and women would be safe and that they would all make it home. Would that it were so.

When it was over, and the battle had been won, we all felt a great wave of relief that our casualties had been light. But light casualties, don't feel so light when they include our families, our friends, and our loved ones.

One hundred and forty-six young people did not come back. I say this in their memory as I mention one young man who didn't come home from that battle came from Gillette, WY. Manuel Davila was a young father, a nice guy who always had a smile and a kind word for everyone he met. He was the kind of person you'd like to have for a friend. That is why he had so many friends.

I watched Manuel grow up. He was a remarkable young man. He came from the town I call home. You didn't get to meet him, so I should use the words of Ron Franscell, the editor of the Gillette News Record, who wrote so eloquently 6 years ago as Manuel's body was brought home for burial: ''I never knew Manuel, but he was from my town, he was one of us, and he had dreams. In that way, I knew him very well. You know him, too.''

Yes, Ron, we all did know him, too.

Manuel saw a need, and when he was asked to go, he didn't hesitate. He was doing his job and it was a job he loved and felt proud to have been called to do. That's what it was to him. He felt good to be a part of this special mission for he understood how much it meant to the defenseless people of Kuwait who needed him so very badly.

In Wyoming, we like to think of our State as holy ground that was blessed by God. It is a land of open spaces, beautiful mountains that seem to stretch up to God's heaven, green forests, national parks, clean, clear, cool air and wide open spaces.

Manuel traded all of that for a far different world.

He traded his clear blue skies for a desert sky that was pitch black with the fumes and smoke of oil fields set on fire by Iraqi troops. He traded his beautiful mountain paradise for an isolated desert wasteland. He traded the clean, crisp air of Wyoming for the use of a gas mask and the threat of Saddam's chemical weapons. He traded the safety and security of his homeland for the uncertainty and danger of a battlefield. He traded it all to go overseas and fight for freedom.

When it was all over, in spite of all the precautions we had taken to protect our troops, this brave young man didn't make it home. A wife had lost her husband, and a family had lost a son. A little girl had lost her father.

Six years ago we brought him back home to Wyoming. The loss of Manuel in the desert reinforced the truth of an adage made famous by an old television show written about a different war. In one scene a doctor says that there are two rules of war. The first rule is that young men and women die. The second rule is there is nothing that can be done to change rule 1. It is the awful truth of battle.

Today, although we are far removed from that battlefield, we must never forget the sacrifices that were made by Manuel and by so many more who gave their lives for great causes like the one that claimed young Manuel's life. We must continue to honor their memory and commemorate their brave and courageous actions that were done in our name. Truly, far too many have made the ultimate sacrifice that we might be free.

There is no greater way we can honor Manuel's memory and that of our other great war heroes than to rededicate ourselves every day of our lives to the cause of peace. I find great inspiration for that cause and the importance of peace when I reflect on the beautiful words of the Book of Isaiah in the Bible: ''They shall beat their swords into plowshares, and their spears into pruning hooks; nation shall not lift up sword against nation, neither shall they learn war any more.''

Yes, Manuel was one of our great heroes of Wyoming and of these United States. He was a good kid, a hometown boy who had plans for his future. That future was cruelly taken from him on foreign soil by a madman. Now, the torch Manuel carried so bravely in battle is passed to us to light the path to peace in our lives. We had best carry it high and proudly as we commit our every effort to ensuring that we will never again ask our young men and women to make the ultimate sacrifice, as we work together to avoid the horrors of war. If we are successful, we will truly live in a world of peace, where nation shall not lift up sword against nation. That is the best way for us to care for those who have borne the battle, by ensuring that it never happens again.

BALANCED BUDGET AMENDMENT TO THE CONSTITUTION

The Senate continued with the consideration of the joint resolution.

Mr. REED. Mr. President, I ask unanimous consent to speak for 20 minutes.

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

Mr. BIDEN. Mr. President, will the Senator from Rhode Island yield to me so that I may explain why I missed that last vote?

Mr. REED. Yes.

Mr. BIDEN. Mr. President, I thank the Republican leader as well as the Democratic leader for attempting to hold the vote long enough for me to get here. I voted before in the affirmative on the Graham amendment. We voted on it last year.

I was one of the speakers at the International Chiefs of Police and Sheriffs Association discussing the juvenile justice bill. I thought I had left in plenty of time from a downtown hotel to get here. But, as Washingtonians will tell you, there is a good deal of road construction going on. I was caught behind the most polite cab driver in Washington. He stopped for everyone, which I was happy to see except for this day. Had I had the cab driver who runs over most people, I would have been up here. I should not say that. I will get letters about that. That was a joke, an attempted joke.

But I want the RECORD to show that had I been here, I would have once again voted for the Graham amendment.

I apologize if I inconvenienced the Senate in any way in attempting to hold it for me to get here.

I thank my distinguished friend from Rhode Island for yielding.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. REED. Mr. President, I am prepared to speak. I would be willing to defer if there are any other procedural announcements at this time.

Mr. LOTT addressed the Chair.

The PRESIDING OFFICER. The majority leader.

UNANIMOUS-CONSENT AGREEEMENT

Mr. LOTT. I thank you, Mr. President. I thank the Senator from Rhode Island for yielding this time so that I may enter a unanimous-consent agreement which has been reached with regard to an amendment that Senator HOLLINGS had intended to offer to the balanced budget amendment on campaign financing.

I ask unanimous consent that the majority leader, after notification of the Democratic leader, may turn to the consideration of a Senate joint resolution, the modified text of which is Senate amendment No. 9 filed yesterday to Senate Joint Resolution 1 regarding campaign financing.

I further ask that no amendments or motions be in order during the pendency of the Hollings constitutional amendment, and following the conclusion of the debate, the joint resolution be read a third time and a vote occur on passage of the joint resolution, with the preceding occurring without any intervening action.

Before the Chair puts this consent request to the body, it has been pointed out to me by Senator MCCAIN that this consent is for a constitutional amendment regarding campaign spending limits. There are other campaign-related issues that may be pending in the Senate committees that do not amend the Constitution but are statutory language.

So this is not to be in place of or in any way block other consideration, or to indicate that there will not be hearings and further consideration of this matter. But Senator HOLLINGS agreed to this arrangement so that it would not be a part of or relate to the consideration of the constitutional amendment for a balanced budget. Senator MCCAIN agreed that it be done this way. It has taken the cooperation of both of them and of all the Senators. This is an important issue which should be brought up freestanding with

a reasonable amount of time for discussion.

I have indicated to Senator HOLLINGS that, if it takes a couple of days or so, we will be prepared to do that. I think that is about what it would take, but if it takes 2 days and 2 hours, I do not know of anyone who would object to that. But it should be a very interesting debate.

So I now make that request, Mr. President.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. LOTT. I thank the Senator from Rhode Island for yielding.

The PRESIDING OFFICER. Under the previous order, the Senator from Rhode Island is recognized for 20 minutes.

Mr. REED. Thank you, Mr. President.

Mr. President, I rise in opposition to the amendment before us today.

For many decades, Congress found it easier to debate a balanced budget amendment to the Constitution than to actually balance the budget.

Support for the balanced budget amendment was a convenient badge of fiscal austerity at a time when many Members were voting for tax policies and spending proposals that saw our annual deficit and our cumulative national debt explode.

After so many years, it is no wonder that the balanced budget amendment has become a talisman which its supporters clutch, suggesting that it has extraordinary powers to translate the difficult choices that this body must face into some type of simple constitutional formula which will miraculously erase the deficit.

But, as the last few years have indicated, there is no magical constitutional language that will make the choices or the policies of budget balancing easier.

Mr. President, in 1993, the Clinton administration began a process of deficit reduction which has helped to create a strong economy, cut the deficit by 63 percent, brought the deficit when measured as a percentage of the gross domestic product to its lowest level since 1974, and given us the lowest deficit of any major industrialized nation.

It took difficult choices, not constitutional gimmicks; choices that Republicans refused to support.

Whether or not this amendment passes, and I hope it does not, we will still be confronted by these choices.

However, if this amendment does pass, for the first time in our history we will either surrender our role in shaping the budget and the social and economic policies which it defines to the courts, or simply surrender any decision to an adamant minority which could invoke the provision to block necessary action.

Mr. President, the amendment before us today is flawed in many ways. It is the wrong answer to a real problem. It is the wrong way to manage the economy. It disrupts our tradition of majority rule. It needlessly jeopardizes essential programs and it needlessly enhances the role of the courts in budgetary and tax policy. The balanced budget is the wrong way to manage the economy.

Over 1,100 noted American economists, including 11 Nobel laureates, voiced their opposition to this balanced budget amendment on the grounds that it would hurt our economy and graft improper fiscal policy onto the Constitution. They said, ''It is unsound and unnecessary.'' They added, ''It mandates perverse actions in the face of recessions.'' They went on to say it ''would prevent Federal borrowing to finance expenditures for infrastructure, education, research and development, environmental protection, and other investment vital to the Nation's future well-being,'' and that it ''is not needed to balance the budget.'' They also ''condemn'' the amendment and suggest it could place our economy ''in an economic straitjacket.''

One Nobel laureate, Prof. William Vickery, developed an analysis of 15 issues with respect to balancing the budget, reducing the deficit and providing for economic growth, and in this analysis he has a compelling and noteworthy passage:

> If General Motors, AT&T, and individual households had been required to balance their budgets in the manner being applied to the federal government, there would be no corporate bonds, no mortgages, no bank loans, and many fewer automobiles, telephones and houses.

But this balanced budget amendment suggests that the Government do exactly the opposite of what the most sophisticated private industries do, and I think that is a mistake.

While the majority may find it appropriate and even desirable to insert economic formulas into the Constitution, I would urge caution. For example, we all believe and we will say time and time again that we should have a full employment economy and that every able bodied American work. However, if I were to introduce a full employment constitutional amendment, I predict that the very same supporters of this balanced budget amendment would rush to this floor and condemn that approach, invoking the terminology that we should not enshrine economic ideas or formulas into the Constitution of the United States. The same thing would happen if we talked about an anti-inflation amendment.

The point, I think, should be very clear. It is our responsibility, together with other institutions, outside the scope of the Constitution to rationally ameliorate the surges and downswings of the economy. This is what we should do.

Some people might try to say, well, no, look at the States. They provide for a balanced budget. That certainly misses the point. State governments do not manage national economies. They do not issue and support currencies. They do not deal in foreign trade. And most of them, if not all of them, with balanced budget requirements have the good sense to separate capital spending from operational spending. So that logic does not suffice to support this balanced budget amendment.

I also suggest that economically we are not immune from the difficulties of the business cycle. We have been enjoying over the last several years good, substantial economic growth, but we know that in past periods our economy has faltered. If it does falter, this balanced budget amendment could be a straitjacket, confining and constraining us in our response to these economic recessions. When the economy shrinks, revenue shrinks, throwing off our revenue estimates, throwing off our whole plan to get to the balanced budget, and we will be hamstrung by this amendment's proposals in terms of what we can do to address a recession.

For example, the CBO has talked about the impact of recession on the deficit. Their estimates indicate that a 1 percent drop in the gross domestic product would increase the deficit by $32 billion. A 1-percent increase in unemployment would add $61 billion to the deficit. These are staggering figures with which we would have to contend in the context of a very narrowly drawn balanced budget amendment.

These are not just statistics. These are real people's lives. We have all lived long enough to have endured economic recessions and have seen the cost in human lives. We have to, as a Government, to such situations. We cannot, I think, plead, at that moment of need, we would like to help you, but the Constitution prevents us from doing sensible, appropriate things to put people back to work in this country.

One of the aspects of the balanced budget amendment that would severely constrain our response to recessions is the fact that it would suppress the automatic stabilizers contained in our economic policy today, things like unemployment compensation and other entitlement programs which exist to meet the needs of people who have fallen on hard times during a recession.

As the Congressional Research Service cautioned when it examined the economic impacts of this proposal:

> In sum, the balanced budget constitutional amendment could require action to neutralize the automatic stabilizers in the budget that expand outlays and reduce tax collections in economic slowdowns and recessions. In this case, the budget would no longer serve to moderate business cycles.

And, under this amendment, we would lose a valuable tool in aiding the working men and women of America.

There is more than just constitutionally historic interest involved in the question of this amendment's supermajority requirements because this amendment requires not a majority vote, in many cases, but much more than a majority vote. This provision holds the real potential for constraining effective action at the time we

need Government to move decisively and purposefully.

For example, in times of economic crisis, there would be no automatic stabilizers if a small minority of Senators or Representatives objected. Different regions of the Nation experiencing economic hardship could find no comfort in Washington because they could not muster the number of Senators and Representatives to deal with their region's particular problems. Frankly, over the last several years, we have seen economic situations in which the country overall appears to be doing fine, but when you go to the Northeast, to California, or to other parts of the country, you find regional recessions that need the help of this Government. Regrettably, in that situation there may not be sufficient will or political support to do what we must do, which would be extremely detrimental to the citizens who live in these areas.

There is another aspect of this supermajority that is built into this constitutional amendment which should cause us all great concern, and that is in order to raise the debt ceiling a vote of three-fifths would be required.

We have just in the last Congress seen the difficulty of securing approval of a change in the debt ceiling with a simple majority requirement. If we would require a three-fifths vote, we really would be putting our Nation at severe risk.

As Secretary Rubin has pointed out with respect to the issue of raising the debt ceiling and consequently avoiding default on Government debt:

> The possibility of default should never be on the table. Our creditworthiness is an invaluable national asset that should not be subject to question.
>
> Default on payment of our debt would undermine our credibility with respect to meeting financial commitments, and that, in turn, would have adverse effects for decades to come, especially when our reputation is most important, that is, when the national economy is not healthy. Moreover, a failure to pay interest on our debt could raise the cost of borrowing not only for the Government but for private borrowers as well.

This super majority provision would affect the Government's ability to deal rationally and prudently with the debt ceiling, and that is another reason, a very strong reason, why this proposed constitutional amendment is inappropriate.

It is bad economics; 1,100 economists would condemn it, but it is also very poor budgeting. As Senator BYRD pointed out, the majority's proposal turns the Congress and the President into fortune tellers who must somehow predict and balance outlays and receipts exactly or find the supermajority needed to waive the amendment. This appears to be an impossible task, because each year the CBO seems to revise its projected deficit and revenue totals on a regular basis. We should not delude ourselves into thinking we can accurately predict the future, and we should definitely not add this dubious proposition to the Constitution.

In addition to the fact that this amendment's success is predicated on frail human predictions, there are other reasons to oppose this amendment. While the majority claims that States have managed to survive balanced budget amendment requirements, they fail to acknowledge, as I previously indicated, that States do so rationally by creating separate operating and capital budgets. I have supported a balanced budget amendment which recognizes this rational policy. But that proposal is not before us today and we are debating a proposal that does not recognize—in fact some scholars have indicated it would constitutionally preclude—the development of a capital budget by the Federal Government.

Time and time again, the advocates of the amendment have rejected the idea of a capital budget for the Federal Government. I believe, in a sense, not only are we rejecting sound constitutional policy and sound administrative policy, but we are also undercutting this Nation's need to build up our capital infrastructure. So, this amendment, as proposed, is both bad economics and bad budgeting, and finally it is an abrupt departure from the constitutional balance that we have observed through the course of our history. It raises a number of fundamental questions about our Constitution, our tradition of majority rule, and the power of the judicial branch in the United States.

One of the lessons I learned in law school was, where there is a wrong, particularly a constitutional wrong, there must be a remedy. Yet this constitutional amendment makes no mention of how it will be enforced and who has the legal standing to question those issues which arise under the constitutional amendment. This is an invitation to litigate rather than legislate on budgetary matters. If a future Congress finds it too difficult to take the painful steps needed to eliminate the deficit, then we may expect any number of possible claimants, from Governors upset about Medicaid payments to senior citizens upset about their Social Security checks, all of them urging the courts to step in and take action.

Moreover, by placing the requirements that receipts and outlays be reconciled in the Constitution itself, the amendment effectively calls on the Supreme Court to ensure that this mandate is met. While the amendment may leave open the question of how the legislature reaches its positions and what items will be considered outlays and revenues, the Supreme Court will always have an obligation to uphold the Constitution. Once we declare constitutionally that revenues and outlays must be reconciled, the Court will have no inhibition, and, in fact an obligation, to step in and make this reconciliation if Congress fails.

Likewise, under this amendment the President could be forced to impound funds, to cut off checks, to do many things because of a perceived constitutional mandate. I would think long and hard, and I urge my colleagues to think long and hard, whether or not we want to surrender what is traditionally the authority of the Congress over both the courts and the President to manage the public purse. These issues are all very difficult ones, raising profound questions of constitutional law.

One other aspect of the proposal which is disturbing is the departure from a tradition in this country of majority rule. I have mentioned before the supermajorities which would be required to raise the debt limit and to do other things which today only require a majority vote of the Members of the House and the Senate. Indeed, the balanced budget amendment would create new supermajorities in many different areas. When the founders developed the Constitution, they recognized that only majority rule would work for a nation founded on the principles of liberty and opportunity. James Madison argued in Federalist 58 that if more than a majority were required for legislative decision, then:

> . . . in all cases where justice or the general good might require new laws to be passed, or active measures to be pursued, the fundamental principles of free government would be reversed. It would be no longer the majority that would rule: the power would be transferred to the minority.

And, indeed, that is what this amendment would do inexorably.

There is a final and significant issue which must be discussed with respect to this balanced budget amendment proposal. I believe it jeopardizes the integrity of the Social Security system and raises the specter of encroachments on the system, not to support seniors but to pay for the reckless spending of the 1980's.

My State has the Nation's third highest percentage population of senior citizens. These are the men and women who fought in World War II and who made our country an economic power. Their sacrifices have made our Nation what it is today. They deserve our support and they rightly demand our assistance to maintain a dignified retirement.

The hallmark of our commitment to these seniors has been the Social Security system. However, this amendment makes no provision to protect this essential program from the choices necessary to achieve a balanced budget. The amendment fails to recognize that Social Security is not just like every other program. It is directly funded through a dedicated payroll tax, and numerous acts of Congress have sought to protect it from improper manipulation or precipitous reductions in benefits. Yet the majority refuses to protect Social Security and, instead, wants to use the Social Security trust fund to mask the deficit.

Mr. President, recently the Congressional Research Service produced a report regarding the impact of the balanced budget amendment on Social Security, which contained a shocking

revelation. The report found that the Social Security Administration, even though it has accumulated a very healthy surplus, would not be able to pay benefits in certain years, due to the amendment's requirements that total outlays for any fiscal year shall not exceed total receipts for that fiscal year. In other words, Social Security could only pay as much in benefits as it receives from payroll taxes in any given year, even if the trust fund was running a multibillion-dollar surplus from previous years. This is a grave matter that deserves more analysis and could jeopardize the 1983 Social Security reform law as well as future reform efforts. But it would be a consequence of this balanced budget amendment if adopted today or in the future.

Some would argue that no legislator would touch the Social Security system, but a constitutional imperative may provide a shield which would allow legislators to break that sacred commitment between ourselves and those seniors who have contributed so much to this country.

I urge my colleagues to reject this balanced budget amendment. The Constitution establishes the durable rights and responsibilities which are the heritage of our past and the best guarantee of our future. We should not let the Constitution fall prey to a proposal that reflects transient economic policy at best, and would erode both majority rule and the principle that the people's representatives, not judges, must be responsible for the public purse.

Mr. President, before I yield, I would like to thank Senator FEINGOLD for his graciousness in delaying consideration of his amendment in order to permit me to go forward with my statement.

I thank the Senator from Wisconsin and I yield my time.

AMENDMENT NO. 13

The PRESIDING OFFICER. Under the previous order, the question recurs on the Feingold amendment No. 13. Debate on the amendment is limited to 30 minutes equally divided in the usual form.

Mr. FEINGOLD. Mr. President, under the unanimous-consent agreement I have two amendments at the desk and I believe it is in order for me to call up the first of the amendments, amendment No. 13.

The PRESIDING OFFICER (Mr. ENZI). That is the pending question.

The Senator has 15 minutes.

Mr. FEINGOLD. Mr. President, I thank the Senator from Rhode Island for his kind remarks and for his excellent remarks in opposition to the balanced budget amendment. The amendment I am offering today to the balanced budget amendment will ensure that this Congress will meet its stated goal of reaching a balanced budget by the year 2002. Many people do not realize that as currently drafted, Senate Joint Resolution 1 may well forestall this goal of balancing the budget by the year 2002 well into the next century. I believe reaching a balanced budget by 2002 or earlier should be our highest priority. Thus, I am offering an amendment that will shorten the time for ratification of this amendment.

As was noted on the floor by our colleague from North Dakota, Senator DORGAN, a few weeks ago, even if this amendment were somehow ratified at 2:10 today, tomorrow this Nation's deficit would be no smaller than it was when the amendment was adopted. The fact that this amendment in and of itself does nothing to reduce the deficit highlights one of my principal concerns with Senate Joint Resolution 1. That concern is that pursuing a constitutional amendment approach could, counter to what everyone suggests on this issue, actually delay action on the real work of achieving a balanced budget by providing what is, in effect, political cover for inaction while the States debate the question of ratification.

Under the proposal before us, even if the Congress adopted the joint resolution this year, the implementation date, the date by which we would actually be required to balance the budget, is potentially well into the next decade. Conceivably, it could be as late as the year 2006.

That is right within the terms of the balanced budget amendment that is being offered. This is evident on the face of the amendment itself. Section 8 of the amendment offered in Senate Joint Resolution 1 provides that the balanced budget amendment will take effect beginning with the fiscal year 2002, or within the second fiscal year beginning after its ratification, whichever is later. So there is no certainty at all with regard to the year 2002.

The report accompanying Senate Joint Resolution 1 reiterates this uncertain timeframe. It states as follows:

> An amendment to the Constitution forces the Government to live within its means. S.J. Res. 1 requires a balanced budget by the year 2002, or 2 years after the amendment is ratified by the States, whichever is latest.

So, Mr. President, the proposal before us allows the States a full 7 years to ratify this amendment. The practical effect of this is, assuming Congress approves Senate Joint Resolution 1 by June 1 of this year, the States then have 7 years, or until the year 2004, just to ratify the amendment. If they take the full 7 years, and I think they will take more time when they begin to consider the full implications of this approach, the amendment would then not become effective—in other words, binding on Congress—until 2 years later, in the year 2006. In other words, the ratification period envisioned by Senate Joint Resolution 1 forestalls making the truly hard choices until as late as the year 2006, well, well beyond the current target of the year 2002.

In fact, the only way this amendment can be effective and binding by the year 2002 is if we pass it this year and the States then ratify it within only 3 years.

