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Senate

The Senate met at 11 a.m., and was called to order by the President pro tempore [Mr. THURMOND].

The PRESIDENT pro tempore. Today's prayer will be offered by Rev. Msgr. Michael J. Long, of St. Agnes Parish, Sellersville, PA. He is a guest of Senator SANTORUM of Pennsylvania.

PRAYER

The guest Chaplain, Rev. Msgr. Michael J. Long, of St. Agnes Parish, offered the following prayer:

All powerful and ever-living God, in You we live and move and have our being. We ask You to look with favor on the Members of this Senate. Give them wisdom, strength, and vision in their deliberations. We humbly admit that we cannot discharge our duties without Your supernatural help. Our own natural abilities, unaided by Your assistance, are inadequate as we struggle to bring peace and justice throughout our beloved country and our world. You are the source of all the good that is in each one of us. Give us the insight and inspiration to meet the challenges that we face.

O God, Maker and Lover of peace, to know You is to live, to serve You is to reign. All our faith is in Your saving help. We offer this day to praise and glorify You in all we say and do. Amen.

The PRESIDENT pro tempore. The able Senator from Pennsylvania [Mr. SANTORUM].

WELCOMING REV. MSGR. MICHAEL J. LONG

Mr. SANTORUM. Mr. President, I join you in welcoming a constituent of mine and a great minister to the people of Pennsylvania in Sellersville and throughout the Philadelphia diocese, Monsignor Long. I welcome him here today to the U.S. Senate and thank him for his outstanding service, now 43 years, to the diocese of Philadelphia and 14 years at St. Agnes Parish in Sellersville.

I appreciate, also, your moving and wonderful prayer. Thank you, and enjoy the day here in the U.S. Senate.

RECOGNITION OF THE MAJORITY LEADER

The PRESIDENT pro tempore. The able majority leader of the U.S. Senate, Mr. LOTT, is recognized.

SCHEDULE

Mr. LOTT. Mr. President, today the Senate will be immediately resuming consideration of Senate Joint Resolution 1, the constitutional amendment requiring a balanced budget. By unanimous consent, Senator Graham of Florida will be recognized to debate his amendment. Following 90 minutes of debate on Senator GRAHAM's amendment, a vote will occur on or in relation to the Graham amendment at approximately 12:30 p.m.

Following that vote, Senator FEINGOLD will be recognized to debate on one of his amendments, and we will continue debate on several pending amendments with those votes stacked this afternoon. I do not believe we have an exact time agreed to yet when that will occur. We will notify the Members, when we have the 12:30 vote, when the next vote will actually occur.

Following those stacked votes, we will turn to Senator BUMPERS' amendment, with additional rollcall votes expected during today's session. We will also, hopefully, get a final agreement on all the amendments that may be offered, and then we will be able to give the Members some information about what to expect, if anything, on Friday and also on Monday.

Even though we had some disappointment yesterday with one of the Senators who indicated he would be voting for this amendment last year and now has indicated he will not, I encourage my colleagues to remember the vote has not been taken yet, and I still am hopeful that we are going to find a way to have the number of votes, the 67, that is required to pass this constitutional amendment for a balanced budget. We are still working on it, and I am looking forward to working with my colleagues on both sides of the aisle in this effort.

I thank the Senator from Florida. We will be look forward to hearing his comments on this amendment.

I yield the floor.

PRIVILEGE OF THE FLOOR—SENATE JOINT RESOLUTION 1

The PRESIDENT pro tempore. The distinguished Senator from Florida.

Mr. GRAHAM. Mr. President, I ask unanimous consent Ms. Barbara Ramey, a fellow working in my office, and Mr. David Hawkins, an intern, be permitted the privilege of the floor during debate this morning on the amendment which I offered.

The PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. GRAHAM. I thank the Chair.

BALANCED BUDGET AMENDMENT TO THE CONSTITUTION

The PRESIDENT pro tempore. The clerk will report the pending business.

The assistant legislative clerk read as follows:

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

The Senate resumed consideration of the joint resolution.

Pending:

Hollings-Specter-Bryan amendment No. 9, to add a provision proposing an amendment to the Constitution of the United States relating to contributions and expenditures intended to affect elections.

Leahy (for Kennedy) amendment No. 10, to provide that only Congress shall have authority to enforce the provisions of the balanced budget constitutional amendment, unless Congress passes legislation specifically granting enforcement authority to the President or State or Federal courts.

Graham-Robb amendment No. 7, to strike the limitation on debt held by the public.

Bumpers motion to refer the joint resolution to the Committee on the Budget with instructions to report back forthwith with Bumpers-Feingold amendment No. 12, in the nature of a substitute.

Feingold amendment No. 13, to require approval of the amendment to the Constitution within 3 years after the date of its submission to the States for ratification.

Feingold amendment No. 14, to permit the use of an accumulated surplus to balance the budget during any fiscal year.

Conrad (for Rockefeller) amendment No. 18, to establish that Medicare outlays shall not be reduced in excess of the amount necessary to preserve the solvency of the Medicare Health Insurance Trust Fund.

AMENDMENT NO. 7

The PRESIDING OFFICER (Mr. HUTCHINSON). The clerk will report the pending amendment.

The assistant legislative clerk read as follows:

An amendment (No. 7), previously proposed by the Senator from Florida [Mr. GRAHAM] for himself and Mr. ROBB:

On page 2, line 17, strike ''held by the public''.

Mr. GRAHAM addressed the Chair.

The PRESIDING OFFICER. On this amendment, there are 90 minutes equally divided. The Senator from Florida.

Mr. GRAHAM. Mr. President, I am an original cosponsor of the balanced budget amendment. I support the amendment. It is an important measure, both to maintain the momentum toward a balanced budget and to assure that, once we have reached a point of balance, we will stay there. For far too long, our Nation has been living on borrowed money, the credit cards of our children and our grandchildren. Our children and grandchildren deserve better. They deserve to inherit a nation whose fiscal house is in order.

Today, every child in America is saddled with a debt at birth of more than $20,000. That debt is growing. I believe strongly that the long-term economic future of our country is in jeopardy. It is in jeopardy unless we are able to arrest this mountain of annual deficits and the cumulative national debt. Arresting this increase is the only way to assure fiscal restraint over the future decades.

This administration deserves a great deal of credit. When President Clinton came into office, he was faced with the largest annual deficit in the history of America, $290 billion. Over the past 4 years, that deficit has been reduced to $107 billion—a very significant accomplishment. However, a balanced budget amendment to the Constitution can guarantee that future Presidents and future Congresses cannot repeat the mistakes of recent history. We cannot do as we have done in the last 20 years, add $4.5 trillion to our national debt.

I believe, therefore, that in its current form, the balanced budget amendment is clearly superior to the alternative, which is the status quo that has served us so poorly over the last two decades.

That said, I want to point out that the balanced budget amendment as it is currently written is, in my judgment, flawed. Section 2 of the balanced budget amendment—and I ask my colleagues who are here today, and those who might be watching on television, if they would take this opportunity to read section 2—section 2 purports to control the limit on debt held by the public. But I believe that the complex policy implications of this section make it one of the least understood provisions of this constitutional amendment. Without a doubt, section 2 is the key to ensuring the enforcement of the balanced budget amendment. It has been referred to as the safety lock of the balanced budget amendment. But it simply does not go far enough to control the growth of the Federal debt, and it denies us some important policy objectives which could be accomplished by the adoption of the amendment which I offer.

I would like to first read the precise language of section 2. Section 2 states:

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

That is, verbatim, the language of section 2. My amendment would strike four words from section 2. Those words are ''held by the public,'' therefore, leaving the amendment as originally written except ''the limit of debt shall not be increased unless three-fifths of the whole number.

These four words constitute less than a sentence within the balanced budget amendment. They carry with them a number of important policy implications.

Under the proposed amendment, three-fifths of the whole number of each House would be needed to raise the debt ceiling as it relates only—and I emphasize only—to that debt held by the public, not to the total Federal debt.

This provision will assist in enforcing the balanced budget amendment by creating a voting requirement of 40 percent plus 1 to increase the debt. Simply that 41 Senators will refuse to go along with the proposal to raise the debt held by the public should serve as a powerful enforcement mechanism, but it does not go far enough to halt the growth of the Federal debt.

Mr. President, let me provide a little background regarding the distinction between debt held by the public, the language that is currently in section 2, and the total national debt, which would be the application of section 2 if my amendment were adopted.

The total national debt, sometimes referred to as debt subject to limit, is divided into two categories: debt held by the public and debt that the Government owes itself.

On this chart, the blue section is that portion of our national debt which is held by the public. Today, it is approximately $3.9 trillion. Debt held by the public is that debt which is issued to individuals, corporations, State or local government, the Federal Reserve System, foreign governments, and central banks. All of that constitutes debt held by the public which today represents $3.9 trillion.

Debt the Government owes to itself is the total of all trust fund surpluses, including those of Social Security, Medicare, and Federal retirement programs. Under current law, surpluses in these trust funds must be invested in Federal Government securities. Social Security is the largest of these, currently accounting for $638 billion of trust fund balances.

Mr. President, the red component of this chart represents the amount of the total Federal debt which is owed to the Social Security trust fund. Today, it is $638 billion. The green represents the borrowing of the Federal Government from all other Federal trust funds. That number has been, over time, approximately $900 billion. And I have depicted it on this chart, for purposes of display, as a consistent $900 billion.

The total of the Federal Government debt that is not held by the public—that is, that debt which would not be subject to constraint under this amendment—is currently $1.6 trillion.

The Congressional Budget Office projects that the total Federal debt, all debt owed by the Federal Government, will be $5.4 trillion at the end of this fiscal year.

I am not surprised that there is some confusion about this arcane subject of the allocation of the total Federal debt among various categories. That confusion has permeated the committee that reported this bill, it has permeated Members of the executive branch and the media. Let me just cite some examples of that misunderstanding.

Mr. President, on our desks, each Senator has a copy of the report of the Judiciary Committee when it recommended favorably the adoption of the balanced budget amendment. Let me quote from the committee report on page 20. It states:

To run a deficit, the Federal Government must borrow funds to cover its obligations. Section 2 removes the borrowing power from the Government, unless three-fifths of the total membership of both Houses vote to raise the debt limit.

Wrong. This statement is inaccurate, because section 2 does not limit the Government's ability to borrow. In fact, as this chart indicates, under current law and the requirement that the Federal Government borrow all of the surpluses that are available from these trust funds, by the midpoint of the second decade of the 21st century, the Federal Government will have an indebtedness of $8.5 trillion, and everything above the blue line can be encumbered by a majority vote of the Congress, without the protection of the three-fifths vote. This is not speculation, this is ordained by the laws that we have passed and the absence of a three-fifths vote for all of the debt above the blue line. The Government will borrow almost $2 trillion of additional indebtedness between the year 2002 and 2019.

But it is not just our own Judiciary Committee that misunderstands the application of section 2. The Secretary of the Treasury, Robert Rubin, blurred the distinction in an opinion column he wrote in the Washington Post on February 2 of this year, where he said:

Finally, as we saw in 1995 and 1996, the history of debt limit shows that raising the statutory debt limit is never an easy process. Yet, right now it is possible to raise the debt limit with a simple majority vote in both Houses. By requiring a three-fifths supermajority vote, the amendment would make it far more difficult.

Again, the Secretary fails to point out the distinction that the three-fifths vote only applies to that portion of the debt which is held by the public, not to that growing portion of debt which is going to be represented by borrowings from the surpluses of the Federal trust funds, especially that enormous trust fund of Social Security.

Even more, the news media has led the American people to believe that this amendment will provide a safety lock on all future borrowings. The February 21, 1997, edition of the Washington Post, for example, indicated that ''a three-fifths majority of both Houses would be required to waive the requirement and to raise the national debt limit.''

Wrong. The only three-fifths requirement would be to that dwindling portion of the national debt which is represented by that which we borrow from the general public and would not apply to the indebtedness which we borrow, essentially, from ourselves through the Federal surpluses in trust funds.

Mr. President, I believe that we should deliver to the American people what the American people expect. They expect an amendment that would provide for control on the total national debt. That is what we have led them to believe we are considering.

Probably one of the most commonly used examples of our runaway national debt is the debt clock. It is not on the floor today, but it was in the Judiciary Committee on the day that I testified in favor of the balanced budget amendment.

What are the numbers on that clock? The numbers on that clock are not the numbers that reflect debt held by the public. The numbers on that clock are those that are consistent with the national debt of $5.4 trillion. That is the debt that the American people have been led by us to believe that we are trying to control.

I believe that in order to avoid further adding to the skepticism and cynicism of the American people, we ought to give them an amendment which is consistent with what they believe we are providing to them because that is what we have told them we are trying to accomplish.

Unless there is a compelling reason to do otherwise, we should pass a balanced budget amendment that meets the expectations of the American people and places a constraint on total national debt.

It will be to those who wish to use their portion of the time to oppose my amendment to explain what that compelling national interest is that says that we should only limit one segment of the national debt and should let the other balloon to an $8.5 trillion national debt within the lifetime of most of the people who are in this room and listening to this on television.

I find no such compelling reason. I find, to the contrary, powerful reasons to deliver an amendment that the people expect. Not only would such an amendment be consistent with our representations and the expectations of the American people, this amendment would have some powerful policy benefits.

First, it would have the effect of avoiding another massive increase in national debt. Adopting the amendment that I offer would say that as of the effective date, the year 2002, that rather than have the then $6.7 trillion continue to grow to $8.5 trillion, that $6.7 trillion—an enormous, staggering national debt as it is—at least would become the plateau for our national debt, that we would not allow further growth in our total debt without a three-fifths vote of the Congress to do so. I believe that would be a tremendous benefit to the American people.

I would like to talk about some of the other policy implications that are involved in subjecting total national debt, as opposed to only that component of debt held by the public, to the three-fifths requirement.

Applying the three-fifths restraint to debt held by the public is going to create an unintended consequence. That unintended consequence is that there will be an incentive to borrow from these trust funds because you can borrow from the trust funds by a majority vote. It takes a three-fifths vote to issue debt to the public. Therefore, the likelihood is that we will see, as the chart indicates, a dramatic expansion in the proportion of our national debt which is held by these trust funds.

Those who are concerned about the long-term security of Social Security ought to be very concerned when they see that not only is the national debt rising to $8.5 trillion, and every one of those trillion dollars will require in the range of $65 to $75 billion a year in debt service, but also they will see that we have not accomplished what the Greenspan commission in 1983 contemplated would be accomplished in terms of the use of the Social Security surpluses.

Let me just divert for a moment to go back to where we were in the late 1970's and the early 1980's.

Up until that time Social Security was a pay-as-you-go system. Every year the Congress would look at the amount of money that was likely to be required to meet obligations in the next year, would examine how much was coming into the trust fund and, if there was a gap, would appropriate what was required in order to meet that year's obligations for Social Security.

There was recognition that as our demographics were changing and larger and larger numbers of people were coming into the Social Security system and they were living longer and therefore utilizing the system for more years, that that pay-as-you-go system was a certain railroad track to disaster.

So in 1983, under President Reagan, a commission was established to look at the long-term well-being of Social Security. That commission recommended that the United States adopt a system, which is used by most other industrialized countries which have a Social Security System, that rather than have a pay-as-you-go program, we would have a program in which the Social Security System would consciously and purposefully operate in a surplus position during those years when there was relatively less demand on the system so that when the demand increased, there would be a pool of resources in order to meet those additional obligations of the Federal Government to America's retirees.

This all occurred at a time when we were still operating in the national tradition of relatively modest national debt. As recently as 1980, we had a national debt of less than $1 trillion. That was the environment in which the Greenspan commission was making its recommendations.

So what did they expect we would do with all of these surpluses that their proposal was directing be accumulated in order to have a pool of resources to meet future demands? What they contemplated was that the Social Security surpluses would be used to buy down the debt held by the public. In fact, their calculations in the early 1980's were that we would have virtually eliminated the debt held by the public, the surpluses in Social Security would have been so great.

What they failed to anticipate was the fact that we would lose all this tradition of fiscal discipline in the country and would go into an unprecedented period of a binge of deficits that would escalate our national debt from less than $1 trillion to today's $5.4 trillion.

My amendment will return us to what was the expectation of the Greenspan commission, albeit not to the extent that they had contemplated because conditions are different in 1997 than they were in 1983.

What we will be doing with this amendment is we will be not adding to the national debt through the additions to the Social Security surplus, but rather will be buying down the debt which is currently held by the public so that when we reach the point that we will start making substantial payments to the baby-boomer wave of retirees, we will be operating from a

dramatically lower level of total national debt and an equally dramatically lower level of debt held by the public.

If you are concerned about the security of the Social Security System, if you want to say, ''I want to have a balanced budget amendment, but I don't want to have a balanced budget amendment that is excessively complex which is written in statutory terms rather than constitutional terms,'' my friends, I would suggest that the way to accomplish all of those objectives and to do what the commission that gave us our current Social Security System contemplated is to adopt my amendment and direct that these Social Security surpluses will not be used as the basis of new national debt but rather will be used as the basis for substitution for the debt that is currently held by the public.

In my opinion, and representing a State which has proportionately more Social Security beneficiaries than any other State in the Nation, this is the way to protect Social Security at the same time we protect our grandchildren against an enormous layering on of additional debt.

Mr. President, the amendment that I have offered would eliminate the current amendment's incentive to excessively borrow from Social Security because all national debt, whether it is held by the general public or held from internal accounts such as Social Security, will be treated equally in terms of the three-fifths requirement in order to exceed the level of debt that existed in the year 2002.

Mr. President, I recognize that this is a somewhat difficult subject matter, however, it is critical subject matter if we are to accomplish our objective of providing to the American people what they believe they are getting from this balanced budget amendment, to save the American people almost $2 trillion in debt between now and the year 2019.

I point out, Mr. President, that all of the numbers I have used in these charts are numbers that have been provided by the Congressional Budget Office. They are the numbers that we as Members of Congress are obligated to use in our budget analysis in our budgetary decisions.

Mr. President, I believe, in summary, that there are five reasons why we should adopt this amendment. It is honest. It limits debt as it has been defined historically. It is the same definition of debt that we use when we have to periodically pass resolutions to raise the national debt. We are raising the total national debt limit, not just that component that is held by the public. We will be doing what the American people think they have directed us to do.

Second, it is fiscally conservative. It will prevent adding another $2 trillion to the national debt in the next 25 years. In fact, this amendment is the most conservative of any amendment which is currently being considered by the Senate.

Third, it is simple. It does not add complex additional theories to the balanced budget amendment. It deletes words which may appear to be benign but which, in my opinion, have serious negative policy implications when we only restrict the national debt to that held by the public.

Fourth, it will have a very positive impact on the Nation's economy. It will release the $2 trillion, which under the amendment, the balanced budget amendment section 2 language that is currently before the Senate, will be used to fund additional national debt, will become $2 trillion that can be used to invest in the private sector, contribute to lower interest rates, stimulating economy growth and more jobs.

When the Social Security surpluses are used to buy down the debt held by the public, less private capital will be tied up in Government borrowing. Those private investment resources will be redirected to the private sector, creating positive economic growth.

Fifth, it will protect the Social Security from those in Congress who would exploit its unique standing as the easiest source of capital from which to borrow. Social Security trust funds will be treated equally and fairly under my amendment with all other sources of borrowing by the Federal Government, without giving any program any special standing in the Constitution and not creating the perverse incentive to go first to the Social Security trust fund for borrowing.

Mr. President, again, I recognize we are dealing with an arcane, frequently misunderstood section of the balanced budget amendment. From the Judiciary Committee report, to opinion columns, to leaders in the administration, there is confusion about what section 2 means and what it will do. But there is no excuse for this Senate to misunderstand what this provision means. Our whole purpose in the constitutional scheme is to be that part of the Government that can deliberate, can consider complex matters and reach resolutions that are in the national interest. Let us not allow this opportunity to pass us by.

We have the chance here to save almost $2 trillion in financial obligations for our children and grandchildren. To release that $2 trillion to help create the jobs for our children and grandchildren, to preserve the Social Security trust fund, and to give the American people what they have a right to expect from this balanced budget amendment, a restriction on the total national debt that they will be required to pay. I urge the adoption of this amendment.

Mr. THOMAS. Mr. President, I think maybe it is appropriate that the pages brought to the floor after we went into session what is essentially 26 years of unbalanced budgets. I think this is a great symbolic pile of stuff. We ought to remember that is what this whole thing is about.

We hear people continuing to say, ''Well, let's just do it.'' We have not just done it, and here is the evidence.

I yield such time as he may consume to the Senator from Idaho.

Mr. CRAIG. I thank my colleague from Wyoming for yielding. Let me say at the outset of my comments that I am pleased to join with Senator GRAHAM today in a discussion about an area of the balanced budget amendment that he admits is not necessarily viewed with the kind of critical nature that other parts of the amendment have been. The Senator from Florida has, in a very sincere way, taken a close look at this and tried to offer an alternative that maybe on the outset bears some attractiveness. I was approached by the Senator and in good faith took a detailed look at his amendment, and my reaction in the next few minutes are as follows.

I do not question the sincerity at all of the Senator from Florida for what he is attempting to do here, to assure that the trust funds of Social Security are held solvent from his perspective and yet to deal with the issue of debt. Our amendment is straightforward.

Section 1 contains the balanced budget rule, total outlays should not exceed total receipts except by a three-fifths vote. Section 6 allows good-faith use of reasonable estimates in planning a balanced budget. In Senate Joint Resolution 1 the numbers match up. The balanced budget rule and the enforcement of that rule correspond with each other.

Over the years, as we have worked to refine this amendment, and I must say that the amendment that we have before the Senate has been well over a decade in refinement so that if we enshrine this in the Constitution we believe it will work in a total sense, while I say all of that, section 2 requires a three-fifths vote to increase the limit on debt held by the public. If the Congress balanced the budget every year, the debt held by the public will not increase. That is, in reality, the balanced budget. That is what the public would expect that is what we would accomplish by the language of the amendment.

Therefore, freezing the limit on debt held by the public directly enforces honest and accurate estimates to produce a balanced budget. That, of course, is another one of our goals, to engage the executive and the legislative branches, the Office of Management and Budget with the Congressional Budget Office and the appropriate budget members to make as accurate as possible the projections that produce the revenue to offset the expenditures.

The relationship among deficit debt and trust funds is important here and this is the crux of the Graham amendment. Debt held by public is Federal debt owed to debtors outside Government. When an official trust fund runs a surplus, by law it must invest the surplus funds in Treasury securities.

For example, the Treasury is required to borrow those funds—money moving inside Government, not outside Government.

These interagency or intragovernmental borrowings, plus debt held by public, money we borrow from the public with the selling of Treasury notes, is included in gross debt. If the budget is balanced, debt held by public does not change. If the budget is balanced and all trust funds continue to run a surplus, then the gross debt goes up. By the very nature of the money in those surpluses, of those trust funds being loaned to the Government, so the Government general fund, if you will, owes. Therefore, it has debt, debt back to the trust funds. If the budget is balanced and the trust funds run a deficit, the gross debt goes down. That is the frustration of the Graham amendment.

Under the Graham amendment the numbers, in my opinion, do not match up. The Graham amendment places a section 2 limit on debt held by the public with a limit on gross debt. That is the crux of his amendment, changing public to gross. Congress can only comply with the section 1 balanced budget rule and still be significantly out of compliance with section 2 limits. That creates the schism, if you will, in the amendment to the Constitution, in my opinion, if the Graham amendment were to become a part of it.

Therefore, if Congress precisely balances the budget, then it must either repeatedly muster a three-fifths vote to allow the trust funds to run a surplus, or to avoid a three-fifths vote on the gross debt limit raid and reduce the trust fund surpluses. That would be the ultimate outcome in my opinion of how Congress would have to react to the Graham amendment if it were to become a part.

If Congress does not want to reduce the trust fund balance, then it must run large surpluses by cutting spending in the nontrust fund part of the budget or by raising taxes.

For the years 2002 to 2007, that means up to $435 billion in additional cuts or taxes, in my opinion. Long-term impact of the Graham amendment on debt and deficit would then be as follows. It would be politically difficult for Congress to continually outperform the balanced budget rule in section 1, that is, run large surpluses. It may be much easier to muster the three-fifths vote to increase the gross debt limit and say it is a ''technicality,'' a ''necessity,'' to allow trust funds to run a surplus; therefore, there will be upward pressure on debt.

Senator GRAHAM is right, this is complicated. That is why not a lot of people focus on it. But I disagree with him not only on the frustration of it, but on the outcome of it. Without a section 2 limit on debt held by the public that directly enforces honest and accurate budget estimates, Congress and the President will continue to face political pressure to use the rosy scenario estimates; therefore, it will still be easier to deficit spend.

One of the things I believe the amendment that we have introduced on the floor forces is as accurate and as honest estimates as you can get, because if, in fact, you produce a deficit, the ability to move that deficit in the debt is a tough vote, and it really forces the fiscal constraints and the tough decisions that we want our balanced budget amendment to the Constitution to cause this Congress to deal with.

Even if the gross debt limit under the Graham amendment remains frozen at $6.7 trillion, as his chart would suggest, it still leaves room to add an additional $2.9 trillion to debt held by the public between the years 2019 and 2029.

My argument is simply this, Mr. President, and I will take the Graham chart and simply extend the line, because this is discretionary on the part of the Congress. It is arguable, by his figures, that there is a decline, but the ceiling remains upward. I know the Congress, and I think Senator GRAHAM knows the Congress. If they have room to spend, oh, boy, do they love to spend. That $2.9 trillion gives them that opportunity, to actually increase real debt. So what would happen down here in debt held by the public, potentially, under this? This line turns upward. This category of debt held by the public versus the green category, which is debt held by other trusts, and the red, of course, is the Social Security trust funds, that line begins to move up.

In the year 2029, the Graham amendment allows a $6.7 trillion debt, while our amendment as proposed, Senate Joint Resolution 1, allows a $5.8 trillion debt—almost a trillion dollars less. I figure that a trillion dollars is a lot of money, especially when it's borrowed, it's debt, and you are paying interest on it. That is one of the great frustrations we are dealing with today—that finally debt has caught up with us. We used to argue that debt was a good stimulus to the economy and, oh, well, the public owed it to themselves, it was no big deal. But, today, it is the second largest item in the Federal budget, soon to shove them all out if we continue this kind of debt creation under deficit spending.

This is why I have to oppose the Graham amendment, because I don't believe that it gets us to where we want to go. I think I now understand what the Senator from Florida tries to do, and it is not a criticism of what he tries to do; it is an observation of what he tries to do. Where I think its weaknesses rest—because, if you talk gross debt but you don't talk debt held by the public, it changes the whole dynamics of the process, as I understand it, and in this outyear period. Somebody might say, ''Senator CRAIG, why are you worried about 2029?'' We are talking about the 28th amendment to the Constitution. We are talking about a process that we have been well over a decade in trying to create, and it will not be changed easily, or overnight, if it is in error or if the Graham amendment were to become part of it and then we were to find it creates this kind of glitch. We would struggle for decades trying to solve that, with the potential of increasing the debt structure by well over a trillion dollars. The last I checked, interest on a debt of a trillion dollars is significant—probably around $50 billion a year.

That is the reality of the amendment, as I see it, and certainly I stand to be corrected. Of course, he knows his amendment a great deal better than I. I tried to study it because I knew the Senator was sincere in his effort to deal with this in a legitimate way and at the same time recognize, as we all want to recognize, the protection of the trust funds, which now help finance the debt structure of this country.

I believe, if you keep it within the unified budget, if you recognize all debt, then you create the kind of honesty that you must play with in a sincere and direct way and force both the executive branch of our Government and the legislative branch of our Government, in each and every budget cycle, to produce the kind of honest estimates that drive the budget process to produce actual spending at or near balance on an annualized basis.

With those comments, I stand in opposition to the Graham amendment and certainly urge my colleagues to oppose it.

I yield the floor.

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

The PRESIDING OFFICER. The minority has 16 minutes 46 seconds remaining.

Mr. GRAHAM. I yield myself such time as is necessary.

The PRESIDING OFFICER. The Senator from Florida is recognized.

Mr. GRAHAM. Mr. President, since this debate started, I have received a letter from the National Committee to Preserve Social Security and Medicare, dated today, which I would like to submit for the RECORD. To quote one paragraph:

> S.J. Res. 1 requires a three-fifths, supermajority vote to increase ''public'' borrowing, but since it does not require such Congressional approval for trust fund borrowing, it provides a powerful incentive for the increased use of trust fund borrowing as a means to pay for general fund programs. We support your effort to correct this definition of ''debt'' as a needed improvement.

The letter is signed by Martha McSteen, president of the National Committee to Preserve National Security and Medicare.

I ask unanimous consent that the letter be printed in the RECORD immediately after my remarks.

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

(See exhibit 1.)

Mr. GRAHAM. Mr. President, the Senator from Idaho raised several points. I want to focus on three.

First, he raises the issue of, are we adding a speculative element into this balanced budget amendment by applying debt to the total debt rather than

to only that component of the national debt which is held by the public. I suggest quite to the contrary—that it is exactly the definition that we are using which this Congress has written into the statute. It is the definition that we use when we are required to assess whether we are about to exceed the national debt. So it is the definition that is not speculative. It is the definition that we are accustomed to using. It is the definition that the American people understand, in part because we have helped them understand it by using things like the debt clock, which focuses on the total national debt.

Finally, and most fundamentally, the debt is not a projected amount, it is a fiscal reality. It is, as anyone knows who has ever balanced a family budget or dealt with the books of a business, the last number on the page after you have looked at what your revenues are, what your expenses are, and you can see whether you are in a profit or a debt situation. That is the circumstance that the U.S. Government is in when we look at that bottom number and say, oh, my goodness, we have just added another $107 billion of deficit in the fiscal year 1997 that will then become an additional layer on top of our national debt.

Second, the Senator from Idaho raises a very significant and interesting issue. That is what are we going to do after the year 2019.

I might say the chart that the Senator has could be replicated precisely on the chart of the balanced budget amendment as submitted. That is the amendment that only restricts debt held by the public. This constitutional amendment and the constitutional amendment with my amendment, all are going to face the very difficult issue of what do you do when you reach that point sometime in the second decade of the 21st century when, instead of running a surplus in the Social Security system, as we are today, and will for the next 20 or so years, we suddenly start to run big deficits as all of those people born after 1945 begin to retire? It is their turn to become eligible for Social Security. And enormous deficits are going to be run in the Social Security system.

