent an express exemption of the Social Security trust fund, we will place at risk the ability to draw down those reserves when the baby boomers begin to retire. We have both a moral and a fiduciary relationship to prevent this.

We all know that the practice of misusing Social Security trust funds is wrong, so let us stop it. Let us terminate it. This is the chance to do that. About 75 percent of the American public agrees with us. Why do we not do something for a change that the American public thinks is the right thing to do, not continue the smoke and mirrors process that has been going on in this country so long that we have

stacks of deficits that big, 4 or 5 feet high as indicated by my friend from Utah. It has been referred to as the Reagan-Bush budget deficit memorial. That is what it is. Huge deficits have accumulated during these years. They must stop. They have gone down in the last 4 years from over \$300 billion to a little over \$100 billion. We can do better.

My amendment, even as my opponents concede, is the only way to do this. But they say if you do it, it is going to be hard to balance the budget. I am willing to take that chance and make the hard, make the difficult choices because when we do it, it will not be smoke and mirrors. It will not be a gimmick. We will be balancing the budget the right way, the proper way, and we will protect the most important social program in the history of the world.

I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. REID. I would ask the time run equally against the opponents and proponents of this amendment during the time that I suggest the absence of a quorum.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. HATCH. I ask how much time is remaining?

The PRESIDING OFFICER. Each side has 4 minutes remaining.

Mr. HATCH. Mr. President, it is my fervent hope that during the debate over the proposed exemption of the Social Security funds from the requirements of Senate Joint Resolution 1, I have convinced my colleagues to support the balanced budget amendment. As Justice Brandeis so eloquently wrote in the 1927 case of *Whitney versus California*, "It is the function of speech to free men from the bondage of irrational fears."

I truly believe that many of my well-meaning colleagues' desires to exempt the Social Security Program is based on unfounded fears.

Look, if we take the largest item in the Federal budget and put it outside of balanced budget purview, we are left with no mechanism at all for its protection. Social Security will be out there all alone, with no protections whatsoever. Whereas, if we keep a unified budget and keep everything in it, Social Security will be protected because everybody in the Congress wants to protect it, and it can compete better than any other Federal program for the available funds. Frankly, I know it would get them. Every one of us would vote for Social Security, for its protection.

But if you agree to the risky gimmick of putting Social Security outside the budget, and everything else is

subject to balanced budget amendment requirements but Social Security, then those who want to destroy Social Security or those who want to continue to spend for social programs, all they have to do is statutorily—because that is all Social Security is, a myriad of statutes—statutorily add anything they want to to Social Security and go on spending forever more without any budgetary restraint at all. The more provisions they add to the total Social Security bill outside the purview of the budget, the more Social Security will be watered down, diminished, and eaten away. That is the difference here.

We have a unified budget, and with a balanced budget amendment that unified budget is going to have to be balanced by the year 2002 or we are going to have to stand up and vote not to balance it. There is no reason in the world to put the largest item in the budget outside of the purview of the balanced budget amendment, since every dime that comes in from the FICA funds will be invested in Federal Government securities anyway. Whether we keep it in budget or put it out on its own without any budgetary restraints, those surpluses are going to go into Federal Government bonds, and the only way we can pay those bonds off, the absolute, only way, is if we pass this balanced budget amendment intact without excluding any program from its purview.

Last but not least, in this limited time, if you write a statute into the amendment, that means you make it constitutional. Can you change Social Security to reform it or make it better or help people or increase funds without a constitutional amendment? Unfortunately, I am not sure we can answer that today. It might well be the case that it would take a constitutional amendment to do it. If that is so, that would be a tragedy.

I do not think this amendment is well thought through. I hope our colleagues will not support it. Constitutionally, it is the wrong thing to do. Most important, even if you do what the distinguished Senator from Nevada sincerely wants to do here, you are not protecting Social Security because you cannot protect it outside of the budget from suspect spending practices. It is free floating without any of the budgetary restraints that the balanced budget amendment would put on the whole unified budget.

Let us do what budget people really know we have to do, and that is live within the constraints of the unified budget, keep Social Security in there where it will compete better than any other program, and, in the end, I think our country will be so much better off because we will be able to balance the budget, reduce interest rates, and make this country really run properly.

It is always helpful to put this debate in a larger context. Today, the accumulated national debt is nearly \$5.4 trillion. Interest payments on this debt consumes \$250 billion annually, which the Washington Times recently estimated, is more than the combined

budgets of the Departments of Commerce, Agriculture, Education, Energy, Justice, Interior, Housing and Urban Development, Labor, State, and Transportation. This means that the share of the debt for every infant born today is about \$20,000.

There is a crying need for sound fiscal reform. Unless we do something, this Nation will continue to have stagnant economic growth with less jobs. Unless we do something, the interest payment on the debt will continue to devour capital that could be otherwise used for investment or Federal programs. Let's not kid ourselves that Washington politicians will remedy this problem; the blunt truth is that no balanced budget deal has worked in the past, that is why we need to amend the Constitution to provide for fiscal sanity.