Because I believe, as I know do most of my colleagues, that we should balance the budget no later than the year 2002, I am offering this amendment to shorten the time for ratification from the allowed 7 years under the current amendment to 3 years, thus keeping us on track to meet the 2002 goal.

I want to be candid in stating that I disagree with many of my colleagues who believe that this amendment will be promptly ratified by the States. There is already talk that some of the States that might have ratified this proposed amendment in the past may be having some second thoughts. Maybe they have been listening to the debate on the floor, about some of the very serious flaws with the way this balanced budget amendment was drafted, that has been brought forward. In fact, the longer the States have to consider this amendment and its potential ramifications and uncertainties, they will be less and less inclined to adopt it.

However, when I offered this amendment in the Judiciary Committee, the proponents of the balanced budget argued against it. The distinguished chairman of the Judiciary Committee, the senior Senator from Utah, Senator HATCH, stated that he was quite confident that if the timeframe were shortened, as I am proposing, that the underlying amendment ''would still be ratified by an overwhelming number of States and probably within that 3-year time.''

That being the case, and the general agreement that the budget must be balanced no later than the year 2002, I was somewhat surprised to see my amendment defeated by the committee. If we are sincere about our efforts to achieve balance within 5 years, our actions on this amendment should reflect that goal, a goal that has been stated by the President and by the majority leader and by the Speaker of the other body.

The argument has also been made we should not abandon the custom of allowing a full 7 years for ratification. However, the 7-year period for ratification has evolved as a matter of practice beginning with the 18th amendment. On each successive occasion, except the 19th amendment, Congress has a set time for ratification, and they have set that time each time at 7 years. Doing so has been upheld as appropriate by the Supreme Court as an exercise of Congress' authority to adopt reasonable timeframes for ratification of amendments.

There has, no doubt, been much debate over whether or not the time for ratification may be extended. There is nothing, Mr. President, nothing, except adherence to tradition, that precludes the adoption of a shorter period of ratification, of a period less than 7 years. I respectfully suggest that the context in which the debate over the balanced budget arises counsels that it would be entirely appropriate and reasonable to depart from the 7-year standard and

adopt, in this case, 3 years, as is proposed in my amendment.

There can be little doubt that balancing the budget is perhaps the top priority of the Federal Government at this point. In fact, so important was the adoption of the 2002 target date that the Republican Party created and ran what was, in my opinion, a pretty effective TV ad that showed President Clinton saying that a balanced budget could be attained in 7 years, then 8 years and then 10 years. That was a pretty good ad. This ad was a dramatic portrayal of what many argued was a general unwillingness to commit to attaining balance by a specific date.

I agreed with my Republican colleagues that we should set about the business of reaching balance by the year 2002, and that is why I think the amendment I am offering is appropriate and should be adopted. It assures that the target date of 2002 will not be pushed back until possibly as late as 2006. If, as the chairman of the Judiciary Committee suggested, the States adopt this Senate Joint Resolution 1 very quickly, then we should make it effective no later than 2002. If however, the States, upon learning about the uncertain consequences to the American people of this proposal, reject it, Congress should not be allowed to sit on their hands for 7 years and let the gains of the past 4 years of reducing the deficit languish or, even worse, be lost.

I am sure that many proponents of this constitutional amendment will argue that even if the States take the full 7 years, there is nothing to stop the Congress from continuing to work hard to get the balance done by the 2002 date. I hope so. But I suggest that such an argument speaks not to my amendment, but to the more threshold question of why, if that is the case, do we have to amend the Constitution anyway? If the constitutional amendment is not going to require balance until the year 2006, what will force this body to do the job by the year 2002? Nothing. The heat will be off.

President Clinton was clear when he said that all we need to balance the budget is our votes and his signature. I agree. We should make the tough choices sooner, not later. The report accompanying this measure argues that should this amendment be adopted and subsequently disregarded by a Congress and a President and are stalled at an impasse in budget negotiations, that that would constitute nothing less than a betrayal of public trust. In my opinion, if we allow this amendment to potentially delay balancing the budget or, in the interim, stray from the course charted over the last 4 years, that would also be, in my view, a betrayal of the public trust. We should remain always and in all respects committed to the 2002 target date.

As I said before in the Judiciary Committee, this amendment is really, to put it in very simple terms, the fish-or-cut-bait amendment. You either support moving toward balance by the year 2002 or you don't. If this Nation is going to take the constitutional approach, we should set about doing so and not let possible delays over ratification provide an excuse, provide political cover for inaction and delay until as long as the year 2006.

I do not question the sincerity of my colleagues in their desire to balance the budget. My amendment ensures that this will occur within the timeframe we have all agreed upon. Therefore, Mr. President, I am hopeful that all of us who support balancing the budget, whether we support this amendment or not, will embrace my amendment that will limit the ratification to 3 years and, therefore, Mr. President, keep us on track to balance by the year 2002, not the year 2006.

I reserve the remainder of my time.

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the Senator from Utah.

Mr. HATCH. I understand my colleague. I understand the amendment being offered by Senator FEINGOLD would reduce the period for the States to ratify the balanced budget amendment from 7 to 3 years.

I have to say, that I do not see the wisdom in departing from the long-standing 7-year standard that this resolution reflects. The 18th amendment, ratified in 1921, was the first constitutional amendment to contain a time limitation of any kind. Although there was heated debate at the time over Congress' authority to impose such a limitation on the States' ratification of the constitutional amendment, the Supreme Court subsequently upheld Congress' power to set a reasonable time limit on ratification in the case of Dillon versus Gloss back in 1921. As a result, we find 7-year time limitations within the actual text of the 18th, 20th, 21st and 22d amendments.

Since approval of the 23d amendment in 1961, Congress has continued to include a 7-year time limitation. But such limitation has been removed from the text of the amendment and incorporated instead in the joint resolution proposed in the amendment as we have done in Senate Joint Resolution 1.

Now, just to verify the continued adherence to the convention of a 7-year time limitation, I did a quick review of the 107 Constitutional amendments introduced in the last Congress. Indeed, of those 107 resolutions, only 1 contained a time limitation that varied from the conventional 7-year limitation.

I am quite confident, were we to adopt a shorter time limit, as my colleague proposes, the amendment would still be ratified by an overwhelming number of the States. But I fail to see the need in this case to alter what has been recognized as a reasonable time limitation on ratification since the early part of this century or to prejudice the consideration of the balanced budget amendment by reducing the time for consideration.

Mr. President, I am not concerned about 3 years or 7 years. I am concerned about 28 years, these 28 years of unbalanced budgets. You know, the bottom line is, we can talk all we want to about technicalities like 3 or 7 years but it is the 28 years I am concerned about. Really, if you get serious about it, it is 58 of the last 66 years during which we have had unbalanced budgets. It does not take a rocket scientist to realize this outfit just does not have the will to do what is right.

So to get all caught up in whether it is 3 or 7 years, I do not think serves the best interests of this amendment. Let me just say the bottom line is this. Congress cannot and will not stop spending more than it earns without the force of a constitutional requirement to balance the budget.

I have 28 unbalanced budgets here just to prove the point. We stacked them a little lower by doubling and tripling the smaller volumes, but it still is a pretty high stack. It is headed right to the ceiling if we do not get a balanced budget amendment. We have run deficits in 58 of the last 66 years. And, Mr. President, that is plain fiscal irresponsibility.

For these reasons, I urge my colleagues to reject distractions such as this amendment. I do not mean to demean the amendment of the distinguished Senator or my colleague who serves well on the Judiciary Committee, and with whom I have a very good, friendly and decent relationship, but it is a distraction in the sense that really the 7-year period really ought to be maintained since it has been over all these years.

So I urge my colleagues to reject this amendment and to find the courage to change the face of this Nation by voting for a constitutional amendment to balance the budget. This is a chance to do it. This is a chance to do something that will work. If we put the balanced budget requisite into the Constitution, I have no doubt that it will be a very relative few who would not observe it. But I believe the vast majority of Members of the Congress of the United States henceforth and forever would do everything in their power to live up to that constitutional requisite were we to put it in the Constitution.

I have no doubt about it. I think the vast majority of people who serve here are very honorable people who keep their word and will do what is right. I really believe that if we put this in the Constitution, that vast majority will really make sure that this balanced budget amendment works. On the other hand, if we do not, my gosh, what hope do we have? I mean, I can just see where nobody could be seen above this stack 6 or 4 years from now.

Frankly, I am absolutely solid in asserting, unless we have a balanced constitutional amendment, these stacks are just going to continue to grow ad infinitum, something that must be horrifying our Founding Fathers, many of whom are undoubtedly in Heaven, although there are a few I am sure who

had a rough time getting there. But the vast majority of them probably are there with our Father in Heaven saying, ''Let's do that which we failed to do when we had the chance, even though we thought about it.'' But they, when they were here, never thought for a minute we would have 28 straight years of unbalanced budgets.

So I suspect that the only way to solve this problem is to put some fiscal mechanism within the Constitution that makes sense. This amendment is that mechanism. It is a bipartisan amendment.

I chatted with CHARLES STENHOLM last night, our Democratic counterpart over in the House. I have to say he has done a tremendous job over the years doing his best to try to enact this amendment. It takes guts because he takes a lot of flak for it because people in his party in particular want to keep spending and taxing and claiming that they are doing a lot for people—they never say with their own money that could be better utilized by them and I think in a better way. So I want to praise him for the work he has done over there in the House, along with other Democrats and Republicans who have worked so hard through the years on this amendment.

I want to praise everybody here who will vote for this amendment because it does—it does—hold hope for the future if we can pass this amendment and enshrine it in the Constitution where I think the vast majority of Members would honor it and do what is right. The spending games would be over.

So I would hope that our colleagues will keep the language exactly the same. I do not know how it would affect other people who are currently willing to vote for the amendment, but we would like not to change it. In spite of the fact that my colleague is sincere and that this is a sincere amendment, I would hope that our colleagues will vote to table it.

Mr. President, I am prepared to yield back the balance of my time. We could move to the Senator's next amendment, unless he wants to discuss it.

Mr. FEINGOLD. How much time do I have remaining?

The PRESIDING OFFICER. You have 3 minutes, 46 seconds.

Mr. FEINGOLD. Mr. President, if I may, I would like to use that time. There were interesting remarks made by the chairman of the Judiciary Committee, my friend, Senator HATCH.

I will reiterate, this is really the fish-or-cut-bait amendment. I always appreciate the eloquence of the Senator from Utah, but I notice a sort of different tone when he speaks about this amendment as opposed to the balanced budget amendment. There is sort of a lack of urgency to his tone about this. His tone suggests that whether we get this thing done by 2002 or 2006, the important thing is that we just have this balanced budget amendment on the books. That just does not seem to square with the rest of the comments I have heard from the Senator and most of the other supporters of the balanced budget amendment.

There was no suggestion by the Senator from Utah that we could not limit this to 3 years. I appreciate his candor on that. That is something that is available to the Congress. It has not been done before, but when the limitation was put in the first place on the 7 years on the 18th amendment, it was my understanding that was not done before. So there is no literal constraint on that.

I was also struck, Mr. President, by the Senator from Utah's statement that we really had no reason here not to adhere to convention, there is no reason not to go to 3 years or we should stick with the traditional 7 years. This entire process of balancing the budget and having an amendment to the Constitution to do it could not be more contrary to the notion of adhering to convention. We have tried to use the Constitution of this country as a very limited and narrow document for 200 years but now we are going to do accounting through the Constitution. I suggest that that is a failure to adhere to convention.

The Senator from Utah also tried to describe this amendment as sort of a technicality, saying that whether it is 2002 or 2006, that is not the issue. We just need it in the Constitution.

Mr. President, it flies right in the face of his excellent description of that stack of documents in front of him. The Senator from Utah is one of the taller Members of this body, if I may say so. I do not think that is in dispute. I agree that if we keep going down this road that we will be unable to see the distinguished chairman, perhaps even by the year 2002, because of these books that are piling up. But if we wait not until the year 2002 but to the year 2006, I think the former Senator from New Jersey may not be visible and we may have to get Senators who would be able to start in a starting line up in the NBA just to be able to be seen over these documents. The fact is, there is a difference between the year 2006 and the year 2002.

All my amendment does, Mr. President, is guarantee that however this turns out, through a balanced budget amendment or through a bipartisan agreement to balance the budget by the year 2002, that is the date. Either way, it cannot be after that time. That is the effect of my amendment, Mr. President.

I yield the floor.

Mr. HATCH. Let me just say for the sake of this debate, if the Senator were willing to vote for the balanced budget amendment, I would accept his amendment because I think three-quarters of the States would ratify this amendment within the 3-year time period. I know he will not vote for this balanced budget amendment, and, frankly, it is better from a constitutional standpoint to give the States enough time to function. Some States do not even meet this year in their legislatures; others meet, but may not have time to consider this. It does take time to ratify a constitutional amendment, depending upon a lot of timing factors.

So we prefer to have the 7-year period. But I will make that offer if the Senator will vote for the balanced budget amendment. I would encourage all my colleagues to vote for his amendment, but until he does, I think we have to reject this amendment unless he is willing to do so.

The PRESIDING OFFICER. The Senator from Wisconsin has 36 seconds.

Mr. FEINGOLD. Let me say I, of course, am very candid on this point, that I do not support the balanced budget amendment for a variety of reasons, but I do recognize that there are some very serious consequences for this country if we do pass it.

My amendments today are relevant to the situation we would face if it does go through. I am sincere in my belief that if it does pass, the process is going to be slowed down here if it is not ratified quickly by the States. That is why I offer this amendment, because sometimes things happen that you are not happy about in the Congress and the President signs it, but you would like the negative effects to be limited.

That is the spirit in which the amendment is offered.

Mr. HATCH. Mr. President, I know my colleague is sincere. I have nothing but respect for him as he serves on the committee. I have a lot of regard for the distinguished Senator, and he knows it, and I know it.

However long it takes, we need a balanced budget amendment, and I think this is drafted correctly. It has Democrat prints all over it and Republican prints all over it. It is the bipartisan amendment that has always been in play, and I think should always be in play.

Frankly, I am hopeful we can pass it by next Tuesday. But however long it takes, we need it. If we do not do it, we will continue the status quo, and that is a stack of unbalanced budgets, which my friend and colleague admits will continue if we do not do something about it.

Mr. President, I yield back the balance of time, and I understand these votes will be stacked.

The PRESIDING OFFICER. The Senator is correct.

Mr. HATCH. I ask unanimous consent to move to table, with the understanding it will be able to come up at a later time.

The PRESIDING OFFICER. The Senator has that right. The motion to table has been made.

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

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

AMENDMENT NO. 14

The PRESIDING OFFICER. Under the previous order, the question recurs

on amendment No. 14, offered by the Senator from Wisconsin [Mr. FEINGOLD]. Debate on the amendment is limited to 40 minutes, equally divided.

The Chair recognizes the Senator from Wisconsin.

Mr. FEINGOLD. Thank you, Mr. President. I thank the distinguished Senator from Utah, the chairman of the Judiciary Committee, for his kind remarks.

I now would like to speak about an amendment that is also in the spirit of trying to make sure this balanced budget amendment works properly, in the event it goes through the Congress and is ratified by the States.

Mr. President, regardless of our views on the balanced budget amendment, many of us would like us not only to balance the budget, but many of us would like us to establish a statutory balance that can act as a fiscal cushion against unexpected emergencies. In other words, we think we should never project a deficit, but that on occasion we may want to project something of a surplus to make sure there is money there in case there is an emergency or some other urgent spending priority that has to be dealt with, but only on a surplus basis.

Now, Mr. President, this is not some idea I cooked up. This is what we do in Wisconsin. It is done in some form in most States. I think it would make good sense at the Federal level.

Unfortunately, Mr. President, in its current form, the proposed balanced budget amendment discourages this fiscally responsible tool. In effect, it does not really allow a surplus. It certainly does not allow a surplus to be used if one arises, except by a three-fifths vote in each house, which is a very high standard. Because outlays cannot exceed receipts in any year under the balanced budget amendment, any surplus built up to address an unexpected need would be subject to the three-fifths threshold and all the potential mischief that a supermajority requirement employs.

Mr. President, many of us in this body have concerns with the way we currently address emergencies and other unexpected needs as they arise. I have seen a lot of that just in the 4 years I have been here dealing with various disaster and emergency legislation. Under our present budget structure, we are forced to choose between adding to the deficit and scrambling to find spending cuts or tax increases to offset the unexpected need.

I think, and we have certainly seen this in Wisconsin, a far more fiscally responsible approach would be to appropriate a dedicated emergency fund or require a positive ending balance on which we could draw as the need arises. By budgeting for an emergency in advance, this approach would avoid deficit funding, but it would also decouple the potentially desperate need for emergency assistance from the hurried approach of emergency offsets. So a surplus fund or statutory ending balance would also address some of the concerns that have been raised by Secretary Rubin and others who have spoken about the important role that automatic economic stabilizers play in the health of the economy.

Our committee chairman has cited Fred Bergsten, a noted economist, during the committee's markup. This is what our distinguished chairman said in citing Mr. Bergsten: ''* * * a better way to go is to shoot for a yearly surplus and let that take care of truly automatic fluctuations, if there are any.''

Mr. President, I agree with our chairman. I think balancing the budget and building up a reasonable surplus during good times to help cushion economic downturns is a better way to go. However, as I just noted, Mr. President, under the present draft, we could not establish and use such a surplus fund without violating the constitutional amendment mandate except through achieving a three-fifths majority in each house.

Mr. President, you know that threshold presents serious problems, as many of our colleagues have noted during the course of this debate. The supermajority requirement empowers a minority to hold up a must-pass measure unless their fiscal or policy demands have been met. As some have noted, this perhaps mild form of extortion might even take the form of insisting on additional deficit spending, precisely the opposite direction intended by the supporters of the constitutional amendment. Remember, this balanced budget amendment does not guarantee that we have deficit spending, it just requires a supermajority to do so.

Mr. President, if allowing a surplus fund might be fiscally prudent to handle the unexpected natural disaster or military conflict, I think this surplus opportunity becomes absolutely essential if we hope to fund the bulges in Social Security benefits that will occur when the baby boomers retire.

In just a few years, we will begin to have to pay back the funds we have borrowed from the Social Security trust fund. Before that happens, Mr. President, we have to somehow rid ourselves of the addiction to those trust fund surpluses. That is how we have been masking how great our deficit is in the past, and we have to begin to balance the budget without those surpluses. That means, Mr. President, that the unified budget will have to be in surplus, but even then, if we build up a genuine surplus in unified budget to pay future retirees, the restrictions of the proposed balanced budget amendment will prevent us from using it unless we can muster a three-fifths vote of support in both bodies.

Mr. President, right now, the Social Security trust fund is receiving more than it is paying out. Those surpluses will continue to build until the baby boomers retire, and we need to tap into those savings at that point to offset the bulge in Social Security beneficiaries.

Mr. President, many have said this, but we have abused the Social Security surpluses by using them to mask part of our budget deficit. I don't single out one party or one branch of Government, because it has sort of been standard operating procedure for nearly 30 years. Mr. President, many of us want to stop that abuse and to work to get the budget off the Social Security surplus addiction so the funds are there for retirees as promised.

Mr. President, again, the current balanced budget amendment draft will not let us do that. When the baby boomer retirees begin to collect Social Security and the surpluses turn negative, the balanced budget amendment does not permit us to draw upon any savings we can build up between now and then.

Now, one approach is to explicitly exempt Social Security from the balanced budget amendment by putting the Social Security trust fund out of reach. We could then be sure that they will be available to draw down when needed.

Some who oppose this approach argue that we can do so by statute. They note that nothing in the current draft would prevent us from taking Social Security off budget by law, as we do now, and achieve genuine balance outside of Social Security. Unfortunately, though, Mr. President, even if the rest of the budget is in true balance, the current version of the amendment still prevents the use of the trust fund savings to pay Social Security benefits, unless the rest of the budget is cut or taxes are increased.

Mr. President, the current balanced budget draft requires cash flow to be balanced. It expressly prohibits the kind of buildup in anticipation of need that is the underpinning of the Social Security system itself. To put it in more simple terms, it is exactly like telling parents when the time comes to pay the cost of their child's education, they will not be able to use any of the savings they have built up, but will have to pay for the cost of their child's college education out of whatever their income is at that time—not one dime more. I can tell you, as a parent of four teenagers, that would be a very troubling prospect indeed.

Mr. President, my amendment would allow us to use the savings we must build up in advance of the coming retirement bulge. Let me be clear about this. Although this is the way it is done in my home State of Wisconsin—by statute—my amendment does not require us to have a surplus. My amendment does not require us to fulfill our commitment to future retirees. Yes, Congress could still duck that commitment. But at least, Mr. President, if my amendment is adopted, Congress would be able to do the right thing by Social Security beneficiaries. Without it—if the Constitution is amended as it is currently drafted—Congress will have to find a dollar in

budget cuts or tax increases for every dollar Social Security outlays exceed receipts.

Mr. President, despite all the rhetoric about how Social Security will do quite well in what I like to call the ''brave new world of the balanced budget amendment,'' who can doubt that Social Security benefits will quickly go on the chopping block, if we ever get to that eventuality?

Mr. President, this is a fundamental inequity that is built into the proposed constitutional amendment. Programs like Social Security, which require a buildup of savings to work, have to muster a three-fifths majority from both bodies. But the defense budget, special interest spending done through the Tax Code, and corporate welfare, all get a free pass. They don't have to go through this.

So, Mr. President, to conclude, even if my amendment is adopted, it will be difficult for Social Security to compete with these other powerful interests. But at least by allowing for a surplus, my amendment gives it a fighting chance.

I reserve the balance of my time.

Mr. KYL addressed the Chair.

The PRESIDING OFFICER (Mr. ASHCROFT). The Senator from Arizona [Mr. KYL] is recognized.

Mr. KYL. Mr. President, Senator HATCH was called away for a moment. I would like to present some of the remarks he would make in opposition to the amendment.

Of course, nothing in Senate Joint Resolution 1 prevents us from running surpluses or saving those surpluses in a rainy day fund. But Senate Joint Resolution 1 does put a lock on savings to ensure that they are not spent frivolously.

The proposal before us is based upon the argument that, under the balanced budget amendment, previously accumulated surpluses cannot be drawn upon in future years without a three-fifths vote. This is because, the argument goes, such funds would be spent as current outlays within the meaning of section 7, but would not count as current receipts and would therefore cause outlays to exceed receipts and trigger the three-fifths vote in section 1. Thus, this proposal seeks to prevent the use of previously accumulated surplus funds by a simple majority vote.