Those are not speculative or imaginative. They are exactly what the 1983 Social Security Commission contemplated. Add surpluses during periods of relatively limited numbers of Americans benefiting by Social Security so that we can meet the obligations when we are in a demographic period with large numbers of retirees.

So what are we going to do when we get out here to around the year 2019? Frankly, there is no free lunch. What we have been doing is, we have been borrowing from the general fund from Social Security. Social Security does not have a great bank filled up with stocks and bonds, or real estate deeds, or other assets that have a market value. What it has is IOU's from the General Treasury.

Beginning in about the year 2019, the Social Security beneficiaries are going to be knocking on the door of that vault, saying, ''We want to redeem these IOU's.'' What are we going to do? We basically have three choices.

We have the choice of reducing spending every place else in the Federal Government sufficient to release the money to be able to redeem the IOU's and pay off this obligation. We can raise taxes sufficiently to do the same thing. Or, we can begin again to borrow from the public, in order to be able to substitute borrowing from the public, in order to meet the borrowing that we have been doing for the last three decades from the Social Security trust fund.

If somebody has another alternative to those three, or some combination, I would suggest that they might want to identify them.

What is going to be the difference between where we will be under the bill as it is introduced and where we will be under the bill as my amendment would have it? First, instead of having to repay, dealing with a Federal deficit at $8.5 trillion, we are going to be approximately $2 trillion less in debt. If you had a big obligation coming, wouldn't you feel better about your ability to meet it if you were relatively less indebted than if you were more indebted? Clearly, the Nation will be better off, better positioned to meet its obligations, if it starts from a lower position of national debt.

Under the amendment that we have, when we come to this period in the year 2019, and we elect not to cut spending and we don't want to raise taxes as the only two ways to meet this obligation to meet the payment of the IOU's that the General Treasury will owe to the Social Security trust fund, but we would like to consider borrowing from the public, what is our position going to be? For two decades we will have been operating under a constitutional amendment that says you can borrow from these trust funds by a majority vote, which is relatively not easy but past history has shown is not politically a Mount Everest to climb. But we are going to say you have to have a three-fifths vote to borrow from the public.

So we are going to find ourselves in about 20 years facing the prospect of having to, for the first time, use that three-fifths vote requirement to increase the debt held by the public, having ballooned the debt by a majority vote from our borrowings from these other trust funds. And I would suggest that is not going to be a very happy time to be a Member of the U.S. Congress.

I think that what we are doing today is leaving to our successors—not in the far distant future but just about 20 years from now—an extremely indebted America with a constitutional structure that is going to make it very difficult for us to meet our obligations to those Social Security beneficiaries.

My amendment would have us enter that period with substantially less indebtedness. We would have been applying this three-fifths vote to all borrowing, not just to that held by the public.

But the most significant difference of how we will be in the year 2019 goes to the very first point that the Senator from Idaho talked about. It is not correct to say that the only thing you can do with Social Security surpluses is borrow. If that is the case, then clearly we are locked into this chart. Clearly, we are looking like a plane that is on automatic pilot and all the members of the cockpit have bailed out.

We know where we are heading. We are heading to an $8.5 trillion national debt, if, in fact, we are required to borrow all of the money from these trust funds and add it to the national debt. That is not what the Greenspan commission contemplated in 1983. That is not what my amendment would allow us to do; that is, instead of adding to the national debt, why don't we take those surpluses and pay off some of the debt we have already so we don't have to continually place our children and grandchildren under a greater and greater burden? But, rather, we can face the day when we will have to make substantial repayments of these Social Security IOU's. This is the best possible fiscal condition for America, and with our debt to the general public at the lowest level that our fiscal condition over the next two decades will allow us to be.

So, Mr. President, we do have an alternative. We are not obligated to have $8.5 trillion in debt. We can make that debt clock tick in the future as we are representing. We can make it a means by which we can protect our future, not enslave our future.

Mr. President, just to summarize again with greater brevity why I think this amendment is critical, it is honest. It does what the American people expect us to do. It is fiscally conservative. It saves almost $2 trillion in borrowing. It is simple and direct. It is not complicated. It will have a positive impact on our Nation's economy by releasing $2 trillion into the private sector. The only real long-term salvation of Social Security—and our retirement systems, whether they are Government or otherwise—is a strong American economy. And if we can put $2 trillion more into that private economy, we will be making a fundamental contribution to the strength of our Social Security and all of our other retirement programs.

We would avoid the temptation, as the National Committee for the Preservation of Social Security and Medicare points out, to use the Social Security system as the cash cow, as the point of first preference for borrowing for the Federal Government by saying we are not going to establish a different standard for borrowing from the Social Security fund than we apply to borrowing from the general public. Both would be subject to a supermajority of

three-fifths of the Members of the Congress in order to increase the total national debt.

So, Mr. President, for those reasons, I respectfully suggest the analysis of the Senator from Idaho is not an appropriate projection of the consequences of this amendment and that, rather, the honesty, the reduction of the total national debt and the protection of Social Security by, among other things, stimulating a higher rate of economic growth in America are the goals which are sought and I believe will be accomplished by the adoption of this amendment.

I thank the Chair.

EXHIBIT 1

NATIONAL COMMITTEE TO PRESERVE SOCIAL SECURITY AND MEDICARE,
Washington, DC, February 26, 1997.

DEAR SENATOR GRAHAM: On behalf of its five and a half million members and supporters, the National Committee to Preserve Social Security and Medicare wishes to express our support for your proposed amendment to S.J. Res. 1, a resolution to amend the Constitution to require a balanced federal budget. Among our concerns about S.J. Res. 1 is that it would change the current definition of federal debt. Your proposed amendment would change the current language ''debt held by the public'' in S.J. Res. 1, to include all federal debt, particularly that which the government holds for itself—i.e. the federal trust funds. We appreciate your leadership on this important issue.

As drafted, S.J. Res. 1 contains a provision which intentionally removes Social Security trust fund holdings of U.S. securities from the definition of ''public debt,'' even though the trust fund money was borrowed to finance the deficit. This change would permit the Treasury to increase its debt by borrowing from the trust funds without obtaining the Congressional approval required to borrow money from other sources.

S.J. Res. 1 requires a three-fifths, supermajority vote to increase ''public'' borrowing, but since it does not require such Congressional approval for trust fund borrowing, it provides a powerful incentive for the increased use of trust fund borrowing as a means to pay for general fund programs. We support your effort to correct this definition of ''debt'' as a needed improvement.

Sincerely,

MARTHA A. MCSTEEN,
President.

Mr. THOMAS. Mr. President, I yield as much time as he may use to the Senator from Idaho.

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

Mr. THOMAS. Mr. President, how much time remains on our side?

The PRESIDING OFFICER. The majority has 31 minutes and 50 seconds, the minority 3 minutes and 20 seconds.

Mr. THOMAS. I thank the Chair.

Mr. CRAIG. I thank the Chair.

I will not take much more time to discuss the Graham amendment other than the disagreement that he and I might have as relates to the ceiling that is created, and while I would argue that what he wishes to accomplish is impossible to do, and that is a buy down of debt, unless by this whole character of activity here from now until the year 2019 we have changed the whole culture of political pressure in this country and interest group activity, my guess is that the pressure to spend money, if the system would allow it, beyond the balance because of the limit on the debt ceiling, would be great.

He and I recognize the tremendously laudable goal of trying to buy down debt, and I think Americans are all asking us, well, if you in fact can get the budget balanced in the timeframe that you are suggesting, does that mean then we are going to get rid of some of this debt, because interest on debt is going to be even higher by the year 2002 than it is today because we are still creating debt. Even under our scenario, as conservative as it is and as damning as this administration thinks it is, we are still going to be creating lots of debt out there because we are still deficit spending. Although ours is declining and the President's is in reality increasing, we are still creating debt. So I do not blame the Senator from Florida for wanting to find a time in which we can buy down debt. I would like to do the same. But his is not an obligation to do that; his is only an opportunity to do that. And therein lies the difference in why I think what we do today is the right thing by not amending the proposed amendment.

Social Security is a concern of all of ours and it has been, and you have heard a lot of debate in the Chamber in the last 3 weeks about Social Security. It is a social contract and a financial obligation that we hold to the senior citizens of our country. None of us want to deny it or walk away from it. We want to deal with it responsibly and straightforward and we want to create the fiscal environment in which we can honor that debt.

I am one of those who believes that if we fail to balance the budget, there will come a day when we cannot honor that debt. We should not suffer the illusion that a bankrupt government can send checks out. Tragically enough, there are some Social Security recipients who believe that somehow they will be held whole while the rest of the world collapses, the world of a Government that is so badly in debt that it cannot honor its commitments or, more importantly, at a time when the public would simply reject it.

Gross interest payments this year reached $344 billion, fiscal year 1996. The debt grows, the mandatory interest payments grow. Here are the figures. Social Security, we spent $347 billion on Social Security this year; gross interest on debt, $344 billion; defense, $266 billion; all the domestic discretionary programs, $248 billion; Medicare, $191 billion; Medicaid, $92 billion; net interest on debt held by public, a subset of gross interest or gross debt, the kind that the Senator from Florida was talking about, $241 billion.

The reality of what we do is damning the future of this country, damning the future of the obligations we hold to the seniors of our communities if we fail in balancing the budget.

The President, I believe, 12 times in his State of the Union said he was going to produce a balanced budget, and we all held our breath and did not criticize and waited for that budget to come to the Hill. And, voila, the words did not meet the fine print—$120 billion of deficit straight lined until the end of his term and then, guess what? He leaves office and says: Now it is time to do the heavy lifting. You either have to take away the tax cuts I have given or cut spending dramatically.

I am sorry, Mr. President. Once again your rhetoric just does not match up to your performance, and that budget does not work, and you have not dealt with a balanced budget in the honest and straightforward way that the Senator from Florida or the Senator from Idaho or the majority of Congress or a supermajority of the American people want us to deal with it. And that is a declining deficit structure to the year 2002 when all of this comes into balance.

The reality of the obligation to Social Security does not go away, but the honesty of budgeting materializes, and because we have created a unified budget the real pressure to cut so that we can honor the debt obligation to Social Security is there. We must get our fiscal house in order. We cannot, nor should we ever, allow interest on gross debt to become the greatest single expenditure in the Federal budget, and yet we are clearly headed in that direction. By most reasonable budget guesstimates we have missed that by only $3 billion this year.

I know what any good business person or any good analyst of a business would say if the figures were like this in a business. They would say you are out of business; you are bankrupt; you cannot service your debt; you cannot afford to operate in this manner. However, because we can create debt in the nature that we have now for nearly 30 years, we continue. Of course, that obligation gets immediately transferred outward into the future to our children, to our grandchildren, and somehow we are fair weather; we just go on saying we have done our job in a responsible way.

I was saddened yesterday that the Senator from New Jersey would not honor his obligation and his verbal commitment to the citizens of his State. That is a tragedy, but he has made his choice. We all make our choices. Those are tough choices. The pressures are great here, but they are not so great as to walk away from your commitment to your citizens, to your public and to the oath of office. What we are trying to do is enshrine within the Constitution an obligation that Thomas Jefferson was so very clear about when he said there should have been an 11th amendment to the Bill of Rights and that was that we could not borrow. Now, we could have borrowed inside the budget but we could not borrow from outside the budget.

What we are suggesting is that we cannot borrow from outside the budget.

We can borrow from inside the budget, and that is what we are doing now, and that is the unified budget. It does not make the obligation go away. It does not make the legal commitment go away. It does not say to the baby boomers that, when you get ready to retire your check won't be in the mail. What says to the baby boomers that your check may be threatened and may someday not be in the mail is the perpetual increase of debt, that which the Senator from Wyoming pointed out a few moments ago with all of those books stacked before him. It is one budget piled upon another budget piled upon another budget.

Regarding half of those 28, half of those 28 budgets, the politicians who assembled them, interestingly enough, had the public tenacity to say they are heading toward balance. For 3 years we have been saying we are headed toward balance. The President's State of the Union Address before the American people assembled: ''I will produce balanced budgets.'' Oh, come on, Mr. President. We have read the fine print. You do not produce a balanced budget and you are not trying. You raise taxes, you raise revenue, you spend more for new programs, and after you have left office you say, ''Now, if you want to get it balanced, you either raise taxes or you cut spending.'' Big-time stuff, $50-billion, $60-billion-type stuff—tough to do. Most important, he knows it's impossible to do. It is impossible to do unless Senate Joint Resolution 1 is the organic law of the land.

It is the Constitution through which the public views its Government and controls its Government and tells its Government what to do. That is the test before us.

While the Senator from Florida in a responsible way attempts to address that, I ask that we reject his amendment because of the risk of increasing debt by at least another $1 trillion or more inside what we could definitionally call a balanced budget. We dare not do that to our public. Most important, we dare not allow that kind of latitude in future Congresses. I am not going to be here then. The Senator from Florida is not going to be here then. But his action, my action, the action of this Senate, whether it is on Senate Joint Resolution 1 amended by the Senator from Florida, or if it is left as it is presented, will be the law of the land that dictates to the Congress and to the Senate in the year 2019 or 2028: This is how you operate. These are the parameters within which you must perform, in which you must make priorities for spending. It must be balanced, it must be honest, it must be fair.

What we do here is going to be important both in the short term and in the long term. What we do must be honest and must be clear and undefinitional to future Congresses so, just like the first amendment or the second or the third, they are not arbitrary, they are not capricious, they do not create those kinds of actions. They are real and we honor them. So our language must be clear and unambiguous.

Mr. President, I hope my colleagues will join us in opposing the amendment by the Senator from Florida. I do not believe it creates the environment in which we must operate. I yield the remainder of my time.

Mr. THOMAS. How much time remains, I ask the Chair?

The PRESIDING OFFICER. The time remaining for the majority is 19 minutes 20 seconds. The Chair recognizes the Senator from Wyoming.

Mr. THOMAS. Mr. President, I want, first of all, to congratulate the Senator from Idaho for his leadership in this matter. I don't think there is a more important issue before us than the idea of being financially and fiscally responsible. I say that also to my friend from Florida, who supports this concept of accountability as well. Certainly there will be a lot said—there has been a lot said, maybe everything has already been said but maybe not everyone has said it—but it is broader than the books, it is broader than the numbers, it is broader than math. It is a question of being responsible to ourselves, being responsible to our children, being responsible to the future. It is a question of priorities. It is a question of, really, dealing with the issue rather than what has been done over the last 30 years, by saying, yes, we are going to balance, yes, we are going to balance the budget, yes, we are going to do it, and not doing it.

I think one of the ironies is many of those who oppose this balanced budget amendment say, ''Oh, yes, we are going to do it,'' and point to the President's budget—which does not do it. It does not achieve balance by 2002 and stay in balance. It does not provide permanent tax relief. It does things in Medicare that are strictly gimmicks. It spends $21 billion more on welfare and raises taxes by $80 billion. It has $60 billion in new entitlements.

So let us be clear that, if we want different results, we have to change the way we do things, and that is what this amendment is all about.

Let me yield to my friend from Missouri. We have approximately 18 minutes left, and I will yield as much time as he requires.

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

Mr. BOND. Mr. President, I thank the distinguished manager of the bill. I have asked for this time to spend about 5 minutes to introduce a piece of legislation, so, while it will count against the time, I ask unanimous consent to be permitted to proceed as in morning business for that 5-minute period.

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

Mr. BOND. I thank the Chair.

(The remarks of Mr. BOND pertaining to the introduction of S. 368 are located in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

Mr. BOND. Mr. President, I reserve the remainder of the time, and I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. GRAHAM addressed the Chair.

The PRESIDING OFFICER. The Senator from Florida.

Mr. GRAHAM. Mr. President, I believe I have approximately 3 minutes remaining, which I would like to use to close after the opponents of the amendment have completed their arguments.

Mr. HATCH addressed the Chair.

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

Mr. HATCH. Mr. President, I think this side has said everything it needs to say. I will be happy to yield any time of our remaining time, unless somebody else wants to speak, to our friend from Florida.

We have to oppose this amendment. We know how helpful the Senator from Florida is and how much this means to him. We have appreciated the support he has provided in this debate and certainly will listen to what he says here.

I yield the floor.

The PRESIDING OFFICER. The Senator from Florida has the remaining time of 3 minutes and 1 second.

Mr. GRAHAM. Mr. President, to close briefly, let me underscore that I support the balanced budget amendment. I will vote for the balanced budget amendment in the form it was reported by the Judiciary Committee. I do so because I believe it is superior to the alternative of continuing with the status quo, a status quo that had added $4.5 trillion to our national debt in less than 20 years.

I believe, however, that the balanced budget amendment can be improved. I have suggested what I think is an important area of that improvement, and that is that after we have achieved the objective of section 1 of the balanced budget amendment, which is to see that we will bring as rapidly as possible our annual accounts into balance, we will not be adding to the national deficit, that we will then place a safety lock on that gain by saying there shall not be any further increases in the national debt without a three-fifths vote of both Houses of Congress.

The amendment that is before us does not do that, although there are many who believe that it does that, because the three-fifths vote only applies to that portion of the national debt which is held by the public, by individuals, by corporations, by State and local governments, by all the people who buy Federal securities.

My amendment would strike that limitation and have the requirement of a three-fifths vote of both Houses of Congress apply to all of the national debt. It would apply to the totality of the $5.4 trillion national debt that we now have.

Mr. President, there was some suggestion in the concluding remarks of the Senator from Idaho that in some

way by my amendment I had weakened the existing three-fifths requirement that is in the constitutional amendment as it relates to debt held by the public. Absolutely to the contrary. I am extending the same three-fifths requirement to the rest of the debt of the Federal Government, continuing to apply it to debt held by the public, but also applying it to that debt which the Federal Government borrows from its own trust funds.

In brief summary, Mr. President, I believe the following reasons are why this amendment should be adopted:

It is honest.

It comports with what the American people believe we are doing when we say we are restricting national debt.

It is fiscally conservative. It will result in almost $2 trillion less national debt over the next 20 years than will be almost certainly the case if we do not adopt this amendment.

It is simple. It does not add new or complex concepts to the balanced budget constitutional amendment.

It will have a very positive effect on the Nation's economy. The result of releasing $2 trillion that otherwise would be used to finance unnecessary and excessive national debt into the private sector will increase our Nation's economic growth and strength.

Mr. President, I ask unanimous consent for 60 seconds to conclude my remarks.

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

Mr. GRAHAM. Mr. President, finally, by using these surpluses, as the 1983 Social Security Commission had anticipated they would be used, to reduce the amount of Federal debt which is currently owed to the general public and, therefore, place our Nation in a stronger fiscal position to meet our future obligations to Social Security, we will be strengthening the Social Security system. And for that reason, the National Committee for the Preservation of Social Security and Medicare has endorsed this amendment.

I urge the adoption of this amendment which I believe is exactly consistent with the purposes of the balanced budget amendment, will add to its strength, and will add to the acceptance of the American people, because it will be the amendment that they believe we are about to adopt and submit to the States for ratification. I urge the adoption of this amendment.

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I compliment the distinguished Senator from Florida. He has been one of the great leaders on the balanced budget amendment, prior to this debate and certainly during this debate. I believe he deserves a lot of commendation from both sides of the floor for his steadfastness and standing up on this amendment.

We cannot support this particular amendment to the balanced budget constitutional amendment, and I regret that we cannot. But, in spite of that fact, our colleague from Florida has been one of the leaders out here, and I personally just want to express my appreciation for his efforts and for the work he has done on his side of the floor, as well as our side of the floor. I appreciate it.

Mr. President, I understand that the vote cannot occur until 12:35?

The PRESIDING OFFICER. There is no order to that effect.

Mr. HATCH. I ask unanimous consent that I be permitted to move to table, with the vote not occurring before 12:35.

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

Mr. HATCH. I move to table the amendment, with the understanding that the vote will not occur until 12:35. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

Mr. HATCH. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

The question occurs on agreeing to the motion to lay on the table amendment No. 7 offered by the Senator from Florida [Mr. GRAHAM]. The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. FORD. I announce that the Senator from Delaware [Mr. BIDEN] and the Senator from Louisiana [Ms. LANDRIEU] are necessarily absent.

I further announce that, if present and voting, the Senator from Louisiana [Ms. LANDRIEU] would vote ''no.''

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

The result was announced—yeas 59, nays 39, as follows:

[Rollcall Vote No. 19 Leg.]

YEAS—59

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

NAYS—39

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

NOT VOTING—2

Biden	Landrieu

The motion to lay on the table the amendment (No. 7) was agreed to.

Mr. ENZI addressed the Chair.

The PRESIDING OFFICER (Mr. BROWNBACK). The Senator from Wyoming [Mr. ENZI] is recognized.

Mr. ENZI. Mr. President, I ask unanimous consent that I be allowed to speak out of order for 5 minutes.

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

OUR GIFT OF FREEDOM

Mr. ENZI. When we woke up this morning, I wonder how many of us paused to reflect on the great gift we have been given—the gift of our freedom. It is a special gift, but so many of us take it for granted, even though we paid for it at quite a heavy price. As we drove to work, how many of us thought about the sacrifices that were made over the years by our Nation's veterans to preserve and protect those freedoms?

Six years ago, President Bush was in the White House and he had a difficult task on his hands. The world was in crisis. The United Nations was meeting night and day to try to stop the spread of the threat of Saddam Hussein. He had invaded Kuwait and brought the people of that nation to their knees. Something had to be done.

When the cry for help went out from Kuwait, we sent our best to answer the call. Many brave men and women went to a foreign land to stop the advance of that madman in the deserts of Kuwait and Iraq.

In the days that followed, we picked up a whole new vocabulary. We spoke of Scuds, Patriot missiles, chemical weapons, gas masks, Riyadh, and so much more.

It was a war we witnessed like no other battle in our history. We charted our troops' progress with the reports we saw on the news every night. We were a part of it all. The press took us right along with our soldiers as the fighting progressed. Everything came to us live as the media brought the conflict right into our living rooms.

It was almost like watching a movie. It seemed so distant and dangerous. Yet, somehow, because of our advanced technology, we thought our young men

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.

Currently, the Medicare Program is not in the best of health—its short- and long-term fiscal problems make it increasingly vulnerable. In January, the Congressional Budget Office projected the Medicare trust fund is headed for the emergency room; it will go bankrupt in 2001 with a $4.5 billion shortfall. The trust fund is spending more than it is taking in from revenues; this trend will continue, creating a trust fund deficit of over one-half trillion dollars just 10 years from now. And that's still before the baby-boomers begin to retire in 2010.

The prognosis is not good. The Medicare trust fund is limping—and soon will be staggering—into the 21st century.

This national bipartisan commission is the medicine needed to restore Medicare's good health. Its recommendations will help the President and Congress build the consensus needed to enact effective policies to preserve and strengthen Medicare.

Senator Dole is correct in stating, ''Creating a commission won't let—the President and Congress—off the hook to enact needed Medicare changes now to avoid bankruptcy in 2001.'' I believe the President and Congress must act immediately to extend the short-term solvency of the program.

I am encouraged by President Clinton's willingness in his budget package to address the growth of Medicare spending over the next 5 years. However, I'm troubled by the administration's use of gimmicks like the home health transfer and an over reliance on cutting provider payments—such policies are just plastic surgery, masking deeper problems with a pretty face. Senator Dole says he has ''never seen a budget gimmick that solved a real public policy problem''—and neither have I.

In the long-term, Medicare must fight another potentially crippling problem. Retiring baby boomers will challenge our ability to maintain our promises to beneficiaries. Today, there are less than 40 million Americans who qualify to receive Medicare. By the year 2010, the number will be approaching 50 million, and by 2020, it will be over 60 million. Today, there are almost four workers supporting each retiree, but in 2030, there will be only about two per retiree.

The demographic progression of the Medicare population will not come as a surprise. We know today what is to be expected.

To be healthy, the Medicare Program is in need of structural reform. Since Medicare's enactment in 1965, there has been a great deal of change in the private health care system in the United States—but Medicare remains fundamentally unchanged. Medicare is too rigid and unable to offer the improvements in delivery of care and technological advances that have been made in the private sector. Medicare is the Model T Ford of health care programs competing in a race car world.

These are some of the problems the National Bipartisan Commission will address. I believe it will prove to be the intensive treatment needed to cure Medicare's growing symptoms. There is agreement over the diagnosis, but no consensus over the course of treatment. Meanwhile, Medicare's time runs short.

It is my hope that by working together in a bipartisan effort, we can seriously and responsibly address the Medicare issue. Again, I hope my colleagues will read Senator Dole's essay, and consider the issues he raises.

The answers to the Medicare problem are not easy and they are not politically popular. The consequences of delaying treatment are much worse, though. As chairman of the Senate Finance Committee, I intend for future generations to inherit a robust Medicare Program with a clean bill of health. The Commission proposed by Senator MOYNIHAN and myself is just what the doctor ordered.

Mr. President, I ask unanimous consent that a copy of Senator Dole's oped be printed in the RECORD.

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

[From the Washington Post, Feb. 22, 1997]

MEDICARE: LET'S FIX IT

(By Bob Dole)

Some politicians make Medicare decisions with one eye on the next election—something I learned in 1996. Enough already. It's time to focus on present beneficiaries and the next generation.

Rhetoric won't get the job done. Neither will budget gimmicks nor shell games such as the administration's proposal to move home health costs from Part A of Medicare over to Part B. Such accounting gimmicks have been around for at least as long as the budget deficit. I've seen plenty of them, even tried some, but I have never seen a budget gimmick yet that solved a real public policy problem.

The fact is, to survive, Medicare will have to look much different in 10 years from what it looks like today. The program obviously requires structural changes, not just tinkering around the edges. In his State of the Union address, President Clinton said: 'The enemy of our time is inaction.'' Well, it's time to do what's right for our nation's elderly before the president's words become an epitaph for the Medicare program.

Doing what's right means doing things differently in several ways. Remember, we face two major problems with Medicare: a short-term problem with bankruptcy in 2001 and an even larger long-term financing problem when the baby boomers start retiring in 2010. Any Medicare ''fix'' has to be mindful of both. I do not have all the answers, but I would advance a few ideas for consideration.

Affluence-test the Part B premium. Yes, I'll say it: Senior citizens who can afford to pay more should pay more for Part B of Medicare. Unlike Part A of Medicare, Part B is not financed by payroll taxes. Right now, Medicare beneficiaries pay premiums that cover only 25 percent of the cost of Part B of Medicare. General revenues pick up the tab for the remaining 75 percent. If only the well-to-do beneficiaries, those with incomes greater than $60,000 for a single individual and $90,000 for a couple, paid a higher premium (say, 50 percent instead of 25 percent—as was originally intended in the program), we could save $9 billion over five years.

It's just plain old-fashioned fairness for affluent beneficiaries to pay a little more (still way below the actual cost of the care), and our elected leaders should say so. No more of this strange, silent dance between president and Congress where each partner says to the other, ''You go first!'' The president should propose and a bipartisan majority in Congress should support appropriate increases in the Part B premium.

Keep the link between Medicare and Social Security. Throughout the history of the Medicare program, the age at which a senior citizen becomes eligible for Medicare has always been the same as the age at which he or she becomes eligible for Social Security. That's as it should be. It makes perfect sense for these two programs to go hand-in-hand.

In 1983 the bipartisan Social Security Commission, on which I served, recommended several fixes to save the Social Security program that were enacted into law. One fix was slowly to raise the age of eligibility for Social Security to 67. After all, people will live longer and retire later than they did earlier in the century when the program was created. So, the age of eligibility for Social Security will start to rise a couple of months each year beginning in 2003. We should keep the historical link between Medicare and Social Security, and let Medicare eligibility rise with Social Security.

Give senior citizens choice. Medicare beneficiaries should be able to choose the kind of coverage they want. Innovative ideas such as medical savings account should be available, as should managed-care plans and traditional fee-for-service plans. The critical word here is choice. No one should be forced into any particular health care model.

Let's let seniors make their own decisions. It's wrong when some people argue that seniors simply are not capable of deciding their own health care coverage and that the government always knows best. Given the right kind of information, seniors can decide what's best for themselves. The should be given the same kind of choices that federal employees have been offered for years. The federal employee health benefits program is one broad-scale model that shows choice works.

Giving seniors choice could also help hold down costs. Last year health care costs in the private sector grew only 2.9 percent while health care costs in the public sector rose. 8.7 percent—three times as fast. Why is the private sector doing a much better job holding down costs? One reason is free-market competition. And choice will spur competition, efficiency and lower costs in the public sector just as it already has in the private sector. What's more, structural changes that help lower overall costs are the only way to address Medicare's long-term problem.

Cutting providers alone is not the answer. It seems every time the president and Congress address Medicare, payments to doctors and hospitals get cut. Politically, this is a ''no brainer,'' since there are millions more beneficiaries than doctors and hospitals. The president's FY 1998 budget proposal is more of the same: cuts for doctors and hospitals—and now cuts for HMOs, too, reducing their reimbursement rate from 95 percent to 90 percent of average per capita costs.

Some reductions in some areas are no doubt justified, but you cannot fix the program by hitting providers alone. You can buy a few months or a few years on the short-term problem, but it will not solve the long-term problem. In fact, it may exacerbate it. The reductions must be accompanied by true reimbursement reform. Let's move more of the program into a prospective payment system so the incentives for the wise use of services are in place. Let's pay managed-care plans a fair amount and be certain

the care provided is of the highest quality and that funds meant for teaching and indigent care are spent correctly. The real problems faced by rural plans as well as by urban providers must be addressed as should Medicare's role in paying to train our nation's physicians.

Form a Medicare commission. It may turn out that no matter how much is done, it still will not be enough to offset the long-term challenge we face with the retirement of the huge baby-boomer generation. If the president and Congress cannot agree on how to preserve Medicare long term, as a last resort, a bipartisan commission should be authorized. Sen. William Roth and Sen. Daniel Patrick Moynihan should be applauded for recently proposing legislation to establish such a commission. As the 1983 Social Security Commission demonstrated, a bipartisan commission can recommend sound long-term solutions. But if some politicians hope they can dodge the tough choices by creating a commission, I have news for you: It won't work. Creating a commission won't let you off the hook to enact needed Medicare changes now to avoid bankruptcy in 2001, and even the commission's recommendations to address the long-term problem will require members of Congress to vote on sticky issues and the president to sign or veto the legislation.