Yet, opponents of Senate Joint Resolution 1 argue that Social Security should be removed from the protection of the balanced budget amendment. But to do so as they request would be a risky gimmick that would harm Social Security and open a loophole in the constitutional amendment.

The PRESIDING OFFICER. The time of the Senator has expired. The Senator from Nevada has 4 minutes.

Mr. REID. Mr. President, even the great mind, Justice Scalia, who does not like legislative history, does not like to look at it, even Justice Scalia would recognize we have established in this matter a legislative history that is second to none. We are taking Social Security from the confines of this balanced budget amendment. This is not all alone, floating in the air. It is out on its own, as it was required by law in 1990. All of a sudden we are ignoring this law we passed. Any one of the Senators who voted for this in 1990 and now does not vote for my amendment better check his or her record on inconsistency, because this would probably be at the top of their inconsistency list.

The only way to protect Social Security is the way we are doing it. We are not running full-page ads paid for by the Wall Street brokers and power brokers. We are trying to establish, through petitions signed by a million people that were received today, that what is being done with Senate Joint Resolution 1 is wrong. We are representing the recipients, the beneficiaries of Social Security, not the people who want to raid Social Security so it will be easier to balance the budget.

We are supported by the beneficiaries past and those in the future and those in the present. We are supported by the American public by almost 75 percent in polls taken. We are supported by the National Committee to Save Social Security, by the President, in letter and in radio address. We are supported by the Office of Management and Budget.

Mr. President, we are supported by Republicans in the House of Representatives who have stepped forward courageously to say we are not going to be seen as trying to cut Social Security. I

repeat, I hope some of my friends on the other side of the aisle will step forward with the courage shown by Congressman McIntosh, Republican of Indiana.

Mr. President, Franklin Roosevelt, when this legislation was signed, said that he had an obligation not only to protect business interests. I feel that same obligation to protect business interests. I am for reduction in the capital gains tax. I was for the legislation that gave significant incentives to small businesses last year that we passed in conjunction with the minimum wage bill. But as President of the United States, Franklin Roosevelt, said:

... just as Government in the past has helped lay the foundation of business and industry. We must face the fact that in this country we have a rich man's security and a poor man's security and that the Government owes equal obligations to both. National security is not a half and half manner: it is all or none.

We have to help business and we have to help the small person. We are trying to help those people who are trying to survive to maintain their dignity. That is what this amendment is all about. I repeat, anyone who voted in 1990 to take Social Security off budget and now votes against my amendment had better recognize that that is probably about as inconsistent as you can be, legislatively.

I ask my colleagues to support this amendment. It is the right thing to do for the American public.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. REID. I ask for the yeas and nays.

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I move to table and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be 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 amendment No. 8, offered by the Senator from Nevada [Mr. REID]. The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. FORD. I announce that the Senator from Hawaii [Mr. INOUE] is necessarily absent.

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

The result was announced—yeas 55, nays 44, as follows:

[Rollcall Vote No. 14 Leg.]

YEAS—55

Abraham	Bennett	Burns
Allard	Bond	Campbell
Ascroft	Brownback	Chafee

Coats	Hagel	Robb
Cochran	Hatch	Roberts
Collins	Helms	Roth
Coverdell	Hutchinson	Santorum
Craig	Hutchison	Sessions
D'Amato	Inhofe	Shelby
DeWine	Jeffords	Smith, Bob
Domenici	Kempthorne	Smith, Gordon
Enzi	Kerrey	H.
Faircloth	Kyl	Snowe
Frist	Lott	Stevens
Gorton	Lugar	Thomas
Gramm	Mack	Thompson
Grams	McConnell	Thurmond
Grassley	Murkowski	Warner
Gregg	Nickles	

NAYS—44

Akaka	Feingold	Lieberman
Baucus	Feinstein	McCain
Biden	Ford	Mikulski
Bingaman	Glenn	Moseley-Braun
Boxer	Graham	Moynihan
Breaux	Harkin	Murray
Bryan	Hollings	Reed
Bumpers	Johnson	Reid
Byrd	Kennedy	Rockefeller
Cleland	Kerry	Sarbanes
Conrad	Kohl	Specter
Daschle	Landrieu	Torricelli
Dodd	Lautenberg	Wellstone
Dorgan	Leahy	Wyden
Durbin	Levin	

NOT VOTING—1

Inouye

The motion to lay on the table the amendment (No. 8) was agreed to.

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

Mr. CRAIG. Mr. President, I move to lay it on the table.

The motion to lay on the table was agreed to.

MORNING BUSINESS

Mr. ENZI. Mr. President, I ask unanimous consent that there now be a period for the transaction of morning business with Senators permitted to speak up to 5 minutes each.

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

SCHINDLER'S LIST

Mr. D'AMATO. Mr. President, I hold in my hand a press statement sent to my office and I believe to all of the Senate and House offices from a Congressman from Oklahoma, Congressman TOM COBURN, regarding the showing of "Schindler's List," this past Sunday. I have to tell you, we had to call the office to assert whether or not this was a joke. We thought it was a prank. The Congressman in his press release goes on to raise concerns on behalf of the family caucus, and says that the airing and demonstration of the television program that depicted sex and violence was inappropriate. He complains about the nudity of the program.