While most of us are concerned with how to stop running deficits, this proposal exhibits concern about accumulated surpluses. Protecting accumulated surpluses with a three-fifths vote is not necessarily a flaw in the amendment, however. On the contrary, I see it as a strength. Requiring a supermajority to spend previously accumulated surpluses could help us ensure that they are not frittered away on enticing, but fundamentally unimportant, spending projects.

Let us be realistic, Mr. President, we have had 28 straight years of deficits, and we have run deficits for 58 of the last 66 years. If we adopt the balanced budget amendment, we all believe that deficits will come to an end. I do not expect it will be easy to accumulate large surpluses, even under the balanced budget amendment. Proper planning and discipline can yield positive results. But I think it's important that we jealously guard the fruits of our budgetary labors and protect the surpluses we have managed to acquire, if any.

This amendment seeks to make it easier to spend away any surpluses we manage to acquire. It seems to me that this is an ill-advised policy. We would be wiser to keep the surplus in the strongbox of subject it to a supermajority requirement to be certain that it is not whisked away in yet another Washington spending frenzy. Can we safely assume that the Congress would leave money sitting, unguarded, on the table?

The supermajority requirement will help us ensure that when a real emergency arises, the surplus will be there to meet truly pressing and worthy needs. Both common sense and political reality dictate that there will be very little difficulty in getting the three-fifths necessary because, after all, who would vote against emergency aid when there would be no increase in the deficit?

I do have a concern that allowing Congress the option of spending a portion of the national savings by simple legislative fiat might erode the effectiveness of the balanced budget amendment by relaxing the fiscal constraints on yearly spending. Congress might slip into a habit of spending accumulated surpluses with regularity and get used to spending beyond our annual income, just as we have gotten into the habit of borrowing under the current system. Then having wasted our savings, we would have much more work just to get back into annual balance habits.

If we were fortunate enough to accumulate a sizable surplus, I expect we could stop patting ourselves on the back for simply not increasing the debt and actually start to repay some of the huge debt this country has run up. This is probably the best use of surpluses, particularly from a cash management perspective, and is what is contemplated as the normal use of surpluses under the balanced budget amendment.

That is why Senate Joint Resolution 1 does not count repayment of debt principal as total outlays. As we pay down our debt, we will continue to free up capital, lower interest rates and our annual interest payments, and strengthen the economy, helping us avoid deficits and the need to draw on savings or to borrow. We would also be moving ourselves away from the debt ceiling and building a cushion of debt availability if we should have to borrow again.

One final point, Mr. President. We have not balanced the budget in almost 30 years, as I have said before. It is perhaps a bit premature to start arguing about how we will spend surpluses. The first order of business is to pass the balanced budget amendment and get the deficit at least to zero. Then I submit that we can work on surpluses and true debt reduction.

This is an interesting proposal, but it ought to be defeated.

Mr. FEINGOLD. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator has 9 minutes 36 seconds.

Mr. FEINGOLD. Thank you, Mr. President. I appreciate the comments of the Senator from Arizona. I enjoy serving with him on the Judiciary Committee. I appreciate his candor.

Basically, those folks who advocate the constitutional amendment have said it all here. They have now said formally that if you want to get money from the Social Security trust fund surplus in the coming years, that in fact the only way to do it is by getting a supermajority, three-fifths of both the Senate and the other body.

I hope the seniors of this country are listening and realize what we are talking about here. It is incredibly difficult to get three-fifths of either body on anything. It is hard enough to get over 50 votes on anything. And when you are talking about the competition with all the special interests that are represented in this community, even with a fully funded Social Security trust fund, requiring a three-fifths majority of both Houses to fully fund Social Security benefits from the trust fund has to be one of the greatest threats to Social Security that can be imagined.

Let's be clear. I do not think anyone has successfully disputed the claim that this constitutional amendment allows the use of Social Security dollars to balance the budget. That has become very clear in this debate. What this new admission tells us is that if the Congress wants to do the right thing after we have a balanced budget amendment and wants to make sure that retirees and future retirees have the money saved for them over the years, they will not be able to do it through a majority vote. A minority in either House will be able to prevent every senior citizen in this country from getting the payments they deserve and that they paid into the system for. That is what this thing does.

This isn't just about seniors. Yes, it is about my generation. It is about baby boomers. Perhaps that will be the first group that will be affected by this. But it is also about future generations who certainly hope, if they are required to pay into the Social Security system, that there would be a way for them to access their retirement benefits without having to persuade three-fifths of both Houses of Congress it is a good idea. You should not have to persuade three-fifths of the Congress that it is a good idea. That is your money. That is your retirement benefit.

So, basically, our argument has been conceded here. I thank the Senator for his candor.

Let me note that in States where they have a surplus fund, in most of those States they do not require a supermajority in order to access the surplus money. According to the National Conference of State Legislators, as of 1995, 45 States and Puerto Rico had created such funds but only about a quarter of them required a supermajority to use the fund.

Further, let's remember that States are not faced with having to fund a program like Social Security that absolutely requires a substantial buildup of savings in advance. As drafted, the balanced budget amendment puts programs like Social Security at a tremendous disadvantage by requiring a three-fifths vote to use net savings. So why don't we learn from the experience of the States?

The Presiding Officer was a distinguished Governor, and he and the other former Governors in this body know that it is very important sometimes to have a projected surplus for a rainy day. Apparently, the vast majority of the States have determined in their experience—which we don't have here in Washington—that you should not require a supermajority if you need to get at that money either for purposes of emergency, or here, in this case, for the very important purpose of paying retirement benefits to people who are promised those benefits for their retirement.

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

Mr. KYL addressed the Chair.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. KYL. Mr. President, I appreciate the comments of the Senator from Wisconsin and will respond briefly to them.

First of all, I think it is important to note that the Feingold amendment, as I understand it, does not just apply to any potential surplus in the Social Security trust fund but would apply to any surplus. I think that is a correct interpretation.

I go back to the comments I made a moment ago to reiterate that it ought to be more difficult to spend the surplus, first of all, because we could easily get into the habit of saying, ''Well, we have a few dollars here in surplus. Let's quickly go out and spend it,'' and, second, because we are not going to eliminate the debt or even begin to repay the debt if we do not apply surpluses to the debt.

But as to the argument that this would apply as well to the Social Security trust fund, I think several comments are in order to the extent, if that is true, that it is true. First of all, of course, one could always run a surplus in the rest of the budget as a unified budget to cover the cost that the Senator from Wisconsin is talking about. In any event, this three-fifths vote requirement, so-called supermajority, is necessary to protect the Social Security trust fund from being raided to ensure that it is used for its true purposes. We are running a surplus today. We ought not to make it easier for Congress to continue to raid that surplus and spend it on other things.

If there is any criticism that I get—and I get plenty when I visit with seniors out in Arizona—it is the criticism of the Congress and the President raiding the Social Security trust fund. They ask, ''Why are you spending that on other Government things when it is intended to be spent on Social Security?'' And, of course, they are absolutely right. We should not be. We ought to make that as hard to do as possible. That is one of the reasons that we are supporting the balanced budget amendment because we recognize that if we do not balance the budget, if we do not begin to set priorities in other spending programs, the temptation is always there to continue to raid the Social Security trust fund.

So, ironically, the whole purpose here, or at least a significant part of the purpose, of the balanced budget amendment is to protect the Social Security trust fund. We ought to make it harder to raid that trust fund.

I suppose one could postulate the situation in which we are at a point when we have to draw upon the IOU's that are in the Social Security trust fund, even for Social Security purposes. And I do not think that there is anybody in the House or the Senate who would argue that, in that circumstance, it would be very difficult to get the three-fifths vote. I mean no politician, nobody here in Washington, DC, is going to say, ''No, we don't think we will fund Social Security this year.'' That is the one obligation that all of us take as kind of our first rule. And, obviously, no one would be able to face the folks back home if we didn't do that, and we should not. We have that obligation. We owe that obligation, and it would be done.

We have provided a supermajority in here for other kinds of emergency situations, and we have said those are clearly situations in which, if it is necessary, you could get 60 votes in the Senate, and three-fifths in the House, as well.

I daresay, if we ever got to that eventuality, even if this applied to that situation, it would not be difficult to get the 60 votes necessary.

So it seems to me that, as I said before, we are really worried about something here that isn't going to happen. I would much rather focus our attention on getting the budget in balance than to worry about what is going to happen after we do that and we start to run surpluses. I think that will be a wonderful day, if we ever get there. I do not think we will have trouble figuring out how to spend the extra money, and I would rather make it difficult to spend it so we can make sure that at least part of that begins to go to pay our national debt.

I would be happy to stop at this point, if the Senator from Wisconsin has any other thoughts to engage in this debate further.

Mr. FEINGOLD. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator from Wisconsin has 4 minutes and 15 seconds.

Mr. FEINGOLD. Thank you, Mr. President.

Let me respond to the remarks of the Senator from Arizona. He referred to the belief that we should worry about spending, what he has referred to as the ''extra money'' when we get to the point of the surplus. I guess the main thrust of my remarks is that I wasn't talking really about extra money. I am sure that could happen. I will address an example of that in a moment.

What we are talking about here is a formula against money which is otherwise known as the Social Security trust fund. Are we going to start thinking about whether we are going to honor the obligations to our retirees only at the point that we have a surplus? That is what it sounds like. We get to that point, and say, ''Oh, there is a bunch of money in here for Social Security. Let's see if we can get 60 votes of the Senate to hand that money out.''

That strikes me as very different than a discussion of what we are going to do about extra money. What we are talking about here is whether we are going to basically pull the rug out from under people who paid into a system for the express purpose of providing for their retirement. There are really very few things that are more important to working people in this country.

I do not think there has been a real response to my concern that the bar is being set higher for Social Security under this amendment than it is for other programs. That is because Social Security by its nature requires the buildup of a surplus in order to work. Such a program, in order to access those surplus funds, has to get three-fifths of both Houses, but other programs, the Defense Department, corporate welfare, and wasteful spending programs, need only obtain a simple majority as long as it is within the balance of the balanced budget amendment.

This is very serious business. Let us finally just take the example of surplus funds that might be used for a different purpose. Let us say there is a surplus that builds up—and I think the folks on the other side of the aisle might be attracted to this—and Congress decides they expected and they would like to give the people in the country a tax cut. Maybe they decide it is not the Government's money; it is the people's money, and there is enough money in surplus to give everybody $500 of tax relief.

Under this amendment as it is now drafted, that built up surplus could not be used to cut taxes unless you had 60 votes. And as strong as the Republican majority is in this body, you do not have 60 votes. You would need 60 votes to give the American people the benefits of that surplus in the form of a tax

cut. That does not strike me as similar to the arguments I have heard about the urgency of tax cuts in the past, and I do believe that would be the effect of the proposed balanced budget amendment if we do not adopt the amendment I have suggested to allow a surplus to be used for other purposes as long as a simple majority is achieved in both Houses.

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

Mr. KYL. Mr. President, might I inquire of the Senator from Wisconsin, I am a little bit confused about the last point he made. Perhaps he could clarify this. Was the Senator from Wisconsin suggesting that if we might want to cut taxes because we have a surplus of funds unassociated with Social Security, it would require a 60-vote majority? Or was the Senator from Wisconsin assuming that the surplus that he described was the IOU's in the Social Security trust fund?

Mr. FEINGOLD. This would relate, Mr. President, to the surplus that has been built up over several years.

Mr. KYL. Would it be the surplus in the Social Security trust fund or just surpluses that would be accumulated over the years?

Mr. FEINGOLD. Surpluses we have accumulated.

Mr. KYL. In that event, Mr. President, I do not understand the argument of the Senator from Wisconsin, because we are not going to need 60 votes simply to reduce taxes. If we have a surplus, then the revenues that would be lost theoretically from a reduction in taxes would have to be offset. But there is no requirement in that case that there be a supermajority to cut taxes. The revenue that would result that would show up in subsequent years would be required to be taken into account in order to determine whether we had a balanced budget and whether we needed to reduce expenditures in subsequent years. But at the time that we would make the decision to cut taxes, there would not be a requirement for a 60-vote majority.

To the other point that the Senator made, asking the question with regard to the Social Security trust fund, that I was somehow suggesting that we only honor our obligation when we have a surplus, I do not understand that either because, of course, that was not my point. That is not the fact.

We have an obligation to our Social Security recipients, our retirees, that has to be satisfied regardless of whether the Social Security trust fund is in surplus or in deficit. That is a solemn commitment that we all understand and we are prepared to meet.

Over the last several years, we have been building up a surplus theoretically, so we are in the situation now where there is a surplus. We are meeting the obligations. That is not at issue. We have to satisfy our obligations to our seniors. In the event that we begin to run a deficit, that obligation would have to be satisfied, as I described before. Nobody in this body or the other body is going to contend that somehow the balanced budget amendment is going to preclude us from doing that. It is an expenditure that is probably the first expenditure we will want to make around here. My guess is that there might be a bridge here or special subsidy there that might fall by the wayside, but Social Security payments are not going to fall by the wayside.

In fact, again, unless we balance the budget, Social Security, along with everything else, is in jeopardy. Most of us, I think, would undoubtedly agree with the Senator from Wisconsin that Social Security is one of the very first obligations we are going to have to meet, and, therefore, it is probably not in jeopardy. I think we would all contend under no circumstances would we ever allow it to be in jeopardy. It is going to be other programs.

But I would rather be in a position to say we can fund all the things that we would like to fund that are necessary to fund. If we do not get our budget in balance, we are not going to have that ability. There will come a time when there is not enough money to spend on key things like law enforcement and national defense and critical programs because our debt will have gotten so high that the interest payments on the debt are eating up the largest part of our budget.

We have to get to the point where we are not running deficits anymore, our annual deficits are zero, but we can begin to pay down the national debt. That is why we need a balanced budget amendment to the Constitution.

I think perhaps the best illustration of this is to look at the budget that the President presented to us just a couple of weeks ago. It is an amazing document because while the President purports to demonstrate that we can reach a balanced budget in 5 years, and therefore we do not need to pass the balanced budget amendment, his budget demonstrates precisely the opposite. It proves that you cannot get here from there unless you are required to do so by the Constitution. How so? Apart from the fact that the Congressional Budget Office says it is not in balance by somewhere between $50 and $70 billion—leave that aside—the President proposes that most of the savings that would be required to get into balance are in the last 2 years of the 5-year period—incidentally, after he is no longer President. Seventy-five percent of the savings would have to be made in the last 2 years, fully 47 percent in the last year—almost half of all the savings over a 5-year period.

Now, what does that mean? Our budget deficit last year was $107.9 billion. We are going to go up to something like, I don't know, $126 billion this next year and $127 billion the year after that. We are supposed to be getting to zero.

I had an old rancher friend tell me once if you are in a hole and you want to get out, the first thing you do is stop digging. This President would not stop digging until the very end and then magically, somehow or other, after he is long gone, we are going to ratchet up the courage to make all kinds of savings that we cannot decide to make in this year or the next year or the year after that. It is a little bit like the fellow who swears he is going to go on a diet; he has to lose 30 pounds. So he says, all right, I am going to do it by July 4. I am going to lose 30 pounds. First, however, I am going to eat like heck and gain another 20 pounds. And then, by golly, on July 1 I am going to start losing and by July 4 it will all be gone.

It is not going to happen. That is why you need the discipline of the balanced budget amendment to force us to set the priorities so that we can achieve a zero deficit within 5 years, stop the accumulation of additional debt, which requires us to pay more interest on the debt, which eats up moneys that could be spent on education, on the environment, on defense, on law enforcement, on any number of things—on Social Security. As I said, I mean all of us around here will agree Social Security comes first. So we really do not have to worry about Social Security. But we ought to be worrying about all of these other things because many of them are important just like Social Security is. And there is not going to be enough money for them if we do not get this budget in balance. That will not happen, as the President's own budget illustrates very clearly, until we have the discipline of a mandatory requirement under the balanced budget amendment to the Constitution.

So, again, I think this is where we really ought to be focusing right now. We can worry about how we are going to spend the surpluses if and when we ever get there. For now I would just be pleased to get to the point of zero. That is what is going to be required if we are going to be in balance, and that means we have to pass the balanced budget amendment.

Mr. FEINGOLD addressed the Chair.

The PRESIDING OFFICER (Mr. ENZI). The Chair recognizes the Senator from Wisconsin.

Mr. FEINGOLD. How much time do I have remaining?

The PRESIDING OFFICER. One minute two seconds.

Mr. FEINGOLD. I thank the Chair.

I think the discussion of both the issue of tax cuts and the Social Security benefits points up how serious it is to amend the Constitution in order to balance the budget. In effect, we are not going to be able to use a surplus that has been built up to give a tax cut. If we do not worry about it now and we only worry about it when there is a surplus, the problem is it is going to be in the Constitution. We are not going to be able to just fix it. We had one experience like that in this country in prohibition, and it took quite an effort to undo it.

So, again, there appears to be a major uncertainty with regard to this. The important question is do we really want to be faced in the future years with a system set forth in the Constitution that gives us no flexibility, that requires a three-fifths majority of both Houses in order to simply access and use the Social Security trust funds?

The other side is not denying that is what is happening. In fact, they say that is what should have to happen—and that is what our retirees of the future may face.

The PRESIDING OFFICER. The Chair recognizes the Senator from Arizona.

Mr. KYL. Mr. President, I will take a couple of the minutes we have remaining here. Let me reiterate. We are talking about two things here. One, we are talking about accumulated surpluses that don't have anything to do with Social Security. The point I made on behalf of Chairman HATCH is, if we ever get to that wonderful point, I don't think we will have any trouble figuring out how to spend that money. In fact, a lot of us would like to make it a little harder to spend so we can begin applying it to deficit reduction. So I am not concerned if it requires us to get 60 votes here to do that.

Folks watching, of course, may appreciate that it takes 60 votes to do most things here in the U.S. Senate because a 40-vote minority can always filibuster. In order to break that filibuster and actually bring something to a vote here you have to have 60 votes. This is about the only body that I know of where a Member cannot call the question and automatically get a vote. We cannot get a vote in this body unless there is unanimous consent or 60 Members agree. So there is a 60-vote requirement to do a lot of things around here. Again, I am not too worried about getting a 60-vote requirement to spend surplus money in the U.S. Treasury. I suspect that will be a pretty easy thing to do.

As to the matter of Social Security, again I think all of us are united in our concern. I commend the Senator from Wisconsin for his concern about Social Security recipients, and I know Chairman HATCH and all the Members on this side have the same concern. Again, I am not at all concerned that Members here would somehow slight Social Security recipients. They are going to be the first obligation that we satisfy.

But, as I said, there is not going to be enough money for any of these things if we don't get the budget in balance.

Mr. President, at this point I yield any additional time I have.

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

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

AMENDMENT NO. 10

The PRESIDING OFFICER. Under the previous order, the question recurs on amendment No. 10, offered by the Senator from Massachusetts [Mr. KENNEDY].

Debate on the amendment is limited to 2 hours equally divided.

The Chair recognizes the Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I hope, depending upon the interest of our colleagues, we might be able to address this issue in a more limited period of time and get back on schedule. But at this time, we will move to the time agreement and then try to respond to the leader's request that we move as expeditiously as we can to the conclusion of some of these amendments.

Mr. President, I offer this amendment to guarantee exclusive congressional enforcement of the balanced budget constitutional amendment and to avoid the serious problem of judicial enforcement under the pending version of the amendment. The balanced budget amendment would overturn the basic principle of separation of powers by giving the courts and the President enforcement authority. We must take clear steps to avoid such a situation.

The proponents of this amendment apparently believe the old adage that silence is golden. They say that because the amendment remains silent with regard to judicial review and Presidential impoundment power, the Congress has not sanctioned either form of enforcement. Unfortunately, numerous constitutional scholars disagree. During the last debate on this issue, 17 of our country's most well-respected scholars urged Congress to reject the proposed balanced budget amendment. Conservative and liberal constitutional experts shared the conviction that the proposed balanced budget amendment was a mistake, and they specifically stated that the amendment would inappropriately involve the judiciary in intractable questions of fiscal and budget policy.

The proposal before us today raises those same concerns. The amendment I offer today addresses this problem by granting Congress exclusive authority to enforce the balanced budget constitutional amendment unless Congress authorizes otherwise in the implementing legislation. The courts could not become involved in the many complex budgetary questions that would be raised by taxpayers, Members of Congress, or other citizens without specific authorization from Congress.

If the Senate does not adopt this amendment, Congress may not have another opportunity to narrow the Court's enforcement authority. I know that some balanced budget amendment proponents argue that the Congress can step in at a later date to address this problem. But constitutional scholars disagree. Cass Sunstein, a well respected constitutional scholar at the University of Chicago, said:

> It is by no means clear that Congress can forbid judicial involvement by statute. Courts are quite reluctant to allow Congress to preclude judicial review of constitutional claims.

This amendment also protects against Presidential impoundment power, which was soundly rejected in the 1970's. At that time President Nixon unilaterally impounded funds for programs he did not like.

In 1974, we made those actions illegal, but unless we act again, the balanced budget constitutional amendment restores that authority to the President. The problem solved by this amendment is real.

Proponents of the balanced budget constitutional amendment argue that there are few, if any, risks that the courts will micromanage the Federal budget. They say that article III of the Constitution is a bar to judicial intrusion. But if that is the case, why did 92 Members of the Senate support an amendment offered last year by Senator Nunn and Senator CONRAD which limited judicial action unless specifically authorized by legislation?

We all know that the risk of judicial intervention is very high, and article III does not afford protection. As Stuart Gerson, a former Justice Department official who testified before the Judiciary Committee in support of the balanced budget amendment, said:

> The ''case or controversy'' requirement of article III is the greatest bulwark against undue judicial intervention in budgetary matters, but it is not an impregnable barrier.

The reality is that the balanced budget amendment is likely to produce numerous lawsuits in Federal and State courts.

Neither article III doctrines, which are not applicable in State courts, nor practices of judicial deference will operate as automatic protections against the flood of litigation that could be brought by taxpayers and others. Such cases will force courts to act to analyze complicated economic questions and prescribe remedies.

For example, can a State or Federal court enjoin Government spending if three-fifths of both Houses of Congress are unable to raise the debt limit?

Could a court levy taxes to prevent an unauthorized deficit?

Can a Member of Congress file suit because he or she disagrees about what constitutes a revenue increase and then argue that such an increase was not adopted by a constitutional majority?

Could a criminal defendant file suit because he or she was charged under a law claimed to cost more to enforce than the Government can finance through expected proceeds?