Mr. ROTH. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

TAX FREE STADIUM BOND FINANCING

Mr. SPECTER. Mr. President, I have sought recognition to discuss the pending unanimous-consent request on the tax measure. I do so because of my concern about a matter which is pressing for my State, in a number of particulars, most specifically the Wilkes-Barre arena, where financing is being held up because legislation has been introduced by Senator MOYNIHAN, which has an effective date on the date of committee action, and bond counsel have, as I understand it, given an opinion that industrial development bonds cannot be issued from the State.

After discussing the matter with Senator MOYNIHAN, it is my understanding that he is concerned about the statutory limits on other tax-exempt bonds, which would affect hospitals and universities. It is a relative rarity that a tax bill comes through the Senate. This is an occasion where I would have an opportunity to introduce an amendment to try to move this process along. I am well aware of the fact that this is an important measure which needs to be cleared through the Senate. But I wanted to take this opportunity—and I have so advised our distinguished majority leader of my intention—when the unanimous-consent request is propounded, to reserve the right to object to see if we might get some sort of a schedule for consideration of the underlying issues here.

I note the presence of the distinguished majority leader on the floor. I await his action on propounding the unanimous-consent request. I take advantage of this break in the action to state my position.

I yield the floor.

Mr. LOTT. Mr. President, with my apologies to the Senator from Pennsylvania, was there anything I needed to respond to at this juncture, or would you like to go ahead with the unanimous-consent request?

Mr. SPECTER. If I may respond to the majority leader, there is nothing for him to respond to.

UNANIMOUS-CONSENT AGREEMENT—S. J. Res. 1

Mr. LOTT. Mr. President, I just had a discussion with the Democratic leader with respect to the pending balanced budget constitutional amendment. This agreement would allow the Senate to conclude the matter on Tuesday, March 4. Having said that, I now will propound a unanimous consent for final disposition of the constitutional amendment.

I ask unanimous consent that the time between 9:30 a.m. on Tuesday and 12:30 be equally divided between the two managers for closing remarks on Senate Joint Resolution 1. I further ask that, at 2:15 on Tuesday, there be 1 hour under the control of the manager on the Democratic side of the aisle, with the first 20 minutes under the control of Senator BYRD, to be followed by the next hour under the control of Senator HATCH, to be followed by the next 30 minutes under control of Senator DASCHLE, or his designee, with the final 30 minutes under the control of the majority leader or his designee.

I further ask that following the conclusion or yielding back of time, a vote occur on the passage of S.J. Res. 1 at 5:15 p.m. on Tuesday, and that paragraph 4 of rule XII be waived and all occur without intervening action.

Mr. DASCHLE. Mr. President, the majority leader and I have had the opportunity to discuss this matter, and I concur with the unanimous-consent request, with the understanding—which we have discussed—that if there is a family emergency or an illness that would preclude a Member from having the opportunity to vote on such an important issue as this, that we would revisit the issue. I don't anticipate that. I expect 100-percent attendance. And, as I say, we have had that understanding in our discussion also. So I do not object.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. LOTT. Mr. President, if I could just comment on the Democratic leader's comments of a moment ago. First of all, I think we have had a good and full debate on this issue. I said from the beginning that I hoped we would do that, and that it would be a thoughtful and provocative debate that would cause Members to think seriously about this issue. I think that has happened.

There has been some suggestion that we put it off, and I thought about that. If there were some reason to do that, I would be willing to delay it further. But I think we should be ready to vote. We have had amendments and the debate, and we would be prepared to do that, then, on Tuesday under this agreement. But, as always is the case, we need to be aware of and respectful of extenuating circumstances beyond our control. I will join the Democratic leader in moving the vote to the next morning, or whatever, if we have that need, based on a genuine illness or family problem that could not be avoided.

UNANIMOUS CONSENT AGREEMENT

Mr. LOTT. Mr. President, I ask unanimous consent that in the event a motion to reconsider the final passage vote is entered, and the motion to proceed and the motion to reconsider are agreed to, then at that time Senate Joint Resolution 1 be debatable.

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

Mr. LOTT. Mr. President, for the information of all Senators, the Senate will close the debate on the Monday or the Tuesday session of the Senate with a final passage vote occurring on the constitutional amendment at 5:15 p.m. on Tuesday, March 4.

I thank my colleagues for their cooperation and announce that no votes will occur on Friday of this week or Monday, March 3.

MORNING BUSINESS

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

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

INVESTIGATE CONGRESSIONAL ABUSES

Mr. KERRY. Mr. President, today on the front page of the Washington Post there is a story that I think should not simply slide by the concern and consideration of all our colleagues in the Senate. The headline is, ''GOP Senators Seek To Curb Panel's Fund-Raising Probe.''

The heart of the story is a basic expression, on behalf of some Senators, that they only want to focus on President Clinton. They do not want an investigation that somehow looks into the activities of the Congress itself.

I know the Congress is plenty good at taking care of itself. Through history it has proven that. But the American people will not be satisfied with such

an extraordinary, brazen, overt statement of unwillingness to heed the interests of the American people and to get to the bottom of any allegations of wrongdoing in any kind of fundraising. Anyone who suggests we can just sweep this under the rug because people are nervous up here, or somehow they think that looking at congressional inquiries might become the instigator of reform, and therefore, because they don't want reform, they are not going to investigate, is one of the most extraordinary efforts of turning your back on the interests of what we are supposed to be doing here and of the American people.

I will signal for myself, and I think there are other Senators who feel this way—no one is looking for some no-holds-barred embarrassment here. No one is looking for some fishing expedition. But where there are legitimate examples and legitimate allegations with respect to congressional abuses, it would simply be inappropriate for the Congress of the United States to sweep it under the rug and walk away because we fear whatever that might tell us. It would be even more inappropriate to do so because we fear reform.

I can think of nothing that would invite a storm of protest from the American people over a period of time more than that kind of front page statement about the congressional willingness to sweep something under the rug.

I yield the floor.

REINSTATEMENT OF OREGON LAW RELATING TO PHYSICIAN-ASSISTED SUICIDE

Mr. ASHCROFT. Mr. President, there are developments in a matter that I think command our attention. I would like to bring them to the attention of the Senate.

Recently, Senator DORGAN and I, joined by 28 of our colleagues, introduced S. 304, the Assisted Suicide Funding Restriction Act. It is simply a law that says no Federal tax dollars shall be used to promote or pay for assisted suicide.

There had been a threat that we might be asked to pay for assisted suicide with Federal Medicaid funds in the State of Oregon. Oregon enacted what was called Measure 16, which allowed for physician-assisted suicide for terminally ill patients in that State. Oregon officials stated that they would be submitting Medicaid bills to the Federal Government to pay for assisted suicide under the category of ''comfort care,'' a euphemism which is particularly troubling to me.

After Oregon passed Measure 16, its implementation was suspended by U.S. District Judge Michael Hogan, in Eugene, OR. While the law was not in effect, we would not be asked to pay Federal dollars, tax dollars of American citizens, to end the lives of individuals rather than to sustain their lives.

Throughout the history of the Medicaid and Medicare Programs, there has been the presumption that funds for those programs would be used to elevate, encourage, enrich and extend the lives of American citizens. It turns out now that with this one law in one State, we will be asked for Federal resources for medical reimbursements under the health care provided by Oregon's Medicaid program, to end the lives of individuals, to help physicians help patients commit suicide.

Senator DORGAN and I, and 28 of our colleagues, have sponsored legislation to prevent such a practice—to prohibit Federal tax dollars from being expended for assisted suicide. Our legislation had an imperative quality because the decision of an appeals court was pending. But today the Ninth Circuit Court of Appeals dismissed the action which had suspended the implementation of the Oregon law. The Ninth Circuit Court of Appeals, in so doing, potentially clears the way for the State of Oregon to begin calling upon the resources of U.S. taxpayers to assist people in their suicides.

I have to tell you, this is against the values of many of the people with whom I speak and many of those I represent in the State of Missouri. Key groups and organizations, including the U.S. Catholic Bishops, the National Right to Life, and the American Medical Association, oppose assisted suicide, and oppose the use of Federal funds for such a practice, as it is an inappropriate expenditure of tax dollars.

Mr. President, 87 percent of the American public does not want tax dollars spent on dispensing toxic drugs to end the lives of Americans instead of focusing our resources on therapeutic drugs and other therapies to extend and improve the life of American citizens. It is time for us to understand the urgency of this issue, given the fact the Ninth Circuit Court of Appeals rejected the challenge to Measure 16.

Now, the dismissal of the action is appealable by the parties there. They can appeal back to the Ninth Circuit for a hearing en banc, or to the U.S. Supreme Court. But I raise this in the consciousness of the U.S. Senate to say we do not have a significant amount of time, and I believe the vast majority of citizens in this country never anticipated that their tax resources would be consumed in poisoning fellow citizens under the guise of comfort care in the State of Oregon.

We would be derelict in our duty were we to ignore this problem and allow a few officials in one State to decide that taxpayers all across America must help subsidize a practice that has never been authorized in most of America, is considered to be morally abhorrent by many Americans, and is considered to be medically inappropriate by the American Medical Association. Because of today's decision, I implore my colleagues in the U.S. Senate to act swiftly to pass the Assisted Suicide Funding Restriction Act before our tax dollars begin to go for ending, and not saving, the lives of our fellow Americans.

I yield the floor.

MEDICAL SAVINGS ACCOUNTS

Mr. ROTH. Mr. President, as part of the Kassebaum-Kennedy health care legislation, passed in the 104th Congress, we provided for a pilot program to explore the potential of medical savings accounts.

These MSA's represent a significant step forward in our objective to promote an environment where Americans can receive quality and affordable health care in market-based programs. MSA's would allow families to participate in higher deductible, lower premium plans.

The money saved on premiums would be placed in tax-sheltered MSA accounts. Families could then use this money to pay for health care costs. They would have a greater stake in the health care delivery system. Their vigilance—as they use their own money—would encourage health care providers to keep costs competitive and quality high.

MSA's would also go a long way toward cutting the high costs associated with health care administration.

It's projected that as families play a more active role in paying for their health care, because of the high deductible nature of MSA's, that less than 10 percent of those using MSA's would send a bill to their insurance. Insurance company involvement would come only after the deductible has been met, or in the case of a catastrophic illness.

As we look for innovative and workable programs to help Americans meet the costs associated with health care, MSA's offer a viable and attractive possibility. I anxiously await the results from the pilot program we initiated, as well as response from our health care community.

Recently, I received a letter and an article from two academics associated with the allied health profession field. Amy B. Hecht, former dean of the Temple University College of Allied Health Professions and James L. Hecht, professor in the political science department at Temple, authored an impressive overview of MSA's.

I ask unanimous consent that their article be printed in the RECORD.

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

RX FOR HEALTH REFORM—MEDICAL SAVINGS ACCOUNTS GIVE CONSUMERS A STAKE IN CUTTING COSTS

(By James L. Hecht and Amy Blatchford Hecht)

Horror stories constantly are being reported by the media about how America's rapidly changing health care system has caused disastrous results for some and suffering for many. That is not surprising since tens of millions of people are being forced into managed care, where they have far less control than under the previous fee-for-service system.

Unfortunately, little has been said about an alternative: having people pay for normal

health care expenses directly from tax-sheltered Medical Savings Accounts. Much of what has been said has been directed at MSAs' one disadvantage as opposed to their many advantages.

Employers are the vector for the rapid transition to managed care. The cost of medical care in the United States has been more than 30 percent more per capita than anywhere else in the world. Thus American companies are under enormous pressure to cut health costs since they have become a major expense and a disadvantage against foreign competitors. Moreover, large expenditures have not produced better health as measured by criteria such as life expectancy and infant mortality rates.

Some of the America's high costs results from its leadership in using technology to provide the best care in the world for those who are able to take advantage of it. That is desirable. But there is another reason why health costs in the United States have gotten out of control: an enormous government subsidy which encourages payment by insurance.

Providing most health care payments through insurance makes as little sense as having homeowners' insurance cover maintenance. The purpose of insurance is to protect against expensive catastrophes. Home maintenance costs are significant, but can be handled more economically and satisfactorily without a third party involved.

But in the case of health care, insurance paid by employers became the standard following World War II because employers were able to shelter part of their employee compensation from taxes by providing health insurance that covered normal expenses. Thus the U.S. government subsidized a health care system financed unlike any other in the world. As costs of new treatments increased and options for care expanded, costs skyrocketed but were not matched by improved results.

That is why tax-sheltered contributions to Medical Saving Accounts, whether made by an employer or individual, make sense. Consumers should have the option of administering their own medical bills, barring catastrophic costs, while receiving the same government subsidy given to employer-paid insurance and managed care.

People with MSAs would have insurance, but it would only cover expenses after a deductible of at least $2,000. Thus, less than 10 percent of those with MSAs would send a single bill to their insurance company in a single year. That's one huge advantage of MSAs: a big decrease in the costs of health care administration. Studies indicate that administration of third-party payments accounts for well over 20 percent of health costs. Billions of dollars spent on paperwork would be saved. And that does not include the time and aggravation consumers spend to get reimbursement.

MSAs might cause some people to skimp on preventive care. But insurance policies for catastrophic care could cover periodic physical exams, Pap tests and prenatal care because they effectively prevent expensive medical problems.

Meanwhile, people paying their own bills are more likely to compare prices when a physician orders tests. Some will question the necessity of recommended tests. Nurse practitioners and physician assistants would be used more since their fees are far lower than physicians'. Savings of tens of billions more would result from giving consumers a stake in reducing costs.

Plus, having people pay directly for much of their health care will be a powerful force for choosing healthier lifestyles.

Many of these same advantages can be achieved by managed care, which is why employers are shifting health benefits in this direction. In fact, a good HMO usually will be the best option for people who are not careful consumers. However, people who value control over their health decisions, or who do not have access to a good HMO, usually would be better off with an MSA and fee-for-service.

Competition between managed care and MSAs is another important reason to shelter MSAs from taxes. Competition solely between HMOs and other managed care plans will not necessarily result in good, cost-effective health care. There was fierce competition between General Motors, Ford and Chrysler, but until Japanese automakers captured a significant share of the market, American manufacturers produced inferior cars and did not control costs as efficiently. Today, doctors are being offered financial incentives to decrease patient care. Tax-sheltered NSAs and fee-for-service could shift incentives where they belong: bonuses for better patient outcomes.

While tax-sheltered MSAs will provide better care at greatly reduced costs for most Americans, they would not be good for those with chronic illnesses requiring costly, long-term treatments. This is why they were opposed by Senate Democrats and President Clinton. The chronically ill would lose money with MSAs (although some might still choose one in order to exercise greater control), and their alternatives would cost more than at present because health care plans would serve sicker populations with higher than average expenses.

So in fairness, legislation creating tax-sheltered MSAs should include a benefit for the chronically ill to offset their higher costs. It might be a credit for families who had out-of-pocket health expenses greater than some percentage of gross income in the previous two years. The credit might be for expenses greater than 7.5 percent of gross income, which is the current medical and dental deduction on the federal income tax. The credit also should have a cap on the amount of expenses that qualify.

And legislation should be enacted as soon as possible, instead of waiting years for the results of a small trial program established under the Kassebaum-Kennedy Bill. The trial is unlikely to yield definitive results.

No legislation will be a panacea for all health care problems. But Medical Savings Accounts are a simple way to provide better, more cost-effective care for many Americans. This in turn will contribute to a political and economic environment more conducive to keeping the promise of decent health care for all.

THE GROWING CRISIS IN PUBLIC ACCESS TO PUBLIC INFORMATION

Mr. WARNER. Mr. President, on February 11, in his capacity as chairman of the Joint Committee on Printing, the senior Senator from Virginia testified before the U.S. House of Representatives Legislative Branch Appropriations Subcommittee.

The purpose of that testimony was to provide justification for the Joint Committee's Fiscal Year 1998 appropriations request, and to outline the priorities of the Joint Committee in the current and future fiscal years.

Chief among the Joint Committee's priorities are reform of Title 44 U.S.C., and the implementation of means to assure that the American public continues to retain access to information created by the Federal Government at taxpayer expense.

Currently, the Government Printing Office is charged under title 44 with the management of the Federal Government's procurement of information products and with the maintenance of the public's access to these products—through the Federal Depository Library System, through the GPO Bookstore Program, and through GPO access, the on-line service of the Government Printing Office.

In recent years, however, various Federal agencies have taken to ignoring title 44. Some are procuring their information products directly from the private sector without going through the GPO's private sector procurement program. Others are setting up in-house facilities to create their own information products. In addition, a few agencies, in an effort to be entrepreneurial, have taken to making arrangements with organizations outside the Federal Government for the dissemination of taxpayer-funded information. In doing so, this information has become copyrighted, or had copyright-like restrictions imposed upon it. The net result is that the public's access to taxpayer-funded information has been greatly restricted.

Mr. President, the Government Printing Office's Superintendent of Documents, Mr. Wayne Kelley recently delivered a speech on this issue. In his remarks, Mr. Kelley provided specific details and raised a number of important questions about these activities and their detrimental effect on the American public.

I ask unanimous consent that Mr. Kelley's speech before the Government Documents Roundtable, Federal Documents Task Force, of February 15, 1997, be printed in full at the conclusion of this statement.

The PRESIDING OFFICER. Without objection, it is ordered.

(See exhibit 1.)

Mr. WARNER. Mr. President, the Senate Committee on Rules and Administration, which also is chaired by the senior Senator from Virginia, will hold 2 days of hearings later this spring on legislation to correct this situation and to reform other areas of title 44.

It is this Senator's intention that this legislation will be supported on a bicameral and bipartisan basis, and that the administration will fully support it as well.

Mr. President, the strength of America's system of government lies with an informed public. Free and open access to information created at taxpayer expense is the principle which has enabled the United States to endure and prosper for over 200 years, making this Nation the oldest, continuous, constitutional democratic republic in the world.

Members of Congress have a responsibility to our Founding Fathers, to our citizenry, and to future generations to ensure that this principle is maintained.

EXHIBIT 1

REMARKS OF WAYNE KELLEY,
SUPERINTENDENT OF DOCUMENTS

I'd like to take a few minutes this morning to discuss a growing trend to transfer Federal Government information from the public domain to private ownership.

This is happening in a number of ways. One is for agencies to establish exclusive or restrictive distribution arrangements that limit public access to information. Another is to charge fees or royalties for reuse or redissemination of public information. In some recent cases government publishers have actually assisted in transferring copyright to the new owner.

Let me give you an example. For many years, the National Cancer Institute procured the printing of its Journal of the National Cancer Institute through the Government Printing Office. The Superintendent of Documents Sales Program sold subscriptions to the Journal and it was distributed to Federal Depository Libraries at GPO expense.

In 1987, NCI made the semimonthly Journal a more current, higher-quality cancer research publication. It was heavily promoted by our Office of Marketing in coordination with the NCI staff. By 1992, the Journal was selling 6,240 copies at an annual subscription of $51, and was distributed free to more than 800 selecting depository libraries throughout the nation. It had achieved recognition as ''the number one journal'' in its field, publishing the best original research papers in oncology from around the world.

In 1993, the National Cancer Institute notified us that they were developing a ''Consolidated Services'' concept making all print and electronic data information available only through an ''Information Associates Program.'' GPO could no longer sell subscriptions at $51. The only way to get a subscription was to buy an Associates Program membership from NCI for $100. NCI agreed to supply depository copies at the agency's expense. GPO continued to sell individual copies in bookstores at $7 each. In December 1994, the International Cancer Information Center, publisher of the Journal, received a Federal ''Hammer'' award for its new Information Associate Program.

Then, a disturbing development. Just a few week ago, in a letter dated January 2, our Library Program Service was notified that the Journal had been ''privatized.'' Ownership was transferred from the National Cancer Institute to Oxford University Press—USA, Inc. The letter said: ''Under the terms of a Cooperative Research and Development Agreement signed by the two organizations, the name of the publication will be retained, and Oxford will assume all responsibility for printing the Journal and will hold copyright to the Journal's content.''

The letter went on to explain that ''because the Journal is no longer a publication of the U.S. Government, copies of the Journal and JNCI Monographs will not be provided to the Depository Library Program nor will sale copies be available at the GPO bookstore.'' The new price, from Oxford, is $120 for an individual and $150 for an institution.

The last paragraph in this brief letter said: ''We appreciate the service the Depository Library Program has provided in disseminating the Journal and JNCI Monographs for many years.''

Looking back, I do not regret that we at GPO invested our resources in promoting the Cancer Journal in the late 1980s. Nor do I regret assisting in the transfer of subscribers to the Information Associates Program in 1993. But I do regret the loss of this valuable resource to American citizens through the depository library program in 1997.

I have here the November 20 issue of the Journal which I purchased from the main GPO Bookstore. Maybe this last, public domain issue has some historical value.

Looking through the Journal, a number of questions come to mind. I note that the masthead lists some 26 staff members.

I wonder if the editorial and news staff is still being paid by the American taxpayer, but working for the Oxford University Press? I wonder if the Oxford Press is sharing revenues from the new, higher subscription rate with the National Cancer Institute? I wonder if copyright will prevent a librarian from sending a copy of an article to another librarian?

I have no way of knowing the answers to these questions—because the details of the Cooperative Research and Development Agreement are not public information, according to NCI legal counsel.

Unfortunately, this is not an isolated case. There are other recent examples of information gathered by government employees disappearing from the public domain—for a price. I worry that these cases will become precedents and the precedents will set an irreversible trend.

I want to make it clear that I do not question the motives or goals of the agency publishers who take this course. They are doing what they feel is right in a new environment which calls for cutting costs and generating revenues. They are seeking to preserve valuable information.

But what if this new trend drives future Federal Government Information Policy? Since the founding of our nation, the cornerstone of information policy in the United States has been the principle of universal access to Federal information. This principle is being set aside without many of the usual checks and balances in our democratic society: Without any high level policy debate, without clear rules, without thought to unintended consequences, and often without full public disclosure of the negotiations and agreements.

Is all Federal information with sufficient demand going to be sent to market? If so, we should think about what that means.

Does it mean that a Government agency may sell its name as well as its information?

Does it mean that a wide array of private sector publishers will no longer have access to the information to add value and redistribute it to many different markets in different products?

Does it mean the public consumer must pay two or three times as much, or more, for the same information?

Does it mean that agency publishers will focus their attention on more popular, marketable information and eliminate other, perhaps more significant but less marketable information?

Does it mean that programs authorized by Congress will begin to move away from public needs, to focus instead on market needs never contemplated by our elected representatives?

Does it mean Government employees working at taxpayer expense to support the information requirements of private firms? And isn't that corporate welfare?

And what if the Journal of the National Cancer Institute, now owned by the Oxford University Press, does not meet the profit goals of the new owner? Does it mean that instead of a ''Hammer'' award, there will be the ''axe'' usually awarded sub-par performers in the market place?

Who represents the public in a Bottom-line Information Era? What is to prevent our nation's bridge to the 21st Century from turning into a toll bridge for Government information?

In 1989, the late Office of Technology Assessment, may it rest in peace, declared that ''congressional action is urgently needed to resolve Federal information issues and to set the direction of Federal activities for years to come.'' Now, eight years later, there is some talk of legislation to update Federal Information Policy to the Electronic Era.

The critical issues at stake today are preservation of official information, public access, Government accountability, and an informed electorate. Americans should not pass up this opportunity to define their own information future.

Those best positioned to know the value and power of information should take the lead. It is not an easy issue for the media because it lacks the essential elements of hot news. It is more significant than sensational.

It is not an easy issue for politicians because there is no visible crisis and framing sound policy seldom delivers votes.

So it may be up to those among us who by nature are reluctant to get out front. Remember those riveting lines of Yeats: ''The best lack all conviction, While the worst are full of passionate intensity.'' Let's not let that happen.

Before it is too late, let the debate begin.

JOURNAL OF THE
NATIONAL CANCER INSTITUTE,
January 2, 1997.

MS. ROBIN HAUN-MOHAMED,
Chief, Library Program Service,
U.S. Government Printing Office (SLLA), Washington, DC.

DEAR MS. HAUN-MOHAMED: As you know, the Journal of the National Cancer Institute has been privatized, and effective January 1, 1997, ownership of the Journal will be transferred from the National Cancer Institute to Oxford University Press-USA, Inc. Under the terms of a Cooperative Research and Development Agreement signed by the two organizations, the name of the publication will be retained, and Oxford will assume all responsibility for printing the Journal and will hold copyright to the Journal's content.

Because the Journal is no longer a publication of the U.S. Government, copies of the Journal and JNCI Monographs will not be provided to the Depository Library Program nor will sale copies be available at the GPO bookstore. Nonprofit organizations, however, will be able to subscribe to the Journal at reduced rates.

For more information on subscriptions to the Journal, call 1–800–852–7323 or 919–677–0977.

We appreciate the service the Depository Library Program has provided in disseminating the Journal and JNCI Monographs for many years.

Sincerely,

JULIANNE CHAPPELL,
Chief, Scientific Publications Branch,
International Cancer Information Center.

A TRIBUTE TO STEVEN J.W. HEELEY

Mr. CAMPBELL. Mr. President, I come to the floor today with mixed emotions. I'm glad because a colleague is moving on to new opportunities, but I'm also saddened by the fact that the Senate, and in particular the Committee on Indian Affairs, is losing a great friend, Steven Heeley.

Steve's work on native American issues goes back many years, to when he started with Senator MCCAIN as the deputy minority staff director and Counsel for the Senate Indian Affairs Committee in 1989. He moved across the Hill to the House of Representatives, where I first had the pleasure of

working with him, when Steve served as the deputy counsel on Indian affairs for the Committee on Interior and Insular Affairs under Chairman GEORGE MILLER. Later he became the counsel to the Subcommittee on Native American Affairs of the Natural Resources Committee of the House. Steve returned to the Senate Committee on Indian Affairs in 1995 to become Chairman MCCAIN's staff director and chief counsel.

His lengthy list of accomplishments represents the kind of man Steve is: hard working and committed to Indian Country. Steve's work on environmental issues in Indian country includes the Clean Water and Clean Air Act amendments, solid waste disposal, leaking underground storage tanks and the Indian Environmental General Assistance Program Act. His broad range of knowledge was crucial in passing the Self-Determination Act amendments, as well as self-governance legislation, the Indian Gaming Regulatory Act and the Navajo-Hopi Settlement Act.

Steve's work to reauthorize the Indian Health Care Improvement Act, his work with tribal courts and the Native American Graves Protection and Repatriation Act show his concern for native Americans and most important, our mutual heritage. The work that has been important to Steve was the work that was important to Indian people across this country. Much of his work, including reorganizing the Bureau of Indian Affairs and amendments to the Indian Gaming Regulatory Act is not yet complete, but his mark will certainly be on the changes when they do occur.

Steve's work on behalf of Indian people goes back before his time here in Washington. He served as the assistant general counsel for the Gila River community in Arizona and was a staff attorney for the Four Rivers Indian Legal Services Program at Gila River. Now, Steve is going back to Arizona, where I'm sure he's been missed, as we're going to miss him here.

I would like to offer my personal thanks to Steve for the invaluable service he has provided to me as I took over as Chairman of the Indian Affairs Committee. His wise counsel to both me and my staff has made a difficult job more easy and has helped to make sure that the leadership Senator MCCAIN brought to this committee will continue.

Steve has been an outstanding advocate, leader, and friend to Indian country. On behalf of all of us who have been lucky enough to work him, we thank him, we wish him good luck, and we look forward to working together again.

SALUTE TO THE BIG TEN CHAMPIONS MINNESOTA GOLDEN GOPHERS

Mr. GRAMS. Mr. President, I rise today and I want to pay tribute to the University of Minnesota basketball team, who last night clinched their first Big Ten title in 15 years.

As you know, the Golden Gophers defeated the Michigan Wolverines 55 to 54, in a hard-fought, come-from-behind victory. Down by four with under a minute to play, the Gophers' confidence, determination, and faith led them to victory. This is truly an accomplishment that all Minnesotans can be proud of. Under the leadership of coach Clem Haskins, the Gophers have shot, rebounded, and passed their way into the national spotlight as a team to be taken seriously in the upcoming NCAA tournament.

With the great play of senior guard Bobby Jackson, junior guard Eric Harris, junior forward Sam Jacobson, and senior co-captain centers John Thomas and Trevor Winter, along with the rest of the Big Ten championship team, the Golden Gophers have set a school record 25 victories in a single season, with three regular season games to play. Among the notable accomplishments this team has achieved have been their two victories over Michigan, an overtime victory over Indiana, and a season sweep over our border rival Iowa Hawkeyes. This team has been on a mission all year to gain respect, not only from the Big Ten but also from the Nation, after having all its starters returning from last year from a team that was not invited to play in the NCAA tournament. As you can see, these Golden Gophers took matters into their own hands and earned the qualifying bid from the NCAA by winning the Big Ten title outright.

From the land of 10,000 frozen lakes, this Minnesota Golden Gopher basketball team has provided warmth and excitement to fans statewide in an otherwise very cold and long Minnesota winter. Again, Mr. President, I want to congratulate Clem Haskins and his Big Ten championship team from the University of Minnesota, and wish them all the best in their final regular season games and when they go for it all in the upcoming NCAA tournament.

Mr. FORD. Will the Senator yield for a question?

Mr. GRAMS. I am happy to yield.

Mr. FORD. Does the Senator know where Clem Haskins got his training? Western Kentucky University. He was also a coach at Western Kentucky University. I am tickled to death that he gave such improvement to the great State of Minnesota.

Mr. GRAMS. So are we.

Thank you, Mr. President.

THE VERY BAD DEBT BOXSCORE

Mr. HELMS. Mr. President, at the close of business yesterday, Wednesday, February 26, the Federal debt stood at $5,345,590,198,251.20.

One year ago, February 26, 1996, the Federal debt stood at $5,016,711,000,000.

Five years ago, February 26, 1992, the Federal debt stood at $3,828,590,000,000.