I cannot believe, and I am shocked and appalled, that any Member of Congress would put out a statement of this kind that shows those who were imprisoned and being sent to their death—it seems to me that anyone who would make a statement condemning "Schindler's List" is totally out of touch with the importance of this historic film, depicting the monstrous deeds that took place and the heroism that was also displayed.

To equate the nudity of the Holocaust victims in a concentration camp with any sexual connotation is outrageous and offensive. I am shocked and appalled that any Member of Congress would make these kinds of statements. I am particularly embarrassed that they were made by a Member of my own party.

I understand that the Congressman is planning to make a clarification of his statement. While I await them, I think that everyone should seek that clarification. Certainly, this should not be a view expressed by anyone in public office who is right-thinking.

Again, I thought this press release was a prank at first, and it was only when I called that we verified it was not the case. The Congressman should respond quickly and clarify exactly what he meant by this statement.

I yield the floor.

UNANIMOUS-CONSENT AGREE- MENT—SENATE JOINT RESOLU- TION 1, AMENDMENT NO. 7

Mr. GRAHAM. Mr. President, I recognize we are now in morning business, but I ask unanimous consent that it be in order to offer an amendment at this time, which I previously filed, listed as amendment No. 7 to Senate Joint Resolution 1.

It is my intention that the amendment be taken up and then laid aside for consideration later in the debate on Senate Joint Resolution 1.

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

Mr. GRAHAM. Mr. President, I also ask unanimous consent that Senator ROBB of Virginia be added as a cosponsor of amendment No. 7.

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

When the Senate resumes the business of Senate Joint Resolution 1, amendment No. 7 will be one of several amendments pending to the resolution.

Mrs. MURRAY. Mr. President, I thank the Chair.

(The remarks of Mrs. MURRAY pertaining to the introduction of S. 351 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

MANAGEMENT FAILINGS IN THE FBI

Mr. GRASSLEY. Mr. President, reports of alleged mismanagement within the Federal Bureau of Investigation have been in the news, recently. Most of the reports reflect issues in the FBI's vaunted crime lab. These allegations of mismanagement come on the heels of FBI management disasters with Waco, Ruby Ridge, Filegate, and Atlanta, as well as others.

The average citizen is wondering if this premiere law enforcement agency is out of control. The deputy director of the FBI, Weldon Kennedy, understands the significance. Two weeks ago, he said the following:

The single thing most responsible for the success of the FBI is that "people are confident that if they come to the FBI, the mat-

ter will be handled professionally and well. If that trust ever breaks down, not only is the FBI in trouble, but the American people are in trouble.

Mr. President, that is the issue. Weldon Kennedy hit the nail squarely on the head.

The issue is trust and confidence in the Nation's No. 1 law enforcement agency. And in the context of other, recent management fiascos at the FBI, skepticism is validly the order of the day.

Indeed, allegations of problems in the FBI lab are troubling. I have been working, parallel to the Justice Department's inspector general, to find out if the allegations are true or not. The IG's report is due for public release on or about March 14.

So far, the FBI has responded to the allegations in a less than credible way. First, they shot the messenger—Dr. Frederic Whitehurst, the lab scientist who first raised the allegations.

Next, the FBI used the typical "everything's okay" strategy to make the public think there was no problem. But that was contradicted by the facts. Weldon Kennedy said the problems in the lab wouldn't compromise any past, present, or future case.

That statement raised a lot of eyebrows. The deputy attorney general, Jamie Gorelick, refused to confirm Mr. Kennedy's wild optimism. Her refusal to do so totally undercut Mr. Kennedy's statement. Mr. Kennedy's credibility came into question. Even Mr. Kennedy had to back off his own statement. On February 6, he admitted, "Maybe I was overstating the case."

But then, in a letter to me dated February 21, Mr. Kennedy went right back to defending his wildly optimistic statement—that no past, present or future case is in danger. In my view, Mr. Kennedy is playing fast and loose with reality, with a purpose to mislead the public, and mislead Congress. The simple fact is, it is much too premature for Mr. Kennedy to be making groundless predictions. For him to do so anyway shows a strategy to mislead.

Third, I have learned that it is not just Dr. Whitehurst who has alleged wrongdoing in the FBI crime lab. Others have as well. So in the near future, I will resume speaking to my colleagues about this issue, Mr. President. At that time, I intend to discuss a very specific case with specific allegations of alleged wrongdoing. Today, however, I intend for my remarks to remain general.

Finally, I fear the FBI has covered up the lab's shortcomings. The FBI has been aware of many of these specific problems for more than 10 years. Yet, there have been few, if any, fixes to the problems. I suspect the reason is that the obvious solution is for the lab to be accredited; but the lab is so poorly configured and maintained that it can't be accredited. So instead, the FBI calculated that it's better to "cover it up"