These questions and others regarding funding for Social Security, Medicare, education and the environment would rest in the hands of unelected judges and judicial intervention can easily disrupt Federal services that all Americans depend on. Citizens could find ''closed'' signs on Federal agencies, parks and museums because employees have been furloughed or hours opened

to the public have been cut back. Our Republican friends in Congress closed down the Government in 1995. Surely they don't want a repetition of that experience at the hands of judges.

Supporters of this amendment may believe these risks are unlikely, but we all know that deficits and lawsuits are not rare, and we have an obligation to tell the American people what will happen if the balanced budget constitutional amendment is not obeyed.

The amendment also grants a great deal of power to the President. What is the President required to do if it becomes clear that outlays will exceed receipts and Congress has not authorized the deficit?

Secretary Rubin, former Reagan Solicitor General Charles Fried, and former Attorney General Nick Katzenbach agree that the President would have the obligation to impound funds. Testifying before the Senate Judiciary Committee in 1995, Solicitor General Walter Dellinger said that if the command for a balanced budget were about to be violated, he would advise the President that he not only had the right, but also the constitutional obligation, to step in and prevent the violation by impounding money before the budget became imbalanced.

What does that mean to American families? It means that across-the-board cuts or specific cuts will reduce or eliminate Federal programs and that projects in particular States will be subject to cuts. This authority makes the line-item veto look mild by comparison.

We all know that many Republicans want to slash Federal funds for education or even eliminate the Department of Education entirely. If the balanced budget constitutional amendment is enacted, there is nothing to prevent a President from using the excuse to balance the budget to unilaterally deny funds for education or even close the Department.

The balanced budget constitutional amendment unnecessarily places a huge question mark in the Constitution. The deficit is going down, the economy is improving, President Clinton has put us on the road to a balanced budget by the year 2002. We don't need these serious enforcement problems under the balanced budget amendment, and I urge my colleagues to avoid them by supporting this amendment.

Mr. President, as I mentioned just a moment ago, the last time we debated this amendment it was the judgment of this body to accept the Nunn-Conrad amendment, which would have provided a limitation on Federal court enforcement. Similarly, the Congress before that accepted a Danforth amendment that was related to the authority of the judiciary. On both of those occasions, it was the judgment of the U.S. Senate that this was a real issue, with the real potential of resulting in the kinds of situations that I have outlined briefly this afternoon.

This body either intends that we permit the courts to make judgments about different programs, that we permit unelected judges to make judgments about matters dealing with the budget and dealing with the expenditures of resources—judgments the Constitution authorizes Congress to make—or it doesn't. Courts are there to interpret the law; Congress to make budget and resource allocation decisions.

With this balanced budget constitutional amendment, we are providing an open door for courts not just to interpret the law, but use their power to preempt the power of the Congress of the United States in allocating resources.

We are also giving that additional power to the executive branch in terms of impoundment.

If it is the decision of the majority that that is not the case, then this amendment should be acceptable. But I ask my colleagues to review with me the statements of a number of those who have supported the balanced budget amendment. Many of those proponents specifically say they believe the courts will have enforcement authority, and it is one of their reasons for supporting the balanced budget amendment. We can go back and review the report of the Judiciary Committee, which gets into some considerable detail on that.

If we are seriously interested in protecting Congress' constitutional duty to make judgments regarding the budget, then we ought to support this amendment and make it very, very clear.

Finally, for those who have said, ''We can address this issue at a later time with a statute,'' we cannot rely on that because such a statute may very well be unconstitutional.

So, if we are serious about ultimately preserving Congress' authority to make judgments regarding resource allocation, we ought to accept this amendment.

If there is another intention, then it will be rejected. But the American people ought to understand the vast enhancement of authority and responsibility that we are giving to the President of the United States and to the courts of this country. They ought to understand that the President and unelected judges will be making judgments about the budget and taxes, not Congress.

That, I think, is an issue that should not be left to general statements or comments on the floor of the U.S. Senate. In the past, this body has been willing to define those powers, and we should not abdicate that responsibility today. I urge my colleagues to accept this amendment.

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

Mr. KYL addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the Senator from Arizona.

Mr. KYL. Mr. President, I would like to just raise one of the questions that rises under the Kennedy amendment, to ask the Senator from Massachusetts to respond to what I think is a real dilemma that is created. I presume it is an unintentional consequence, but it is the kind of thing that we have to be very careful of because, obviously, we are amending the Constitution here. We need to be very, very careful we do not do something wrong or something that would have a consequence that would be undesirable.

The Senator from Massachusetts referred to the Nunn amendment from last year, which most Members of the Senate supported, and essentially compared his amendment to the Nunn amendment. There are a couple of subtle differences which makes a big difference between the Senator's amendment and the Nunn amendment.

The Nunn amendment from last year provided that absent specific legislative authority, judicial review by the courts would not be possible, that is to say, ''The courts would not have jurisdiction for claims arising under the balanced budget amendment.'' And that was the language, ''for claims arising under the balanced budget amendment.'' The Senator's amendment, however, provides and adds specific legislation and authorizes judicial review: ''Congress shall have exclusive authority to enforce the provisions'' under the balanced budget amendment so that the courts would have no enforcement role.

Let me repeat that in a moment here. Then I will provide a hypothetical which illustrates why that is not a good thing.

The courts would have no enforcement role—that includes, of course, the right to protect a citizen who is acting under the Constitution in conformance with his constitutional rights and, therefore, would be denied the protection of the court. Could such a situation arise? Yes.

The Kennedy amendment allows Congress unconstitutionally to raise taxes by use of a voice vote and no court can hold the tax unconstitutional. The balanced budget amendment requires raising taxes by rollcall vote. That, of course, means that we all have to cast our vote when our name is called. It is a written record, that each one go on record. And that is for a reason, of course. But if the Congress were to raise taxes by a voice vote, in violation of that constitutional amendment, citizens would be in a quandary of whether or not they could raise the question of the unconstitutionality of the imposition of a tax in defense when they are prosecuted for failure to pay the tax.

The Nunn amendment did not have this draconian effect. Under the Nunn amendment, any taxpayer could raise as a defense the argument that the Congress passed an unconstitutional tax. The Kennedy amendment forecloses that debate by precluding court action by providing that the exclusive

enforcement is by the Congress. So Senator KENNEDY's amendment would allow the Government effectively to imprison taxpayers for refusing to pay an unconstitutional tax.

Of course, that is an unintended consequence of the Kennedy amendment, but it is a consequence. And it is one of the reasons why we should not adopt the Kennedy amendment.

One of the reasons why it is so hard to amend the Constitution is that we want to be absolutely certain that everything we have done will withstand the scrutiny of time and the Constitution. That is why we have a lot of hearings and debates, and perhaps one of the reasons why an amendment which comes to the floor for the first time for debate has not had the kind of hearings that would illustrate the problems with the amendment. That is an important part of our process here.

The Nunn amendment went through that process. It was thoroughly debated and was approved. The Kennedy amendment, by making a very slight change in the Nunn amendment, raises a very serious constitutional question, and it is one of the reasons why I would not be able to vote for the Kennedy amendment.

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

Mr. FEINGOLD addressed the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. KENNEDY. I yield such time as the Senator might use.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. FEINGOLD. Thank you, Mr. President.

I rise today in support of the amendment by my colleague, the senior Senator from Massachusetts. I do so because it speaks directly to one of the most significant, yet still unanswered questions about this proposed amendment to the U.S. Constitution. The issue I want to speak about today goes to the very heart and structure of our democratic system of Government, that being the role the courts will play if this amendment is adopted.

As has often been the case during this debate on the issue of judicial enforcement, we have rarely moved the dialog beyond generalities and hypotheticals to resolve with any finality what role if any the courts will play if the balanced budget amendment becomes a part of our Constitution.

Unless the proposed amendment is modified to make clear that the judiciary shall not assume the responsibilities of managing the financial obligation and priorities of this Nation, it could well turn over to the courts decisionmaking authority on issues such as tax rates and spending priorities, decisions which I think we all agree should remain within the purview of the Congress and the executive branch.

As the President has said, all it takes to balance the budget is our votes and his signature. Yet, this amendment potentially wrests from Congress our ability and, in my opinion, our responsibility to make the tough choices and lays them at the foot of the judiciary. We should make it clear that unelected judges will not assume the role which is better left to those who are elected by the voters.

In raising my concern with the potential role of the judiciary enforcing the balanced budget amendment, I want to make it clear that I do not do so out of disrespect or disregard for the courts and their very significant role in our democracy. Nor do I rise to engage in the kind of assault on the integrity of the judiciary that has become all too commonplace in recent years when a contrary decision manifests itself into a full-scale assault on the judicial system of our Nation.

Mr. President, our system of justice is by no means foolproof. Nor does it always reach popular results. It is, however, the best system that has been devised throughout history. And this is due in large measure to its independence, to the independence of the judiciary. The Federal judges are granted life tenure so that they may be free to interpret the law without fear of retribution during the next election cycle. The independence of the judiciary is as important to our democracy as any other element, and I do not rise to question that independence or to castigate members of the judiciary. Rather, I rise because the failure to address the role of the courts in this amendment strikes at the very heart of our system of government. Our system of checks and balances between our three branches has prevented any one branch from becoming too powerful.

This body, the legislative branch, the branch closest to the people, was given the responsibility of making the laws and controlling the purse. The executive is charged with the primary responsibility for execution of the laws and the judiciary with interpretation and enforcement of them.

The premise that the courts shall interpret and enforce the laws has been a fundamental notion throughout our constitutional history. Although noted in the accompanying views of both the proponents and opponents in the report on this amendment, the words of Chief Justice John Marshall, in Marbury versus Madison, are worth reiteration here.

> It is, emphatically, the province and duty of the judicial department, to say what the law is.

Mr. President, there could be little doubt that the courts of this Nation play a significant and vital role in our democracy. As was pointed out by my colleague in the Senate Committee on the Judiciary, Senator TORRICELLI, the difference between our Constitution and those of other countries is not necessarily in the rights that it assures, but that they will be enforced by an independent judiciary. It is this structure which has served us so well for so long.

However, that structure is also based upon the assumption that the courts will not be given the responsibility for actions which are intended to and have historically been reserved for elected officials in both the executive and legislative branches. In the context of this amendment, that assumption simply cannot be made.

If the balanced budget amendment is added to this Nation's charter, without clarifying and limiting the role of the courts and establishing fiscal priorities for our Nation, it will constitute nothing less than a radical restructuring of our democratic system of government. In fact, the history of this amendment illustrates the significance of this issue.

On two previous occasions, in 1994 and 1995, the text of the balanced budget amendment was modified in respect to the role of the courts: Once to limit involvement to declaratory judgments and, most recently, to allow implementing legislation to define the role of the courts. Yet, despite these facts, proponents of this amendment, the one we are to vote on next week, now argue that the best approach to this significant threshold issue is simply silence. They are not open to the kinds of changes that were added in the last two attempts to pass this amendment to our Constitution.

The committee report states that it is the belief of the proponents that:

> S.J. Res. 1 strikes the right balance in terms of judicial review. By remaining silent about judicial review in the amendment itself, its authors have refused to establish congressional sanction for the Federal courts to involve themselves in fundamental macroeconomic and budgetary questions, while not undermining their equally fundamental obligation to ''say what the law is . . .''

Thus, Mr. President, it seems under a veil of silence the proponents are simply choosing not to address this issue.

I also note that I do not believe that the courts of this Nation have historically waited for congressional sanction before addressing issues raised by the U.S. Constitution. In short, the committee report seems to be saying that Congress will not explicitly give the courts their approval to do something which, in fact, the courts may already do on their own—interpret and enforce the Constitution. To me, Mr. President, this approach is the kind of classic sidestepping of critical issues which has plagued this debate and that fosters public cynicism for this body and elected officials in general.

In response to this concern, one can anticipate that proponents will argue that we should set aside such issues and just address them within implementing legislation. This has been standard throughout the debate—much as the balanced budget amendment allows us to forestall the tough votes needed to balance the budget, the distant promise of implementing legislation allows us to forestall answering the tough questions about this proposed amendment to the U.S. Constitution.

Mr. President, if we are going to ask the American people to amend the Constitution in a manner as unprecedented

as this amendment, I believe they have a right to know exactly what the amendment will mean to them. They should have a chance to know that now, not after it has already been locked into the Constitution in a way that we cannot easily undo.

The hollow promise that all of these issues may be resolved at some unspecified point in the distant future should not be the basis on which we choose to amend the U.S. Constitution. It is more than a bit ironic that many of the same Members of this Congress who support the balanced budget amendment on the ground that Congress lacks the discipline and responsibility to balance the budget ourselves, have little trouble asking the American people to trust that same Congress to somehow properly address the myriad of uncertainties created by this amendment through implementing legislation.

Mr. President, if the 105th Congress is intent on adding a balanced budget amendment to the U.S. Constitution, then we better do it correctly. We should know what it means and we should address situations like judicial review now, not later.

Furthermore, by placing the intent of the Congress into the amendment, the potential result of the Presidential veto of implementing legislation is avoided. There can be little doubt that the debate over implementing legislation will be a very protracted and difficult debate involving issues of separation of powers and enforcement, among others. What if the President vetoes implementing legislation and Congress cannot muster the two-thirds necessary to override?

At this point, does anyone truly believe that the courts will simply sit idly by and wait for Congress and the President to reach an accord on implementing legislation? They must, Mr. President, have a duty to enforce constitutional requirements and the fact that Congress and the Executive cannot agree on legislation does not simply and suddenly negate that duty. While section 6 of the balanced budget amendment authorizes the Congress to create implementing legislation, that authority is not exclusive and does not preclude court action.

Quite simply, Mr. President, as currently configured, this amendment does nothing to stop the courts from fulfilling their historic role of interpreting and enforcing the Constitution of this Nation.

While the committee report seeks to silently advocate the position that the involvement of courts should be limited, many proponents of the amendment have argued for significant judicial involvement. The U.S. Chamber of Commerce testified that there is in fact a legitimate and necessary role for the courts in maintaining the integrity of the balanced budget requirement.

This position is not ahistorical as the courts have historically played a legitimate role in maintaining the protections embodied in our Constitution. As Alan B. Morrison of Public Citizen testified before the Committee on the Judiciary:

> Does anyone believe that the First, Fourth, Fifth, Tenth or Fourteenth Amendments, to mention a few, would be respected by our governments if the Federal Judiciary were not there to back up the words with court orders?

The notion that the role of the courts would be limited because the amendment will not spawn litigation is simply unfounded. Constitutional scholars, from Robert Bork to Kathleen Sullivan have agreed that this amendment will force the issue before the courts in myriad lawsuits. Former Judge Bork argued that the potential for thousands of cases, with inconsistent results, would be before the courts.

Thus, what the American people are faced with is this: An amendment which is intentionally silent on the role of the courts, the looming specter of thousands of lawsuits, and a Judiciary which has historically, and in my opinion properly, played a primary role in resolving constitutional conflicts. Given these factors, is there any question that in the absence of an express limitation the courts will become hopelessly immersed in the budgetary decisions which should be left up to Congress?

When faced with such a scenario, proponents argue that the issue of standing will preclude court intervention, despite the fact that doing so suggests that the constitutional amendment is virtually inoperative because no one would be able to go into court and have it enforced. While some argue that only a handful of parties may have standing, and still others argue for a more broad interpretation, no one can argue or be sure who, in fact, will be heard by the courts. Further, the arguments on both sides of the issue must be viewed in the context of the amendment being added to the Constitution.

For example, while the proponents argue that the amendment does not allow for Presidential impoundment, it is conceivable that the President, backed by the new amendment, could argue he or she not only has the power to impound appropriated funds but also a constitutionally mandated obligation to do so. If such action would occur, individuals whose retirement checks are withheld or Federal employees whose salaries have been reduced by executive fiat would surely have standing to sue. What about a suit brought by Members of Congress challenging the actions of the Executive?

Testimony received from Stuart Gerson, former Acting Attorney General and proponent of the notion that judicial intervention will be narrow, who conceded some limited form of standing may exist and that judicial review is not fully foreclosed. What about the potential for taxpayers bringing lawsuits—potentially in the State courts?

The simple and uncontroverted fact, Mr. President, is that we do not know the answers to these questions.

In response, the proponents argue that the balanced budget amendment strikes the proper response by remaining silent. We can continue to have hypothetical debates ad infinitum, and we will never resolve, until the courts themselves do so, what will happen when these lawsuits are filed. Until such time, this is all speculation, speculation which provides an insufficient foundation in my view on which to amend the Constitution of the United States.

Failure to address the issue in the context of this amendment will result in three unfortunate and unnecessary results: First, unelected judges, potentially both State and Federal, will be inserted into policymaking positions for which they have no experience. Second, such a result will constitute a radical and unwise transformation of responsibility of three branches of our democratic Government. Third, this shift in power could do incalculable damage to our system of justice itself. Not only would the practical, policy driven demands burden the courts, but the potential backlash for unpopular judiciary decisions would threaten to undermine the effectiveness of the courts and risk the independence of that important branch.

One can only assume that a court forced to make a tough if constitutionally mandated budgetary decision would no doubt feel the sting not only of angry public sentiment, but also from Members of Congress, many of whom engage in this type of rhetoric even now. Mr. President, we should make the tough choices, not the courts.

Finally, Mr. President, it is no secret that I oppose this amendment to the Constitution for a number of reasons, many of which I have had the chance to speak about today, and also because it is unnecessary to amend the Constitution in order to balance the budget. Many have argued this amendment will instill within the Congress the character necessary to balance the budget—I disagree. Character cannot be constitutionally mandated. It can only be revealed through accepting responsibility and making the tough choices and doing it now.

The amendment before this body potentially forestalls the enactment of the balanced budget well into the next century. In doing so, it amends our fundamental charter, and it does so in a manner that creates more questions than it resolves. This is not the way to balance the budget, nor, in my opinion, is it the way to maintain the integrity of our great Constitution.

While we may disagree on the utility of amending the Constitution, I hope we can at least strike agreement on the particular issue of judicial review. For the reasons I and others have outlined, it is the height of foolishness to leave something as important as this unresolved. For many of my colleagues who call themselves conservatives and

criticize what they believe to be judicial excess, explicitly foreclosing judicial intervention would seem to be a very simple, appropriate, and appealing solution to what is a legitimate and potentially catastrophic problem.

Mr. President, before yielding the floor back to the senior Senator from Massachusetts, let me just say we should not leave important budgetary decisions in the uncertain hands of unelected judges. We should make them ourselves. We can ensure this result by clarifying the role of the courts in this amendment.

I urge my colleagues to support the Kennedy amendment, and I yield the floor.

Mr. HUTCHINSON addressed the Chair.

The PRESIDING OFFICER. The Senator from Arkansas.

Mr. HUTCHINSON. Mr. President, I yield myself such time as I may consume.

I will respond briefly to my good friend, the Senator from Wisconsin, regarding the political will and courage for the Senate, House—the Congress—to simply balance the budget. We heard that in the State of the Union Address: ''Pass a balanced budget and the President will sign it.'' We have heard that referred to repeatedly from the other side of the aisle. I stand next to 28 years of budget books, over 50 volumes that I think bears mute evidence to the lack of political will and courage in Congress and the evidence that we simply won't do it without constitutional discipline.

In 1986, my brother, who now serves in the House of Representatives, was running for this body, the U.S. Senate. The balanced budget amendment the previous year had been defeated in this body by one vote. So that was a very big political issue in the campaign that year. Over and over again it was said, ''We don't need the balanced budget amendment. We simply need the courage to do it.'' So now, 11 years later, with over $1 trillion in additional debt, we hear those same recycled arguments brought before the U.S. Senate again.

I want to comment a bit on the contention that the balanced budget amendment is both unenforceable and that the courts will impermissibly interfere with the budget process, or that a President may simply just impound things to resolve a budget shortfall. I agree with Senator HATCH's long-held position that a balanced budget amendment to the Constitution ought to be silent as to judicial review. The long-existing and well-recognized precepts of the standing separation of powers, as well as the political question doctrine, restrains courts from interfering with the budgetary process. After all, courts are loathe to intrude into areas that properly belong to other branches of Government. And the Constitution, in article I, solely delegates to Congress, not the courts, the power to raise taxes, borrow money, and increase or reduce spending programs.

Courts simply do not have the authority to order Congress to raise taxes. Furthermore, courts will not grant standing to litigants who claim a generalized grievance similar to the complaints of all citizens, such as the raising of taxes, so as not to impose broad-based relief that interferes with congressional prerogatives.

Federal courts simply do not have the authority to usurp Congress' role of the budgetary process. This is made clear by the time-honored precept of standing and the political question in separation-of-powers doctrines. These jurisprudential doctrines, together, stand as impenetrable barriers to the courts' commandeering of the democratic process.

Additionally, I wish to respond to the impoundment argument. I want to emphasize that there is nothing in the balanced budget amendment that allows for impoundment. It is not the intent of the amendment to grant the President any impoundment authority. In fact, there is a ripeness problem to any attempted impoundment. Indeed, up to the end of the fiscal year, the President has nothing to impound because Congress, in the amendment, has the power to ameliorate any budget shortfalls or ratify or specify the amount of deficit spending that may occur in that fiscal year. Moreover, under section 6 of the amendment, Congress must—and I emphasize must—mandate exactly what type of enforcement mechanism it wants, whether it be sequestration, rescission, or the establishment of a contingency fund. The President, as Chief Executive, is dutybound to enforce a congressionally crafted scheme to the exclusion of impoundment. The position that section 6 implementing legislation would preclude Presidential impoundment was seconded by Attorney General Barr in 1995.

Finally, let me address the rock and a hard place argument that opponents of the balanced budget always dredge up. That is, they contend, on the one hand, that there may be too much enforcement because of the courts, while, on the other hand, that the balanced budget amendment is unenforceable because no one can force the President and Congress to abide by the amendment's terms. Well, you can't have it both ways. The truth is that the President and Congress must abide by their oath of office to preserve, protect, and defend the Constitution. I seriously doubt that the basic terms of any constitutional provision will be flouted. Also, each branch will keep a close eye on the other, and the reality of political pressure and the electoral wrath of the American people will assure compliance. Remember, the budget must be in balance at the end of the fiscal year, and I expect that a budget agreement will be worked out well before that time. Instead, the contention against the balanced budget amendment actually argues in favor of a balanced budget amendment. It is clear that, without a constitutional hammer, the political process lacks the discipline to agree to the terms.