Fifteen years ago, February 26, 1982, the Federal debt stood at $1,048,207,000,000 which reflects a debt increase of more than $4 trillion—$4,297,383,198,251.20—during the past 15 years.

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Williams, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the Committee on Armed Services.

(The nominations received today are printed at the end of the Senate proceedings.)

REPORT OF THE NOTICE OF THE CONTINUATION OF THE NATIONAL EMERGENCY RELATING TO CUBA—MESSAGE FROM THE PRESIDENT—PM 18

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on Banking, Housing, and Urban Affairs.

To the Congress of the United States:

Section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)) provides for the automatic termination of a national emergency unless, prior to the anniversary date of its declaration, the President publishes in the *Federal Register* and transmits to the Congress a notice stating that the emergency is to continue in effect beyond the anniversary date. In accordance with this provision, I have sent the enclosed notice, stating that the emergency declared with respect to the Government of Cuba's destruction of two unarmed U.S.-registered civilian aircraft in international airspace north of Cuba on February 24, 1996, is to continue in effect beyond March 1, 1997, to the *Federal Register* for publication.

WILLIAM J. CLINTON.

THE WHITE HOUSE, *February 27, 1997.*

MESSAGES FROM THE HOUSE

ENROLLED JOINT RESOLUTION SIGNED

At 2:04 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the Speaker has signed the following enrolled joint resolution:

H.J. Res. 36. Joint resolution approving the Presidential finding that the limitation on obligations imposed by section 518A(a) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1997, is having a negative impact on the proper functioning of the population planning program.

The message also stated that the House has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 497. An act to repeal the Federal charter of Group Hospitalization and Medical Services, Inc., and for other purposes.

H.R. 624. An act to amend the Armored Car Industry Reciprocity Act of 1993 to clarify certain requirements and to improve the flow of interstate commerce.

H.R. 668. An act to amend the Internal Revenue Code of 1986 to reinstate the Airport and Airway Trust Fund excise taxes, and for other purposes.

ENROLLED BILL SIGNED

At 4:45 p.m., a message from the House of Representatives, delivered by one of its clerks, announced that the Speaker has signed the following enrolled bill:

H.R. 499. An act to designate the facility of the United States Postal Service under construction at 7411 Barlite Boulevard in San Antonio, Texas, as the ''Frank M. Tejeda Post Office Building.''

The enrolled bill was signed subsequently by the President pro tempore [Mr. THURMOND].

At 6:16 p.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that pursuant to the provisions of 15 U.S.C. 1024(a), the Speaker appoints the following Members of the House to the Joint Economic Committee: Mr. MANZULLO, Mr. SANFORD, Mr. THORNBERRY, Mr. DOOLITTLE, and Mr. MCCRERY.

MEASURES REFERRED

The following bill was read the first and second times by unanimous consent and referred as indicated:

H.R. 624. An act to amend the Armored Car Industry Reciprocity Act of 1993 to clarify certain requirements and to improve the flow of interstate commerce; to the Committee on Commerce, Science, and Transportation.

MEASURE PLACED ON THE CALENDAR

The following measure was read the first and second times by unanimous consent and placed on the calendar:

H.R. 668. An act to amend the Internal Revenue Code of 1986 to reinstate the Airport and airway trust fund excise tax, and for other purposes.

PETITIONS AND MEMORIALS

The following petitions and memorials were laid before the Senate and were referred or ordered to lie on the table as indicated:

POM–33. A joint resolution adopted by the Legislature of the State of Washington; to the Committee on Appropriations.

HOUSE JOINT MEMORIAL 4006

Whereas, more than three thousand eight hundred women in Washington will be diagnosed with breast cancer this year; and

Whereas, nearly one thousand women in Washington lost their lives to breast cancer in 1996; and

Whereas, women who die from breast cancer lose an average of twenty years of their life; and

Whereas, breast cancer is the second leading cause of cancer death in women; and

Whereas, the medical treatment costs of breast cancer nation-wide total over six billion dollars annually; and

Whereas, underfunded research into the causes of breast cancer have not yet determined a cause, prevention, or cure for the disease; and

Whereas, research into the cause and cure for all cancers totals only one-tenth of one percent of the federal budget; and

Whereas, the Senate and House of Representatives of the State of Washington honor and support the American Cancer Society's ''Campaign 2.6'' signature drive: Now, therefore, your Memorialists respectfully pray that the President of the United States and members of the United States Congress recommit to eradicating breast cancer by investing two billion six million dollars in breast cancer research between now and January 1, 2000, and mandate that cancer activists be among those who decide how that money is appropriated; be it

Resolved, That Copies of the Memorial be immediately transmitted to the Honorable William J. Clinton, President of the United States; the Honorable Patty Murray, United States Senator; the Honorable Linda Smith, United States Representative; John Seffrin of the American Cancer Society National Home Office; Sherry Bailey of the American Cancer Society National Home Office; Fran Visco of the National Breast Cancer Coalition; Willie Stewart, Chairman of the Board of Directors, Western Pacific Division of the American Cancer Society; Ann Marie Pomerinke, Chief Executive Officer, Western Pacific Division of the American Cancer Society; Theresa Miller of the Breast Cancer Task Force of the Western Pacific Division of the American Cancer Society; Deb Schiro of the division office of the Western Pacific Division of the American Cancer Society; the President of the United States Senate; the Speaker of the House of Representatives, and each member of Congress from the State of Washington.

POM–34. A resolution adopted by the Senate of the Commonwealth of Pennsylvania; to the Committee on Armed Services.

RESOLUTION

Whereas, the Base Closure and Realignment Commission was created pursuant to the Defense Base Closure and Realignment Act of 1990 to study the viability of United States military installations and to issue reports regarding the closure and realignment of select installations; and

Whereas, the commission thoroughly reviewed data and input from all interested parties, including the Department of Defense, which recommended Tobyhanna Army Depot for increased mission responsibility; and

Whereas, in its final deliberations, the Defense Base Closure and Realignment Commission concurred with the efficiency and productivity analyses of the Tobyhanna Army Depot work force; and

Whereas, the commission issued a report to the President of the United States on July 1, 1995, which recommended the transfer of the ground communications-electronics workload from the Sacramento Air Logistics Center, California, to the Tobyhanna Army Depot; and

Whereas, in recommending that the McClellan Air Force Base, Sacramento, California, should be closed, the commission directed that its ground communications-electronics workload transfer to Tobyhanna Army Depot; and

Whereas, this recommendation and others included in the commission's 1995 report were accepted by the President, submitted to the Congress of the United States and signed as the Base Closure and Realignment Report of 1995 on July 13, 1995; and

Whereas, the commission's report indicated that the Tobyhanna Army Depot can perform the ground communications-electronics workload just as efficiently and more cost effective than the Sacramento Air Logistics Center; and

Whereas, the Tobyhanna Army Depot has proven to be one of the United States' most cost-effective installations; and

Whereas, the transfer of the ground communications-electronics workload to the Tobyhanna Army Depot would involve the movement of approximately 900 positions to the Tobyhanna Army Depot; and

Whereas, these 900 positions constitute a significant staff complement for the Tobyhanna Army Depot, although these 900 positions represent less than 10% of the total complement based at the Sacramento Air Logistics Center; and

Whereas, the Tobyhanna Army Depot is northeastern Pennsylvania's largest employer, and the transfer of these 900 positions would represent an important influx to the regional economy; and

Whereas, the Tobyhanna Army Depot has the capacity, capability and skills necessary to immediately perform a significant portion of the Sacramento Air Logistics Center's ground communications-electronics workload; and

Whereas, the Base Closure and Realignment Report of 1995 required that the President of the United States initiative workload transfers no later than July 13, 1997, and complete those transfers no later than July 13, 2001; and

Whereas, at the recommendation of the Secretary of Defense, the President of the United States of America accepted these decisions; and

Whereas, the transfer of the 900 ground communications-electronics positions to Tobyhanna Army Depot has not been initiated, even though this transfer was approved by the President of the United States and shown to be in the interests of cost-effectiveness and military efficiency; and

Whereas, it is apparent that leaders in the state of California seek to delay or prevent the movement of the ground communications-electronics workload to Tobyhanna; and

Whereas, the Commonwealth of Pennsylvania has been severely impacted by the Department of Defense base closure process in each round from 1988 to 1996 and has not sought special protection from these impacts; and

Whereas, these efforts by the elected officials of California will violate the intention of the 1995 Defense Base Closure and Realignment Commission, negate annual savings of $160 million and impact the readiness of the nation's armed forces; Therefore be it

Resolved, That the Senate of the Commonwealth of Pennsylvania memorialize the President of the United States to effect the immediate transfer of the ground communications-electronics workload from the Sacramento Air Logistics Center to the Tobyhanna Army Depot; and be it further

Resolved, That copies of this resolution be transmitted to the President of the United States, to the presiding officers of each house of Congress and to each member of Congress from Pennsylvania.

POM–35. A resolution adopted by the Puerto Rican Bar Association Board of Directors relative to opposition to the Death Penalty; to the Committee on Energy and Natural Resources.

POM–36. A joint resolution adopted by the Legislative of the State of Washington; to the Committee on Energy and Natural Resources.

Whereas, the Fast Flux Test Facility (FFTF) is the nation's most advanced test reactor; and

Whereas, numerous independent studies have suggested that the facility could one day be used to produce cancer-curing medical isotopes; and

Whereas, the facility has also been considered by the Department of Energy (DOE) for short-term production of tritium for our nation's defense needs; and

Whereas, utilizing the FFTF for this purpose could help postpone construction of more expensive options for tritium production, thus freeing federal dollars for environmental purposes during DOE's ''Ten Year Cleanup Plan''; and

Whereas, this would protect Hanford clean up from budget pressures during this time frame and ensure that the federal government fulfills its responsibilities under the Tri-Party Agreement; and

Whereas, private sector involvement in the FFTF project could further reduce federal expenditures needed for tritium production; and

Whereas, DOE and President William J. Clinton have announced their decision to keep the FFTF on standby for potential use for medical and tritium purposes; and

Whereas, this decision could lead to the development of a major cancer treatment center in Washington State; and

Whereas, sixty-nine nationally recognized cancer researchers have expressed their strong support for preserving the FFTF, and have argued that they would find it ''unconscionable to shut down the FFTF without a full review of its potential for future operation, including isotope production'': Now, therefore,

Your Memorialists respectfully pray that the United States Congress and executive agencies approve and endorser the plan to fully and fairly evaluate the FFTF for use in meeting critical national needs, and urge that the long-term best interests of clean-up activities at Hanford and cancer research be given top priority by DOE in arriving at its decision, be it

Resolved, That copies of this Memorial be immediately transmitted to the Honorable William J. Clinton, President of the United States, the Secretary of Energy, the President of the United States Senate, the Speaker of the House of Representatives, and each member of Congress from the State of Washington.

POM–37. A petition from the citizens of the State of California relative to violence, abuse, and the women's citizenship; to the Committee on Environment and Public Works.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. BOND (for himself and Mr. ASHCROFT):

S. 368. A bill to prohibit the use of Federal funds for human cloning research; to the Committee on Labor and Human Resources.

By Mr. JEFFORDS (for himself, Mr. KENNEDY, Mr. CHAFEE, Ms. MIKULSKI, Ms. COLLINS, Mrs. MURRAY, Mr. DODD, Mr. HOLLINGS, Mr. GLENN, and Mr. REED):

S. 369. A bill to amend section 1128B of the Social Security Act to repeal the criminal penalty for fraudulent disposition of assets in order to obtain medicaid benefits added by section 217 of the Health Insurance Portability and Accountability Act of 1996; to the Committee on Finance.

By Mr. GRASSLEY (for himself, Mr. CONRAD, and Mr. HOLLINGS):

S. 370. A bill to amend title XVIII of the Social Security Act to provide for increased medicare reimbursement for nurse practitioners and clinical nurse specialists to increase the delivery of health services in health professional shortage areas, and for other purposes; to the Committee on Finance.

S. 371. A bill to amend title XVIII of the Social Security Act to provide for increased medicare reimbursement for physician assistants, to increase the delivery of health services in health professional shortage areas, and for other purposes; to the Committee on Finance.

By Mr. GRASSLEY:

S. 372. A bill to amend title XVIII of the Social Security Act to provide for a 5-year reinstatement of the medicare-dependent, small, rural hospital payment provisions, and for other purposes; to the Committee on Finance.

By Mr. KENNEDY:

S. 373. A bill to amend title XXVII of the Public Health Service Act and part 7 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 to establish standards for protection of consumers in managed care plans and other health plans; to the Committee on Labor and Human Resources.

By Mr. ROBB:

S. 374. A bill to amend title 38, United States Code, to extend eligibility for hospital care and medical services under chapter 17 of that title to veterans who have been awarded the Purple Heart, and for other purposes; to the Committee on Veterans' Affairs.

By Mr. MCCAIN (for himself, Mr. DODD, Mr. ROBERTS, Mr. FORD, Mr. WARNER, Mr. DURBIN, Mr. GREGG, Mr. BINGAMAN, Mr. REED, Mr. DEWINE, Mr. WELLSTONE, and Mr. HAGEL):

S. 375. A bill to amend title II of the Social Security Act to restore the link between the maximum amount of earnings by blind individuals permitted without demonstrating ability to engage in substantial gainful activity and the exempt amount permitted in determining excess earnings under the earnings test; to the Committee on Finance.

By Mr. LEAHY (for himself, Mr. BURNS, Mrs. MURRAY, and Mr. WYDEN):

S. 376. A bill to affirm the rights of Americans to use and sell encryption products, to establish privacy standards for voluntary key recovery encryption systems, and for other purposes; to the Committee on the Judiciary.

By Mr. BURNS (for himself, Mr. LEAHY, Mr. LOTT, Mr. NICKLES, Mr. DORGAN, Mrs. HUTCHISON, Mr. CRAIG, Mr. WYDEN, Mr. ASHCROFT, Mr. DOMENICI, Mr. THOMAS, Mr. CAMPBELL, Mrs. BOXER, Mr. BROWNBACK, Mrs. MURRAY, Mr. KEMPTHORNE, Mr. INHOFE, Mr. FAIRCLOTH, Mr. GRAMS, and Mr. ALLARD):

S. 377. A bill to promote electronic commerce by facilitating the use of strong encryption, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. THOMPSON:

S. 378. A bill to provide additional funding for the Committee on Governmental Affairs of the Senate; read the first time.

By Mr. MURKOWSKI (for himself and Mr. STEVENS):

S. 379. A bill entitled the ''Native Alaskan Subsistance Whaling Provision''; to the Committee on Finance.

By Mr. DURBIN (for himself, Mr. KENNEDY, and Mr. KOHL):

S. 380. A bill to prohibit foreign nationals admitted to the United States under a nonimmigrant visa from possessing a firearm; to the Committee on the Judiciary.

By Mr. ROCKEFELLER (for himself, Mr. MACK, Mr. FRIST, Mr. MOYNIHAN, Mr. KENNEDY, Mr. ABRAHAM, Mr. KERREY, Mr. CRAIG, Mr. WELLSTONE, Mr. COCHRAN, Ms. MIKULSKI, Mr. CAMPBELL, Mr. LEAHY, Mr. JEFFORDS, Mrs. HUTCHISON, Mr. HOLLINGS, Mr. FAIRCLOTH, and Mr. BINGAMAN):

S. 381. A bill to establish a demonstration project to study and provide coverage of routine patient care costs for medicare beneficiaries with cancer who are enrolled in an approved clinical trail program; to the Committee on Finance.

By Mr. HOLLINGS (for himself, Mr. SPECTER, Mr. DASCHLE, Mr. BRYAN, Mr. BIDEN, Mrs. FEINSTEIN, Mr. REED, Mr. CONRAD, Mr. DORGAN, and Mr. REID):

S.J. Res. 18. A joint resolution proposing an amendment to the Constitution of the United States relating to contributions and expenditures intended to affect elections; read twice and placed on the calendar.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. BOND (for himself and Mr. ASHCROFT):

S. 368. A bill to prohibit the use of Federal funds for human cloning research; to the Committee on Labor and Human Resources.

RESEARCH LEGISLATION

Mr. BOND. Mr. President, today I rise to introduce a measure on behalf of myself, Senator ASHCROFT, and Senator BYRD which would prohibit permanently the use of Federal funds for human cloning research. I am sure most Americans by now have heard about the successful cloning of Dolly, the sheep, by Scottish scientists. Many people are now asking can similar techniques be used to clone a human being? Something that was once thought to be only science fiction is now close to being a reality.

With the legislation I introduce today, I intend to make sure that human cloning stays within the realm of science fiction and does not become a reality. The bill that I am introducing with my colleagues today will place a permanent ban on Federal funding for human cloning or human cloning research. We must send a clear signal: Human cloning is something we cannot and should not tolerate. This type of research on humans is morally reprehensible. We should not be creating human beings for spare parts or as replacements. Moreover, a National Institutes of Health human embryo panel noted, ''allowing society to create genetically identical persons would devalue human life by undermining the individuality of human beings.''

In a September 1994 report of the Human Embryo Research Panel, the heading is, ''Research Considered Unacceptable for Federal Funding.'' It said:

Four ethical considerations entered into the deliberations of the panel as it determined what types of research were unacceptable for Federal funding: The potential adverse consequences of the research for children, women and men; the respect due the reimplantation embryo; concern for public sensitivities in highly controversial research proposals, and concern for the meaning of humanness, parenthood, and the successions of generations.

The President has said we should study the issue. President Clinton has asked a Federal bioethicist board to consider the implications of this research and report back to him within 90 days. I do not think we need to study this. I think we can save the board some effort because the President's own administration has concluded that human cloning was ''research considered unacceptable for Federal funding.'' There are some aspects of life which simply ought to be off limits to science.

I think it will be helpful to go through some of the ethical considerations the board looked at. First, they asked: Is it ethical to create genetically identical individuals who can be born at different times? Is it ethical to store a frozen human embryo that is genetically identical to a born child in order to serve as a later source for organ and tissue transplantation; thus treating humans as spare parts? Is it ethical to create a genetically identical child as a replacement in case the first child dies?

Again, these are just a sample of the ethical questions the issue poses.

The board concluded the analysis by stating:

There are broad moral concerns about the deliberate duplication of an individual genome. The notion of cloning an existing human being or of making ''carbon copies'' of an existing embryo appears repugnant to members of the public. Many Members of the panel share this view and see no justification for Federal funding of such research.

I also should point out an important distinction with this bill. It is narrowly drafted so that it only affects human cloning research. It does not address the issue of plant and animal cloning research, and it will also allow—and I personally strongly support—NIH to continue its human genome mapping project.

I have long been a supporter of biotechnology, genome mapping and manipulation, and even plant and animal cloning. But we can draw a clear line here. For plants and animals, it makes sense to clone your specimens to improve human health and human well-being. But when we are talking about creating an entire human being, identical to another, we are talking about playing God, and that is where we must draw the line.

I note, the Vatican and leading ethicists throughout the country have called for a ban on human cloning and human cloning research.

I ask unanimous consent that the names of those ethicists and scientists be printed in the RECORD.

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

Dr. Ted Cicero, Vice Chancellor for Research at Washington University in St. Louis, Missouri.

Dr. Kevin Fitzgerald, a Jesuit priest and a geneticist at Loyola University in Illinois.

Arthur Caplan, head of the Center for Bioethics at the University of Pennsylvania.

Dr. Harmon Smith, Professor of Moral Theology at Duke University.

By Mr. JEFFORDS (for himself, Mr. KENNEDY, Mr. CHAFEE, Ms. MIKULSKI, Ms. COLLINS, Mrs. MURRAY, Mr. DODD, Mr. HOLLINGS, Mr. GLENN and Mr. REED):

S. 369. A bill to amend section 1128B of the Social Security Act to repeal the criminal penalty for fraudulent disposition of assets in order to obtain medicaid benefits added by section 217 of the Health Insurance Portability and Accountability Act of 1996; to the Committee on Finance.

HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT AMENDMENTS

Mr. JEFFORDS. Mr. President, I am on the floor today to introduce legislation that will repeal section 217 of the Health Insurance Portability and Accountability Act [HIPAA]. As enacted last year, this provision for the first time creates Federal criminal penalties for elders who transfer their assets and who subsequently apply for Medicaid but are deemed ineligible for nursing home benefits.

I believe the goal to stop fraud and abuse in the Medicaid Program is laudable and must be pursued. However, there is a growing consensus that section 217 is a vague, unenforceable, criminal sanction misdirected at the elderly. It is unduly threatening to the Nation's senior citizens. We are sending the wrong message by implying there is something wrong or illegal with obtaining sound financial advice and estate planning to legitimately protect the assets that senior citizens have spent a lifetime accruing.

During a recent hearing before the Committee on Labor and Human Resources, on the implementation of HIPAA, several concerns were raised about this issue. Ms. Gail Shearer, the director of health policy analysis of the Consumers Union, testified that section 217 was ''leading to considerable alarm among seniors'' and that she was ''deeply troubled by the prospect of HIPAA leading to the transfer of elderly nursing home residents from their nursing home to prison.''

At that same hearing, Mr. Bruce Vladek, the administrator of the Health Care Financing Administration, pointed out that there is no evidence that large numbers of the elderly are impoverishing themselves to become Medicaid eligible. He expressed his belief that a few people doing something egregious can create the perception of a widespread problem. It is especially unclear how pervasive this practice is, particularly in light of actions already taken by Congress to curb these asset transfers.

Repeal of section 217 would not affect several other restrictions now on the books designed to close loopholes and stop the inappropriate transfer of assets. People found to have transferred nonexempt assets within a look-back period are determined ineligible and denied Medicaid nursing home assistance for the period over which their assets would have paid. The look-back period for asset transfers is 36 months, with a 60-month period for trusts. States are also required to establish estate recovery programs to compensate for nursing home services paid for by the Medicaid Program.

There is no systematic study that has determined or recommended that the addition of criminal sanctions to the penalties which already exist are necessary to address inappropriate asset transfers by the elderly. In the absence of a demonstrated need for criminal penalties, we believe that section 217 holds the potential to do more harm than good.

No one really wants to send Granny to jail. In fact, it has been reported that the intended targets of section 217 are those who have created a cottage industry, and made substantial sums of money, from advising the elderly on how to transfer their assets to become Medicaid eligible. Ironically, section 217 has had the opposite effect. Recent newspaper ads placed by these advisers from Portland, ME, to Phoenix, AZ, now use this very law to drum up business. The bold-print headlines of these ads read:

Sneaky New Law Buried in the Health Insurance Bill Can Put Unsuspecting Seniors and Retirees Behind Bars!, and You Only Have Until December 31st, 1996, To Avoid Making the Mistake That Could Toss You in Jail . . . Congress' Sneaky New Law Is the Most Vicious Attack on Retirees Yet!

Mr. President, fraud and abuse in the Medicaid Program must not be tolerated, and taxpayers should not have to pay nursing home bills for persons who have the wherewithal to pay for their own care. But neither should confusing, unenforceable laws be in place that impose Federal criminal penalties on elderly individuals where there is no clear understanding of what does and what does not constitute a criminal activity.

Organizations urging repeal of the provision include: the American Association of Retired Persons, the Alzheimer's Association, the Leadership Council on Aging—a group of more than 40 national organizations in the field of aging—and the American Bar Association.

I believe that we in the Congress owe it to our senior citizens to stop their needless anxiety over this misdirected, confusing law. We need to repeal section 217. I urge my colleagues to join me in repealing this unnecessary and unworkable law.

Mr. President, I ask unanimous-consent that the text of the bill be printed in the RECORD.

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

S. 369

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. REPEAL OF CRIMINAL PENALTY FOR FRAUDULENT DISPOSITION OF ASSETS IN ORDER TO OBTAIN MEDICAID BENEFITS.

(a) REPEAL.—Section 1128B(a) of the Social Security Act (42 U.S.C. 1320a–7b(a)), as amended by section 217 of the Health Insurance Portability and Accountability Act of 1996 (Public Law 104–191; 110 Stat. 2008), is amended—

(1) by adding ''or'' at the end of paragraph (4);

(2) by striking ''or'' at the end of paragraph (5) and inserting a comma; and

(3) by striking paragraph (6).

(b) EFFECTIVE DATE.—The amendments made by subsection (a) take effect as if included in the enactment of the Health Insurance Portability and Accountability Act of 1996 (Public Law 104–191; 110 Stat. 1936).

Mr. KENNEDY. Mr. President, I commend Senator JEFFORDS for his leadership on this legislation and I am honored to join him on it. Our bill repeals the criminal penalties enacted last year for disposing of assets in order to obtain Medicaid benefits.

We all agree that Medicaid must be free of fraud and abuse. No one should be able to game the system by giving away their assets just to qualify for Medicaid, a program intended to help the truly needy.

The criminal penalties enacted last year was a mistake and should never have been enacted. They are poorly drafted, and will have unintended consequences that penalize senior citizens unfairly. Indeed, this provision could frighten the most needy elderly away from seeking the care they need, while doing little to deter and punish those who defraud the system.

No serious study has defined abusive transfers of assets as a significant problem, or recommended criminalizing an action that is already prohibited and penalized in other ways. If middle and upper income families are transferring assets to qualify for Medicaid, it should be the topic of congressional hearings and investigation, so that we can evaluate the scope of the problem and develop an appropriate response. In the meantime, seniors should not be terrorized with threats of jail merely for seeking nursing home care.

The current debate over this issue reveals a much larger problem—the need for better coverage of long-term care, so that those requiring long nursing home stays don't have to sacrifice their life savings to pay for their care.

There is broad bipartisan support in Congress for repeal of this provision. The White House supports repeal. Advocacy groups for the elderly support repeal. I urge Congress to act quickly on this legislation, and provide peace of mind to senior citizens across the country who feel unfairly threatened by current law.

By Mr. GRASSLEY (for himself, Mr. CONRAD, and Mr. HOLLINGS):

S. 370. A bill to amend title XVIII of the Social Security Act to provide for increased Medicare reimbursement for nurse practitioners and clinical nurse specialists to increase the delivery of health services in health professional shortage areas, and for other purposes; to the Committee on Finance.

THE PRIMARY CARE HEALTH PRACTITIONER INCENTIVE ACT OF 1997

● Mr. GRASSLEY. Mr. President, today, on behalf of myself, Senator CONRAD, Senator DORGAN, and Senator HOLLINGS, I am introducing two bills. If enacted, these bills would increase access to primary care for Medicare beneficiaries in rural and inner-city communities. The Primary Care Health Practitioner Incentive Act of 1997 would reform Medicare reimbursement to nurse practitioners [NP's] and clinical nurse specialists [CNS's]. The Physician Assistant Incentive Act of 1997 would reform Medicare reimbursement for physician assistants. We introduced these bills in the last three Congresses. We are reintroducing them today to improve access to primary care services for Medicare beneficiaries, particularly in rural and underserved areas. This legislation would reform Medicare policies which, under certain circumstances, restrict reimbursement for services delivered by these providers. Similar measures are included in the President's Medicare proposal and were part of the Balanced Budget Act of 1995.

The Medicare Program currently covers the services of these practitioners. However, payment levels vary depending on treatment settings and geographic area. In most cases, reimbursement may not be made directly to the nonphysician provider. Rather, it must be made to the employer of the provider, often a physician. The legislation authorizing these different reimbursement arrangements was passed in an incremental fashion over the years.

The Medicare law, which authorizes reimbursement of these providers, is also inconsistent with State law in many cases. For instance, in Iowa, State law requires nonphysicians to practice with either a supervising physician or a collaborating physician. However, under Iowa law, the supervising physician need not be physically present in the same facility as the nonphysician practitioner and, in many instances, can be located in a different site from that of the nonphysician practitioner he or she is supervising.

Unfortunately, Medicare policy will not recognize such relationships. Instead, the law requires that the physician be present in the same building as the nonphysician practitioner in order for the services of these nonphysician providers to be reimbursed. This is known as the incident to provision, referring to services that are provided incident to a physician's services.

This has created a problem in Iowa, Mr. President. In many parts of my State, clinics have been established using nonphysician practitioners, particularly physician assistants, to provide primary health care services in communities that are unable to recruit a physician. The presence of these practitioners insures that primary health care services will be available to the community. Iowa's Medicare carrier has strictly interpreted the incident to requirement of Medicare law as requiring the physical presence of a supervising physician in places where physician assistants practice. This has caused many of the clinics using physician assistants to close, and thus has deprived the community of primary health care services.

Mr. President, in 1995 the Iowa Hospital Association suggested a number of ways to improve access and cost effectiveness in the Medicare Program. One of their suggestions was that this incident to restriction be relaxed. They said:

> In rural Iowa, most physicians are organized in solo or small group practices. Physician assistants are used to augment these practices. With emergency room coverage requirements, absences due to vacation, continuing education or illness and office hours in satellite clinics, there are instances on a monthly basis where the physician assistant is providing care to patients without a physician in the clinic. Medicare patients in the physician clinic where the physician assistant is located have to either wait for the physician to return from the emergency room or care is provided without this provision.

If enacted, this legislation would establish a more uniform payment policy for these providers. It would authorize reimbursement of their services as long as they were practicing within State law and their professional scope of practice. It calls for reimbursement of these provider groups at 85 percent of the physician fee schedule for services they provide in all treatment settings and in all geographic areas. Where it is permitted under State law, reimbursement would be authorized even if these nonphysician providers are not under the direct, physical supervision of a physician.

Currently, the services of these nonphysician practitioners are paid at 100 percent of the physician's rate when provided ''incident to'' a physician's services. If enacted, this legislation would discontinue this ''incident to'' policy. Medicare reimbursement would now be provided directly to the nurse practitioners and clinical nurse specialists and it would be provided to the employer of the physician assistant. These bills also call for a 10-percent bonus payment when these practitioners work in health professional shortage areas [HPSA's]. Senator CONRAD and I believe these provisions will encourage nonphysician practitioners to relocate in areas in need of health care services.

Mr. President, legislation closely paralleling these bills we are introducing today is being introduced this week in the House by Representatives NANCY

JOHNSON and ED TOWNS. In addition, these provisions are included in the President's Medicare proposal. Historically, this legislation has received bipartisan support in both Houses. Comparable legislation was included in the Balanced Budget Act of 1995, as well as several other health care measures in previous Congresses. Therefore, I urge my colleagues to support this legislation.●

Mr. HOLLINGS. Mr. President, I join my colleagues Senators CONRAD and GRASSLEY in introducing the Primary Care Health Practitioner Incentive Act of 1997. Today I specifically want to address the provision that would allow for direct Medicare reimbursement for services provided by nurse practitioners and clinical nurse specialists regardless of geographic location. For many years we have been trying to pass legislation that would allow these health care providers in urban settings the same direct Medicare reimbursement as those in a rural setting, and I am hopeful that this is the year it will actually be enacted.

Currently, nurse practitioners and clinical nurse specialists may treat Medicare patients without a physician present if they practice in a rural setting or in a long-term care facility. I believe that it is time for this antiquated restraint to practice to be removed so that health care choices may be improved and increased for all Medicare patients. If we are to have any hope of providing adequate care with huge reductions in both Medicare and Medicaid, it is essential that service be provided by the least costly provider of quality care. We simply cannot afford to ignore the quality care of which nurse practitioners and clinical nurse specialists have proven they are capable.

I would also like to point out that many times there is a discrepancy in the designation of rural and urban areas. In my home State of South Carolina, as in other States, a number of the areas listed as urban are, in reality, rural areas. Medicare patients in these areas are unable to receive home visits or utilize local community satellite offices staffed with nurse practitioners. Rather, they are required to travel miles to see a physician. As a result, many patients forgo preventive health care and wait to seek care until they become so ill that they must be hospitalized or they are forced to seek care in more expensive emergency rooms. Not only is access to physicians more limited, but their fees for services are usually higher as well. Recent figures published by the American Academy of Nurse Practitioners estimate a cost savings of greater than $54 million per year if nurse practitioners were utilized appropriately in the provision of Medicare services in ambulatory care settings.

The primary objective of nurse practitioners and clinical nurse specialists is to provide routine care, manage chronic conditions, promote preventive health care, and make medical care more accessible and less expensive. Nurse practitioners and clinical nurse specialists have proven that they are able to provide high-quality, cost-effective primary care in all settings in which they provide services. It is foolish to restrict their ability to provide primary care services to the elderly based on setting or geographic location, and I urge your consideration and the passage of this bill.

By Mr. GRASSLEY (for himself, Mr. CONRAD, and Mr. HOLLINGS):

S. 371. A bill to amend title XVIII of the Social Security Act to provide for increased medicare reimbursement for physician assistants, to increase the delivery of health services in health professional shortage areas, and for other purposes; to the Committee on Finance.

THE PHYSICIAN ASSISTANT INCENTIVE ACT OF 1997

● Mr. CONRAD. Mr. President, Senator GRASSLEY and I are again introducing legislation to improve Medicare reimbursement policy for nurse practitioners, clinical nurse specialists, and physician assistants. The Primary Care Health Practitioner Incentive Act and the Physician Assistant Incentive Act of 1997 are very similar to S. 864 and S. 863, which we introduced in the 104th Congress. This legislation passed both Houses as part of reconciliation in 1995. I am very hopeful that this bipartisan legislation will garner widespread support and be signed into law as part of a Medicare reform bill this year.

We believe our legislation will help all Americans by making the best possible use of primary care providers who play a vital role in our health care delivery infrastructure. Throughout the country, nurse practitioners, clinical nurse specialists and physician assistants have the skills to provide needed primary care services. This is particularly important in rural and underserved areas that have shortages of physicians.

In recent years, our Nation's health care system has put a renewed emphasis on the use of primary care and wellness. Nurse practitioners, physician assistants, and clinical nurse specialists are uniquely positioned to provide this care. Nurse practitioners are registered nurses with advanced education and clinical training, often in a specialty area such as geriatrics or women's health. Nearly half of the Nation's 25,000 nurse practitioners have master's degrees. Clinical nurse specialists are required to have master's degrees and usually work in teritary care settings such as cardiac care. Many, however, also work in primary care. Physician assistants receive an average of 2 years of physician-supervised clinical training and classroom instruction and work in all setting providing diagnostic, therapeutic, and preventive care services. Each of these providers work with physicians in varying degrees usually in consultation.

Within their areas of competence, these health care providers deliver care of exceptional quality. These practitioners play a vital role in communities that cannot support a physician but can afford a nurse practitioner or physician assistant; historically, these providers have been willing to move to both rural and inner-city areas that are underserved by health care providers. In fact, there are 50 communities in North Dakota that are taking advantage of the services provided by these care givers. Unfortunately, unless we make changes in our Federal reimbursement scheme, many areas of the country will not be able to benefit from these needed services.

Current Medicare reimbursement rules were developed in an ad hoc fashion; as a result, they are inconsistent, incoherent, and nearly inexplicable. Current law provides reimbursement for advanced practice nurses in rural settings. But if the same patient sees the same nurse practitioner in a satellite clinic in an equally rural community that happens to be within an MSA county, reimbursement becomes subject to the ''incident to'' rule that HCFA has interpreted to require the physical presence of a physician in the building.

In rural North Dakota and in rural communities throughout the country, that scenario is often inconsistent with the realities of health care delivery. Doctors in these areas often rotate between several clinics in a region that is staffed on a full-time basis by a physician assistant, nurse practitioner, or other provider. This allows physicians to cover a wider area and affords more rural residents access to basic primary care services. Current Medicare rules work against this, however. If a Medicare patient requires care when a physician is away at another clinic or out on an emergency call, the physician assistant or other provider will not be reimbursed by Medicare for the same care that would have been paid for if a physician was in the next room.

Moreover, if the nurse practitioner crosses the street from a free-standing clinic to a hospital-affiliated outpatient clinic, the reimbursement rules change once again. Physician assistants are subject to an equally bewildering set of reimbursement rules that serve to prevent their effective use by the Medicare Program.

Other complications also cause problems. State laws are often inconsistent with the Medicare requirements. In North Dakota, care provided by a physician assistant is reimbursed even if a physician is not present. Across the country, there also are a wide variety of payment mechanisms that result in reimbursement variations in different settings and among different providers. The Office of Technology Assessment, the Physician Payment Review Commission, and these providers themselves have all expressed the need for consistency and sensibility in a reimbursement system that acknowledges

the reality of today's medical marketplace. Our colleagues shared those sentiments in 1995 by passing this legislation in both Houses.

The legislation Senator GRASSLEY and I are introducing today will provide each of these groups with reimbursement at 85 percent of the physician fee schedule. They will also provide a bonus payment to those providers who choose to practice in areas designated as Health Professional Shortage Areas [HPSA's]. The health care access problems faced by residents of these communities could be dramatically improved through the use of this special class of primary care providers. Finally, our legislation will ensure that a nurse practitioner who cares for a patient will get paid directly for that service.

This legislation offers an example how Medicare can and should increase access to care by promoting the use of cost-effective providers to a much higher degree without compromising the quality of care that older Americans receive. There was a clear agreement on these issues in the 104th Congress, and we urge our Democratic and Republican colleagues to continue to support this legislation in the 105th Congress.●

By Mr. GRASSLEY:

S. 372. A bill to amend title XVIII of the Social Security Act to provide for a 5-year reinstatement of the Medicare-dependent, small, rural hospital payment provisions, and for other purposes; to the Committee on Finance.

THE MEDICARE DEPENDENT HOSPITALS PROGRAM REINSTATEMENT ACT

● Mr. GRASSLEY. Mr. President, I introduce a bill which would reinstate the Medicare-Dependent Hospital Program.

This program expired in October 1994. As its title implied, the hospitals it helped were those which were very dependent on Medicare reimbursement. These were small—100 beds or less—rural hospitals with not less than 60 percent of total discharges or with 60 percent of total inpatient days attributable to Medicare beneficiaries. The program enabled the hospitals in question to choose the most favorable of three reimbursement methods.

The program was extended, and phased out down to October 1994, in the Omnibus Budget Reconciliation Act of 1993. That act retained the choice of the three original reimbursement methods. But it reduced the reimbursement available from those original computation methods by 50 percent.

My legislation would not extend the program as it was originally enacted by the Omnibus Budget Reconciliation Act of 1989. Rather, it would reinstate for 5 years the provisions contained in the Omnibus Budget Reconciliation Act of 1993. It would not have retroactive effect, however. The program would be revived for fiscal year 1998, and would terminate at the end of fiscal year 2002.

As I noted above, the hospitals which would benefit from this program are small, rural hospitals providing an essential point of access to hospital and hospital-based services in rural areas and small towns. Obviously, if we lose these hospitals, we will also have a hard time keeping physicians in those communities.

Mr. President, 44, or 36 percent, of Iowa's 122 community hospitals qualified to participate in this program in 1994, and 29, or 24 percent, chose to participate. I believe that this was the largest number of such hospitals of any State.

For these hospitals, the percentage of all inpatient days attributable to Medicare patients was 77.4 percent in 1994, and Medicare discharges represented 65.5 percent of total discharges. Across all Iowa hospitals, the Association of Iowa Hospitals and Health Systems indicates that the Medicare share of inpatient days and discharges has increased in recent years, as non-Medicare admissions have dropped. As a result, it is likely that the program will provide a lifeline for even more Iowa hospitals now than in 1994.

The expiration of the program has had a devastating effect on many of these hospitals, including a number with negative operating margins. The bottom line is that many of these hospitals have had, and will have, a very difficult time continuing to exist without the Medicare-Dependent Hospital Program.

Mr. President, I am also going to continue to work for a limited service rural hospital bill. This bill will essentially extend the EACH/RPCH Program—the Essential Access Community Hospital and Rural Primary Care Hospital Program—to all the States.

Taken together, these two pieces of legislation will allow the smaller hospitals in Iowa—and throughout America—to modify their missions in a deliberate and nondisruptive way, and to continue to provide the health care services essential to their communities.●

By Mr. KENNEDY:

S. 373. A bill to amend title XXVII of the Public Health Service Act and part 7 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 to establish standards for protection of consumers in managed care plans and other health plans; to the Committee on Labor and Human Resources.

THE HEALTH INSURANCE BILL OF RIGHTS ACT OF 1997

Mr. KENNEDY. Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 373

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Health Insurance Bill of Rights Act of 1997''.

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

SEC. 2. AMENDMENTS TO THE PUBLIC HEALTH SERVICE ACT.

(a) PATIENT PROTECTION STANDARDS.—Title XXVII of the Public Health Service Act is amended—

(1) by redesignating part C as part D, and

(2) by inserting after part B the following new part:

''PART C—PATIENT PROTECTION STANDARDS

''SEC. 2770. NOTICE; ADDITIONAL DEFINITIONS.

''(a) NOTICE.—A health insurance issuer under this part shall comply with the notice requirement under section 711(d) of the Employee Retirement Income Security Act of 1974 with respect to the requirements of this part as if such section applied to such issuer and such issuer were a group health plan.

''(b) ADDITIONAL DEFINITIONS.—For purposes of this part:

''(1) NONPARTICIPATING PHYSICIAN OR PROVIDER.—The term 'nonparticipating physician or provider' means, with respect to health care items and services furnished to an enrollee under health insurance coverage, a physician or provider that is not a participating physician or provider for such services.

''(2) PARTICIPATING PHYSICIAN OR PROVIDER.—The term 'participating physician or provider' means, with respect to health care items and services furnished to an enrollee under health insurance coverage, a physician or provider that furnishes such items and services under a contract or other arrangement with the health insurance issuer offering such coverage.

''SUBPART 1—ACCESS TO CARE

''SEC. 2771. ACCESS TO EMERGENCY CARE.

''(a) PROHIBITION OF CERTAIN RESTRICTIONS ON COVERAGE OF EMERGENCY SERVICES.

''(1) IN GENERAL.—If health insurance coverage provides any benefits with respect to emergency services (as defined in paragraph (2)(B)), the health insurance issuer offering such coverage shall cover emergency services furnished to an enrollee—

''(A) without the need for any prior authorization determination,

''(B) subject to paragraph (3), whether or not the physician or provider furnishing such services is a participating physician or provider with respect to such services, and

''(C) subject to paragraph (3), without regard to any other term or condition of such coverage (other than an exclusion of benefits, or an affiliation or waiting period, permitted under section 2701).

''(2) EMERGENCY SERVICES; EMERGENCY MEDICAL CONDITION.—For purposes of this section—

''(A) EMERGENCY MEDICAL CONDITION BASED ON PRUDENT LAYPERSON.—The term 'emergency medical condition' means a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that a prudent layperson, who possesses an average knowledge of health and medicine, could reasonably expect the absence of immediate medical attention to result in—

''(i) placing the health of the individual (or, with respect to a pregnant woman, the health of the woman or her unborn child) in serious jeopardy,

''(ii) serious impairment to bodily functions, or

''(iii) serious dysfunction of any bodily organ or part.

''(B) EMERGENCY SERVICES.—The term 'emergency services' means—

''(i) a medical screening examination (as required under section 1867 of the Social Security Act) that is within the capability of the emergency department of a hospital, including ancillary services routinely available to the emergency department, to evaluate an emergency medical condition (as defined in subparagraph (A)), and

''(ii) within the capabilities of the staff and facilities available at the hospital, such further medical examination and treatment as are required under section 1867 of the Social Security Act to stabilize the patient.

''(C) TRAUMA AND BURN CENTERS.—The provisions of clause (ii) of subparagraph (B) apply to a trauma or burn center, in a hospital, that—

''(i) is designated by the State, a regional authority of the State, or by the designee of the State, or

''(ii) is in a State that has not made such designations and meets medically recognized national standards.

''(3) APPLICATION OF NETWORK RESTRICTION PERMITTED IN CERTAIN CASES.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), if a health insurance issuer in relation to health insurance coverage denies, limits, or otherwise differentiates in coverage or payment for benefits other than emergency services on the basis that the physician or provider of such services is a nonparticipating physician or provider, the issuer may deny, limit, or differentiate in coverage or payment for emergency services on such basis.

''(B) NETWORK RESTRICTIONS NOT PERMITTED IN CERTAIN EXCEPTIONAL CASES.—The denial or limitation of, or differentiation in, coverage or payment of benefits for emergency services under subparagraph (A) shall not apply in the following cases:

''(i) CIRCUMSTANCES BEYOND CONTROL OF ENROLLEE.—The enrollee is unable to go to a participating hospital for such services due to circumstances beyond the control of the enrollee (as determined consistent with guidelines and subparagraph (C)).

''(ii) LIKELIHOOD OF AN ADVERSE HEALTH CONSEQUENCE BASED ON LAYPERSON'S JUDGMENT.—A prudent layperson possessing an average knowledge of health and medicine could reasonably believe that, under the circumstances and consistent with guidelines, the time required to go to a participating hospital for such services could result in any of the adverse health consequences described in a clause of subsection (a)(2)(A).

''(iii) PHYSICIAN REFERRAL.—A participating physician or other person authorized by the plan refers the enrollee to an emergency department of a hospital and does not specify an emergency department of a hospital that is a participating hospital with respect to such services.

''(C) APPLICATION OF 'BEYOND CONTROL' STANDARDS.—For purposes of applying subparagraph (B)(i), receipt of emergency services from a nonparticipating hospital shall be treated under the guidelines as being 'due to circumstances beyond the control of the enrollee' if any of the following conditions are met:

''(i) UNCONSCIOUS.—The enrollee was unconscious or in an otherwise altered mental state at the time of initiation of the services.

''(ii) AMBULANCE DELIVERY.—The enrollee was transported by an ambulance or other emergency vehicle directed by a person other than the enrollee to the nonparticipating hospital in which the services were provided.

''(iii) NATURAL DISASTER.—A natural disaster or civil disturbance prevented the enrollee from presenting to a participating hospital for the provision of such services.

''(iv) NO GOOD FAITH EFFORT TO INFORM OF CHANGE IN PARTICIPATION DURING A CONTRACT YEAR.—The status of the hospital changed from a participating hospital to a nonparticipating hospital with respect to emergency services during a contract year and the plan or issuer failed to make a good faith effort to notify the enrollee involved of such change.

''(v) OTHER CONDITIONS.—There were other factors (such as those identified in guidelines) that prevented the enrollee from controlling selection of the hospital in which the services were provided.

''(b) ASSURING COORDINATED COVERAGE OF MAINTENANCE CARE AND POST-STABILIZATION CARE.—

''(1) IN GENERAL.—In the case of an enrollee who is covered under health insurance coverage issued by a health insurance issuer and who has received emergency services pursuant to a screening evaluation conducted (or supervised) by a treating physician at a hospital that is a nonparticipating provider with respect to emergency services, if—

''(A) pursuant to such evaluation, the physician identifies post-stabilization care (as defined in paragraph (3)(B)) that is required by the enrollee,

''(B) the coverage provides benefits with respect to the care so identified and the coverage requires (but for this subsection) an affirmative prior authorization determination as a condition of coverage of such care, and

''(C) the treating physician (or another individual acting on behalf of such physician) initiates, not later than 30 minutes after the time the treating physician determines that the condition of the enrollee is stabilized, a good faith effort to contact a physician or other person authorized by the issuer (by telephone or other means) to obtain an affirmative prior authorization determination with respect to the care,

then, without regard to terms and conditions specified in paragraph (2) the issuer shall cover maintenance care (as defined in paragraph (3)(A)) furnished to the enrollee during the period specified in paragraph (4) and shall cover post-stabilization care furnished to the enrollee during the period beginning under paragraph (5) and ending under paragraph (6).

''(2) TERMS AND CONDITIONS WAIVED.—The terms and conditions (of coverage) described in this paragraph that are waived under paragraph (1) are as follows:

''(A) The need for any prior authorization determination.

''(B) Any limitation on coverage based on whether or not the physician or provider furnishing the care is a participating physician or provider with respect to such care.

''(C) Any other term or condition of the coverage (other than an exclusion of benefits, or an affiliation or waiting period, permitted under section 2701 and other than a requirement relating to medical necessity for coverage of benefits).

''(3) MAINTENANCE CARE AND POST-STABILIZATION CARE DEFINED.—In this subsection:

''(A) MAINTENANCE CARE.—The term 'maintenance care' means, with respect to an individual who is stabilized after provision of emergency services, medically necessary items and services (other than emergency services) that are required by the individual to ensure that the individual remains stabilized during the period described in paragraph (4).

''(B) POST-STABILIZATION CARE.—The term 'post-stabilization care' means, with respect to an individual who is determined to be stable pursuant to a medical screening examination or who is stabilized after provision of emergency services, medically necessary items and services (other than emergency services and other than maintenance care) that are required by the individual.

''(4) PERIOD OF REQUIRED COVERAGE OF MAINTENANCE CARE.—The period of required coverage of maintenance care of an individual under this subsection begins at the time of the request (or the initiation of the good faith effort to make the request) under paragraph (1)(C) and ends when—

''(A) the individual is discharged from the hospital;

''(B) a physician (designated by the issuer involved) and with privileges at the hospital involved arrives at the emergency department of the hospital and assumes responsibility with respect to the treatment of the individual; or

''(C) the treating physician and the issuer agree to another arrangement with respect to the care of the individual.

''(5) WHEN POST-STABILIZATION CARE REQUIRED TO BE COVERED.—

''(A) WHEN TREATING PHYSICIAN UNABLE TO COMMUNICATE REQUEST.—If the treating physician or other individual makes the good faith effort to request authorization under

paragraph (1)(C) but is unable to communicate the request directly with an authorized person referred to in such paragraph within 30 minutes after the time of initiating such effort, then post-stabilization care is required to be covered under this subsection beginning at the end of such 30-minute period.

''(B) WHEN ABLE TO COMMUNICATE REQUEST, AND NO TIMELY RESPONSE.—

''(i) IN GENERAL.—If the treating physician or other individual under paragraph (1)(C) is able to communicate the request within the 30-minute period described in subparagraph (A), the post-stabilization care requested is required to be covered under this subsection beginning 30 minutes after the time when the issuer receives the request unless a person authorized by the plan or issuer involved communicates (or makes a good faith effort to communicate) a denial of the request for the prior authorization determination within 30 minutes of the time when the issuer receives the request and the treating physician does not request under clause (ii) to communicate directly with an authorized physician concerning the denial.

''(ii) REQUEST FOR DIRECT PHYSICIAN-TO-PHYSICIAN COMMUNICATION CONCERNING DENIAL.—If a denial of a request is communicated under clause (i), the treating physician may request to communicate respecting the denial directly with a physician who is authorized by the issuer to deny or affirm such a denial.

''(C) WHEN NO TIMELY RESPONSE TO REQUEST FOR PHYSICIAN-TO-PHYSICIAN COMMUNICATION.—If a request for physician-to-physician communication is made under subparagraph (B)(ii), the post-stabilization care requested is required to be covered under this subsection beginning 30 minutes after the time when the issuer receives the request from a treating physician unless a physician, who is authorized by the issuer to reverse or affirm the initial denial of the care, communicates (or makes a good faith effort to communicate) directly with the treating physician within such 30-minute period.

''(D) DISAGREEMENTS OVER POST-STABILIZATION CARE.—If, after a direct physician-to-physician communication under subparagraph (C), the denial of the request for the post-stabilization care is not reversed and the treating physician communicates to the issuer involved a disagreement with such decision, the post-stabilization care requested is required to be covered under this subsection beginning as follows:

''(i) DELAY TO ALLOW FOR PROMPT ARRIVAL OF PHYSICIAN ASSUMING RESPONSIBILITY.—If the issuer communicates that a physician (designated by the plan or issuer) with privileges at the hospital involved will arrive promptly (as determined under guidelines) at the emergency department of the hospital in order to assume responsibility with respect to the treatment of the enrollee involved, the required coverage of the post-stabilization care begins after the passage of such time period as would allow the prompt arrival of such a physician.

''(ii) OTHER CASES.—If the issuer does not so communicate, the required coverage of the post-stabilization care begins immediately.

''(6) NO REQUIREMENT OF COVERAGE OF POST-STABILIZATION CARE IF ALTERNATE PLAN OF TREATMENT.—

''(A) IN GENERAL.—Coverage of post-stabilization care is not required under this subsection with respect to an individual when—

''(i) subject to subparagraph (B), a physician (designated by the plan or issuer involved) and with privileges at the hospital involved arrives at the emergency department of the hospital and assumes responsibility with respect to the treatment of the individual; or

''(ii) the treating physician and the issuer agree to another arrangement with respect to the post-stabilization care (such as an appropriate transfer of the individual involved to another facility or an appointment for timely followup treatment for the individual).

''(B) SPECIAL RULE WHERE ONCE CARE INITIATED.—Required coverage of requested post-stabilization care shall not end by reason of subparagraph (A)(i) during an episode of care (as determined by guidelines) if the treating physician initiated such care (consistent with a previous paragraph) before the arrival of a physician described in such subparagraph.

''(7) CONSTRUCTION.—Nothing in this subsection shall be construed as—

''(A) preventing an issuer from authorizing coverage of maintenance care or post-stabilization care in advance or at any time; or

''(B) preventing a treating physician or other individual described in paragraph (1)(C) and an issuer from agreeing to modify any of the time periods specified in paragraphs (5) as it relates to cases involving such persons.

''(c) LIMITS ON COST-SHARING FOR SERVICES FURNISHED IN EMERGENCY DEPARTMENTS.—If health insurance coverage provides any benefits with respect to emergency services, the health insurance issuer offering such coverage may impose cost sharing with respect to such services only if the following conditions are met:

''(1) LIMITATIONS ON COST-SHARING DIFFERENTIAL FOR NONPARTICIPATING PROVIDERS.—

''(A) NO DIFFERENTIAL FOR CERTAIN SERVICES.—In the case of services furnished under the circumstances described in clause (i), (ii), or (iii) of subsection (a)(3)(B) (relating to circumstances beyond the control of the enrollee, the likelihood of an adverse health consequence based on layperson's judgment, and physician referral), the cost-sharing for such services provided by a nonparticipating provider or physician does not exceed the cost-sharing for such services provided by a participating provider or physician.

''(B) ONLY REASONABLE DIFFERENTIAL FOR OTHER SERVICES.—In the case of other emergency services, any differential by which the cost-sharing for such services provided by a nonparticipating provider or physician exceeds the cost-sharing for such services provided by a participating provider or physician is reasonable (as determined under guidelines).

''(2) ONLY REASONABLE DIFFERENTIAL BETWEEN EMERGENCY SERVICES AND OTHER SERVICES.—Any differential by which the cost-sharing for services furnished in an emergency department exceeds the cost-sharing for such services furnished in another setting is reasonable (as determined under guidelines).

''(3) CONSTRUCTION.—Nothing in paragraph (1)(B) or (2) shall be construed as authorizing guidelines other than guidelines that establish maximum cost-sharing differentials.

''(d) INFORMATION ON ACCESS TO EMERGENCY SERVICES.—A health insurance issuer, to the extent a health insurance issuer offers health insurance coverage, shall provide education to enrollees on—

''(1) coverage of emergency services (as defined in subsection (a)(2)(B)) by the issuer in accordance with the provisions of this section,

''(2) the appropriate use of emergency services, including use of the 911 telephone system or its local equivalent,

''(3) any cost sharing applicable to emergency services,

''(4) the process and procedures of the plan for obtaining emergency services, and

''(5) the locations of—

''(A) emergency departments, and

''(B) other settings,

in which participating physicians and hospitals provide emergency services and post-stabilization care.

''(e) GENERAL DEFINITIONS.—For purposes of this section:

''(1) COST SHARING.—The term 'cost sharing' means any deductible, coinsurance amount, copayment or other out-of-pocket payment (other than premiums or enrollment fees) that a health insurance issuer offering health insurance issuer imposes on enrollees with respect to the coverage of benefits.

''(2) GOOD FAITH EFFORT.—The term 'good faith effort' has the meaning given such term in guidelines and requires such appropriate documentation as is specified under such guidelines.

''(3) GUIDELINES.—The term 'guidelines' means guidelines established by the Secretary after consultation with an advisory panel that includes individuals representing emergency physicians, health insurance issuers, including at least one health maintenance organization, hospitals, employers, the States, and consumers.

''(4) PRIOR AUTHORIZATION DETERMINATION.—The term 'prior authorization determination' means, with respect to items and services for which coverage may be provided under health insurance coverage, a determination (before the provision of the items and services and as a condition of coverage of the items and services under the coverage) of whether or not such items and services will be covered under the coverage.

''(5) STABILIZE.—The term 'to stabilize' means, with respect to an emergency medical condition, to provide (in complying with section 1867 of the Social Security Act) such medical treatment of the condition as may be necessary to assure, within reasonable medical probability, that no material deterioration of the condition is likely to result from or occur during the transfer of the individual from the facility.

''(6) STABILIZED.—The term 'stabilized' means, with respect to an emergency medical condition, that no material deterioration of the condition is likely, within reasonable medical probability, to result from or occur before an individual can be transferred from the facility, in compliance with the requirements of section 1867 of the Social Security Act.

''(7) TREATING PHYSICIAN.—The term 'treating physician' includes a treating health care professional who is licensed under State law to provide emergency services other than under the supervision of a physician.

''SEC. 2772. ACCESS TO SPECIALTY CARE.

''(a) OBSTETRICAL AND GYNECOLOGICAL CARE.—

''(1) IN GENERAL.—If a health insurance issuer, in connection with the provision of health insurance coverage, requires or provides for an enrollee to designate a participating primary care provider—

''(A) the issuer shall permit a female enrollee to designate a physician who specializes in obstetrics and gynecology as the enrollee's primary care provider; and

''(B) if such an enrollee has not designated such a provider as a primary care provider, the issuer—

''(i) may not require prior authorization by the enrollee's primary care provider or otherwise for coverage of routine gynecological care (such as preventive women's health examinations) and pregnancy-related services provided by a participating physician who specializes in obstetrics and gynecology to

the extent such care is otherwise covered, and

''(ii) may treat the ordering of other gynecological care by such a participating physician as the prior authorization of the primary care provider with respect to such care under the coverage.

''(2) CONSTRUCTION.—Nothing in paragraph (1)(B)(ii) shall waive any requirements of coverage relating to medical necessity or appropriateness with respect to coverage of gynecological care so ordered.

''(b) SPECIALTY CARE.—

''(1) REFERRAL TO SPECIALTY CARE FOR ENROLLEES REQUIRING TREATMENT BY SPECIALISTS.—

''(A) IN GENERAL.—In the case of an enrollee who is covered under health insurance coverage offered by a health insurance issuer and who has a condition or disease of sufficient seriousness and complexity to require treatment by a specialist, the issuer shall make or provide for a referral to a specialist who is available and accessible to provide the treatment for such condition or disease.

''(B) SPECIALIST DEFINED.—For purposes of this subsection, the term 'specialist' means, with respect to a condition, a health care practitioner, facility, or center (such as a center of excellence) that has adequate expertise through appropriate training and experience (including, in the case of a child, appropriate pediatric expertise) to provide high quality care in treating the condition.

''(C) CARE UNDER REFERRAL.—Care provided pursuant to such referral under subparagraph (A) shall be—

''(i) pursuant to a treatment plan (if any) developed by the specialist and approved by the issuer, in consultation with the designated primary care provider or specialist and the enrollee (or the enrollee's designee), and

''(ii) in accordance with applicable quality assurance and utilization review standards of the issuer.

Nothing in this subsection shall be construed as preventing such a treatment plan for an enrollee from requiring a specialist to provide the primary care provider with regular updates on the specialty care provided, as well as all necessary medical information.

''(D) REFERRALS TO PARTICIPATING PROVIDERS.—An issuer is not required under subparagraph (A) to provide for a referral to a specialist that is not a participating provider, unless the issuer does not have an appropriate specialist that is available and accessible to treat the enrollee's condition and that is a participating provider with respect to such treatment.

''(E) TREATMENT OF NONPARTICIPATING PROVIDERS.—If an issuer refers an enrollee to a nonparticipating specialist, services provided pursuant to the approved treatment plan shall be provided at no additional cost to the enrollee beyond what the enrollee would otherwise pay for services received by such a specialist that is a participating provider.