Again, as we enter the final days of this debate on the balanced budget amendment, I think we need to step back on occasion from the very technical arguments and some of the very arcane amendments that have been proposed generally by those who oppose the underlying constitutional amendment and look at the reason we have come to this impasse, this situation. If, in fact, there are questions that cannot be answered about all of the consequences of a balanced budget amendment, and the one that is before this Senate, I believe, when you weigh those unanswered questions with the very clear evidence and the very clear and present danger to the future, the economic future, of the Republic that exists with massive debt and chronic deficits, that it is time we take whatever risk—and I think that risk would be minor—there might be in the passage of that constitutional amendment and submitting that to the States for ratification. We have a $5.3 trillion national debt. We have heard the figures over and over—$20,000 per every man, woman, and child in America. The average child reared today, if he or she lives an average lifespan, makes an average income, will spend over $200,000 of their income in Federal income taxes to pay their portion of the interest on this ever-growing national debt.

Let us view this massive debt in another way. In 1960, after the first 140 years of the Republic, John D. Rockefeller, who at that time was the wealthiest man in America, could have singlehandedly paid off the national debt. In 1997, if we combine the wealth of our richest families—say, Bill Gates, Warren Buffet, or from my home State, the Walton family—and we combine all of their net worth, all of their family wealth, they, together, could not even pay the interest on this massive debt for a few short months. Such is the difference, and such is the massiveness of the debt that we have accumulated and that we are imparting to generations in the future.

Viewed from another perspective, if you laid out the debt in silver dollars, one right after another, it would be 120 million miles long. The word ''trillion'' becomes meaningless, I think, to the average American, as we hear millions, billions and trillions. But the national debt—$5.3 trillion—in silver dollars would be 120 million miles long. That is from the Earth to the Sun and well beyond—millions of miles beyond.

If you could wrap it around the Earth you would wrap it around the Earth 5,000 times. Adam Smith in ''Wealth of Nations,'' published in the very year we became a Republic, said, ''What is prudence in the conduct of a private family can scarcely be followed in that of a great kingdom.''

I have heard opponents of the balanced budget amendment say, ''Well, families go into debt. Families routinely go into debt. Therefore, deficit

spending on the part of the National Government should not be anything that we should greatly worry about or be greatly concerned about.'' Yes. Families go into debt. They have a home mortgage. They have car loans. They have the college loan. But if they are to survive as a family economically the deficits must never be chronic. They should always be short-termed. They should always be temporary. The debt must be manageable. There must be a schedule to pay it off and pay it down, all of which contrasts vividly with the practice of this Congress over the last 60 years. For in the last 60 years we have not paid down one dime on the growing national debt. No family could survive the habitual mismanagement that has characterized Congress for the past 28 years.

Opponents say, ''We don't need an amendment. We have the ability to balance the budget.'' I say that we don't have the ability. We have the authority but we obviously don't have the ability, as these 28 years of budget books testify.

In 1963 the amount of the debt held by the public was $254 billion. In 1996, it was $3.87 trillion, 15 times greater than in 1963. But since 1963 the promises have not changed. Let me just give you a sample.

President Kennedy in the State of the Union Address in 1963 said, ''My program is the surest and soundest way of achieving in time a balanced budget.''

Or, the budget message of 1964 from President Johnson, ''My budget cuts the deficit in half and carries us a giant step toward the achievement of a balanced budget.''

Or, President Nixon in 1971 in his State of the Union Address, ''I shall recommend a balanced budget.''

Or, President Ford in 1976, ''The combination of tax and spending changes I propose will set us on a course that not only will lead us to a balanced budget in 3 years but also improves the prospects for the economy to stay on a growth path that we can sustain.''

Or, President Carter in his message to Congress accompanying the Economic Report of 1977, ''We have moved on the path necessary for achieving a balanced budget in the very near future.''

Or, President Bush in 1992 in a speech to the Detroit Economic Club, ''I will fight to reduce spending and spur growth so we can get this budget in balance.''

And, President Clinton's address to the Nation in 1995, ''I present the American people a plan for a balanced Federal budget.''

In fact, it is not balanced. Three-fourths of the cuts, savings, and spending occur after this President will leave office. And the Congressional Budget Office tells us that even with all of that it is still very much out of balance.

But the opponents continue to mock the idea of amending the Constitution. The statutory solutions that Congress have proposed simply have failed over and over and over again. They have failed from the Gramm-Rudman-Hollings Act, and on and on. We found a way to circumvent or undermine and some way to continue our spending habit. And our opponents say, ''Well, we are treating the Constitution as if it were a rough draft; that we have a raft full of amendments, a pocketful of constitutional changes.'' Wrong. Our Founding Fathers I believe knew very, very well that changing circumstances in the life of our Nation would make it necessary to have a process for change and, therefore, they included an amendment process that is both deliberate and very, very difficult, as we are learning once again this year. But our Founding Fathers never envisioned that there would be a Congress, or a series of Congresses that would go 28 years without balancing its budget. Our Founding Fathers never envisioned that we would amass more than $5 trillion in public debt. But they left us a procedure whereby we can address even that kind of calamitous situation, a procedure of amending the Constitution.

This isn't frivolous. This isn't like what we are about in attempting to amend the Constitution. It is as our Founding Fathers intended, a deliberate process by which we can address those circumstances that would threaten the very future of the Nation. And this massive debt does threaten.

How much does the debt and the growth of the debt and the chronic deficits affect the average American? We have heard much talk about declining interest rates and how that will benefit the average American family. How things have changed. My mom and dad had only high school educations. They raised a family of six children. My father worked in a chicken plant, and my mother stayed at home. She didn't even go out and get a job. We lived in a nice home, a brick home. I thought we were poor. But we thought we were middle class. But all in all, we had a great quality of life. And I wonder how many times that could happen today? How many times today could you have parents without a college education with one spouse working and one spouse at home, and providing their children a college education? I say that, even as we look at the average middle-class family today, we see the erosion of our standard of living. And part of that is because the wealth of this Nation is consumed more and more by the massive spending of the Federal Government and the absorption of that wealth by paying interest on an evergrowing national debt.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. KENNEDY. Mr. President, how much time remains?

The PRESIDING OFFICER. The Senator from Massachusetts has 26 minutes remaining, the Senator from Arkansas has 40 minutes remaining.

Mr. KENNEDY. I yield 12 minutes to the Senator from Illinois.

The PRESIDING OFFICER. The Senator from Illinois is recognized for 12 minutes.

Mr. DURBIN. I thank the Chair.

(The remarks of Mr. DURBIN and Mr. KENNEDY pertaining to the introduction of legislation are located in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

Mr. DURBIN. Mr. President, at this point I would like to address the amendment offered by Senator KENNEDY to the balanced budget amendment.

I would like for those who are listening to this debate to consider a possible and likely scenario at some point in our Nation's future. Let us assume the balanced budget amendment to the Constitution passes and is ratified by the States and takes effect. In 1 year we find that the budget for the coming year is out of balance. A group of 48 Senators proposes an across-the-board cut to balance the budget. Another group of 41 Senators favors deeper cuts in military spending to spare education and safety net programs. And then a group of 11 Senators comes forward and opposes those plans and says let us have significant cuts in the growth of Medicare. None of the groups will budge. The fiscal year begins with a budget that is clearly out of balance. The group of 11 Senators goes to court asking the courts to compel compliance with the balanced budget constitutional amendment requirements that outlays not exceed revenues for any fiscal year.

One day you turn on the television, and you find the Supreme Court has listened to the briefs, has ordered Social Security, Medicare, highway funding, and medical research funding to be cut, and the Court has ordered an income tax increase of 1 percentage point for every group. The Court says the Constitution, as amended by the balanced budget amendment, clearly requires a balanced budget, and since Congress cannot act, the Court is required to step in.

If this sounds farfetched, think of what has happened in our history in the last several decades where courts have said that Congress has failed to meet its constitutional obligation and that the courts will step in and order, for example, integration of school districts and the imposition of local property taxes to equalize educational opportunity which the courts have decided is not being offered and should be.

The President, in my hypothetical, responds to this court order and says, I disagree with the Court requirement. I will assume the responsibility to balance the budget. The President says, I will impound funds. I will cut spending on certain programs so that the budget is in balance.

If this sounds farfetched, I think those who have offered the amendment

have not considered the very real likelihood that it could occur. Our Constitution now gives Congress the primary authority to raise and spend Federal funds. James Madison wrote in ''The Federalist Papers,'' No. 48.

The legislative department alone has access to the pockets of the people.

This proposed amendment would dramatically alter the balance of power in the Constitution, and this amendment is silent on the issue about whether or not the courts can interpret and enforce the balanced budget amendment. I daresay neither the courts nor the President will stand idly by if the budget is not in balance and this constitutional amendment is in place. In fact, most of the supporters of the balanced budget amendment readily concede this scenario.

A representative of the U.S. Chamber of Commerce testified before my Judiciary Committee. He said:

There is a legitimate and necessary role for the courts in ensuring compliance with the amendment.

Someone from the National Taxpayers Union said:

We oppose denying judicial review authority and believe it would be more difficult to enforce the provisions of this resolution if Congress were to add such language to the balanced budget amendment.

The same basic testimony coming from the ultraconservative Family Research Counsel.

It is not an unusual proposal of the Senator from Massachusetts that we specify the limits of power in interpreting the constitutional amendment and enforcing it. In fact, in 1994, Senator Danforth, a Republican, of Missouri, successfully modified the same amendment in the Chamber today including a proposal very similar to Senator KENNEDY's. In 1995, the following year, Senator Nunn, a Democrat of Georgia, did the same. But the current version of this amendment contains neither of those provisions. I stand in support of Senator KENNEDY's effort to once again include this sensible language.

The constitutional amendment eliminates the fundamental distinction which exists between the legislative branch, the executive branch and judicial branch. It invites unelected judges to exercise budgetary powers with no opportunity for the people through the ballot box to affect those decisions.

The President, of course, as I said, will not stand idly by either. He has a constitutional responsibility to preserve, protect, and defend the Constitution. Just as the courts are loathe to avoid their constitutional mandate, mark well my words: No President will avoid it either. If this Congress is gridlocked, at an impasse with the budget not in balance, a President will step in and the President will make his decision as to where the cuts will be made. And that decision may not be the will of the Congress.

Legal scholars agree that what I have just described is not farfetched but likely to occur, and without Senator KENNEDY's amendment it will occur. The President's powers of impoundment could include across-the-board cuts, specific programs abolished, and targeted expenditures intended for States or other agencies could be impounded. This has been acknowledged by those who have worked on budgetary matters in Washington for many years.

The Kennedy amendment acknowledges the fundamental ambiguities inherent in the balanced budget amendment's silence regarding enforcement powers of the courts and Presidents. It recognizes that budgetary decisions should be made by the elected representatives of the people, not by the unelected judges or single executive. It avoids a fundamental shift in the allocation of power and authority among the Federal branches of Government and assures that Members of Congress will remain responsible for spending and for balancing the budget. It achieves these important goals by specifying that Congress shall have exclusive authority to enforce the balanced budget amendment unless specifically otherwise provided in implementing legislation.

I am new to the Senate. This is the first time I have been engaged in this debate in the Senate. I find it incredible that the wisdom of this amendment was recognized in 1994, when offered by a Republican Senator from Missouri, and in 1995, when offered by a Democratic Senator from Georgia, and is not being included today as part of this amendment. The Senate today has an opportunity, through Senator KENNEDY's initiative, to make a real difference and to correct this error, to make certain that it is clear we are not ceding a grant of power to either the executive branch or the judicial branch; we are accepting our responsibility to spell out with specificity the responsibility of Congress, the Senate and the House to balance the budget.

At this point, I yield back the remainder of my time. I thank the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. KENNEDY. How much time do I have?

The PRESIDING OFFICER. The Senator from Massachusetts has 14 minutes remaining.

Mr. KENNEDY. I yield myself 7 minutes, Mr. President.

Mr. KENNEDY. Mr. President, as pointed out by the Senators from Illinois and Wisconsin, those who are opposing the amendment on the floor today and those who have opposed addressing this issue in the Judiciary Committee agree with what the principal sponsor, Senator HATCH, has said—he wants silence on this issue—silence on the issue.

We have a great deal at risk by not accepting this amendment. So why not accept it. The amendment is quite clear in its objective—if we are going to be required to enforce the amendment, it ought to be the Congress who enforces it, not the President of the United States or the courts. They should not have the ability to raise or lower taxes or to cut various kinds of programs. That is what this issue is all about. That is why, as the Senator from Illinois has pointed out, it was addressed by Republicans and Democrats previously.

All we are saying is we are not prepared to make that judgment here this afternoon. But we are presenting an amendment which will permit the Congress to make a judgment as to what those powers would be down the road, in the future. It is amazing to me to hear resistance to that argument.

The idea that this is really a moot issue and moot question just defies testimony by those who are both supportive of the balanced budget amendment and those who are against the amendment. One of the most compelling cases was made by one of our leading constitutional authorities, Kathleen Sullivan, and supported by a broad range of different constitutional scholars, both conservative and Democrat alike. I will refer to some parts of the letter. I will include the whole letter in the RECORD.

First, taxpayers might claim that their rights to a balanced budget are violated, for example, by projections that outlays will exceed receipts. True, taxpayers are generally barred from suing the government for the redress of generalized grievances. But the Supreme Court a quarter of a century ago held that there is an exception to the general bar on taxpayer standing when the taxpayer claims that a government action ''exceeds specific constitutional limitations imposed upon the exercise of the congressional taxing and spending power.''

Mr. Barr suggests that this exception may be limited to Establishment Clause challenges, but there is nothing in the principle stated in *Flast* that so confines it. If anything, the proposed Balanced Budget Amendment more clearly limits congressional taxing and spending power than does the Establishment Clause.

* * * * *

Second, members of Congress might well have standing to claim that congressional actions have diluted the vote they were entitled to exercise under the Amendment. For example, suppose that the Congress declined to hold a three-fifths vote required to approve deficit spending under section 1, or a rollcall vote required to increase revenue under section 4. This might occur, for example, because of a dispute over whether outlays really exceeded receipts, or over whether revenue was really being increased, because the meaning of those terms might be controversial as a matter of fact. Declining to implement the supermajority voting requirements in such a context, however, might be plausibly claimed to have diluted a Member's vote. This is arguably analagous to other circumstances of vote dilution in which the lower courts have held that Members of Congress have standing.

Third, persons aggrieved by actions taken by the government in claimed violation of the Amendment might well have standing to challenge the violation.

And it gives further examples of it.

Mr. President, I ask unanimous consent the entire letter be printed in the RECORD.

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

STANFORD LAW SCHOOL,
Stanford, CA, February 15, 1995.

Senator EDWARD M. KENNEDY,
U.S. Senate,
Washington, DC.

Re: Proposed Balanced Budget Amendment.

DEAR SENATOR KENNEDY: I have reviewed the statement of William P. Barr before the Senate Committee on the Judiciary on January 5, 1995, in which former Attorney General Barr argued that ''the courts' role in enforcing the Balanced Budget Amendment will be quite limited.'' While I have great respect for Mr. Barr, and while I found his testimony to be considered and thoughtful, I must respectfully state that I disagree with him. I continue to believe that, as I testified before the Senate Appropriations Committee on February 16, 1994 the Balanced Budget Amendment in its current draft form is likely to produce numerous lawsuits in the federal and state courts, and that neither Article III justiciability doctrines nor practices of judicial deference will operate as automatic dams against that flood tide of litigation.

Let me begin with the doctrines of justiciability under Article III of the Constitution. Mr. Barr argues that ''few plaintiffs would be able to establish the requisite standing to invoke federal court review.'' This is by no means clear. There are at least three categories of litigants who might well be able to establish standing to challenge violations of the Amendment.

First, taxpayers might claim that their rights to a balanced budget are violated, for example, by projections that outlays will exceed receipts. True, taxpayers are generally barred from suing the government for the redress of generalized grievances. But the Supreme Court a quarter of a century ago held that there is an exception to the general bar on taxpayer standing when the taxpayer claims that a government action ''exceeds specific constitutional limitations imposed upon the exercise of the congressional taxing and spending power.'' *Flast* v. *Cohen,* 392 U.S. 83 (1968). Mr. Barr suggests that this exception may be limited to Establishment Clause challenges, but there is nothing in the principle stated in *Flast* that so confines it. If anything, the proposed Balanced Budget Amendment more clearly limits congressional taxing and spending power than does the Establishment Clause. The Amendment is not confined, as Mr. Barr suggests, merely to the power of Congress to borrow. Thus taxpayers would have an entirely plausible argument for standing under existing law.

Second, members of Congress might well have standing to claim that congressional actions have diluted the vote they were entitled to exercise under the Amendment. For example, suppose that the Congress declined to hold a three-fifths vote required to approve deficit spending under section 1, or a rollcall vote required to increase revenue under section 4. This might occur, for example, because of a dispute over whether outlays really exceeded receipts, or over whether revenue was really being increased, because the meaning of those terms might be controversial as a matter of fact. Declining to implement the supermajority voting requirements in such a context, however, might be plausibly claimed to have diluted a Member's vote. This is arguably analogous to other circumstances of vote dilution in which the lower courts have held that Members of Congress have standing. See, e.g., *Vander Jagt* v. *O'Neill*, 699 F.2d 1166, 1168–71 (D.C. Cir. 1982), cert. denied, 464 U.S. 823 (1983).

Third, persons aggrieved by actions taken by the government in claimed violation of the Amendment might well have standing to challenge the violation. For example, consider a criminal defendant charged under a law claimed to cost more to enforce than the government can finance through expected receipts. Or suppose that the President, believing himself bound by his Oath to support the Constitution, freezes federal wages and salaries to stop the budget from going out of balance. In that circumstance, a federal employee might well challenge the President's action, which plainly causes her pocketbook injury, as unauthorized by the Amendment, which is silent on the question of executive enforcement.

Each of these circumstances poses plausible claims of injury in fact, and none of them poses insurmountable problems of redressability. In most of them, in fact, simple injunctions can be imagined that would redress the plaintiffs' claims. Thus, contrary to Mr. Barr's prediction, the doctrine of standing is by no means certain to preclude federal judicial efforts at enforcement of the Amendment. And further, as Mr. Barr concedes, federal standing doctrine will do nothing to constrain litigation of the proposed Amendment in state courts, which are not bound by Article III requirements at all.

Nor is the political question doctrine likely to eliminate all such challenges from judicial review. True, the Supreme Court has held that a question is nonjusticiable when there is ''a textually demonstrable constitutional commitment of the issue to a coordinate political department; or a lack of judicially discoverable and manageable standards for resolving it.'' *Baker* v. *Carr,* 369 U.S. 186 (1962). But the proposed Amendment implicates neither of these kinds of limitation. It does not reserve enforcement exclusively to the discretion of the Congress, as, for example, the Impeachment or Speech and Debate Clauses may be read to do. And it presents no matters that lie beyond judicial competence. Rather, here, as with apportionment, the question whether deficit spending or revenue increases ''exceed whatever authority has been committed, [would] itself [be] a delicate exercise in constitutional interpretation,'' and thus would fall well within the ordinary interpretive responsibility of the courts. See *Baker* v. *Carr,* at 211.

Let me turn now from doctrines of justiciability to practices of judicial deference. Mr. Barr argues that, as a prudential matter, ''a reviewing court is likely to accord the utmost deference to the choices made by Congress in carrying out its responsibilities under the Amendment,'' especially in light of the enforcement clause in section 6. This is by no means clear. The Reconstruction Congress expected that enforcement of the Thirteenth, Fourteenth and Fifteenth Amendments would be undertaken primarily by the Congress, and reflected that expectation in the Enforcement Clauses specifically included in those Amendments. But we have seen time and time again in our history that judicial review has played a pivotal role in the enforcement of those Amendments nonetheless. The proposed Amendment, as did those Amendments, gives Congress authority to legislate, but it does not oust the courts, who need not defer to Congress in these matters. Courts rightly have not hesitated to intervene in civil rights cases, even though those cases involved grave structural questions as well as questions of individual rights.

Finally, Mr. Barr argues that courts will, again as a matter of prudence and practice rather than doctrine, ''hesitate to impose remedies that could embroil [them] in the supervision of the budget process.'' He is correct to observe that a direct judicial order of a tax levy such as that in *Missouri* v. *Jenkins,* 495 U.S. 33 (1990), is highly exceptional. But even if that is so, courts could issue a host of other kinds of injunctions to enforce against conceivable violations of the proposed Balanced Budget Amendment. For example, a court could restrain expenditures or order them stayed pending correction of procedural defaults, or a court could enjoin Congress simply to put the budget into balance while leaving to Congress the policy choices over the means by which to reach that end. Thus there is little reason to expect that prudential considerations will keep enforcement lawsuits out of court, or keep judicial remedies from intruding into political choices.

In sum, the draft Balanced Budget Amendment in its present form has considerable potential to generate justiciable lawsuits, which in turn would have considerable potential to generate judicial remedies that would constrain political choices. Thank you for considering these remarks in the course of your current deliberations.

Sincerely,

KATHLEEN M. SULLIVAN.

Mr. KENNEDY. Mr. President, this is a very well-thought-out analysis about the role of standing. It is very clear. And, I believe, to cavalierly dismiss the fact there would be standing for challenge by outside forces does not represent the vast majority of legal opinion, both from those who support the amendment and those who are opposed to it.

Mr. President, I yield myself 4 more minutes.

Furthermore, the President is obligated to faithfully execute the laws and defend the Constitution. That duty is not limited to the enforcement of acts of Congress. It includes obligations derived from the Constitution. Thus, if the President believed the balanced budget constitutional amendment was about to be violated, he would be duty bound to prevent the violation. After all, what happens when it becomes clear that outlays will exceed receipts for the fiscal year and Congress has not specifically authorized the deficit? Many, including Secretary Rubin, former Reagan administration Solicitor General Charles Fried, former Attorney General Nick Katzenbach, and Harvard Law School Prof. Laurence Tribe, believe the President would be obligated to take the dramatic step of impounding funds to comply with the Constitution. As then-Assistant Attorney General Walter Dellinger suggested in 1995: If it appears the requirement for a balanced budget was about to be violated, he would advise the President not only that he had the right but the obligation to step in and prevent the violation by impounding money before the budget became imbalanced.

Those are basically the facts. There is every indication there would be standing, both by citizens and others who wanted to challenge this; that the President would be required, after taking the oath of office, to uphold the Constitution, to impound funds. I do not want to see the seizing of Social Security checks by the Congress, duly elected, but at least we are accountable to people. But to say we are going to leave that to the courts or to the 50

courts—50 courts, as was talked about previously by the Senator from Arizona—we are going to give that to the President of the United States, or to the courts—I find enormously troublesome.

But, no, no, those who oppose this amendment say the amendment is going to be silent on this issue. I don't think it should be silent. I think the ultimate decision, in terms of budget cutting, should ultimately rest here, specifically in the Congress of the United States unless we are going to make a judgment that the courts should have some kind of a responsibility. That is all this amendment does.