''(2) SPECIALISTS AS PRIMARY CARE PROVIDERS.—

''(A) IN GENERAL.—A health insurance issuer, in connection with the provision of health insurance coverage, shall have a procedure by which a new enrollee upon enrollment, or an enrollee upon diagnosis, with an ongoing special condition (as defined in subparagraph (C)) may receive a referral to a specialist for such condition who shall be responsible for and capable of providing and coordinating the enrollee's primary and specialty care. If such an enrollee's care would most appropriately be coordinated by such a specialist, the issuer shall refer the enrollee to such specialist.

''(B) TREATMENT AS PRIMARY CARE PROVIDER.—Such specialist shall be permitted to treat the enrollee without a referral from the enrollee's primary care provider and may authorize such referrals, procedures, tests, and other medical services as the enrollee's primary care provider would otherwise be permitted to provide or authorize, subject to the terms of the treatment plan (referred to in paragraph (1)(C)(i)).

''(C) ONGOING SPECIAL CONDITION DEFINED.—In this paragraph, the term 'special condition' means a condition or disease that—

''(i) is life-threatening, degenerative, or disabling, and

''(ii) requires specialized medical care over a prolonged period of time.

''(D) TERMS OF REFERRAL.—The provisions of subparagraphs (C) through (E) of paragraph (1) shall apply with respect to referrals under subparagraph (A) of this paragraph in the same manner as they apply to referrals under paragraph (1)(A).

''(3) STANDING REFERRALS.—

''(A) IN GENERAL.—A health insurance issuer, in connection with the provision of health insurance coverage, shall have a procedure by which an enrollee who has a condition that requires ongoing care from a specialist may receive a standing referral to such specialist for treatment of such condition. If the issuer, or the primary care provider in consultation with the medical director of the issuer and the specialist (if any), determines that such a standing referral is appropriate, the issuer shall make such a referral to such a specialist.

''(C) TERMS OF REFERRAL.—The provisions of subparagraphs (C) through (E) of paragraph (1) shall apply with respect to referrals under subparagraph (A) of this paragraph in the same manner as they apply to referrals under paragraph (1)(A).

''SEC. 2773. CONTINUITY OF CARE.

''(a) IN GENERAL.—If a contract between a health insurance issuer, in connection with the provision of health insurance coverage, and a health care provider is terminated (other than by the issuer for failure to meet applicable quality standards or for fraud) and an enrollee is undergoing a course of treatment from the provider at the time of such termination, the issuer shall—

''(1) notify the enrollee of such termination, and

''(2) subject to subsection (c), permit the enrollee to continue the course of treatment with the provider during a transitional period (provided under subsection (b)).

''(b) TRANSITIONAL PERIOD.—

''(1) IN GENERAL.—Except as provided in paragraphs (2) through (4), the transitional period under this subsection shall extend for at least—

''(A) 60 days from the date of the notice to the enrollee of the provider's termination in the case of a primary care provider, or

''(B) 120 days from such date in the case of another provider.

''(2) INSTITUTIONAL CARE.—The transitional period under this subsection for institutional or inpatient care from a provider shall extend until the discharge or termination of the period of institutionalization and shall include reasonable follow-up care related to the institutionalization and shall also include institutional care scheduled prior to the date of termination of the provider status.

''(3) PREGNANCY.—If—

''(A) an enrollee has entered the second trimester of pregnancy at the time of a provider's termination of participation, and

''(B) the provider was treating the pregnancy before date of the termination,

the transitional period under this subsection with respect to provider's treatment of the pregnancy shall extend through the provision of post-partum care directly related to the delivery.

''(4) TERMINAL ILLNESS.—

''(A) IN GENERAL.—If—

''(i) an enrollee was determined to be terminally ill (as defined in subparagraph (B)) at the time of a provider's termination of participation, and

''(ii) the provider was treating the terminal illness before the date of termination,

the transitional period under this subsection shall extend for the remainder of the enrollee's life for care directly related to the treatment of the terminal illness.

''(B) DEFINITION.—In subparagraph (A), an enrollee is considered to be 'terminally ill' if the enrollee has a medical prognosis that the enrollee's life expectancy is 6 months or less.

''(c) PERMISSIBLE TERMS AND CONDITIONS.—An issuer may condition coverage of continued treatment by a provider under subsection (a)(2) upon the provider agreeing to the following terms and conditions:

''(1) The provider agrees to continue to accept reimbursement from the issuer at the rates applicable prior to the start of the transitional period as payment in full.

''(2) The provider agrees to adhere to the issuer's quality assurance standards and to provide to the issuer necessary medical information related to the care provided.

''(3) The provider agrees otherwise to adhere to the issuer's policies and procedures, including procedures regarding referrals and obtaining prior authorization and providing services pursuant to a treatment plan approved by the issuer.

''SEC. 2774. CHOICE OF PROVIDER.

''(a) PRIMARY CARE.—A health insurance issuer that offers health insurance coverage shall permit each enrollee to receive primary care from any participating primary care provider who is available to accept such enrollee.

''(b) SPECIALISTS.—

''(1) IN GENERAL.—Subject to paragraph (2), a health insurance issuer that offers health insurance coverage shall permit each enrollee to receive medically necessary specialty care, pursuant to appropriate referral procedures, from any qualified participating health care provider who is available to accept such enrollee for such care.

''(2) LIMITATION.—Paragraph (1) shall not apply to speciality care if the issuer clearly informs enrollees of the limitations on choice of participating providers with respect to such care.

''(c) LIST OF PARTICIPATING PROVIDERS.—For disclosure of information about participating primary care and specialty care providers, see section 2782(b)(3).

''SEC. 2775. COVERAGE FOR INDIVIDUALS PARTICIPATING IN APPROVED CLINICAL TRIALS.

''(a) IN GENERAL.—If a health insurance issuer offers health insurance coverage to a qualified enrollee (as defined in subsection (b)), the issuer—

''(1) may not deny the enrollee participation in the clinical trial referred to in subsection (b)(2);

''(2) subject to subsection (c), may not deny (or limit or impose additional conditions on) the coverage of routine patient costs for items and services furnished in connection with participation in the trial; and

''(3) may not discriminate against the enrollee on the basis of the enrollee's participation in such trial.

''(b) QUALIFIED ENROLLEE DEFINED.—For purposes of subsection (a), the term 'qualified enrollee' means an enrollee under health insurance coverage who meets the following conditions:

''(1) The enrollee has a life-threatening or serious illness for which no standard treatment is effective.

''(2) The enrollee is eligible to participate in an approved clinical trial with respect to treatment of such illness.

''(3) The enrollee and the referring physician conclude that the enrollee's participation in such trial would be appropriate.

''(4) The enrollee's participation in the trial offers potential for significant clinical benefit for the enrollee.

''(c) PAYMENT.—

''(1) IN GENERAL.—Under this section an issuer shall provide for payment for routine patient costs described in subsection (a)(2) but is not required to pay for costs of items and services that are reasonably expected (as determined by the Secretary) to be paid for by the sponsors of an approved clinical trial.

''(2) PAYMENT RATE.—In the case of covered items and services provided by—

''(A) a participating provider, the payment rate shall be at the agreed upon rate, or

''(B) a nonparticipating provider, the payment rate shall be at the rate the issuer would normally pay for comparable services under subparagraph (A).

''(d) APPROVED CLINICAL TRIAL DEFINED.—In this section, the term 'approved clinical trial' means a clinical research study or clinical investigation approved and funded by one or more of the following:

''(1) The National Institutes of Health.

''(2) A cooperative group or center of the National Institutes of Health.

''(3) The Department of Veterans Affairs.

''(4) The Department of Defense.

''SEC. 2776. ACCESS TO NEEDED PRESCRIPTION DRUGS.

''If a health insurance issuer offers health insurance coverage that provides benefits with respect to prescription drugs but the coverage limits such benefits to drugs included in a formulary, the issuer shall—

''(1) ensure participation of participating physicians in the development of the formulary;

''(2) disclose the nature of the formulary restrictions; and

''(3) provide for exceptions from the formulary limitation when medical necessity, as determined by the enrollee's physician subject to reasonable review by the issuer, dictates that a non-formulary alternative is indicated.

''SUBPART 2—QUALITY ASSURANCE

''SEC. 2777. INTERNAL QUALITY ASSURANCE PROGRAM.

''(a) REQUIREMENT.—A health insurance issuer that offers health insurance coverage shall establish and maintain an ongoing, internal quality assurance and continuous quality improvement program that meets the requirements of subsection (b).

''(b) PROGRAM REQUIREMENTS.—The requirements of this subsection for a quality improvement program of an issuer are as follows:

''(1) ADMINISTRATION.—The issuer has a separate identifiable unit with responsibility for administration of the program.

''(2) WRITTEN PLAN.—The issuer has a written plan for the program that is updated annually and that specifies at least the following:

''(A) The activities to be conducted.

''(B) The organizational structure.

''(C) The duties of the medical director.

''(D) Criteria and procedures for the assessment of quality.

''(E) Systems for ongoing and focussed evaluation activities.

''(3) SYSTEMATIC REVIEW.—The program provides for systematic review of the type of health services provided, consistency of services provided with good medical practice, and patient outcomes.

''(4) QUALITY CRITERIA.—The program—

''(A) uses criteria that are based on performance and clinical outcomes where feasible and appropriate, and

''(B) includes criteria that are directed specifically at meeting the needs of at-risk populations and enrollees with chronic or severe illnesses.

''(5) SYSTEM FOR REPORTING.—The program has procedures for reporting of possible quality concerns by providers and enrollees and for remedial actions to correct quality problems, including written procedures for responding to concerns and taking appropriate corrective action.

''(6) DATA COLLECTION.—The program provides for the collection of systematic, scientifically based data to be used in the measure of quality.

''(c) DEEMING.—For purposes of subsection (a), the requirements of subsection (b) are deemed to be met with respect to a health insurance issuer if the issuer—

''(1) is a qualified health maintenance organization (as defined in section 1310(d)), or

''(2) is accredited by a national accreditation organization that is certified by the Secretary.

''SEC. 2778. COLLECTION OF STANDARDIZED DATA.

''(a) IN GENERAL.—A health insurance issuer that offers health insurance coverage shall collect uniform quality data that include—

''(1) a minimum uniform data set described in subsection (b), and

''(2) additional data that are consistent with the requirements of a nationally recognized body identified by the Secretary.

''(b) MINIMUM UNIFORM DATA SET.—The Secretary shall specify the data required to be included in the minimum uniform data set under subsection (a)(1) and the standard format for such data. Such data shall include at least—

''(1) aggregate utilization data;

''(2) data on the demographic characteristics of enrollees;

''(3) data on disease-specific and age-specific mortality rates of enrollees;

''(4) data on enrollee satisfaction, including data on enrollee disenrollment and grievances; and

''(5) data on quality indicators.

''(c) AVAILABILITY.—A summary of the data collected under subsection (a) shall be disclosed under section 2782(b)(4).

''SEC. 2779. PROCESS FOR SELECTION OF PROVIDERS.

''(a) IN GENERAL.—A health insurance issuer that offers health insurance coverage shall have a written process for the selection of participating health care professionals, including minimum professional requirements.

''(b) VERIFICATION OF BACKGROUND.—Such process shall include verification of a health care provider's license, a history of suspension or revocation, and liability claim history.

''(c) RESTRICTION.—Such process shall not use a high-risk patient base or location of a provider in an area with residents with poorer health status as a basis for excluding providers from participation.

''SEC. 2780. DRUG UTILIZATION PROGRAM.

''A health insurance issuer that provides health insurance coverage that includes benefits for prescription drugs shall establish and maintain a drug utilization program which—

''(1) encourages appropriate use of prescription drugs by enrollees and providers,

''(2) monitors illnesses arising from improper drug use or from adverse drug reactions or interactions, and

''(3) takes appropriate action to reduce the incidence of improper drug use and adverse drug reactions and interactions.

''SEC. 2781. STANDARDS FOR UTILIZATION REVIEW ACTIVITIES.

''(a) COMPLIANCE WITH REQUIREMENTS.—

''(1) IN GENERAL.—A health insurance issuer shall conduct utilization review activities in connection with the provision of health insurance coverage only in accordance with a utilization review program that meets the requirements of this section.

''(2) USE OF OUTSIDE AGENTS.—Nothing in this section shall be construed as preventing a health insurance issuer from arranging through a contract or otherwise for persons or entities to conduct utilization review activities on behalf of the issuer, so long as such activities are conducted in accordance with a utilization review program that meets the requirements of this section.

''(3) UTILIZATION REVIEW DEFINED.—For purposes of this section, the terms 'utilization review' and 'utilization review activities' mean procedures used to monitor or evaluate the clinical necessity, appropriateness, efficacy, or efficiency of health care services, procedures or settings, and includes ambulatory review, prospective review, concurrent review, second opinions, case management, discharge planning, or retrospective review.

''(b) WRITTEN POLICIES AND CRITERIA.—

''(1) WRITTEN POLICIES.—A utilization review program shall be conducted consistent with written policies and procedures that govern all aspects of the program.

''(2) USE OF WRITTEN CRITERIA.—

''(A) IN GENERAL.—Such a program shall utilize written clinical review criteria developed pursuant to the program with the input of appropriate physicians.

''(B) CONTINUING USE OF STANDARDS IN RETROSPECTIVE REVIEW.—If a health care service has been specifically pre-authorized or approved for an enrollee under such a program, the program shall not, pursuant to retrospective review, revise or modify the specific standards, criteria, or procedures used for the utilization review for procedures, treatment, and services delivered to the enrollee during the same course of treatment.

''(C) NO ADVERSE DETERMINATION BASED ON REFUSAL TO OBSERVE SERVICE.—Such a program shall not base an adverse determination on—

''(i) a refusal to consent to observing any health care service, or

''(ii) lack of reasonable access to a health care provider's medical or treatment records, unless the program has provided reasonable notice to the enrollee.

''(c) CONDUCT OF PROGRAM ACTIVITIES.—

''(1) ADMINISTRATION BY HEALTH CARE PROFESSIONALS.—A utilization review program shall be administered by qualified health care professionals who shall oversee review decisions. In this subsection, the term 'health care professional' means a physician or other health care practitioner licensed, accredited, or certified to perform specified health services consistent with State law.

''(2) USE OF QUALIFIED, INDEPENDENT PERSONNEL.—

''(A) IN GENERAL.—A utilization review program shall provide for the conduct of utilization review activities only through personnel who are qualified and, to the extent required, who have received appropriate training in the conduct of such activities under the program.

''(B) PEER REVIEW OF ADVERSE CLINICAL DETERMINATIONS.—Such a program shall provide that clinical peers shall evaluate the clinical appropriateness of adverse clinical determinations. In this subsection, the term 'clinical peer' means, with respect to a review, a physician or other health care professional who holds a non-restricted license in a State and in the same or similar specialty as typically manages the medical condition, procedure, or treatment under review.

''(C) PROHIBITION OF CONTINGENT COMPENSATION ARRANGEMENTS.—Such a program shall not, with respect to utilization review activities, permit or provide compensation or anything of value to its employees, agents, or contractors in a manner that—

''(i) provides incentives, direct or indirect, for such persons to make inappropriate review decisions, or

''(ii) is based, directly or indirectly, on the quantity or type of adverse determinations rendered.

''(D) PROHIBITION OF CONFLICTS.—Such a program shall not permit a health care professional who provides health care services to an enrollee to perform utilization review activities in connection with the health care services being provided to the enrollee.

''(3) TOLL-FREE TELEPHONE NUMBER.—Such a program shall provide that—

''(A) appropriate personnel performing utilization review activities under the program are reasonably accessible by toll-free telephone not less than 40 hours per week during normal business hours to discuss patient care and allow response to telephone requests, and

''(B) the program has a telephone system capable of accepting, recording, or providing instruction to incoming telephone calls during other than normal business hours and to ensure response to accepted or recorded messages not less than one business day after the date on which the call was received.

''(4) LIMITS ON FREQUENCY.—Such a program shall not provide for the performance of utilization review activities with respect to a class of services furnished to an enrollee more frequently than is reasonably required to assess whether the services under review are medically necessary.

''(5) LIMITATION ON INFORMATION REQUESTS.—Under such a program, information shall be required to be provided by health care providers only to the extent it is necessary to perform the utilization review activity involved.

''(d) DEADLINE FOR DETERMINATIONS.—

''(1) PRIOR AUTHORIZATION SERVICES.—Except as provided in paragraph (2), in the case of a utilization review activity involving the prior authorization of health care items and services, the utilization review program shall make a determination concerning such authorization, and provide notice of the determination to the enrollee or the enrollee's designee and the enrollee's health care provider by telephone and in writing, as soon as possible in accordance with the medical exigencies of the cases, and in no event later than 3 business days after the date of receipt of the necessary information respecting such determination.

''(2) CONTINUED CARE.—In the case of a utilization review activity involving authorization for continued or extended health care services, or additional services for an enrollee undergoing a course of continued treatment prescribed by a health care provider, the utilization review program shall make a determination concerning such authorization, and provide notice of the determination to the enrollee or the enrollee's designee and the enrollee's health care provider by telephone and in writing, within 1 business day of the date of receipt of the necessary information respecting such determination. Such notice shall include, with respect to continued or extended health care services, the number of extended services approved, the new total of approved services, the date of onset of services, and the next review date.

''(3) PREVIOUSLY PROVIDED SERVICES.—In the case of a utilization review activity involving retrospective review of health care services previously provided, the utilization review program shall make a the determination concerning such services, and provide notice of the determination to the enrollee or the enrollee's designee and the enrollee's health care provider by telephone and in writing, within 30 days of the date of receipt of the necessary information respecting such determination.

''(4) REFERENCE TO SPECIAL RULES FOR EMERGENCY SERVICES, MAINTENANCE CARE, AND POST-STABILIZATION CARE.—For waiver of prior authorization requirements in certain cases involving emergency services and maintenance care and post-stabilization care, see sections 2771(a)(1)(A) and 2771(a)(2)(A), respectively.

''(e) NOTICE OF ADVERSE DETERMINATIONS.—

''(1) IN GENERAL.—Notice of an adverse determination under a utilization review program (including as a result of a reconsideration under subsection (f)) shall be in writing and shall include—

''(A) the reasons for the determination (including the clinical rationale);

''(B) instructions on how to initiate an appeal under section 2785; and

''(C) notice of the availability, upon request of the enrollee (or the enrollee's designee) of the clinical review criteria relied upon to make such determination.

''(2) SPECIFICATION OF ANY ADDITIONAL INFORMATION.—Such a notice shall also specify what (if any) additional necessary information must be provided to, or obtained by, person making the determination in order to make a decision on such an appeal.

''(f) RECONSIDERATION.—

''(1) AT REQUEST OF PROVIDER.—In the event that a utilization review program provides for an adverse determination without attempting to discuss such matter with the enrollee's health care provider who specifically recommended the health care service, procedure, or treatment under review, such health care provider shall have the opportunity to request a reconsideration of the adverse determination under this subsection.

''(2) TIMING AND CONDUCT.—Except in cases of retrospective reviews, such reconsideration shall occur as soon as possible in accordance with the medical exigencies of the cases, and in no event later than 1 business day after the date of receipt of the request and shall be conducted by the enrollee's health care provider and the health care professional making the initial determination or a designated qualified health care professional if the original professional cannot be available.

''(3) NOTICE.—In the event that the adverse determination is upheld after reconsideration, the utilization review program shall provide notice as required under subsection (e).

''(4) CONSTRUCTION.—Nothing in this subsection shall preclude the enrollee from initiating an appeal from an adverse determination under section 2785.

''SUBPART 3—PATIENT INFORMATION

''SEC. 2782. PATIENT INFORMATION.

''(a) DISCLOSURE REQUIREMENT.—A health insurance issuer in connection with the provision of health insurance coverage shall submit to the applicable State authority, provide to enrollees (and prospective enrollees), and make available to the public, in writing the information described in subsection (b).

''(b) INFORMATION.—The information described in this subsection includes the following:

''(1) DESCRIPTION OF COVERAGE.—A description of coverage provisions, including health care benefits, benefit limits, coverage exclusions, coverage of emergency care, and the definition of medical necessity used in determining whether benefits will be covered.

''(2) ENROLLEE FINANCIAL RESPONSIBILITY.—An explanation of an enrollee's financial responsibility for payment of premiums, coinsurance, copayments, deductibles, and any other charges, including limits on such responsibility and responsibility for health care services that are provided by nonparticipating providers or are furnished without meeting applicable utilization review requirements.

''(3) INFORMATION ON PROVIDERS.—A description—

''(A) of procedures for enrollees to select, access, and change participating primary and specialty providers,

''(B) of the rights and procedures for obtaining referrals (including standing referrals) to participating and nonparticipating providers, and

''(C) in the case of each participating provider, of the name, address, and telephone number of the provider, the credentials of the provider, and the provider's availability to accept new patients.

''(4) UTILIZATION REVIEW ACTIVITIES.—A description of procedures used and requirements (including circumstances, time frames, and rights to reconsideration and appeal) under any utilization review program under section 2781 or any drug utilization program under section 2780, as well as a summary of the minimum uniform data collected under section 2778(a)(1).

''(5) GRIEVANCE PROCEDURES.—Information on the grievance procedures under sections 2784 and 2785, including information describing—

''(A) the grievance procedures used by the issuer to process and resolve disputes between the issuer and an enrollee (including method for filing grievances and the time frames and circumstances for acting on grievances);

''(B) written complaints and appeals, by type of complaint or appeal, received by the issuer relating to its coverage; and

''(C) the disposition of such complaints and appeals.

''(6) PAYMENT METHODOLOGY.—A description of the types of methodologies the issuer uses to reimburse different classes of providers and, as specified by the Secretary, the financial arrangements or contractual provisions with providers.

''(7) INFORMATION ON ISSUER.—Notice of appropriate mailing addresses and telephone numbers to be used by enrollees in seeking information or authorization for treatment.

''(8) ASSURING COMMUNICATIONS WITH ENROLLEES.—A description of how the issuer addresses the needs of non-English-speaking enrollees and others with special communications needs, including the provision of information described in this subsection to such enrollees.

''(c) FORM OF DISCLOSURE.—

''(1) UNIFORMITY.—Information required to be disclosed under this section shall be provided in accordance with uniform, national reporting standards specified by the Secretary, after consultation with applicable State authorities, so that prospective enrollees may compare the attributes of different issuers and coverage offered within an area.

''(2) INFORMATION INTO HANDBOOK.—Nothing in this section shall be construed as preventing an issuer from making the information under subsection (b) available to enrollees through an enrollee handbook or similar publication.

''(3) UPDATING.—The information on participating providers described in subsection (a)(3)(C) shall be updated not less frequently than monthly. Nothing in this section shall prevent an issuer from changing or updating other information made available under this section.

''(4) CONSTRUCTION.—Nothing in subsection (a)(6) shall be construed as requiring disclosure of individual contracts or financial arrangements between an issuer and any provider. Nothing in this subsection shall be construed as preventing the information described in subsection (a)(3)(C) from being provided in a separate document.

''SEC. 2783. PROTECTION OF PATIENT CONFIDENTIALITY.

''A health insurance issuer that offers health insurance coverage shall establish appropriate policies and procedures to ensure that all applicable State and Federal laws to protect the confidentiality of individually identifiable medical information are followed.

''SUBPART 4—GRIEVANCE PROCEDURES

''SEC. 2784. ESTABLISHMENT OF COMPLAINT AND APPEALS PROCESS.

''(a) ESTABLISHMENT OF SYSTEM.—A health insurance issuer in connection with the provision of health insurance coverage shall establish and maintain a system to provide for the presentation and resolution of complaints and appeals brought by enrollees, designees of enrollees, or by health care providers acting on behalf of an enrollee and with the enrollee's consent, regarding any aspect of the issuer's health care services, including complaints regarding quality of care, choice and accessibility of providers, network adequacy, and compliance with the requirements of this part.

''(b) COMPONENTS OF SYSTEM.—Such system shall include the following components (which shall be consistent with applicable requirements of section 2785):

''(1) Written notification to all enrollees and providers of the telephone numbers and business addresses of the issuer employees responsible for resolution of complaints and appeals.

''(2) A system to record and document, over a period of at least 3 years, all complaints and appeals made and their status.

''(3) The availability of an enrollee services representative to assist enrollees, as requested, with complaint and appeal procedures.

''(4) Establishment of a specified deadline (not to exceed 30 days after the date of receipt of a complaint or appeal) for the issuer to respond to complaints or appeals.

''(5) A process describing how complaints and appeals are processed and resolved.

''(6) Procedures for follow-up action, including the methods to inform the complainant or appellant of the resolution of a complaint or appeal.

''(7) Notification to the continuous quality improvement program under section 2777(a) of all complaints and appeals relating to quality of care.

''(c) NO REPRISAL FOR EXERCISE OF RIGHTS.—A health insurance issuer shall not take any action with respect to an enrollee or a health care provider that is intended to penalize the enrollee, a designee of the enrollee, or the health care provider for discussing or exercising any rights provided under this part (including the filing of a complaint or appeal pursuant to this section).

''SEC. 2785. PROVISIONS RELATING TO APPEALS OF UTILIZATION REVIEW DETERMINATIONS AND SIMILAR DETERMINATIONS.

''(a) RIGHT OF APPEAL.—

''(1) IN GENERAL.—An enrollee in health insurance coverage offered by a health insurance issuer, and any provider acting on behalf of the enrollee with the enrollee's consent, may appeal any appealable decision (as defined in paragraph (2)) under the procedures described in this section and (to the extent applicable) section 2784. Such enrollees and providers shall be provided with a written explanation of the appeal process upon the conclusion of each stage in the appeal process and as provided in section 2782(a)(5)

''(2) APPEALABLE DECISION DEFINED.—In this section, the term 'appealable decision' means any of the following:

''(A) An adverse determination under a utilization review program under section 2781.

''(B) Denial of access to specialty and other care under section 2772.

''(C) Denial of continuation of care under section 2773.

''(D) Denial of a choice of provider under section 2774.

''(E) Denial of coverage of routine patient costs in connection with an approval clinical trial under section 2775.

''(F) Denial of access to needed drugs under section 2776(3).

''(G) The imposition of a limitation that is prohibited under section 2789.

''(H) Denial of payment for a benefit,

''(b) INFORMAL INTERNAL APPEAL PROCESS (STAGE 1).—

''(1) IN GENERAL.—Each issuer shall establish and maintain an informal internal appeal process (an appeal under such process in this section referred to as a 'stage 1 appeal') under which any enrollee or any provider acting on behalf of an enrollee with the enrollee's consent, who is dissatisfied with any appealable decision has the opportunity to discuss and appeal that decision with the medical director of the issuer or the health care professional who made the decision.

''(2) TIMING.—All appeals under this paragraph shall be concluded as soon as possible in accordance with the medical exigencies of the cases, and in no event later than 72 hours in the case of appeals from decisions regarding urgent care and 5 days in the case of all other appeals.

''(3) FURTHER REVIEW.—If the appeal is not resolved to the satisfaction of the enrollee at this level by the deadline under paragraph (2), the issuer shall provide the enrollee and provider (if any) with a written explanation of the decision and the right to proceed to a stage 2 appeal under subsection (c).

''(c) FORMAL INTERNAL APPEAL PROCESS (STAGE 2).—

''(1) IN GENERAL.—Each issuer shall establish and maintain a formal internal appeal process (an appeal under such process in this section referred to as a 'stage 2 appeal') under which any enrollee or provider acting on behalf of an enrollee with the enrollee's consent, who is dissatisfied with the results of a stage 1 appeal has the opportunity to appeal the results before a panel that includes a physician or other health care professional (or professionals) selected by the issuer who have not been involved in the appealable decision at issue in the appeal.

''(2) AVAILABILITY OF CLINICAL PEERS.—The panel under subparagraph (A) shall have available either clinical peers (as defined in section 2781(c)(2)(B)) who have not been involved in the appealable decision at issue in the appeal or others who are mutually agreed upon by the parties. If requested by the enrollee or enrollee's provider with the enrollee's consent, such a peer shall participate in the panel's review of the case.

''(3) TIMELY ACKNOWLEDGMENT.—The issuer shall acknowledge the enrollee or provider involved of the receipt of a stage 2 appeals upon receipt of the appeal.

''(4) DEADLINE.—

''(A) IN GENERAL.—The issuer shall conclude each stage 2 appeal as soon as possible after the date of the receipt of the appeal in accordance with medical exigencies of the case involved, but in no event later than 72 hours in the case of appeals from decisions regarding urgent care and (except as provided in subparagraph (B)) 20 business days in the case of all other appeals.

''(B) EXTENSION.—An issuer may extend the deadline for an appeal that does not relate to a decision regarding urgent or emergency care up to an additional 20 business days where it can demonstrate to the applicable State authority reasonable cause for the delay beyond its control and where it provides, within the original deadline under subparagraph (A), a written progress report and explanation for the delay to such authority and to the enrollee and provider involved.

''(5) NOTICE.—If an issuer denies a stage 2 appeal, the issuer shall provide the enrollee and provider involved with written notification of the denial and the reasons therefore, together with a written notification of rights to any further appeal

''(d) DIRECT USE OF FURTHER APPEALS.—In the event that the issuer fails to comply with any of the deadlines for completion of appeals under this section or in the event that the issuer for any reason expressly waives its rights to an internal review of an appeal under subsection (b) or (c), the enrollee and provider involved shall be relieved of any obligation to complete the appeal stage involved and may, at the enrollee's or provider's option, proceed directly to seek further appeal through any applicable external appeals process.

''(e) EXTERNAL APPEAL PROCESS IN CASE OF USE OF EXPERIMENTAL TREATMENT TO SAVE LIFE OF PATIENT.—

''(1) IN GENERAL.—In the case of an enrollee described in paragraph (2), the health insurance issuer shall provide for an external independent review process respecting the issuer's decision not to cover the experimental therapy (described in paragraph (2)(B)(ii)).

''(2) ENROLLEE DESCRIBED.—An enrollee described in this paragraph is an enrollee who meets the following requirements:

''(A) The enrollee has a terminal condition that is highly likely to cause death within 2 years.

''(B) The enrollee's physician certifies that—

''(i) there is no standard, medically appropriate therapy for successfully treating such terminal condition, but

''(ii) based on medical and scientific evidence, there is a drug, device, procedure, or therapy (in this section referred to as the 'experimental therapy') that is more beneficial than any available standard therapy.

''(C) The issuer has denied coverage of the experimental therapy on the basis that it is experimental or investigational.

''(3) DESCRIPTION OF PROCESS AND DECISION.—The process under this subsection shall provide for a determination on a timely basis, by a panel of independent, impartial physicians appointed by a State authority or by an independent review organization certified by the State, of the medical appropriateness of the experimental therapy. The decision of the panel shall be in writing and shall be accompanied by an explanation of the basis for the decision. A decision of the panel that is favorable to the enrollee may not be appealed by the issuer except in the case of misrepresentation of a material fact by the enrollee or a provider. A decision of the panel that is not favorable to the enrollee may be appealed by the enrollee.

''(4) ISSUER COVERING PROCESS COSTS.—Direct costs of the process under this subsection shall be borne by the issuer, and not by the enrollee.

''(f) OTHER INDEPENDENT OR EXTERNAL REVIEW.—

''(1) IN GENERAL.—In the case of appealable decision described in paragraph (2), the health insurance issuer shall provide for—

''(A) an external review process for such decisions consistent with the requirements of paragraph (3), or

''(B) an internal independent review process for such decisions consistent with the requirements of paragraph (4).

''(2) APPEALABLE DECISION DESCRIBED.—An appealable decision described in this paragraph is decision that does not involve a decision described in subsection (e)(1) but involves—

''(A) a claim for benefits involving costs over a significant threshold, or

''(B) assuring access to care for a serious condition.

''(3) EXTERNAL REVIEW PROCESS.—The requirements of this subsection for an external review process are as follows:

''(A) The process is established under State law and provides for review of decisions on stage 2 appeals by an independent review organization certified by the State.

''(B) If the process provides that decisions in such process are not binding on issuers, the process must provide for public methods of disclosing frequency of noncompliance with such decisions and for sanctioning issuers that consistently refuse to take appropriate actions in response to such decisions.

''(C) Results of all such reviews under the process are disclosed to the public, along with at least annual disclosure of information on issuer compliance.

''(D) All decisions under the process shall be in writing and shall be accompanied by an explanation of the basis for the decision.

''(E) Direct costs of the process shall be borne by the issuer, and not by the enrollee.

''(F) The issuer shall provide for publication at least annually of information on the numbers of appeals and decisions considered under the process.

''(4) INTERNAL, INDEPENDENT REVIEW PROCESS.—The requirements of this subsection for an internal, independent review process are as follows:

''(A)(i) The process must provide for the participation of persons who are independent of the issuer in conducting reviews and (ii) the Secretary must have found (through reviews conducted no less often than biannually) the process to be fair and impartial.

''(B) If the process provides that decisions in such process are not binding on issuers, the process must provide for public methods of disclosing frequency of noncompliance with such decisions and for sanctioning issuers that consistently refuse to take appropriate actions in response to such decisions.

''(C) Results of all such reviews under the process are disclosed to the public, along with at least annual disclosure of information on issuer compliance.

''(D) All decisions under the process shall be in writing and shall be accompanied by an explanation of the basis for the decision.

''(E) Direct costs of the process shall be borne by the issuer, and not by the enrollee.

''(F) The issuer shall provide for publication at least annually of information on the numbers of appeals and decisions considered under the process.

The Secretary may delegate the authority under subparagraph (A)(ii) to applicable State authorities.

''(5) OVERSIGHT.—The Secretary (and applicable State authorities in the case of delegation of Secretarial authority under paragraph (4)) shall conduct reviews not less often than biannually of the fairness and impartiality issuers who desired to use an internal, independent review process described in paragraph (4) to satisfy the requirement of paragraph (1).

''(6) REPORT.—The Secretary shall provide for periodic reports on the effectiveness of this subsection in assuring fair and impartial reviews of stage 2 appeals. Such reports shall include information on the number of stage 2 appeals (and decisions), for each of the types of review processes described in paragraph (2), by health insurance coverage.

''(g) CONSTRUCTION.—Nothing in this part shall be construed as removing any legal rights of enrollees under State or Federal law, including the right to file judicial actions to enforce rights.

''SEC. 2786. STATE HEALTH INSURANCE OMBUDSMEN.

''(a) IN GENERAL.—Each State that obtains a grant under subsection (c) shall establish and maintain a Health Insurance Ombudsman. Such Ombudsman may be part of a independent, nonprofit entity, and shall be responsible for at least the following:

''(1) To assist consumers in the State in choosing among health insurance coverage.

''(2) To provide counseling and assistance to enrollees dissatisfied with their treatment by health insurance issuers in regard to such coverage and in the filing of complaints and appeals regarding determinations under such coverage.

''(3) To investigate instances of poor quality or improper treatment of enrollees by health insurance issuers in regard to such coverage and to bring such instances to the attention of the applicable State authority.

''(b) FEDERAL ROLE.—In the case of any State that does not establish and maintain such an Ombudsman under subsection (a), the Secretary shall provide for the establishment and maintenance of such an official as will carry out with respect to that State the functions otherwise provided under subsection (a) by a Health Insurance Ombudsman.

''(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary such amounts as may be necessary to provide for grants to States to establish and operate Health Insurance Ombudsmen under subsection (a) or for the operation of Ombudsmen under subsection (b).

''SUBPART 5—PROTECTION OF PROVIDERS AGAINST INTERFERENCE WITH MEDICAL COMMUNICATIONS AND IMPROPER INCENTIVE ARRANGEMENTS

''SEC. 2787. PROHIBITION OF INTERFERENCE WITH CERTAIN MEDICAL COMMUNICATIONS.

''(a) PROHIBITION.—

''(1) GENERAL RULE.—The provisions of any contract or agreement, or the operation of any contract or agreement, between a health insurance issuer in relation to health insurance coverage (including any partnership, association, or other organization that enters into or administers such a contract or agreement) and a health care provider (or group of health care providers) shall not prohibit or restrict the provider from engaging in medical communications with the provider's patient.

''(2) NULLIFICATION.—Any contract provision or agreement described in paragraph (1) shall be null and void.

''(3) PROHIBITION ON PROVISIONS.—A contract or agreement described in paragraph (1) shall not include a provision that violates paragraph (1).

''(b) RULES OF CONSTRUCTION.—Nothing in this section shall be construed—

''(1) to prohibit the enforcement, as part of a contract or agreement to which a health care provider is a party, of any mutually agreed upon terms and conditions, including terms and conditions requiring a health care provider to participate in, and cooperate with, all programs, policies, and procedures developed or operated by a health insurance issuer to assure, review, or improve the quality and effective utilization of health care services (if such utilization is according to guidelines or protocols that are based on clinical or scientific evidence and the professional judgment of the provider) but only if the guidelines or protocols under such utilization do not prohibit or restrict medical communications between providers and their patients; or

''(2) to permit a health care provider to misrepresent the scope of benefits covered under health insurance coverage or to otherwise require a health insurance issuer to reimburse providers for benefits not covered under the coverage.

''(c) MEDICAL COMMUNICATION DEFINED.—

''(1) IN GENERAL.—In this section, the term 'medical communication' means any communication made by a health care provider with a patient of the health care provider (or the guardian or legal representative of such patient) with respect to—

''(A) the patient's health status, medical care, or treatment options;

''(B) any utilization review requirements that may affect treatment options for the patient; or

''(C) any financial incentives that may affect the treatment of the patient.

''(2) MISREPRESENTATION.—The term 'medical communication' does not include a communication by a health care provider with a patient of the health care provider (or the guardian or legal representative of such patient) if the communication involves a knowing or willful misrepresentation by such provider.

''SEC. 2788. PROHIBITION AGAINST TRANSFER OF INDEMNIFICATION OR IMPROPER INCENTIVE ARRANGEMENTS.

''(a) PROHIBITION OF TRANSFER OF INDEMNIFICATION.—No contract or agreement between a health insurance issuer (or any agent acting on behalf of such an issuer) and a health care provider shall contain any clause purporting to transfer to the health care provider by indemnification or otherwise any liability relating to activities, actions, or omissions of the issuer or agent (as opposed to the provider).

''(b) PROHIBITION OF IMPROPER PHYSICIAN INCENTIVE PLANS.—

''(1) IN GENERAL.—A health insurance issuer offering health insurance coverage may not operate any physician incentive plan unless the following requirements are met:

''(A) No specific payment is made directly or indirectly by the issuer to a physician or physician group as an inducement to reduce or limit medically necessary services provided with respect to a specific individual enrolled with the issuer.

''(B) If the plan places a physician or physician group at substantial financial risk (as determined by the Secretary) for services not provided by the physician or physician group, the issuer—

''(i) provides stop-loss protection for the physician or group that is adequate and appropriate, based on standards developed by the Secretary that take into account the number of physicians placed at such substantial financial risk in the group or under the plan and the number of individuals enrolled with the issuer who receive services from the physician or the physician group, and

''(ii) conducts periodic surveys of both individuals enrolled and individuals previously enrolled with the issuer to determine the degree of access of such individuals to services provided by the issuer and satisfaction with the quality of such services.

''(C) The issuer provides the applicable State authority (or the Secretary if such authority is implementing this section) with descriptive information regarding the plan, sufficient to permit the authority (or the Secretary in such case) to determine whether the plan is in compliance with the requirements of this paragraph.

''(2) PHYSICIAN INCENTIVE PLAN DEFINED.—In this section, the term 'physician incentive plan' means any compensation arrangement between a health insurance issuer and a physician or physician group that may directly or indirectly have the effect of reducing or limiting services provided with respect to individuals enrolled with the issuer.

''(3) APPLICATION OF MEDICARE RULES.—The Secretary shall provide for the application of rules under this subsection that are substantially the same as the rules established to carry out section 1876(i)(8) of the Social Security Act.

''SUBPART 6—PROMOTING GOOD MEDICAL PRACTICE AND PROTECTING THE DOCTOR-PATIENT RELATIONSHIP

''SEC. 2789. PROMOTING GOOD MEDICAL PRACTICE.

''(a) PROHIBITING ARBITRARY LIMITATIONS OR CONDITIONS FOR THE PROVISION OF SERVICES.—A health insurance issuer, in connection with the provision of health insurance coverage, may not impose limits on the manner in which particular services are delivered if the services are medically necessary and appropriate for the treatment or diagnosis of an illness or injury to the extent that such treatment or diagnosis is otherwise a covered benefit.

''(b) MEDICAL NECESSITY AND APPROPRIATENESS DEFINED.—In subsection (a), the term 'medically necessary and appropriate' means, with respect to a service or benefit, a service or benefit determined by the treating physician participating in the health insurance coverage after consultation with the enrollee, to be required, accordingly to generally accepted principles of good medical practice, for the diagnosis or direct care and treatment of an illness or injury of the enrollee.

''(c) CONSTRUCTION.—Subsection (a) shall not be construed as requiring coverage of particular services the coverage of which is otherwise not covered under the terms of the coverage.''.

(b) APPLICATION TO GROUP HEALTH INSURANCE COVERAGE.—

(1) Subpart 2 of part A of title XXVII of the Public Health Service Act is amended by adding at the end the following new section:

''SEC. 2706. PATIENT PROTECTION STANDARDS.

''(a) IN GENERAL.—Each health insurance issuer shall comply with patient protection requirements under part C with respect to group health insurance coverage it offers.

''(b) ASSURING COORDINATION.—The Secretary of Health and Human Services and the Secretary of Labor shall ensure, through the execution of an interagency memorandum of understanding between such Secretaries, that—

''(1) regulations, rulings, and interpretations issued by such Secretaries relating to the same matter over which such Secretaries have responsibility under part C (and this section) and section 713 of the Employee Retirement Income Security Act of 1974 are administered so as to have the same effect at all times; and

''(2) coordination of policies relating to enforcing the same requirements through such Secretaries in order to have a coordinated enforcement strategy that avoids duplication of enforcement efforts and assigns priorities in enforcement.''.''.

(2) Section 2792 of such Act (42 U.S.C. 300gg–92) is amended by inserting ''and section 2706(b)'' after ''of 1996''.

(c) APPLICATION TO INDIVIDUAL HEALTH INSURANCE COVERAGE.—Part B of title XXVII of the Public Health Service Act is amended by inserting after section 2751 the following new section:

''SEC. 2752. PATIENT PROTECTION STANDARDS.

''Each health insurance issuer shall comply with patient protection requirements under part C with respect to individual health insurance coverage it offers.''.

(d) MODIFICATION OF PREEMPTION STANDARDS.—

(1) GROUP HEALTH INSURANCE COVERAGE.—Section 2723 of such Act (42 U.S.C. 300gg–23) is amended—

(A) in subsection (a)(1), by striking ''subsection (b)'' and inserting ''subsections (b) and (c)'';

(B) by redesignating subsections (c) and (d) as subsections (d) and (e), respectively; and

(C) by inserting after subsection (b) the following new subsection:

''(c) SPECIAL RULES IN CASE OF PATIENT PROTECTION REQUIREMENTS.—Subject to subsection (a)(2), the provisions of section 2706 and part C (other than section 2771), and part D insofar as it applies to section 2706 or part C, shall not prevent a State from establishing requirements relating to the subject matter of such provisions (other than section 2771) so long as such requirements are at least as stringent on health insurance issuers as the requirements imposed under such provisions. Subsection (a) shall apply to the provisions of section 2771 (and section 2706 insofar as it relates to such section).''.

(2) INDIVIDUAL HEALTH INSURANCE COVERAGE.—Section 2762 of such Act (42 U.S.C. 300gg–62), as added by section 605(b)(3)(B) of Public Law 104–204, is amended—

(A) in subsection (a), by striking ''subsection (b), nothing in this part'' and inserting ''subsections (b) and (c)'', and

(B) by adding at the end the following new subsection:

''(c) SPECIAL RULES IN CASE OF MANAGED CARE REQUIREMENTS.—Subject to subsection (b), the provisions of section 2752 and part C (other than section 2771), and part D insofar as it applies to section 2752 or part C, shall not prevent a State from establishing requirements relating to the subject matter of such provisions so long as such requirements are at least as stringent on health insurance issuers as the requirements imposed under such section. Subsection (a) shall apply to the provisions of section 2771 (and section 2752 insofar as it relates to such section).''.

(e) ADDITIONAL CONFORMING AMENDMENTS.—

(1) Section 2723(a)(1) of such Act (42 U.S.C. 300gg–23(a)(1)) is amended by striking ''part C'' and inserting ''parts C and D''.

(2) Section 2762(b)(1) of such Act (42 U.S.C. 300gg–62(b)(1)) is amended by striking ''part C'' and inserting ''part D''.

(f) EFFECTIVE DATES.—(1)(A) Subject to subparagraph (B), the amendments made by subsections (a), (b), (d)(1), and (e) shall apply with respect to group health insurance coverage for group health plan years beginning on or after July 1, 1998 (in this subsection referred to as the ''general effective date'') and also shall apply to portions of plan years occurring on and after January 1, 1999.

(B) In the case of group health insurance coverage provided pursuant to a group health plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified before the date of enactment of this Act, the amendments made by subsections (a), (b), (d)(1), and (e) shall not apply to plan years beginning before the later of—

(i) the date on which the last collective bargaining agreements relating to the plan terminates (determined without regard to any extension thereof agreed to after the date of enactment of this Act), or

(ii) the general effective date.

For purposes of clause (i), any plan amendment made pursuant to a collective bargaining agreement relating to the plan which amends the plan solely to conform to any requirement added by subsection (a) or (b) shall not be treated as a termination of such collective bargaining agreement.

(2) The amendments made by subsections (a), (c), (d)(2), and (e) shall apply with respect to individual health insurance coverage offered, sold, issued, renewed, in effect, or operated in the individual market on or after the general effective date.

SEC. 3. AMENDMENTS TO THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.

(a) IN GENERAL.—Subpart B of part 7 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 is amended by adding at the end the following new section:

''SEC. 713. PATIENT PROTECTION STANDARDS.

''(a) IN GENERAL.—Subject to subsection (b), a group health plan (and a health insurance issuer offering group health insurance coverage in connection with such a plan) shall comply with the requirements of part C (other than section 2786) of title XXVII of the Public Health Service Act.

''(b) APPLICATION.—In applying subsection (a) under this part, any reference in such subpart C—

''(1) to a health insurance issuer and health insurance coverage offered by such an issuer is deemed to include a reference to a group health plan and coverage under such plan, respectively;

''(2) to the Secretary is deemed a reference to the Secretary of Labor;

''(3) to an applicable State authority is deemed a reference to the Secretary of Labor; and

''(4) to an enrollee with respect to health insurance coverage is deemed to include a reference to a participant or beneficiary with respect to a group health plan.

''(c) GROUP HEALTH PLAN OMBUDSMAN.—With respect to group health plans that provide benefits other than through health insurance coverage, the Secretary shall provide for the establishment and maintenance of such a Federal Group Health Plan Ombudsman that will carry out with respect to such plans the functions described in section 2786(a) of the Public Health Service Act with respect to health insurance issuers that offer group health insurance coverage.

''(d) ASSURING COORDINATION.—The Secretary of Health and Human Services and the Secretary of Labor shall ensure, through the execution of an interagency memorandum of understanding between such Secretaries, that—

''(1) regulations, rulings, and interpretations issued by such Secretaries relating to the same matter over which such Secretaries have responsibility under such part C (and section 2706 of the Public Health Service Act) and this section are administered so as to have the same effect at all times; and

''(2) coordination of policies relating to enforcing the same requirements through such Secretaries in order to have a coordinated enforcement strategy that avoids duplication of enforcement efforts and assigns priorities in enforcement.''.

(b) MODIFICATION OF PREEMPTION STANDARDS.—Section 731 of such Act (42 U.S.C. 1191) is amended—

(1) in subsection (a)(1), by striking ''subsection (b)'' and inserting ''subsections (b) and (c)'';

(2) by redesignating subsections (c) and (d) as subsections (d) and (e), respectively; and

(3) by inserting after subsection (b) the following new subsection:

''(c) SPECIAL RULES IN CASE OF PATIENT PROTECTION REQUIREMENTS.—Subject to subsection (a)(2), the provisions of section 713 and part C of title XXVII of the Public Health Service Act (other than section 2771

of such Act), and subpart C insofar as it applies to section 713 or such part, shall not prevent a State from establishing requirements relating to the subject matter of such provisions (other than section 2771 of such Act) so long as such requirements are at least as stringent on health insurance issuers as the requirements imposed under such provisions. Subsection (a) shall apply to the provisions of section 2771 of such Act (and section 713 of this Act insofar as it relates to such section).''.

(c) CONFORMING AMENDMENTS.— (1) Section 732(a) of such Act (29 U.S.C. 1185(a)) is amended by striking ''section 711'' and inserting ''sections 711 and 713''.

(2) The table of contents in section 1 of such Act is amended by inserting after the item relating to section 712 the following new item:

''Sec. 713. Patient protection standards.''.

(3) Section 734 of such Act (29 U.S.C. 1187) is amended by inserting ''and section 713(d)'' after ''of 1996''.

(d) EFFECTIVE DATE.—(1) Subject to paragraph (2), the amendments made by this section shall apply with respect to group health plans for plan years beginning on or after July 1, 1998 (in this subsection referred to as the ''general effective date'') and also shall apply to portions of plan years occurring on and after January 1, 1999.

(2) In the case of a group health plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified before the date of enactment of this Act, the amendments made by this section shall not apply to plan years beginning before the later of—

(A) the date on which the last collective bargaining agreements relating to the plan terminates (determined without regard to any extension thereof agreed to after the date of enactment of this Act), or

(B) the general effective date.

For purposes of subparagraph (A), any plan amendment made pursuant to a collective bargaining agreement relating to the plan which amends the plan solely to conform to any requirement added by subsection (a) shall not be treated as a termination of such collective bargaining agreement.

By Mr. ROBB:

S. 374. A bill to amend title 38, United States Code, to extend eligibility for hospital care and medical services under chapter 17 of that title to veterans who have been awarded the Purple Heart, and for other purposes; to the Committe on Veterans' Affairs.

THE COMBAT VETERANS MEDICAL EQUITY ACT OF 1997

• Mr. ROBB. Mr. President, I introduce the Combat Veterans Medical Equity Act of 1997, legislation which will serve to codify America's obligation to provide for the medical needs of our combat-wounded veterans.

Although we have long recognized the combat-wounded vet to be among our most deserving veterans, and although we have long distinguished the sacrifices of these veterans by awarding the Purple Heart Medal, remarkably, there is nothing in current law that stipulates an entitlement to health care based upon this physical sacrifice. In fact, I believe most Americans would be surprised to learn that a combat-wounded Purple Heart recipient could be denied services for which a noncombat veteran, with a non-service-connected disability, would be eligible. This legislation would seek to remedy that situation.

Specifically, this bill establishes eligibility for VA hospital care and medical services based upon the award of the Purple Heart Medal. It also gives Purple Heart recipients an enrollment priority on par with former prisoners of war and veterans with service-connected disabilities rated between 10 and 20 percent.

Mr. President, as a Vietnam veteran who has been privileged to lead marines in combat, and as a member of the Senate Armed Services Committee, I have a keen appreciation for the sacrifices made by all of our men and women in uniform. At the same time, in the face of tighter budgets and greater competition for services, I believe strongly that Congress should ensure equity in the disbursing of medical services for our most deserving of veterans—the combat wounded. These veterans, who have shed their blood to keep our country safe and free, deserve no less.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 374

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. ELIGIBILITY FOR HOSPITAL CARE AND MEDICAL SERVICES BASED ON AWARD OF PURPLE HEART.

(a) ELIGIBILITY.—Section 1710(a)(2) of title 38, United States Code, is amended—

(1) by striking out ''or'' at the end of subparagraph (F);

(2) by redesignating subparagraph (G) as subparagraph (H); and

(3) by inserting after subparagraph (F) the following new subparagraph (G):

''(G) who has been awarded the Purple Heart; or''.

(b) ENROLLMENT PRIORITY.—Section 1705(a)(3) of such title is amended—

(1) by striking out ''and veterans'' and inserting in lieu thereof ''veterans''; and

(2) by inserting '', and veterans whose eligibility for care and services under this chapter is based solely on the award of the Purple Heart'' before the period at the end.

(c) CONFORMING AMENDMENTS.—(1) Section 1722(a) of such title is amended by striking out ''section 1710(a)(2)(G)'' and inserting in lieu thereof ''section 1710(a)(2)(H)''.

(2) Section 5317(c)(3) of such title is amended by striking out ''subsection (a)(2)(G),'' and inserting in lieu thereof ''subsection (a)(2)(H),''

By Mr. MCCAIN (for himself, Mr. DODD, Mr. ROBERTS, Mr. FORD, Mr. WARNER, Mr. DURBIN, Mr. GREGG, Mr. BINGAMAN, Mr. REED, Mr. DEWINE, Mr. WELLSTONE and Mr. HAGEL):

S. 375. A bill to amend title II of the Social Security Act to restore the link between the maximum amount of earnings by blind individuals permitted without demonstrating ability to engage in substantial gainful activity and the exempt amount permitted in determining excess earnings under the earnings test; to the Committee on Finance.

THE BLIND PERSONS EARNINGS EQUITY ACT

Mr. MCCAIN. Mr. President, I rise today with my good friend, Senator DODD, to introduce an important piece of legislation which would have a tremendous impact on the lives of many blind people. Our bill restores the 20-year link between blind people and senior citizens in regard to the Social Security earnings limit which has helped many blind people become self-sufficient and productive.

Unfortunately, by passing the Senior Citizens Freedom to Work Act last year, Congress broke the longstanding linkage in the treatment of blind people and seniors under Social Security, which resulted in allowing the earnings limit to be raised for seniors only and did not give blind people the same opportunity to increase their earnings without penalizing their Social Security benefits.

My intent when I sponsored the Senior Citizens Freedom to Work Act was not to permanently break the link between blind people and the senior population. Last year, time constraints and fiscal considerations forced me to focus solely on raising the unfair and burdensome earnings limit for seniors. I am happy to say that the Senior Citizens Freedom to Work Act became law last year, and the earnings exemption for seniors is being raised in annual increments until it reaches $30,000 in the year 2002. This law is allowing millions of seniors to make their lives better and continue contributing to society as productive workers.

We now should work in the spirit of fairness to ensure that this same opportunity is given to the blind population. We should provide blind people the opportunity to be productive and make it on their own. We should not continue policies which discourage these individuals from working and contributing to society.

The bill I am introducing today, along with Senator DODD, will restore the traditional linkage between seniors and blind people and allow them the same consideration as seniors in regard to the Social Security earnings test. This bill would reunite the earnings exemption amount for blind people with the exemption amount for senior citizens. If we do not reinstate this link, blind people will be restricted to earning $14,400 in the year 2002 in order to protect their Social Security benefits, compared to the $30,000 which seniors will be permitted to earn.

There are very strong and convincing arguments in favor of reestablishing the link between these two groups and increasing the earnings limit for blind people.

First, the earnings test treatment of our blind and senior populations has historically been identical. Since 1977, blind people and senior citizens have

shared the identical earnings exemption threshold under title II of the Social Security Act. Now, senior citizens will be given greater opportunity to increase their earnings without having their Social Security benefits being penalized; the blind, however, will not have the same opportunity.

The Social Security earnings test imposes as great a work disincentive for blind people as it does for senior citizens. In fact, the earnings test probably provides a greater aggregate disincentive for blind individuals since many blind beneficiaries are of working age—18–65—and are capable of productive work.

Blindness is often associated with adverse social and economic consequences. It is often tremendously difficult for blind individuals to find sustained employment or any employment at all, but they do want to work. They take great pride in being able to work and becoming productive members of society. By linking the blind with seniors in 1977, Congress provided a great deal of hope and incentive for blind people in this country to enter the work force. Now, we are taking that hope away from them by not allowing them the same opportunity to increase their earnings as senior citizens.

Blind people are likely to respond favorably to an increase in the earnings test by working more, which will increase their tax payments and their purchasing power and allow the blind to make a greater contribution to the general economy. In addition, encouraging the blind to work and allowing them to work more without being penalized would bring additional revenue into the Social Security trust funds. In short, restoring the link between blind people and senior citizens for treatment of Social Security benefits would help many blind people become self sufficient, productive members of society.

I want to stress that it was always my intent that the link between blind and senior populations would only be temporarily broken. I urge my colleagues to join me in sponsoring this important measure to restore fair and equitable treatment for our blind citizens and to give the blind community increased financial independence. Our Nation would be better served if we restore the work incentive equality provision for the blind and provide them with the same freedom, opportunities and fairness as our Nation's seniors.

I ask unanimous consent that numerous letters of support from various community groups and state organizations be included as a part of the RECORD. In addition, I would like to thank the many chapters of the National Federation of the Blind from throughout the country who have sent letters of support for this important piece of legislation including the Arizona Chapter, Idaho Western Chapter, Minnesota, Alabama, South Carolina, Shoreline Chapter of Connecticut, Iowa, Idaho, Minnesota's Metro Chapter, Virginia, Maryland, Connecticut, New York, Utah, Pennsylvania, California, Mississippi, Wisconsin, Idaho s Elmore County, and the Pend Oreille Chapter of Idaho.

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

NATIONAL INDUSTRIES FOR THE BLIND,
Alexandria, VA, February 21, 1997.

Hon. JOHN MCCAIN,
241 Russell Senate Office Building, U.S. Senate, Washington, DC.

DEAR SENATOR MCCAIN: On behalf of National Industries for the Blind and our 119 associated industries in 38 states, that employ over 5,300 people who are blind, I vigorously endorse your proposed legislation to amend title II of the Social Security Act.

This legislation to re-institute the linkage, between people who are blind and senior citizens, if passed, will allow people who are blind to strive for full employment.

Please let us know how NIB can be of further assistance to you as you seek support of this important legislation.

Sincerely,

JUDITH D. MOORE.

REHABILITATION ADVISORY COUNCIL FOR THE BLIND,
St. Paul, MN, February 20, 1997.

Hon. JOHN MCCAIN,
U.S. Senate,
Washington, DC.

DEAR SENATOR MCCAIN: On behalf of the Rehabilitation Advisory Council for the Blind in Minnesota, I wish to express our strong support for the restoration of the earnings limits linkage under the Social Security Act between the blind and age 65 retirees. It is my understanding that you will be introducing a bill to achieve this restoration. We commend you for your willingness to exercise leadership on behalf of blind people who want to work and participate actively and productively in society. We support your bill.

The Social Security earnings limit for the blind is presently set at $12,000 per year. As I am sure you are aware, this is a powerful disincentive for blind people to leave the Social Security rolls and become self-supporting citizens. This barrier to self-support will become even more insurmountable as the gap between the blind and senior citizens widens. It is vital, therefore, that the blind achieve parity with age 65 retirees insofar as earnings limits under the Social Security Act are concerned. Using the figures that apply to senior citizens, this means raising the earnings limit for the blind to $30,000 per year by the year 2002.

Thank you for recognizing the problem and taking forthright action to deal with it.

Yours sincerely,

CURTIS CHONG,
Chairperson, Rehabilitation Advisory Council for the Blind.

LOUISIANA CENTER FOR THE BLIND,
Ruston, LA, February 21, 1997.

DEAR SENATOR MCCAIN: Since 1985, the Louisiana Center for the Blind has provided training and job placement services for hundreds of blind adults throughout the country. One of our primary goals is to help blind persons become employed so that they can become productive, tax-paying citizens. Over the past twelve years, we have observed that one of the main disincentives for employment is the earnings limit under Social Security Disability Insurance.

As the director of the Louisiana Center for the Blind, I want to express my strong support for your bill which would restore the linkage between the blind and retirees for the earnings limit under the Social Security Act. Since the unemployment rate among the blind is a staggering 70%, I firmly believe that your bill will decrease this statistic by helping blind Americans enter the workforce.

Thank you for your efforts on behalf of the nation's blind.

Sincerely,

JOANNE WILSON,
Director.

NATIONAL COUNCIL OF STATE AGENCIES FOR THE BLIND, INC.,
Boston, MA, February 25, 1997.

Hon. JOHN MCCAIN,
U.S. Senate, Russell Office Building, Washington, DC.

DEAR SENATOR MCCAIN: Please accept this letter of support and applause from the National Council of State Agencies for the Blind as a testimony to the reality that your effort to reestablish the link for Blind SSDI recipients to the earnings limits of persons who are elderly is both timely and well grounded as a benefit to the national economy.