It comes back to who is going to implement this. I do not believe we should grant that authority to judges who are not accountable to the American people, or to a President of the United States who may impound funds, but it should rest here in the Congress of the United States. That is all this amendment does. Those who support it say we ought to be silent. We say, as other Congresses have said, that we ought to be able to make a conscious decision about the enforcement of this amendment. I do not want unelected judges and the President making that decision. I believe Congress should.

I retain the remainder of my time.

The PRESIDING OFFICER. The Senator from Arkansas.

Mr. HUTCHINSON. Mr. President, I yield myself such time as I might consume.

The PRESIDING OFFICER. The Senator is recognized.

Mr. HUTCHINSON. Mr. President, I certainly agree—and Congress will, should we pass this amendment, and the States ratify this, and this become a part of the Constitution—Congress will, at long last, fulfill its constitutional oath of office and we will enforce a balanced budget. Congress has not done that. We have not done that because we lack a constitutional hammer, a constitutional discipline requiring us to do so.

The courts will not be imposing taxes. The President will not be impounding. But Congress will be doing what will be, then, our constitutional obligation in balancing the books.

Senator KENNEDY's amendment is directed to the issue of judicial review. I believe it is in fact unnecessary. The relevant limitations on the powers of the courts, which are found in the doctrines such as ripeness, standing, and political question, effectively prevent Federal courts from raising Federal taxes or reallocating Federal budget priorities, which are the purview of Congress. Furthermore, as an additional safeguard pursuant to both article 3 of the Constitution and section 6 of the balanced budget amendment, Congress may limit the jurisdiction of courts and the remedies that courts may provide.

No constitutional provision has ever contained a jurisdictional limitation on courts, as this amendment by Senator KENNEDY would. Including this amendment in the balanced budget amendment might establish, I believe would establish, a troublesome precedent that courts might use to get involved in other areas of the Constitution that do not have such limitations.

I believe that these amendments, one after another, are being proposed by those who would, of course, like to see a balanced budget amendment defeated. This is another scare tactic that is being thrown at the American people.

We see that in the issue of impoundment that Senator KENNEDY referred to. President Clinton recently said, ''The way I read the amendment, it would almost certainly require, after the budget is passed, if the economic estimates turn out to be wrong, the executive branch, the President, the Treasury Department to impound Social Security checks or turn it over to courts to decide what is to be done.''

That, to my colleagues I say, is a blatant scare tactic to try to defeat a much-needed amendment to the Constitution.

If Senator KENNEDY's amendment on impoundment is addressed as he indicated, then it is, again, unnecessary. First, the President has, at most, only limited authority to impound funds. The Supreme Court held that in the case involving President Nixon.

Since the balanced budget amendment does not even mention the impoundment authority of the President, there is very, very little support for the claim that the balanced budget amendment would give the President such abilities.

Second, Congress has plenary enforcement authority and, therefore, can, through new legislation, prevent the President from impounding appropriated funds. The Constitution does not mention impoundment. The power of the President in this area is merely implied by the President's general Executive power. This is very important because the Supreme Court has held that Congress has the authority to limit the President's implied powers, so long as it does not prevent the President from discharging his specific duties.

Third, even in the absence of new legislation, the Line-Item Veto Act already regulates this area, thereby indicating how the Congress has allocated power to the President. In that law, Congress established a specific procedure for the President to follow. By so doing, Congress has occupied the field, to borrow a term from the law of Federal preemption, thereby precluding the President from exercising a general Executive power, like impoundment, in a different manner.

So, I say again, this amendment, though I have no doubt it is well intended and addresses what are perceived to be legitimate concerns, is, in fact, unnecessary, plays upon the fears of the American people, and should be rejected. While we carry on this somewhat detailed debate, during this hour in which I have been on the floor of the U.S. Senate, the national debt will increase another $29 million.

It is time, it is far past time, as these 28 years of budget books bear testimony, for this Senate to pass a balanced budget amendment, send it to the States for quick ratification and to begin to put ourselves under the same discipline that most of our States exist under and that every family in this country exists under: A requirement that we live within our means.

Mr. President, I yield the floor.

Mr. CRAIG. Mr. President, the Kennedy amendment points to a problem that doesn't exist and then solves it with a loophole.

Why are we debating the balanced budget amendment in the first place? Because past Congresses have built up a national debt of more than $5.3 trillion, in an abuse of their power of the purse.

So what does the Kennedy amendment prescribe? It says, let's put the fox in charge of the henhouse. It says Congress doesn't have to comply with this amendment unless it wants to. It says, if Congress says it is complying with this amendment, then no one else can question that.

I do believe Members of Congress take their constitutional responsibilities seriously. I do believe that most Members really would prefer balanced budgets to running up another $5 trillion in debt. But I don't believe that every particle of every possibility of independent review should be removed from this amendment.

We will win the war against debt, the war for our economic future the same way we won the cold war: Not by fighting, but by being strong enough to deter. We need to defeat the Kennedy amendment to keep the balanced budget amendment strong enough to deter future fiscal abuse.

Senator HATCH has spoken eloquently about the legal precedents and judicial doctrines that demonstrate there will not be a problem with judicial activism under Senate Joint Resolution 1. I will only touch on the broadest of those.

In our Constitution today, we have something called separation of powers among the three branches of government.

It already gives Congress exclusive power of the purse, saying, ''No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law. * * * '' Only the Congress can make law; only the Congress can decide how to spend money.

It already gives Congress exclusive power to tax. It says, ''All bills to raise revenue shall originate in the House of Representatives. * * *''

Only the Congress can tax, founded upon the Revolutionary War principle of ''No taxation without representation.''

It already gives Congress the power to limit the jurisdiction of the Federal courts, in article III of the Constitution.

It already gives Congress the power to limit, by law, what budgetary actions the President can take, as it did in the Impoundment Control and Budget Act of 1976, as it did in Gramm-Rudman-Hollings, and as it did in the Budget Enforcement Act of 1990.

The balanced budget amendment does not in any way change the current balance of power among the three branches of Government. It does not grant the courts or the President any power they don't already have.

To clarify the matter, the amendment already says, in section 6, ''The Congress shall enforce and implement this article by appropriate legislation. * * *''

But, in some very limited cases, the possibility of outside review should be left open. For example:

Under our Constitution, the courts have already addressed the issue of whether a bill that originated in the Senate, and had the incidental effect of increasing revenues, should have originated in the House.

Similarly, under Senate Joint Resolution 1, if the Congress passed a bill to increase taxes by voice vote, instead of a majority of the whole number on a rollcall vote, and claimed the bill would not raise taxes, it is fair and reasonable for the Supreme Court to say, no, that bill is unconstitutional, and it is struck down.

Under Senate Joint Resolution 1, let's say some future Congress set up a shell game to get around the 3/5 vote on the debt limit. Perhaps they could set up a super Fannie Mae that borrows from the public, and then lends to the Treasury. It is fair and reasonable for the Supreme Court to say, no, that is an obvious attempt to subvert the Constitution, and it is struck down.

In no case, under this amendment, would—or could—the courts rewrite the details of a budget or order a tax increase. They simply couldn't, period.

But the courts could do what they do today:

If a case is obvious, if a party has specific standing, if a controversy is justiciable, and if the political question doctrine does not apply—

Then the Court could look at an act of Congress, or an action of the Executive, and say, no, that violates the Constitution. Stop. Do not pass ''Go''. Do not collect $200 billion. Start over again.

In short, the rule has been, ought to be, that the Court can simply say what the law is, not make new law.

Some may raise the specter of the Missouri versus Jenkins court case. But that case, however dubious on its own merits, has nothing in common with the arguments being raised here.

In that case, a Federal court ordered a local school district to raise revenues to pay for a federally mandated desegregation plan.

In other words, the Federal court was ordering someone else to comply with Federal law.

That case had nothing to do with Congress, with Federal taxes or with constitutional separation of powers.

Finally, the Kennedy amendment would only feed public cynicism.

When the Senate adopted a less sweeping limitation on judicial review in the last Congress, the Nunn amendment, I heard from Idahoans who felt that that amendment had put the fox in charge of the henhouse.

People will realize that the Kennedy amendment says, the same branch of government that has run up $5.3 trillion in debt should be the sole arbiter of what does, and what does not, comply with a rule against running up another $5 trillion.

The Kennedy amendment is being offered by opponents of the balanced budget amendment, not to improve it, but in an attempt to kill it. The amendment should be defeated.

The PRESIDING OFFICER. Who yields time?

Mr. KENNEDY. Mr. President, I understand we have 4 minutes remaining. I yield 2 of those minutes to the Senator from North Dakota.

The PRESIDING OFFICER. The Senator from North Dakota is recognized for 2 minutes.

Mr. CONRAD. Mr. President, I thank the Senator from Massachusetts.

I point out to my colleague on the other side of the aisle that if this balanced budget amendment passes, is implemented, he would have exactly the same problem as represented by that stack of budget documents sitting on his desk today, because the debt would continue to go up. We would not have a balanced budget at all, because this isn't a balanced budget amendment, unfortunately. This is an amendment that decides they are going to claim it's a balanced budget by looting every penny of Social Security surplus over the next 20 years and then claim balance.

But on the question of the amendment before us, I think the amendment by the Senator from Massachusetts addresses one of the three principal concerns of the so-called balanced budget amendment which is before this Chamber. It goes to the question of the role of the courts.

Mr. President, what a difference a Congress makes—what a difference. The last time we had this measure before the Senate, on a vote of 98 to 2, we addressed the question of whether or not unelected judges would be left writing the budget of the United States; 98 to 2 the Senators decided we could not be silent, we could not be left with a circumstance in which right through those doors in the Supreme Court of the United States, we would have unelected judges sitting around a table writing the budget for the United States.

I ask my colleagues, what do the Justices of the Supreme Court, as learned as they are, know about the defense of the United States or the budget for the defense of the United States? Nothing. They have had none of the detailed briefings, none of the hearings on the question of what the defense systems are that are critical to maintaining the security of the United States.

The PRESIDING OFFICER. The time yielded to the Senator from North Dakota has expired.

Mr. KENNEDY. I yield another 45 seconds.

Mr. CONRAD. I will just conclude by saying those Justices, as learned as they are, know nothing about what the defense systems are that are needed to maintain the security of this Nation. They know nothing about agriculture programs which are critical to my State. They know nothing about the budget disciplines that are fundamental to the writing of a budget document that is critical to the future of this country.

This amendment by the Senator from Massachusetts ought to be adopted. The same type of amendment was adopted overwhelmingly in the last Congress when people recognized it was central to the functioning of any balanced budget amendment.

I thank the Chair and yield the floor.

The PRESIDING OFFICER (Mr. GORTON). Who yields time? The Senator from Arkansas.

Mr. HUTCHINSON. I yield myself 2 minutes.

Mr. President, in response to my friend, I will simply say that the learned Justices may know little about budgeting, they may know little about national defense, they may know little about budget priorities, they may know little about exploding entitlements, but they have not been responsible, as we have been, for 28 successive years of deficits and the accumulation of $5.3 trillion in national debt. They have not been responsible for imposing upon my children and my grandchildren $20,000 of debt per person. They cannot be held accountable for our failings, and I emphasize once again, it will not be the Justices of the Supreme Court who will enforce this provision to the Constitution should it be ratified, and it will not be the President, through the impoundment process, that will enforce this; it will be Congress in obedience to and in fulfillment of their oath of office, an oath that requires us to protect and preserve and defend the Constitution of the United States, a Constitution that will, at that time, have enshrined within it a provision requiring us to balance our books. We will do the job. We will do it when we are required by the Constitution.

Is it a shame we have to have that? I think it is. Is it unfortunate we have not had the courage, the political will to make the kind of tough decisions that would have allowed us to balance the budget and to have avoided our current situation? It is a shame. But the evidence is clear that short of an amendment to the Constitution, Congress will continue to allow spending to grow out of control, we will continue to have chronic deficits, and we will continue to amass enormous debts that threaten the economic stability

and the economic future of our country. That is why we need a balanced budget amendment. And in order to have that amendment, we need to reject Senator KENNEDY's I think unnecessary and ill-conceived amendment to the underlying amendment to the Constitution.

Mr. KENNEDY addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, with all due respect to my friend and colleague, 92 Members of the U.S. Senate felt this was an issue that should be addressed in the last Congress, and a Republican, Senator Danforth, thought it should have been addressed in the Congress before that.

Now, if the Senator wants to say that under no circumstances are the judges going to be involved and under no circumstances will the President have impoundment, then accept the amendment. But you cannot have it both ways.

Other Congresses—the previous Congress and the one before it, under Republicans and Democrats—overwhelmingly understood this issue, as leading conservative constitutional authorities do, as the 128 organizations that represent working families, children's organizations, those that have Social Security and senior citizens do.

Mr. President, that is the issue. Who is going to make the ultimate judgment if this amendment is accepted? We believe it should be the Congress, not leave it to unelected judges to permit the President to impound it. That is the simple and fundamental issue. I hope the amendment is successful.

The PRESIDING OFFICER. All time except for 8 seconds to the Senator from Massachusetts has expired and there are 33 minutes 19 seconds remaining for the Senator from Utah.

Who yields time?

Mr. HATCH. Mr. President, how much time is left for the Senator from Utah?

The PRESIDING OFFICER. Thirty-three minutes nineteen seconds.

Mr. HATCH. How much is left for the other side?

The PRESIDING OFFICER. Eight seconds.

Mr. HATCH. Eighty seconds?

The PRESIDING OFFICER. Eight seconds.

Mr. HATCH. That ought to be enough to make some fairly powerful statements, but I will be happy to give him some more time after I make a few remarks.

Let me make a point that my good friend and colleague, Senator KYL, made at the outset of this debate. Senator KENNEDY's amendment would allow the Federal Government to imprison any taxpayer who declines to pay an unconstitutional tax. His amendment is materially different from Senator NUNN's amendment 2 years ago. So I am very concerned about it. Let me just compare the two.

The Nunn amendment provided that absent specific legislation authorizing judicial review, the courts would not have jurisdiction for claims arising under the balanced budget amendment.

The Kennedy amendment provides that absent specific legislation authorizing judicial review, Congress has exclusive enforcement authority under the balanced budget amendment. Thus the courts would have absolutely no enforcement role.

The difference is this. I know my colleague is trying to do what is right here, but the difference is this. The Kennedy amendment allows Congress unconstitutionally to raise taxes by a simple voice vote and no court in this land could hold that tax unconstitutional. The Nunn amendment did not have that draconian affect.

Under the Nunn amendment, any taxpayer could raise as a defense the argument that the Congress passed an unconstitutional tax. The Kennedy amendment forecloses that defense. I do not think we want to go that far, even though I think I know what the distinguished Senator is trying to do. The Kennedy amendment, Senator KENNEDY's amendment, would allow the Government to imprison taxpayers for refusing to pay an unconstitutional tax.

I do not think we want to go that far. At least I do not. So I have to rise in opposition to the amendment offered by my good friend and colleague from Massachusetts.

Mr. President, in each year that the balanced budget amendment has been debated, I notice that various arguments are presented as scare tactics by the opponents of the amendment. The devil resurrected now in the Kennedy amendment is the fear that under the balanced budget amendment the courts will raise taxes or cut programs. Indeed, President Clinton even claimed that he could refuse to disburse Social Security checks to our retired senior citizens if the budget is not balanced by the end of any particular fiscal year.

The balanced budget amendment does not produce any such evils. On the contrary, the balanced budget amendment strikes a delicate balance between the reviewability by the courts and limitation on the courts' ability to interfere with congressional budgetary authority. It has always been my position that we should not foreclose all judicial review. No. Some judicial review may be necessary and should be permitted.

What we should foreclose is any action by the courts that would interfere with Congress' budgetary authority. Judicial review should be available for the egregious, but unlikely, cases where Congress flouts the express procedures dictated by Senate Joint Resolution 1, such as the requirement that each House of Congress vote for a tax increase only by rollcall vote, when in fact we provide for a constitutional majority or a majority of the whole number of both Houses in order to have a tax increase. Such review does not mean that the courts will be able to interfere with the budgetary process but does ensure that the Constitution is enforced and respected. Let me explain this balance in greater detail.

There are several reasons why courts will not run the budget process if Senate Joint Resolution 1 becomes law. In part, that is because several well-settled constitutional principles ensure courts do not make the budget decisions that we must make. In part, that is because section 6 of Senate Joint Resolution 1 gives Congress the power to decide how the balanced budget amendment should be enforced. Let us start with the Constitution.

No. 1. Standing. The standing doctrine limits who may bring a lawsuit in Federal court. At bottom, to do so a party must show that it has suffered an ''injury in fact.'' That term is a technical one in the law. It does not allow clients to simply claim he dislikes a law or merely that the law is unconstitutional. No. A plaintiff must prove three elements in order to establish standing or to show, as I have mentioned before, that that plaintiff has suffered ''injury in fact.''

First, a plaintiff must prove that he has suffered, or likely will suffer, a concrete injury, not just a conjured up one or abstract one, but a concrete injury.

Second, the plaintiff must show that the defendant has caused the specific injury that he has shown. In this case it would be the Government.

And third, the plaintiff must show that the remedy he seeks will redress the specific injury that he has shown.

It would be very difficult for a plaintiff to establish or any plaintiff to establish all three elements in a lawsuit brought challenging an action under Senate Joint Resolution 1 unless there was an actual violation of Senate Joint Resolution 1 such as I have mentioned—a refusal to follow the supermajority vote rule or a refusal to follow the actual vote rule. Dissatisfaction with Congress' policy judgment is not ''injury in fact.'' A plaintiff, therefore, cannot establish the ability to sue if all that a plaintiff can show is that Congress has not adequately funded or has been unduly generous in funding a particular program.

A plaintiff cannot establish standing based merely on the claim that an act of Congress is unconstitutional.

A plaintiff also cannot establish standing based simply on his or her status as a taxpayer.

The Supreme Court long ago held that a plaintiff cannot establish standing based merely on his status as a taxpayer. The Court so ruled in the 1923 case of Frothingham versus Mellon. In 1982, the Supreme Court reaffirmed its Frothingham decision in the case of Valley Forge Christian College versus Americans United for Separation of Church & State.

That is not all. Even if a party can prove he has suffered a judicially recognizable ''injury in fact,'' in all but

the most extraordinary cases that party still would not be able to establish standing to sue. The reason why is that a plaintiff still could not make out the remaining requirements to establish standing. In particular, a party would not be able to establish either the ''causation'' or ''redressability'' elements. In a case brought under the balanced budget amendment, a plaintiff would not be able to show that a specific law caused his injury or that a specific law should be held invalid as the unconstitutionally necessary and appropriate remedy. After all, Congress appropriates money for numerous programs, so it would be impossible for a plaintiff to show, for example, that he is injured by any one specific program.

Now, that is No. 1.

No. 2 is justiciability and the political question doctrine.

There are two other doctrines that are relevant here: Justiciability and the political question doctrine.

Justiciability focuses not on the person who wishes to bring a lawsuit, but on the issue or claim that the plaintiff wishes to litigate. Not every claim is one that Federal courts are going to adjudicate, and claims that cannot be adjudicated are deemed ''nonjusticiable.''

In many ways, the political question doctrine is just the flipside of the justiciability doctrine. The reason is that a political question is an issue that the Constitution has given to someone other than the courts to decide.

The political question doctrine is relevant here because of the origination clause in article I, section 7, clause 1, of the Constitution that provides that ''All Bills for raising revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as on other Bills.'' Because that clause gives to the House of Representatives specifically the exclusive power to decide whether to raise taxes, the courts cannot do so, even in a case that the courts otherwise may adjudicate.

Because this is an important issue, let me just address it in some detail.

I will refer to the judicial taxation issue of Missouri versus Jenkins. Can Federal courts order a tax increase? Some opponents of the balanced budget amendment have argued that the courts will use their remedial power to order that Congress raise taxes. In making that argument, some balanced budget amendment opponents rely on the Supreme Court's decision in Missouri versus Jenkins, a decision decided in 1990. There the Supreme Court held that a Federal district court has the remedial authority to order a local school district to raise taxes in order to ensure that a court-ordered school desegregation plan is carried into effect. The Jenkins case, however, supplies no authority for a Federal court to order Congress to raise taxes.

The short and simple answer is that the text of the Constitution treats the Federal Government and the States differently in that regard. The Supreme Court did not discuss the effect of the origination clause of the Constitution in the Jenkins case, and that clause is critical to any discussion of this issue. The origination clause of the Constitution provides that ''All bills for raising revenue shall originate in the House of Representatives, but the Senate may propose or concur with amendments, as on other bills.'' That provision is not a mere matter of etiquette. No, the Supreme Court has said that it is a substantive, judicially enforceable constitutional requirement. And we, in the Senate, are very diligent in making sure that we do not tread on the House's authority to do that. All of us understand that, and we are very, very concerned about observing it.

In United States versus Munoz-Flores, in 1990, the Supreme Court ruled that the courts can enforce the requirements of the origination clause. In that case, the Supreme Court rejected the argument that issues arising under the origination clause pose what are known as ''political questions,'' questions that are for the political branches, not the courts, to resolve.

The upshot of the Munoz-Flores decision is twofold. First, all bills for raising revenue must originate in the House of Representatives, or else they are unconstitutional. Second, and more importantly, the House of Representatives has plenary authority for the ''origination of revenue bills.'' No entity created by the Constitution other than the House of Representatives can originate a revenue bill or order that a revenue bill originate in the House. That includes the Federal courts. Since the Supreme Court is created by the Constitution and since the lower Federal courts are authorized by the Constitution, neither the Supreme Court nor any lower Federal court has the power to order the House to raise taxes or, in any other way, to order Federal taxes raised.

The same point can be made in another way. Under the political question doctrine, the Federal courts lack authority to adjudicate certain types of issues. The classic formulation of a ''political question'' case is set forth in Baker versus Carr in 1962. That formulation makes clear that a political question is an issue in part whose resolution is textually committed to a branch other than the courts. The issue whether taxes should be raised easily satisfies that standard, because the origination clause expressly vests that authority in the House of Representatives.

At the end of the day, the question whether taxes should be raised is quintessentially a political question, because the Constitution expressly vests in the House of Representatives the authority over that issue. Since the resolution and political question is beyond the demand of the courts, no Federal court could order Federal taxes to be raised as a remedy in any case. Accordingly, the Supreme Court's decision in the Jenkins case is irrelevant in this contest.

The principle that Federal courts cannot order taxes to be raised is consistent with the Framers of our Constitution. Let me quote from ''The Federalist Papers'' to make my point. James Madison wrote in Federalist No. 48: ''The legislative department alone has access to the pockets of the people.'' Similarly, Alexander Hamilton wrote the following about the courts in Federalist No. 78: ''The Judiciary has no influence over the sword or the purse, no direction either of the strength or of the wealth of the society, and can take no active resolution whatever.''

Those are important Founding Fathers' definable terms with regard to this particular issue. It is very important that we make this case, because there is a lot of misunderstanding on this constitutional issue.

Now, No. 3, an additional safeguard against judicial activism lies in article III of the Constitution and section 6 of Senate Joint Resolution 1. Both provisions give Congress power to limit the jurisdiction of the courts and the remedies courts may provide. The Supreme Court has made clear on numerous occasions under article III that Congress can limit the jurisdiction and remedial powers of the Federal court. Under section 6 of the balanced budget amendment, Congress may adopt statutory remedies and mechanisms for any purported budgetary shortfall such as sequestration, rescission, or the establishment of a contingency fund.

Pursuant to section 6, it is clear that Congress, if it finds it necessary, could limit the type of remedies a court may grant or limit a court's jurisdiction to prevent judicial overreaching. If the balanced budget amendment becomes law, and I hope it does, Congress will have the authority of both article III and section 6 of the balanced budget amendment in order to protect against unwarranted judicial action. Those two provisions help to ensure that Congress will retain the ultimate power to decide how Senate Joint Resolution 1 will be enforced and thereby prevents courts, whether Federal or State, from expanding their power beyond the limited role Congress assigns. These are issues that are important and have to be covered in the context of this debate.

Some opponents have argued it would force the President to impound funds; that is, to withhold from spending already appropriated funds such as Social Security payments in order to balance the books. President Clinton has made that argument on several occasions recently. He made it in his State of the Union Address and he made in his Saturday radio broadcast. Shame on him, having taught constitutional law. I shall now explain that argument is a canard.

Constitutional analysis, like all legal analysis, begins with the text of the

relevant law. Here we need to look to the text of Senate Joint Resolution 1. That part of the analysis is conclusive. Nothing in the text of Senate Joint Resolution 1 authorizes, or otherwise allows, for the impoundment of any appropriated funds. On the contrary, it imposes a duty on the President, the duty to transmit to Congress a proposed budget for each fiscal year in which total outlays do not exceed total receipts. The text of Senate Joint Resolution 1 is clear: It does not authorize the President to impound appropriated funds of any type.

We should now move on to the intent of the drafters of Senate Joint Resolution 1. Here, too, the answer is compelling. Neither I nor anyone else who supports Senate Joint Resolution 1 in this Chamber construes the balanced budget amendment as granting the President any authority to impound funds. That should end the debate.

Now, under section 6 of Senate Joint Resolution 1, Congress must mandate exactly what enforcement mechanism it wants, whether it be sequestration, rescission, the establishment of a contingency, or rainy day fund, or some other mechanism. The President must enforce whatever mechanism the Congress enacts so Congress has the power to prevent the President from impounding funds.

Indeed, even if Congress took no preventive action in that regard, the President could not impound funds if Senate Joint Resolution 1 became law. The reason why is that the Line Item Veto Act prevents the President from doing so. Let me explain why in three steps.

First, unlike Gaul, all Presidential powers can be divided into two parts. Expressed powers such as the pardon power, or implied powers, which consist of every constitutional power that the President can invoke, that is not expressly granted to him. That is the complete universe of Presidential powers according to the Constitution. So any power to impound funds must fit into one of these two categories.

Second, the Constitution grants the President the power to issue a pardon, but it does not grant him the power to impound funds. As a result, if the President has any impoundment power, that power can only come from the President's general executive power in article II, section 1, or in his duty in article II, section 3, to ''take care that the laws be faithfully executed.''

Third, how the President's impoundment power is classified is important, because Congress has greater authority to regulate the President's implied powers than his expressed powers. Congress has only very limited authority to regulate the President's exercise of an express power such as the pardon power of article I, section 2, clause 1. But Congress has greater room to regulate the President's general executive power. In fact, Congress may do so as long as Congress does not prevent the President from discharging his assigned responsibilities.

Indeed, Congress already has regulated in the area of the President's implied powers by giving the President a line-item veto power. We gave the President such authority last Congress. As a result, even if Congress does nothing more to enforce the balanced budget amendment, Congress already has limited the President's ability to impound funds. Why is that so? Well, it is because Congress told the President that the only budget authority that he can exercise is the line-item veto power. The Congress gave the President that power, rather than the impoundment power, only last year, and that judgment by the Congress is naturally entitled to respect. By so granting the line-item veto power, Congress impliedly denied to the President the power claimed by President Clinton to impound funds. The one power implies that the other does not exist.

Now, these are important issues, and I have to say they are issues that literally, I think, must be stated against the amendment of my friend from Massachusetts in this particular case.

Mr. President, let me just end where I began. There are only two ways to assert constitutional claims. One, you can sue the Government; two, you can raise constitutional claims as a defense. Simply put, the Kennedy amendment would not allow the latter. You could not raise a constitutional defense. Imagine, the Leviathan IRS can prosecute an innocent taxpayer and the taxpayer can't tell the court that the IRS is acting unconstitutionally. Can you imagine that? We just could not put that in the Constitution. It would be awful. The Kennedy amendment does exactly that. This, alone, is a good reason to table Senator KENNEDY's amendment.

Taxpayers have rights, too and, frankly, the current amendment, Senate Joint Resolution 1, the balanced budget amendment, protects those rights, whereby, the amendment of the distinguished Senator from Massachusetts does not.

Now, my friend from Massachusetts may not worry so much about some of the excessive powers of the IRS. I suspect he doesn't have too many worries there, compared to people who are scraping for a living every day of their lives. Be that as it may, that doesn't mean we should justifiably put this into the Constitution by amending the balanced budget amendment with this amendment.

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

The PRESIDING OFFICER. The Senator has 10 minutes 35 seconds.

Mr. LEAHY. How much time do the proponents of the amendment have?

The PRESIDING OFFICER. They have 8 seconds.

Mr. HATCH. Would the Senator like me to yield him some time?

Mr. LEAHY. Yes. Would the Senator yield me 2 minutes?

Mr. HATCH. I will yield the distinguished Senator 5 minutes.

Mr. LEAHY. I thank the Senator for his customary courtesy. Mr. President, someday somebody will sit down and write scholarly articles about this debate. I commend my friend from Utah, who has spent more time on the floor, I believe, than any other Senator. As the amendments have come from this side, it has been easier for me, as the Democratic floor manager, to leave and allow those proposing them to speak. He has stayed here throughout.

Mr. President, even though my friend from Utah and I have been on opposite sides on this issue, there have been extremely important arguments. Senators can disagree over the question of the three-fifths vote requirement, whether that changes our normal idea of how a legislative body should work, and on the issues of Social Security. Those arguments have been important. Capital budgets have been important. No matter how the final vote comes out—and I suspect it will be voted down—I think that the American public has had the opportunity to hear some aspects of a constitutional amendment debated that, as I have gone back and read various debates, have not come out previously with the same strength and clarity.

We have hundreds and hundreds and hundreds of constitutional amendments proposed every decade. We have, however, amended the Constitution only 17 times since the Bill of Rights. We are the most powerful democracy history has ever known—in fact, the most powerful country. To be able to be powerful and to be a democracy is an interesting juggling act, especially in a country as diverse and as large as the United States. I think one of the reasons is our Constitution. We have kept it simple, short, and very clear.

The genius of the Founders of this country is in our Constitution, in our Bill of Rights. But also the genius of it is that Congress, for over 200 years, has, for the most part, resisted the temptation to amend the Constitution. Now, we can, with courage, the men and women in this body and the other body, bring down deficits and balance the budget—with courage. We do not need a constitutional amendment to do it. I urge that we reject this constitutional amendment, having listened and considered the arguments made by both sides. Then we must settle down and dedicate ourselves as Members of the Senate, not as Republicans or Democrats, but as Members of the Senate, to get rid of unnecessary expenditures, to make sure that we have a tax code that is fair to all, to bring down the deficits and allow the world's largest and strongest economy to operate as it should.

Mr. President, I yield the floor.

Mr. KENNEDY. I yield back whatever time I have, Mr. President.

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah is recognized.

Mr. HATCH. Mr. President, is this vote set for a time certain?

The PRESIDING OFFICER. No, it is not.

Mr. HATCH. I yield the balance of my time.

I move to table the amendment, reluctantly, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion to table the Kennedy amendment.

The clerk will call the roll.

The legislative clerk called the roll.

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

The result was announced—yeas 61, nays 39, as follows:

[Rollcall Vote No. 20 Leg.]

YEAS—61

Abraham	Gorton	McConnell
Allard	Graham	Murkowski
Ashcroft	Gramm	Nickles
Bennett	Grams	Robb
Bond	Grassley	Roberts
Brownback	Gregg	Roth
Bryan	Hagel	Santorum
Burns	Harkin	Sessions
Campbell	Hatch	Shelby
Chafee	Helms	Smith, Bob
Coats	Hutchinson	Smith, Gordon H.
Cochran	Hutchison	Snowe
Collins	Inhofe	Specter
Coverdell	Jeffords	Stevens
Craig	Johnson	Thomas
D'Amato	Kempthorne	Thompson
DeWine	Kyl	Thurmond
Domenici	Lott	Warner
Enzi	Lugar	Wyden
Faircloth	Mack	
Frist	McCain	

NAYS—39

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

So the motion to lay on the table the amendment (No. 10) was agreed to.

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

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The majority leader.

Mr. LEAHY. Mr. President, the Senate is not in order.

The PRESIDING OFFICER. The Senate will be in order. The majority leader.

Mr. LOTT. Mr. President, I ask unanimous consent that the second and third vote in this voting sequence be reduced to 10 minutes in length.

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

Mr. LOTT. I urge our colleagues stay close to the floor because otherwise we will go into overtime. We had a couple of Senators, two or three this year, who have missed votes because they got away from the general area. We don't like that to happen. You have to stay close when we have a 10-minute count.

I yield the floor.

AMENDMENT NO. 13

The PRESIDING OFFICER. There is now 1 minute equally divided on the motion to table the Feingold amendment, numbered 13. Who yields time?

Mr. FEINGOLD addressed the Chair.

The PRESIDING OFFICER. There is 1 minute of debate on this motion. That minute cannot start until the Senate is in order.

The Senator from Wisconsin.

Mr. FEINGOLD. Mr. President, my amendment simply reduces from 7 to 3 the number of years the States have to ratify the balanced budget amendment.

Mr. BYRD. Mr. President, the Senate is not in order.

The PRESIDING OFFICER. The Senate is not in order. Will the Senators to my left remove their conversations from the floor. Will the Senators in the aisle take their conversations elsewhere.

The Senator from Wisconsin will start his 30 seconds over.

Mr. FEINGOLD. Mr. President, my amendment simply reduces from 7 to 3 the number of years that States have to ratify the balanced budget amendment, thereby ensuring that it will take effect no later than the year 2002. Under the current version of the balanced budget amendment, the balancing requirement could be delayed in its effectiveness until the year 2006.

I like to call this the fish-or-cut-bait amendment. This will ensure, whether we go with a balanced budget amendment or whether we simply do our job now as we should, that we get the job done by the year 2002.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, as my friend has said, I move to table this amendment. It unnecessarily reduces the time for ratification from 7 years to 3 years, even though that 7 years has been the proper form of ratification for many amendments since 1921.

However long it takes, we need the balanced budget amendment and there is no reason to reduce the time for the consideration by the States. So I hope our colleagues will table this amendment.

The PRESIDING OFFICER. All time has expired. The question is on the motion to table the Feingold amendment, amendment No. 13.

The yeas and nays have been ordered.

The clerk will call the roll.

The bill clerk called the roll.

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

The result was announced—yeas 69, nays 31, as follows:

[Rollcall Vote No. 21 Leg.]

YEAS—69

Abraham	Frist	McConnell
Allard	Gorton	Moseley-Braun
Ashcroft	Graham	Murkowski
Baucus	Gramm	Nickles
Bennett	Grams	Reid
Biden	Grassley	Robb
Bond	Gregg	Roberts
Breaux	Hagel	Roth
Brownback	Harkin	Santorum
Bryan	Hatch	Sessions
Burns	Helms	Shelby
Campbell	Hollings	Smith, Bob
Chafee	Hutchinson	Smith, Gordon H.
Coats	Hutchison	Snowe
Cochran	Inhofe	Specter
Collins	Jeffords	Stevens
Coverdell	Kempthorne	Thomas
Craig	Kohl	Thompson
D'Amato	Kyl	Thurmond
DeWine	Landrieu	Warner
Domenici	Lott	Wyden
Dorgan	Lugar	
Enzi	Mack	
Faircloth	McCain	

NAYS—31

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

The motion to lay on the table the amendment (No. 13) was agreed to.

Mr. HATCH. Mr. President, I move to reconsider the vote by which the motion to table was agreed to.

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 14

The PRESIDING OFFICER. There is now 1 minute equally divided on the motion to table the Feingold amendment No. 14.

Mr. FEINGOLD addressed the Chair.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. FEINGOLD. Mr. President, my amendment allows Congress to establish a surplus fund, a tool used in many States, in a far more responsible way to address emergencies than simply deficit spending or scrambling for offsets.

My amendment allows Congress to build up and use the savings needed to fund the bulge in Social Security benefits that will occur when the baby boomers retire. Without this amendment, there would be a three-fifths vote required in each House in order to access the Social Security fund. This is terribly important to current and future retirees, and my amendment does not require Congress to do the right thing, but at least allows Congress to live up to its commitment to the Social Security beneficiary.

Mr. LEAHY. Mr. President, the Senate is not in order.

The PRESIDING OFFICER. The Senator from Utah has the floor. The Senate will please come to order so he may be heard.

Mr. HATCH. I thank both my colleagues. Mr. President, I believe we

should reject this amendment. Senate Joint Resolution 1 will not only help us to stop borrowing, but will help us to protect any savings we may build up. So, I do not believe it is necessary to make it easier to spend our hard-earned savings.

Senate Joint Resolution 1 gives us appropriate flexibility with the appropriate protections.

Mr. President, have we moved to table this amendment yet?

The PRESIDING OFFICER. The motion has been made.

Mr. HATCH. Mr. President, I yield back the balance of my time. Are the yeas and nays ordered?

The PRESIDING OFFICER. The question occurs on agreeing to the motion to lay on the table the Feingold amendment No. 14. The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

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

The result was announced—yeas 60, nays 40, as follows:

[Rollcall Vote No. 22 Leg.]

YEAS—60

Abraham	Faircloth	Mack
Allard	Frist	McCain
Ashcroft	Gorton	McConnell
Bennett	Graham	Murkowski
Bond	Gramm	Nickles
Brownback	Grams	Robb
Bryan	Grassley	Roberts
Burns	Gregg	Roth
Byrd	Hagel	Santorum
Campbell	Hatch	Sessions
Chafee	Helms	Shelby
Coats	Hutchinson	Smith, Bob
Cochran	Hutchison	Smith, Gordon
Collins	Inhofe	Snowe
Coverdell	Jeffords	Specter
Craig	Kempthorne	Stevens
D'Amato	Kyl	Thomas
DeWine	Landrieu	Thompson
Domenici	Lott	Thurmond
Enzi	Lugar	Warner

NAYS—40

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

The motion to lay on the table the amendment (No. 14) was agreed to.

MOTION TO REFER

The PRESIDING OFFICER. Under the previous order, the question is on agreeing to the motion made by the Senator from Arkansas, [Mr. BUMPERS] to refer the resolution to the Senate Budget Committee with instructions. Debate on the motion is limited to 2 hours equally divided in the usual form.

Mr. BUMPERS. Mr. President, the Constitution of the United States was adopted in 1789. It will be 208 years old this coming summer. In that period of time, there have been more than 11,000 efforts to amend the Constitution. And to the eternal credit of this body and the American people, only 18 times out of the 11,000 efforts have we amended the Constitution. Of those 11,000 efforts, I consider the amendment pending before this body to be the most unworkable, unenforceable, totally political amendment ever to be foisted off on an unsuspecting public.

I have never heard as many questions answered with ''I don't know.'' Who will enforce this amendment? ''I don't know.'' What will be the courts' role, if any, in enforcing this amendment? ''I don't know.'' And I am speaking for the authors of this amendment when I say, ''I don't know,'' because they don't know. Who has standing to sue? ''I don't know.''

Who has standing to challenge the assumptions that we make that we have a balanced budget? ''I don't know.'' It reminds me of Abbott and Costello and ''Who's on First?'' And if we have a crisis—a crisis that is not yet a military conflict, but may become one, such as previous to World War II, such as previous to Desert Storm, the constitutional amendment says you have to have 60 votes to unbalance the budget, even though you are headed, almost certainly, toward war with another nation.

There are no provisions in here to take care of a national emergency that is not yet a military conflict or a declared war. It has been said time and time again, but it bears repeating, that we have had 5 declared wars in the history of this country and about 200 military conflicts.

Can the courts raise taxes? ''I don't know.'' Can the courts demand a cut in spending? ''I don't know.'' If a court orders Congress to raise taxes or cut spending and we don't do it and can't get the 60 votes to do it, what happens then? ''I don't know.'' Can the Chief Justice of the Supreme Court go to the White House and say to the President, ''Mr. President, you are charged with executing and enforcing the laws of this Nation. We have ordered Congress to do a number of things in order to come into compliance with this constitutional amendment to balance the budget, and they have refused to do it. Now, do your duty, Mr. President, send the troops over that Hill and hold bayonets to the backs of the Members until they do it.'' Now, that is far-fetched, of course. But how many times have I heard the lamentation on this floor about the courts being intrusive and intervening where they have no right to intervene?

Yet, Mr. President, this is a popular amendment. It is popular in my State and across the country. But it is not as popular as it was 2 years ago. It has gone from about 74 percent to 57 percent approval. If you ask about Social Security it only has a 27 percent approval rating. I don't like casting unpopular votes. I have cast my share of them.

I think one of the reasons the polls have consistently showed this to be popular is twofold. First, when you ask people whether you favor a constitutional amendment to balance the budget, all they hear is ''balance the budget,'' and everybody is for that. Perhaps, there is another group who, like most of us, revere the majesty of the words in the Constitution and they think because of our reverence for the Constitution throughout history, if you just put it in the Constitution, it will be self-fulfilling. It would never occur to them how sloppily crafted this constitutional amendment is. It would never occur to them that it isn't even constitutional language. It would never occur to them that nobody can tell you how it's going to work.

This amendment makes a mockery of that great, revered document. Now, some people who find this to be very popular and highly desirable may take umbrage at some of the things I say. But I have voted against it every time I ever had a chance. But do you know something else? I think one of the things that has stood me in pretty good stead with the people of Arkansas is that I have always trusted them. When I voted for the Panama Canal treaties—and I can tell you, nothing even comes close to that as far as unpopular votes are concerned—I survived it, and it was a correct vote. Very few people in this body would reverse that vote.

Put your trust in the people, vote against this constitutional amendment, and don't have any fear of going home and talking sense to your people. They understand it. Not one person on that side of the aisle is going to vote against this nonsense—not one. How I miss the towering courage of Mark Hatfield in this body.

Let me tell you what the Bumpers-Feingold amendment does, Mr. President. It is simple, ingenious in its simplicity, and it does the same thing the constitutional amendment would do but it takes Social Security off budget. We commit the constitutional amendment, Senate Joint Resolution 1, to the Budget Committee, with instructions to come back here with amendments to the Budget Act almost identical to this amendment.

Did you know, Mr. President, that you can't raise taxes and you can't raise spending, and you can't appropriate money until the budget resolution has passed this body? If you want to change the Budget Act, if you amend the Budget Act, do you know what you have to do? You have to get 60 votes. We passed that with 51 votes. Strangely enough, you can pass something with 51 votes that later requires 61 votes to undo. What does our amendment do? As I say, it refers Senate Joint Resolution 1 to the Budget Committee and instructs them to amend the Budget Act with language almost identical to the constitutional amendment requiring that outlays shall not exceed receipts by 2002.

The constitutional amendment says you may or may not enforce the amendment. I just got through covering that. The Bumpers/Feingold

amendment would prohibit Congress from passing a budget resolution if it isn't balanced. As I just said, there is a prohibition on the passage of appropriations bills and tax bills without 60 votes.

The constitutional amendment says there is no requirement for action until 2002 at the earliest. Do you know what that means? The drafters of this amendment put a provision in there saying 2002. So we have 5 free years. We don't have to do anything for 5 years. Those are freebies. Most people here will have left or will have been reelected in 5 years.

Our amendment says you have to do it now. Face the music now, not 5 years from now. Come up with a budget that puts us on a glidepath to a balanced budget by the year 2002. If the States have not ratified this constitutional amendment by the year 2002, you have maybe 2 more free years where you don't have to do anything.

Our amendment says start now and balance the budget by the year 2002.

Do you know what else it does? It leaves our precious Constitution intact. The best part of this is that it does not trivialize the Constitution. The mandate for a balanced budget is just as tough under this amendment as it is in the constitutional amendment.

Mr. President, in 1993 every single Republican voted against a proposal to reduce the deficit dramatically. The Omnibus Budget Reconciliation bill of 1993 required the Vice President's vote because the vote was tied 50–50. And among the 50 who opposed it, every Republican and about 6 Democrats. At the time we voted the deficit for 1996 was projected to be $290 billion. As a result of that bill, and the economic growth that came from the confidence that gave, the people of this country knew that we were serious about deficit reduction, instead of a $290 billion deficit it was $107 billion.

Mr. President, what is going on now? The President submitted a budget to us which I am not very fond of. I do not like to say that. He is a good friend and has been for 20 years. But I would not have come with a single tax cut, not one. And I would have submitted a budget that took the deficit from $107 billion in 1996 to well under $100 billion in 1997 to show the American people that we were on a glidepath to a balanced budget and we were not going to back off.

The President's tax cuts are not nearly, though, as big as the Republicans. The Republican tax proposal will cost $193 billion. Think of that, $193 billion over the next 5 years. And $508 billion over the next 10 years.

Do you know where they get $100 billion to offset that? Medicare. Do you think that I am going to go home and tell the people in my State that I voted to cut Medicare $100 billion so we could have a $193 billion tax cut the next 5 years? I would need a saliva test to do that. I am not going to do it, and I am not going to vote for these tax cuts. It is the height of irresponsibility to come in here and talk about cutting taxes $193 billion taking $100 billion out of the hides of people on Medicare. They say, ''Oh. We are not going to raise the Medicare premiums.'' No. But if you think you can cut Medicare $100 billion and not cut services to the elderly, go talk to the HMO's and tell them how they are going to make up for the $100 billion we are going to cut. They are going to cut services. That is how they are going to do it, while we have a capital gains tax that cost $33 billion over the next 5 years and $130 billion over the next 10 years. Where does it go?—67 percent of it to the richest 1 percent of the people in this country. ''Oh, yes. We are going to cut taxes and balance the budget.''

Mr. President, it is so cynical to get a serious, somber look on one's face and talk about deficits and propose cutting taxes by such massive amounts. We tried that in 1981.

Mr. President, I don't know how many books there are on that stack down there. I have been looking at that for the last week ever since we started debating this constitutional amendment. Do you know what I would recommend? I wish the distinguished floor manager would take that stack of books and weigh them, put them on a scale and weigh them. And then take the national debt of $5.2 trillion, and divide those books up according to how much deficit by poundage came under Ronald Reagan and George Bush administrations. That would make an interesting thing for the film companies to film. I promise you that when you take Ronald Reagan's and George Bush's deficit over the 12-year period that they served this country and you are going to get about 1 foot for all the Democrats and about 6 feet just for that 12-year period. Do you know why? Because we had the massive tax cut in 1981. And I say once again. I was one of the 11 Senators that said, ''You pass that and you are going to create deficits big enough to choke a mule.'' Eleven out of 100 stood up and called that 1981 bill what it was, the most irresponsible thing we have ever done in the history of the U.S. Senate. You talk about mortgaging the future of our children. That is when we went from $1 trillion in debt that we had accumulated over 200 years to $4 trillion in 12 years; a little over $4 trillion. Think of it. Talk about irresponsibility.

So I have spent an inordinate amount of my time since I have been in the Senate trying to do sensible things to balance the budget. I keep getting run over by a Mack truck called ''tax cuts'' and ''spending increases,'' particularly in defense. You just do not get a somber look on your face while you are voting for the biggest spending increases of the year called tax cuts.

Just yesterday the Center for Budget Priorities came out and strongly recommended that the U.S. Congress forget tax cuts until we balance the budget. There is all the time in the world to cut taxes. Republicans say, ''Well, that is a liberal organization.'' Warren Rudman, with whom we all served 12 years in the U.S. Senate, is no liberal. He heads up the Concord Coalition, and the Concord Coalition jumped on that study yesterday like a chicken after a June bug, and said, ''We agree with every word of it.'' All you have to have is a little common sense to agree with it. You have to understand. You can't cut taxes and balance the budget.

I have only voted for one constitutional amendment during my tenure in the Senate. And sometimes that is unpopular back home. But do you know something else? I talk about trusting the people. Do you know what the people want more than anything else today? Like Coca-Cola says, they want ''The real thing.'' They want to know how you really feel. Stand up for what you believe. Harry Truman told me one time, ''Just tell them the truth.'' So that is what I did.

There is not even anything in the constitutional amendment that would allow Congress to raise spending with less than 60 votes for a depression. I am a Depression child, one of the few left in the Senate. I am telling you we did not have anything. We did not have paved streets; we did not have gas; we did not have electricity; we did not have health care. As I said, we had a two-holer out back when most people just had a one-holer. We did not have anything.

As I have said before in this Chamber, I had pneumonia twice before I was 6 years old and all my parents could do was pray. Today that hardly requires much more than a visit to the doctor's office. And people tell me how they hate Government. They do not hate antibiotics. They do not hate measles and mumps serums and vaccines.

They do not hate the fact that we live a lot longer than we used to because we pour a lot of money into NIH to do medical research for us. They do not hate being able to go on an airplane anyplace in the United States in 4 hours. They do not mind driving down a highway with six lanes on it going 60 to 80 miles an hour. They do not hate REA that gave electricity to rural America. They do not hate the Department of Agriculture for water and sewer systems for rural people. And I could stand here for another hour listing things Government has done, and not a person in this body would vote to undo a single one, although they were highly controversial at the time. Don't you remember how doctors hated Medicare? I can remember how Social Security was a socialist program and TVA was a Communist-inspired program.

Under the constitutional amendment if we face another depression—it is certainly not out of the realm of reason—you have to get 60 votes here to start putting people back to work like Franklin Roosevelt did. All of the rich people in the country said Franklin Roosevelt was the worst thing that

ever happened in this country because he was borrowing money to help people. Do you know what he said? ''It is an unfortunate human failing that a full pocketbook often groans more loudly than an empty stomach.''

Hurricane Hugo, where we spent $5 billion in South Carolina alone; the earthquake in California, for which the cost is incalculable and will continue to be, it would take 60 votes—41 obstreperous, really fundamentally conservative people could say, no, we are not going to unbalance the budget because there are a bunch of people living and dying who should not have been living over a fault anyway.

Mr. President, this amendment has the potential for creating more mischief, more chaos in this country than anything we have ever considered. And even though it looks as though my side has the necessary 34 votes to keep this thing from going into our precious Constitution, I want to keep talking about it until the American people understand what is at stake.

Mr. FEINGOLD. Mr. President, I rise to support the amendment offered by the senior Senator from Arkansas [Mr. BUMPERS].

Over the years, Senator BUMPERS has been the Senate's most consistent voice for deficit reduction, and I am pleased to join him in this effort.

As has been described, this amendment provides a statutory alternative to the constitutional approach, and as such, it has significant advantages.

First and foremost, the Bumpers alternative would require immediate action.

As I have noted on several occasions, the lengthy and uncertain ratification process allows Congress to hide behind years and years of delay.

The only enforcement mechanism explicitly provided in the proposed constitutional amendment, the supermajority voting requirements, would not kick in for years.

If Congress acted today to pass the proposed constitutional amendment, slow ratification could delay enforcement for another 9 years—until 2006.

Even without delays in ratification—even if the States ratified the amendment tomorrow—the constitutional amendment would have no effect until 2002 at the very earliest.

By contrast, this alternative would require action this year.

We would face the supermajority thresholds as part of this year's budget resolution, every year before 2002 and thereafter.

This approach makes good sense.

It removes the excuse for inaction by implementing budget discipline right away.

It also does so without the troubling potential for unintended consequences inherent in the proposed constitutional amendment.

There have been lengthy debates over the precise powers the proposed constitutional language confers on the President and the courts.

To any disinterested observer, these issues are clearly open to different interpretation, and at the very least there is doubt as to the precise role the courts and the President will have in the brave new world of the balanced budget amendment.

The statutory approach contains none of these risks.

There is no unintended domino effect on the constitutional powers of the executive and judicial branches.

In this regard, I strongly urge my colleagues who support a constitutional approach to consider the statutory alternative as a prudent first step, and I invite them to consider the Line-Item Veto Act that we passed last session as a model.

Wisely, Congress opted to pursue a statutory approach instead of a constitutional path in that case.

Although I would have opposed changing our Constitution to provide line-item veto authority, I supported the statutory Line-Item Veto Act crafted here by my good friend the Senator from Arizona and others.

Opting for a statutory approach allows Congress to evaluate the new line-item veto authority carefully and to offer refinements when appropriate.

In fact, I am pleased to have established a line-item veto watchdog group for just this purpose, and look forward to taking an active role in watching the development of this new statutory authority.

I have also offered legislation to strengthen the Line-Item Veto Act with regard to wasteful special interest spending in the tax code.

As we know, changes to our Constitution are not so easily refined.

As the supporters of prohibition discovered, we can only react to the unintended consequences of a constitutional amendment by amending the Constitution again.

Of course, supporters of the constitutional amendment are unwilling to admit there may be unintended consequences, especially with regard to the role of the courts and the President.

They generally remain silent about those issues.

While they are unwilling to confer specific enforcement powers explicitly to the executive or judicial branches, they also refuse to acknowledge the implied presence of enforcement powers in the proposed constitutional amendment.

The amendment offered by my good friend from Arkansas adopts the same supermajority threshold approach used in the proposed constitutional amendment; it would take effect right away, not 9 years from now; and, it avoids the monumental uncertainties inherent in any constitutional change.

I congratulate my good friend Senator BUMPERS for offering this sensible alternative, and I urge my colleagues to support it.

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

Mr. BUMPERS. I yield the floor and retain the remainder of my time.

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I do not intend to take much time on this amendment. My colleague deserves certainly some response.

This motion would alter the constitutional amendment and make it into a statute. I do not know if we need to say anything more because we are debating a constitutional amendment.

The distinguished Senator from Arkansas is very ingenious. He is a great friend of mine; I appreciate him, but this motion very simply says, ''We do not need a constitutional amendment to balance the budget.''

Now, I insist that we do when you look at these 28 years of unbalanced budgets. I hate it when people come in here and say, ''Let's just do it.'' I have heard that throughout this debate. ''Let's just do it''—the very same people who basically have never done it the whole time they have been in the Senate. That is not quite true because Senator BYRD was here, I suspect Senator KENNEDY was here and maybe some others. Frankly, many of these people, I have never heard them ask: Where is the money coming from to pay for these spending programs?

This motion says we can guarantee the fiscal discipline necessary to make balanced budgets the rule rather than the exception simply by enacting statutory changes to the Budget Act.

As I said, I do not doubt that my colleague believes this and that he is sincere in offering this motion, but I must say that the proponents of this motion are dead wrong.

The problem with this motion is that it puts us back to square one, forcing us to rely, as we have done time and time again, on statutory fixes to ensure fiscal responsibility. We have been down this road before, Mr. President, and the result is right here in front of me—28 unbalanced budgets in a row; 58 of the last 66 are unbalanced budgets. Just think about it. In the last 66 years, 58 years we have had an unbalanced budget. In every one of those years we have had people say, ''Let's just do it. Let's do it statutorily.''

Well, the time has come for a solution strong enough that it cannot be evaded for short-term gain. We need a constitutional requirement to balance the budget.

The sad history of legislative attempts to balance the budget shows the need for a constitutional amendment requiring a balanced budget. Since 1978, we have adopted, as I have said many times on this floor, no fewer than five major statutory balanced budget mechanisms such as the distinguished Senator is putting forth here sincerely, none of which have worked. We have 28 straight years of unbalanced budgets. We have had statutory regimes for each of those 28 years, none of which has worked. Since 1978, we have adopted those five statutory regimes which

promised faithfully to bring about balanced budgets. Every one of those failed and they failed miserably. Time after time, statutory fixes have met with increased deficits. Here it is. It does not take any brains, you do not have to be a rocket scientist to realize we do not have the guts to do what is right under the status quo, without the balanced budget amendment.

Some people do not think we even have the guts to pass a balanced budget amendment. Well, in fact, nearly 85 percent of our current national debt has accumulated while Congress has operated within statutory budget frameworks designed to assure balanced budgets. The fact is we can never solve these problems through the enactment of mere statutes because statutes do not purport to correct the structural bias in favor of deficit spending. Statutes are only able to deal with temporary crises.

Let's take a look at just a few of those statutes.

In 1978, my first year here in the U.S. Senate, we passed the Revenue Act of 1978, P.L. 95–600. Section 3 of that act was straightforward. It stated: ''As a matter of national policy * * * the Federal budget should be balanced in fiscal years 1982 and 1983.'' But, if you look carefully, Mr. President, you will find the Federal budgets for each of those years in this stack here in front of me. In 1982 we ran a budget deficit of $128 billion. In 1983, our deficit was even higher at $208 billion. This while it was our national policy—as declared in statute enacted by Congress and agreed to by the President—that our budget should be balanced in each of those years.

Now that is not to say that Congress was not serious about reaching balance. I was here and I can tell you that we were. In fact, later in that same year, 1978, we adopted an amendment offered by our former colleague Harry Byrd, Jr., from Virginia, which stated that ''[b]eginning with fiscal year 1981, the total budget outlays of the Federal Government shall not exceed its receipts.'' Two years later, in 1980, we modified the Byrd amendment to state that ''[t]he Congress reaffirms its commitment that beginning with fiscal year 1981, the total outlays of the Federal Government shall not exceed its receipts.'' You will notice that in reaffirming our commitment to a balanced budget we changed the language from saying that Congress ''should'' balance the budget to say that Congress ''shall'' balance the budget in 1981. And yet, Mr. President, the Federal budget for 1981 is also one of the 28 unbalanced budgets in this stack here in front of me.

This again, is not to say that Congress' commitment to balancing the budget was in any way diminished. In 1982 we revised the Byrd amendment once again to say that ''Congress reaffirms its commitment that budget outlays of the United States Government for a fiscal year may be not more than the receipts of the Government for that year.'' And yet, Mr. President, the budget for every year since that commitment was enacted into statute is in this stack of unbalanced budgets.

Perhaps the most well-known statute designed to ensure a balanced Federal budget was the Gramm–Rudman-Hollings Act of 1985. Many of my colleagues remember this act well. It was touted as the deficit reduction package to end all deficit reduction packages. I supported that legislation, and I held out great hope that it would actually bring us into balance for what then would have been the first time in 22 years.

Much like the motion before us, the Gramm–Rudman-Hollings Act amended the Budget Act to provide for a point of order in the House or Senate against any budget resolution that exceeded certain deficit reduction targets. These declining deficit targets were to put us on the so-called glidepath to balance in fiscal year 1991. A point of order under this legislation could only be waived by a supermajority vote. The singular exception was for circumstances in which a declaration of war was in effect.

That's pretty tough language, Mr. President. And it was backed up by an automatic sequestration mechanism to ensure that the deficit reduction targets were met. That's why so many of my colleagues and I supported the Gramm–Rudman-Hollings Act. And yet that law, Mr. President—the deficit reduction package to end all deficit reduction packages—was slowly amended, circumvented, and the requirement for a balanced budget finally eliminated altogether just one year prior to the year in which we were to achieve balance under the original act. As a result, we have now amassed an additional $1.3 trillion in debt since 1991.

Mr. President, the Bumpers motion offers no better promises than the Gramm–Rudman-Hollings Act. Ultimately, as experience has shown, no Congress can bind a succeeding Congress by simple statute. Any balanced budget statute can be repealed, in whole or in part, by the simple expedient of adopting a new statute. Statutory limitations remain effective only as long as no majority coalition forms to overcome such statutory constraints.

Now I know my colleagues have argued that things are different now than they were under Gramm–Rudman-Hollings. They cite too the fact that we have experienced four consecutive years of deficit reduction and that Congress and the President agree that the budget must be balanced. But the American people have plenty of reasons to be skeptical of this argument.

Under the budget the President has proposed, we will have deficits larger than last year's budget deficit until the year 2000. Only in the last 2 years of his budget do we see the dramatic cuts necessary to bring us into balance. In other words, a full 75 percent of the deficit reduction planned in President Clinton's budget comes in the 2 years after he leaves office. Is this the sort of glide path to a balanced budget that is envisioned by section 1 of the Bumpers motion?

This to me, Mr. President, is not the sort of commitment to balancing the budget that would support the argument that we can rely on yet another statutory fix to bring about long-term fiscal restraint. The reliability of this commitment is only undercut by the Bumpers amendment, which would remove Social Security receipts and outlays from the balanced budget calculation—something the President himself has said cannot be done while still bringing the budget into balance in the year 2002, as is promised by the Bumpers amendment. The truth is that the Bumpers amendment promises only more of the same—year after year of machinations and evasion of responsibility to those of the future generations who must pay for our lack of budgetary discipline.

Now, Mr. President, I do not wish to lay blame on Democrats or Republicans for the fiscal indiscretions of the past. The simple fact is that the problems in our current budget are not the fault of any political party, they are inherent in our political system. As our late colleague Paul Tsongas once said:

> [I]f you ask yourself why are these deficits always voted, the answer is very simple; that is, there are a lot of votes in deficit spending. . . . []The balanced-budget amendment is simply a recognition of that human behavior. It is not so much an indictment of the people who are here now as it is simply a reflection this is how people act in a democracy. They act to maximize their votes, and in this particular case, the addiction to deficit spending takes them in a particular direction.''

The fact is that we can never solve these problems through the enactment of mere statutes because statutes do not purport to correct this structural bias in favor of deficit spending. Statutes are only intended to deal with a temporary crisis. The deficit spending bias is not a problem that has lasted, nor will last, only a short number of years. It is a long-term problem that is deeply ingrained in our budget process. It demands a permanent constitutional solution.

Senate Joint Resolution 1 is such a solution. It is a balanced, carefully crafted measure that has been developed in a bicameral, bipartisan fashion. I hope my colleagues will join with me in opposing the maintenance of the status quo and that they will vote to table the Bumpers motion.

Having said that, I do get just a little uptight about people coming in here and blaming everything on Reagan and Bush. Yesterday, I had a debate with the distinguished Senator from West Virginia who tried to blame all of these deficits on Ronald Reagan and George Bush because during their tenure the deficits went up, and blame them on the tax cuts.

I put into the RECORD yesterday evidence that those tax cuts, those marginal tax rate reductions actually resulted in a 40-percent, approximately 40-percent, increase in revenues because they stimulated the economy for 8 years, they contributed more jobs, more opportunity; 21 million jobs were created. They stimulated opportunity. They did a lot of things to get this country going again. But let me point out that during that whole time Reagan was in the Presidency, the Democrats controlled the House of Representatives. Tip O'Neil was in charge during the first part of that. And they kept spending.

Now, I am not just blaming Democrats. There were liberal Republicans who helped them to do that as well. And there is no question that the increase in military spending did put pressures on the budget and that President Reagan was the one who did that. There is no question about that.

But, on the other hand, if you think of the trillions of dollars that were saved because the Iron Curtain now has fallen and freedom has been restored to the East bloc countries, it probably was worth it.

The blame should be on everybody. I don't think people should demagog this issue and stand up and say, ''It is Reagan and Bush who did this thing to us and created this $5.3 trillion debt.'' No, it is a continual, 58-out-of-66-year unbalanced spending process, during which time the Congress was controlled by liberals—let me put it that way, rather than Democrats and Republicans—liberals who spent us into bankruptcy. And during all of the Reagan years, the liberals did the same thing.

Had we not continued to spend, those marginal tax cuts would have brought us out of the difficulties, except with the possible exception, at least as I view it, of the increases in the defense budget.

The PRESIDING OFFICER. The Senator from Arkansas.

Mr. BUMPERS. Mr. President, I will be very brief. A lot of people want to catch airplanes, and I do not want to discommode anybody. But let me close by saying the Senator from Utah has suggested that the constitutional amendment would be so much more effective than my amendment.

But I ask the Senator from Utah, what provision in the constitutional amendment, Senate Joint Resolution 1, is more effective than mine? We cannot ignore the Budget Act; 60 votes is 60 votes, whether you are trying to get 60 votes to comply with the constitutional amendment or whether you are trying to get 60 votes to comply with the Budget Act, as my amendment will provide.

Let me tell you what one of the differences is. Under my amendment, if you cannot get 60 votes, you shut the Government down and you wait for the people here to come to their senses and get the Government open, as we did the year before last. Under the constitutional amendment, if you cannot get the 60 votes, you shut the Government down and go down to the Supreme Court and wait for them to act. Not only is that time-consuming and outrageous, but you are also cutting the three branches of the Government of the United States to two.

One of the reasons we have this big deficit, which everybody laments—let me say it once more—is because we talk one way and act another. We talk about how we are going to get the budget balanced, and how terrible it is that we cannot get our spending under control, and then we turn around and cut taxes by massive amounts. It is the worst form of snake oil I have ever seen in my life, yet we keep buying into it. We bought into it in 1981, and now we are getting ready to buy into it again.

All I am saying is, under my amendment, you have everything you have under the constitutional amendment. It is just as tough to comply with—really, tougher—and we exclude Social Security.

I guess everything is said that needs to be said, so I will close and let the Senator from Utah move to table my amendment.

Mr. HATCH. Mr. President, how much time remains?

The PRESIDING OFFICER (Mr. BENNETT). The Senator from Utah has 47 minutes, and the Senator from Arkansas has 29 minutes.

Mr. HATCH. I am prepared to yield back my time.

Mr. BUMPERS. I yield back the remainder of my time.

The PRESIDING OFFICER. All time has been yielded back.

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

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion to lay on the table the motion to refer. The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from Oklahoma [Mr. INHOFE] is necessarily absent.

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

The result was announced—yeas 65, nays 34, as follows:

[Rollcall Vote No. 23 Leg.]

YEAS—65

Abraham	Chafee	Gorton
Allard	Coats	Graham
Ashcroft	Cochran	Gramm
Baucus	Collins	Grams
Bennett	Coverdell	Grassley
Biden	Craig	Gregg
Bingaman	D'Amato	Hagel
Bond	DeWine	Harkin
Brownback	Domenici	Hatch
Bryan	Enzi	Helms
Burns	Faircloth	Hutchinson
Campbell	Frist	Hutchison
Jeffords	Murkowski	Smith, Gordon H.
Kempthorne	Nickles	Snowe
Kohl	Reid	Specter
Kyl	Robb	Stevens
Lott	Roberts	Thomas
Lugar	Roth	Thompson
Mack	Santorum	Thurmond
McCain	Sessions	Warner
McConnell	Shelby	Wyden
Moseley-Braun	Smith, Bob	

NAYS—34

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

NOT VOTING—1

Inhofe

The motion to lay on the table the motion to refer was agreed to.

AMENDMENTS NOS. 9 AND 18 WITHDRAWN

Mr. BROWNBACK. Mr. President, I ask unanimous consent amendments No. 9 and No. 18 be withdrawn.

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

The PRESIDING OFFICER. The majority leader.

ORDER OF PROCEDURE

Mr. LOTT. Mr. President, I ask unanimous consent the Senator from Delaware be allowed to proceed as in morning business for as long as he may need. We are waiting for the Democratic leader. We may perhaps interrupt for some agreements when he arrives.

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

The Senator from Delaware.

MEDICARE

Mr. ROTH. Mr. President, I rise today to draw my colleagues' attention to an opinion piece by Senator Bob Dole entitled ''Medicare: Let's Fix It'' that was in last Sunday's Washington Post.

It is my hope that all my Senate colleagues will read this compelling op-ed. Senator Dole has worked on and observed the Medicare Program for many years, and there is much wisdom to be gleaned from his commentary. He is right—we must address Medicare's problems with real solutions while giving seniors more choices.

On a personal note, I want to thank my friend for his praise of legislation, S. 341, recently introduced by Senator MOYNIHAN and myself, to establish a bipartisan commission on the long-term solvency problems in the Medicare Program.

As Senator Dole notes, ''a bipartisan commission can recommend sound long-term solutions,'' as evidenced by the 1983 Social Security Commission.

Mr. President, the proposed national bipartisan commission on the Future of Medicare would be this type of commission.