There is no question in the view of this organization which has a primary role of assisting blind persons to return to work, that reestablishment of the linkage would positively impact the decision of many persons to do so. Removing the disincentive of lower earnings before a total cut-off of benefits and reestablishing the linkage of a higher earnings limit would afford those persons capable of rejoining the national work force with the powerful personal reason to do so through sustained economic security.

Please be assured of the support and any assistance you may require of this organization as you take on this progressive and needed challenge to restore the earnings linkage. I may be reached at the above address or by phoning (617)–727–5550 extension 4503 in the event you wish to communicate further.

Sincerely,

CHARLES H. CRAWFORD,
President.

AMERICAN COUNCIL OF THE BLIND,
Washington, DC, February 25, 1997.

Hon. JOHN MCCAIN,
U.S. Senate, 241 Russell Senate Office Building, Washington, DC.

DEAR SENATOR MCCAIN: On behalf of the national membership of the American Council of the Blind, I write to applaud your efforts to restore the statutory linkage between the earnings limit for seniors and blind SSDI beneficiaries. This bill will go a long way to improving employment opportunities for blind people, who struggle to enter and remain in the work force. In the words of Jim Olsen, a member of the American Council of the Blind of Minnesota, ''restoring the linkage will enable blind people to continue to work, pay taxes, and believe in the American spirit of the work ethic.''

Our members are urging their Senators to support your bill to restore linkage, and we are keeping them informed of your efforts on their behalf. Please let me know how I can be of assistance in this matter.

Thank you.

Very truly yours,

JULIE H. CARROLL,
Director of Governmental Affairs.

METAIRIE, LA,
February 22, 1997.

Hon. JOHN MCCAIN,
U.S. Senate,
Washington, DC.

DEAR SENATOR MCCAIN: I am writing to express our strong support for your bill to restore the linkage of earnings limits under the Social Security Act which apply to age 65 retirees and blind people of any age. The

position of the National Federation of the Blind on this matter is best expressed in a resolution (copy attached) which was unanimously adopted at our 1996 National Convention.

Your leadership on behalf of beneficiaries who want to contribute to society by working has earned our utmost respect. The Social Security earnings limit, presently at $12,000 annually, is the greatest barrier to self-support for blind people. In fact, I would say that the single factor of the earnings limit is more destructive to the self-support efforts of blind people than any other social condition.

By raising the earnings exemption threshold for blind people to $30,000 beginning in 2002, your bill would substantially remove any disincentive to work for blind people. For that reason, we applaud your efforts and pledge our full support.

Although I think that restoring the linkage is all right for the present, I believe that congress should totally eliminate the earnings limit and place us in the same classification as those 70 and over, this would not only provide a significant work incentive, but would also eliminate the cumbersome process of reporting both our earnings and impairment related work related expenses now required under the law. This has caused problems because of the confusion among Social Security Administration employees some of whom are unaware of the special provisions for blind persons.

I personally have had my earnings continuously started and stopped since 1991 not because of anything I have done that disqualifies me from receiving them, but due to the confusion of S.S.A. personnel. I feel that classifying blind persons the same as those 70 and over would ultimately provide an even better work incentive than the restoration of the linkage.

Thank you for responding to the need.

Very truly yours,

HARVEY HEAGY.

CONNECTICUT COMMUNITY ADVOCATES, SPECIALIZED EDUCATIONAL SERVICES,
Westbrook, CT, February 21, 1997.

Hon. JOHN MCCAIN,
U.S. Senate,
Washington, DC.
Attention: Sonya Sotak

DEAR SENATOR MCCAIN: As a member of the CT. C.A.S.E.S., I have counseled many blind individuals who want to work. I have compared their potential entry level salary to their Social Security benefits. Too often, these work-bound blind citizens realize that after taxes and work expenses, their new job will not replace or equal their lost disability benefits. Few blind people can afford to sacrifice income, and they must remain idle in order to receive a guaranteed monthly check. The chance to work, earn, pay taxes, and become a contributing member of our society is a valid goal for all Americans; but with the existing law under title II of the Social Security Act, it is an unobtainable goal for blind people.

However, Senator McCain, your leadership and foresight in introducing a bill to restore the linkage of earnings limits under the Social Security Act for seniors and the blind will enable both groups to work. In addition, they will be able to join the work-force without fear. Your bill will restore fairness, equity, and hope for the working age blind person. The blind want to work and with your bill they will work. The staff of CT. C.A.S.E.S. and clients would like to convey our strong support and appreciation for your bill to restore the linkage of earnings limit under the Social Security Act which applies to retirees and blind people of any age.

I know from personal experience, just how strict the earnings limit is for blind people who attempt to work. My earnings exceeded the exempt amount and the entire sum paid to the primary beneficiary, myself, and my dependents was abruptly withdrawn. After subtracting the travel expenses etcetera, from the salary I obtained from being employed, it was quite evident that my real earnings were much less than my monthly disability benefits. At present many blind people will lose financially by going to work but with the enactment of your bill, restoring the linkage, they will not lose. These blind people will become part of the working force. They will pay taxes. They will become fully integrated and truly achieve first class status as working Americans.

PAULA A. KRAUSS,
Director CT. C.A.S.E.S.

NATIONAL FEDERATION OF THE BLIND,
Baltimore, MD, February 12, 1997.

Hon. JOHN MCCAIN,
U.S. Senate,
Washington, DC.

DEAR SENATOR MCCAIN: I am writing to express our strong support for your bill to restore the linkage of earnings limits under the Social Security Act which apply to age 65 retirees and blind people of any age. The position of the National Federation of the Blind on this matter is best expressed in a resolution (copy attached) which was unanimously adopted at our 1996 National Convention.

Your leadership on behalf of beneficiaries who want to contribute to society by working has earned our utmost respect. The Social Security earnings limit, presently at $12,000 annually, is the greatest barrier to self-support for blind people. In fact, I would say that the single factor of the earnings limit is more destructive to the self-support efforts of blind people than any other social condition.

By raising the earnings exemption threshold for blind people to $30,000 beginning in 2002, your bill would substantially remove any disincentive to work for blind people. For that reason, we applaud your efforts and pledge our full support.

Thank you for responding to the need.

Very truly yours,

JAMES GASHEL,
Director of Governmental Affairs,
National Federation of the Blind.

Mr. DODD. Mr. President, I rise with my dear friend and colleague, Senator MCCAIN, to introduce legislation of vital importance to Americans who happen to be blind. Its purpose is simply to restore the Social Security earnings limitation for the blind to the same level as that for America's senior citizens.

Mr. President, the English poet John Milton once said that ''To be blind is not miserable; not to be able to bear blindness, that is miserable.''

Over the past 20 years, blind Americans have made amazing progress in shouldering those difficult burdens. Today, millions of blind Americans have achieved more independent and rewarding lives for themselves.

The legislation that we introduce today will ensure that this progress continues by restoring an important work incentive for close to 150,000 blind Americans. This bill would reestablish the identical earnings exemption threshold for blind and senior citizen beneficiaries under the Social Security Act, which had been the law from 1977 until just last year.

Prior to 1977, blind people were overwhelmingly dependent on disability benefits. What's worse, many of them could not afford to work without risking the loss of the basic security that these benefits provided.

However, in that year, we raised the earnings exemption for the blind to the same level as retirees—from $500 to $940 a month. That modest step encouraged millions of blind Americans to work by allowing them to keep more of what they earned.

Unfortunately, last year, when the Congress raised the earnings limit for seniors, it failed to extend the same benefits to the blind.

The impact of this unfortunate step has been significant. As the law now stands, a senior citizen may earn $13,500 in 1997 and $30,000 by the year 2002 without any reduction of benefits. A blind person, on the other hand, may only earn $12,000 today, and only $14,400 in 2002. While this provides terrific encouragement for seniors to work, it reenshrines into law the disincentive for blind people that existed before 1977.

There are approximately 1.1 million people in the United States who are blind under the Social Security definition. Of those, 713,000 of the 1.1 million are 65 or older, and they are considered retirees, not blind people.

But there are roughly 387,000 people who are blind, and under retirement age, who have been adversely affected by the severed link between retirees and the blind. Of the 332,000 blind people who are 20 or older, more than 70 percent are unemployed. We must not make their efforts to find meaningful and rewarding work more difficult. Rather, we should encourage blind Americans in their noble endeavors. Our legislation would do just that by raising the earnings limit and linking it once again to the senior citizens exempt account.

In closing, Mr. President, allow me to commend Senator MCCAIN for his leadership here. He has once again demonstrated his commitment to ensuring that all Americans have a fair and equal opportunity to enjoy the fruits of their labors and the blessings of our great Nation. I urge our colleagues to join us in supporting this legislation.

By Mr. LEAHY (for himself, Mr. BURNS, Mrs. MURRAY, and Mr. WYDEN):

S. 376. A bill to affirm the rights of Americans to use and sell encryption products, to establish privacy standards for voluntary key recovery encryption systems, and for other purposes; to the Committee on the Judiciary.

THE ENCRYPTED COMMUNICATION PRIVACY ACT OF 1997

Mr. LEAHY. Mr. President, in the 104th Congress, a bipartisan group of Senators came together to overhaul our country's outdated export rules and bring some sense to our country's encryption policy. We are back at it again in this Congress. I am pleased to

introduce with Senator BURNS, and others, two encryption bills, the Encrypted Communications Privacy Act [ECPA] and Promotion of Commerce On-Line in the Digital Era [PRO-CODE] Act.

This legislation bars government-mandated key recovery, or key escrow encryption, and ensures that all computer users are free to choose any encryption method to protect the privacy of their online communications and computer files. These bills also roll back current restrictions on the export of strong cryptography so that high-tech U.S. firms are free to compete in the global marketplace and meet the demands of customers—both foreign and domestic—for strong encryption.

As an avid Internet user myself, I care deeply about protecting individual privacy and encouraging the development of the Internet as a secure and trusted communications medium. As more Americans every year use the Internet and other computer networks to obtain critical medical services, to conduct business, to be entertained and communicate with their friends, maintaining the privacy and confidentiality of our computer communications both here and abroad has only grown in importance.

Strong encryption also has an important use as a crime prevention shield, to stop hackers, industrial spies and thieves from snooping into private computer files and stealing valuable proprietary information. We should be encouraging the use of strong encryption to prevent certain types of computer and online crime.

We made progress in the last Congress on encryption. The attention we gave to this issue in classified briefings and public hearings helped the administration recognize the need for reform. In fact, in the waning days of the last Congress, the administration took steps to adopt one element proposed in these bills by transferring export control authority for certain encryption products from the State Department to the Commerce Department. The administration also loosened export controls on 56-bit key length encryption—at least for 2 years. Although the administration is moving in the right direction by loosening some export controls, its unilateral regulatory reforms are not enough.

Even under the current regime, popular browser software, such as Microsoft's Internet Explorer and Netscape Navigator, may not be exported in the form generally available here, since both software packages use 128-bit encryption. Lotus Notes shareware, which uses 64-bit encryption, cannot be exported in the same version sold domestically.

We need to loosen export restrictions on encryption products so that American companies are able to export any generally available or mass market encryption products without obtaining Government approval. ECPA would allow our companies to do that.

We are mindful of the national security and law enforcement concerns that have dictated the administration's policy choices on encryption. Both bills contain important exceptions to restrict encryption exports for military end-uses, or to terrorist designated or embargoed countries, such as Cuba or North Korea. This is not enough to satisfy our national security and law enforcement agencies, who fear that the widespread use of strong encryption will undercut their ability to eavesdrop on terrorists or other criminals, or decipher computer files containing material evidence of a crime.

Administration officials have made clear that they seek nothing less than a world-wide key recovery encryption scheme in which the U.S. Government is able to obtain decryption assistance to decipher encrypted communications and stored electronic files. I have significant concerns about the administration conditioning the export of 56-bit key encryption on companies moving forward with key recovery encryption systems. In aggressively promoting a global key recovery scheme the administration is ignoring the conclusion of the National Research Council in its thorough CRISIS report issued last year. Specifically, the report warned that ''Aggressive government promotion of escrowed encryption is not appropriate at this time.''

The administration is putting the proverbial cart-before-the-horse by promoting key recovery without having in place privacy safeguards defining how and under what circumstances law enforcement and others may get access to decryption keys. Many users have legitimate concerns about investing in and using key recovery products without clear answers on how the law enforcement here, let alone other countries, including those with bad human rights records or a history of economic espionage, will get access to their keys.

ECPA provides those answers with clear guidelines on how and when law enforcement and foreign countries may obtain decryption assistance from key holders, who are voluntarily entrusted with decryption keys or have the capability to provide decryption assistance.

It is time for Congress to take steps to put our national encryption policy on the right course. Both the PRO-CODE bill and the Encrypted Communications Privacy Act reflect a bipartisan effort to reform our nation's cryptography policy in a constructive and positive manner.

I ask unanimous consent that the Encrypted Communications Privacy Act and a section-by-section summary be printed in the RECORD.

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

S. 376

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Encrypted Communications Privacy Act of 1997''.

SEC. 2. PURPOSES.

The purposes of this Act are—

(1) to ensure that Americans have the maximum possible choice in encryption methods to protect the security, confidentiality, and privacy of their lawful wire and electronic communications and stored electronic information; and

(2) to establish privacy standards for key holders who are voluntarily entrusted with the means to decrypt such communications and information, and procedures by which investigative or law enforcement officers may obtain assistance in decrypting such communications and information.

SEC. 3. FINDINGS.

Congress finds that—

(1) the digitization of information and the explosion in the growth of computing and electronic networking offers tremendous potential benefits to the way Americans live, work, and are entertained, but also raises new threats to the privacy of American citizens and the competitiveness of American businesses;

(2) a secure, private, and trusted national and global information infrastructure is essential to promote economic growth, protect privacy, and meet the needs of American citizens and businesses;

(3) the rights of Americans to the privacy and security of their communications and in the conducting of personal and business affairs should be preserved and protected;

(4) the authority and ability of investigative and law enforcement officers to access and decipher, in a timely manner and as provided by law, wire and electronic communications and stored electronic information necessary to provide for public safety and national security should also be preserved;

(5) individuals will not entrust their sensitive personal, medical, financial, and other information to computers and computer networks unless the security and privacy of that information is assured;

(6) business will not entrust their proprietary and sensitive corporate information, including information about products, processes, customers, finances, and employees, to computers and computer networks unless the security and privacy of that information is assured;

(7) encryption technology can enhance the privacy, security, confidentiality, integrity, and authenticity of wire and electronic communications and stored electronic information;

(8) encryption techniques, technology, programs, and products are widely available worldwide;

(9) Americans should be free to use lawfully whatever particular encryption techniques, technologies, programs, or products developed in the marketplace they desire to use in order to interact electronically worldwide in a secure, private, and confidential manner;

(10) American companies should be free—

(A) to compete and to sell encryption technology, programs, and products; and

(B) to exchange encryption technology, programs, and products through the use of the Internet, as the Internet is rapidly emerging as the preferred method of distribution of computer software and related information;

(11) there is a need to develop a national encryption policy that advances the development of the national and global information infrastructure, and preserves the right to privacy of Americans and the public safety and national security of the United States;

(12) there is a need to clarify the legal rights and responsibilities of key holders who are voluntarily entrusted with the

means to decrypt wire and electronic communications and stored electronic information;

(13) Congress and the American people have recognized the need to balance the right to privacy and the protection of the public safety with national security;

(14) the Constitution permits lawful electronic surveillance by investigative or law enforcement officers and the seizure of stored electronic information only upon compliance with stringent standards and procedures; and

(15) there is a need to clarify the standards and procedures by which investigative or law enforcement officers obtain assistance from key holders who—

(A) are voluntarily entrusted with the means to decrypt wire and electronic communications and stored electronic information; or

(B) have information that enables the decryption of such communications and information.

SEC. 4. DEFINITIONS.

As used in this Act, the terms ''decryption key'', ''encryption'', ''key holder'', and ''State'' have the same meanings as in section 2801 of title 18, United States Code, as added by section 6 of this Act.

SEC. 5. FREEDOM TO USE ENCRYPTION.

(a) LAWFUL USE OF ENCRYPTION.—Except as provided in this Act and the amendments made by this Act, it shall be lawful for any person within any State, and by any United States person in a foreign country, to use any encryption, regardless of encryption algorithm selected, encryption key length chosen, or implementation technique or medium used.

(b) PROHIBITION ON MANDATORY KEY RECOVERY OR KEY ESCROW ENCRYPTION.—Neither the Federal Government nor a State may require, as a condition of a sale in interstate commerce, that a decryption key be given to another person.

(c) GENERAL CONSTRUCTION.—Nothing in this Act or the amendments made by this Act shall be construed to—

(1) require the use by any person of any form of encryption;

(2) limit or affect the ability of any person to use encryption without a key recovery function; or

(3) limit or affect the ability of any person who chooses to use encryption with a key recovery function to select the key holder, if any, of the person's choice.

SEC. 6. ENCRYPTED WIRE OR ELECTRONIC COMMUNICATIONS AND STORED ELECTRONIC COMMUNICATIONS.

(a) IN GENERAL.—Part I of title 18, United States Code, is amended by inserting after chapter 123 the following new chapter:

''CHAPTER 125—ENCRYPTED WIRE OR ELECTRONIC COMMUNICATIONS AND STORED ELECTRONIC INFORMATION

''§ 2801. Definitions

''In this chapter—

''(1) the term 'decryption key' means the variable information used in or produced by a mathematical formula, code, or algorithm, or any component thereof, used to decrypt a wire communication or electronic communication or stored electronic information that has been encrypted;

''(2) the term 'decryption assistance' means assistance which provides or facilitates access to the plain text of an encrypted wire communication or electronic communication or stored electronic information;

''(3) the term 'encryption' means the scrambling of wire communications or electronic communications or stored electronic information using mathematical formulas or algorithms in order to preserve the confidentiality, integrity, or authenticity of such communications or information and prevent unauthorized recipients from accessing or altering such communications or information;

''(4) the term 'key holder' means a person (including a Federal agency) located within the United States who—

''(A) is voluntarily entrusted by another independent person with the means to decrypt that person's wire communications or electronic communications or stored electronic information for the purpose of subsequent decryption of such communications or information; or

''(B) has information that enables the decryption of such communications or information for such purpose; and

''(5) the terms 'person', 'State', 'wire communication', 'electronic communication', 'investigative or law enforcement officer', 'judge of competent jurisdiction', and 'electronic storage' have the same meanings given such terms in section 2510 of this title.

''§ 2802. Prohibited acts by key holders

''(a) UNAUTHORIZED RELEASE OF KEY.—Except as provided in subsection (b), any key holder who releases a decryption key or provides decryption assistance shall be subject to the criminal penalties provided in subsection (e) and to civil liability as provided in subsection (f).

''(b) AUTHORIZED RELEASE OF KEY.—A key holder shall only release a decryption key in the possession or control of the key holder or provide decryption assistance with respect to the key—

''(1) with the lawful consent of the person whose key is possessed or controlled by the key holder;

''(2) as may be necessarily incident to the provision of service relating to the possession or control of the key by the key holder; or

''(3) upon compliance with subsection (c)—

''(A) to investigative or law enforcement officers authorized to intercept wire communications or electronic communications under chapter 119 of this title;

''(B) to a governmental entity authorized to require access to stored wire and electronic communications and transactional records under chapter 121 of this title; or

''(C) to a governmental entity authorized to seize or compel the production of stored electronic information.

''(c) REQUIREMENTS FOR RELEASE OF DECRYPTION KEY OR PROVISION OF DECRYPTION ASSISTANCE.—

''(1) WIRE AND ELECTRONIC COMMUNICATIONS.—(A) A key holder may release a decryption key or provide decryption assistance to an investigative or law enforcement officer if—

''(i) the key holder is given—

''(I) a court order—

''(aa) signed by a judge of competent jurisdiction directing such release or assistance; and

''(bb) issued upon a finding that the decryption key or decryption assistance sought is necessary for the decryption of a communication that the investigative or law enforcement officer is authorized to intercept pursuant to chapter 119 of this title; or

''(II) a certification in writing by a person specified in section 2518(7) of this title, or the Attorney General, stating that—

''(aa) no court order is required by law;

''(bb) the conditions set forth in section 2518(7) of this title have been met; and

''(cc) the release or assistance is required;

''(ii) the order or certification under clause (i)—

''(I) specifies the decryption key or decryption assistance being sought; and

''(II) identifies the termination date of the period for which the release or assistance is authorized; and

''(iii) in compliance with the order or certification, the key holder provides only the release or decryption assistance necessary for the access specified in the order or certification.

''(B) If an investigative or law enforcement officer receives a decryption key or decryption assistance under this paragraph for purposes of decrypting wire communications or electronic communications, the judge issuing the order authorizing the interception of such communications shall, as part of the inventory required to be served pursuant to subsection (7)(b) or (8)(d) of section 2518 of this title, cause to be served on the persons named in the order, or the application for the order, and on such other parties as the judge may determine in the interests of justice, notice of the receipt of the key or decryption assistance, as the case may be, by the officer.

''(2) STORED WIRE AND ELECTRONIC COMMUNICATIONS AND STORED ELECTRONIC INFORMATION.—(A) A key holder may release a decryption key or provide decryption assistance to a governmental entity requiring disclosure of stored wire and electronic communications and transactional records under chapter 121 of this title only if the key holder is directed to release the key or give such assistance pursuant to a court order issued upon a finding that the decryption key or decryption assistance sought is necessary for the decryption of communications or records the disclosure of which the governmental entity is authorized to require under section 2703 of this title.

''(B) A key holder may release a decryption key or provide decryption assistance under this subsection to a governmental entity seizing or compelling production of stored electronic information only if the key holder is directed to release the key or give such assistance pursuant to a court order issued upon a finding that the decryption key or decryption assistance sought is necessary for the decryption of stored electronic information—

''(i) that the governmental entity is authorized to seize; or

''(ii) the production of which the governmental entity is authorized to compel.

''(C) A court order directing the release of a decryption key or the provision of decryption assistance under subparagraph (A) or (B) shall specify the decryption key or decryption assistance being sought. A key holder may provide only such release or decryption assistance as is necessary for access to the communications, records, or information covered by the court order.

''(D) If a governmental entity receives a decryption key or decryption assistance under this paragraph for purposes of obtaining access to stored wire and electronic communications or transactional records under section 2703 of this title, the notice required with respect to such access under subsection (b) of such section shall include notice of the receipt of the key or assistance, as the case may be, by the entity.

''(3) USE OF KEY.—(A) An investigative or law enforcement officer or governmental entity to which a decryption key is released under this subsection may use the key only in the manner and for the purpose and period expressly provided for in the certification or

court order authorizing such release and use. Such period may not exceed the duration of the interception for which the key was released or such other period as the court, if any, may allow.

''(B) Not later than the end of the period authorized for the release of a decryption key, the investigative or law enforcement officer or governmental entity to which the key is released shall destroy and not retain the key and provide a certification that the key has been destroyed to the issuing court, if any.

''(4) NONDISCLOSURE OF RELEASE.—No key holder, officer, employee, or agent thereof may disclose the release of an encryption key or the provision of decryption assistance under subsection (b)(3), except as otherwise required by law or legal process and then only after prior notification to the Attorney General or to the principal prosecuting attorney of a State or of a political subdivision of a State, as appropriate.

''(d) RECORDS OR OTHER INFORMATION HELD BY KEY HOLDERS.—

''(1) IN GENERAL.—A key holder may not disclose a record or other information (not including the key or the contents of communications) pertaining to any person, which record or information is held by the key holder in connection with its control or possession of a decryption key, except—

''(A) with the lawful consent of the person whose key is possessed or controlled by the key holder; or

''(B) to an investigative or law enforcement officer pursuant to a warrant, subpoena, court order, or other lawful process authorized by Federal or State law.

''(2) CERTAIN NOTICE NOT REQUIRED.—An investigative or law enforcement officer receiving a record or information under paragraph (1)(B) is not required to provide notice of such receipt to the person to whom the record or information pertains.

''(3) LIABILITY FOR CIVIL DAMAGES.—Any disclosure in violation of this subsection shall render the person committing the violation liable for the civil damages provided for in subsection (f).

''(e) CRIMINAL PENALTIES.—The punishment for an offense under subsection (a) is—

''(1) if the offense is committed for a tortious, malicious, or illegal purpose, or for purposes of direct or indirect commercial advantage or private commercial gain—

''(A) a fine under this title or imprisonment for not more than 1 year, or both, in the case of a first offense; or

''(B) a fine under this title or imprisonment for not more than 2 years, or both, in the case of a second or subsequent offense; and

''(2) in any other case where the offense is committed recklessly or intentionally, a fine of not more than $5,000 or imprisonment for not more than 6 months, or both.

''(f) CIVIL DAMAGES.—

''(1) IN GENERAL.—Any person aggrieved by any act of a person in violation of subsection (a) or (d) may in a civil action recover from such person appropriate relief.

''(2) RELIEF.—In an action under this subsection, appropriate relief includes—

''(A) such preliminary and other equitable or declaratory relief as may be appropriate;

''(B) damages under paragraph (3) and punitive damages in appropriate cases; and

''(C) a reasonable attorney's fee and other litigation costs reasonably incurred.

''(3) COMPUTATION OF DAMAGES.—The court may assess as damages the greater of—

''(A) the sum of the actual damages suffered by the plaintiff and any profits made by the violator as a result of the violation; or

''(B) statutory damages in the amount of $5,000.

''(4) LIMITATION.—A civil action under this subsection shall be commenced not later than 2 years after the date on which the plaintiff first knew or should have known of the violation.

''(g) DEFENSE.—It shall be a complete defense against any civil or criminal action brought under this chapter that the defendant acted in good faith reliance upon a warrant, subpoena, or court order or other statutory authorization.

''§ 2803. Reporting requirements

''(a) IN GENERAL.—In reporting to the Administrative Office of the United States Courts as required under section 2519(2) of this title, the Attorney General, an Assistant Attorney General specially designated by the Attorney General, the principal prosecuting attorney of a State, or the principal prosecuting attorney of any political subdivision of a State shall report on the number of orders and extensions served on key holders under this chapter to obtain access to decryption keys or decryption assistance and the offenses for which the orders and extensions were obtained.

''(b) REQUIREMENTS.—The Director of the Administrative Office of the United States Courts shall include in the report transmitted to Congress under section 2519(3) of this title the number of orders and extensions served on key holders to obtain access to decryption keys or decryption assistance and the offenses for which the orders and extensions were obtained.

''§ 2804. Unlawful use of encryption to obstruct justice

''Whoever willfully endeavors by means of encryption to obstruct, impede, or prevent the communication to an investigative or law enforcement officer of information in furtherance of a felony that may be prosecuted in a court of the United States shall—

''(1) in the case of a first conviction, be sentenced to imprisonment for not more than 5 years, fined under this title, or both; or

''(2) in the case of a second or subsequent conviction, be sentenced to imprisonment for not more than 10 years, fined under this title, or both.

''§ 2805. Freedom to sell encryption products

''(a) IN GENERAL.—It shall be lawful for any person within any State to sell in interstate commerce any encryption, regardless of encryption algorithm selected, encryption key length chosen, or implementation technique or medium used.

''(b) CONTROL OF EXPORTS BY SECRETARY OF COMMERCE.—

''(1) GENERAL RULE.—Notwithstanding any other law and subject to paragraphs (2), (3), and (4), the Secretary of Commerce shall have exclusive authority to control exports of all computer hardware, computer software, and technology for information security (including encryption), except computer hardware, software, and technology that is specifically designed or modified for military use, including command, control, and intelligence applications.

''(2) ITEMS SUBJECT TO LICENSE EXCEPTION.—Except as otherwise provided under the Trading With The Enemy Act (50 U.S.C. App. 1 et seq.) or the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.) (but only to the extent that the authority of the International Emergency Economic Powers Act is not exercised to extend controls imposed under the Export Administration Act of 1979), a license exception shall be made available for the export or reexport of—

''(A) any computer software, including computer software with encryption capabilities, that is—

''(i) generally available, as is, and designed for installation by the user or purchaser; or

''(ii) in the public domain (including computer software available through the Internet or another interactive computer service) or publicly available because the computer software is generally accessible to the interested public in any form;

''(B) any computing device or computer hardware that otherwise would be restricted solely on the basis that it incorporates or employs in any form computer software (including computer software with encryption capabilities) that is described in subparagraph (A);

''(C) any computer software or computer hardware that is otherwise restricted solely on the basis that it incorporates or employs in any form interface mechanisms for interaction with other hardware and software, including encryption hardware and software; or

''(D) any encryption technology related or ancillary to a device, software, or hardware described in subparagraph (A), (B), or (C).

''(3) COMPUTER SOFTWARE, COMPUTER HARDWARE, AND TECHNOLOGY WITH ENCRYPTION CAPABILITIES.—(A) Except as provided in subparagraph (B), the Secretary of Commerce shall authorize the export or reexport of computer software, computer hardware, and technology with encryption capabilities under a license exception if—

''(i) a product offering comparable security is commercially available from a foreign supplier without effective restrictions;

''(ii) a product offering comparable security is generally available in a foreign country; or

''(iii) the sole basis for otherwise withholding the license exception is the employment in the software, hardware, or technology of encryption from a foreign source.

''(B) The Secretary of Commerce shall prohibit the export or reexport of computer software, computer hardware, and technology described in subparagraph (A) to a foreign country if the Secretary determines that there is substantial evidence that such software, hardware, or technology will be—

''(i) diverted to a military end-use or an end-use supporting international terrorism;

''(ii) modified for military or terrorist end-use; or

''(iii) reexported without requisite United States authorization.

''(4) DEFINITIONS.—As used in this subsection—

''(A) the term 'as is' means, in the case of computer software (including computer software with encryption capabilities), a computer software program that is not designed, developed, or tailored by the computer software company for specific purchasers, except that such purchasers may supply certain installation parameters needed by the computer software program to function properly with the purchaser's system and may customize the computer software program by choosing among options contained in the computer software program;

''(B) the term 'computing device' means a device which incorporates one or more microprocessor-based central processing units that can accept, store, process, or provide output of data;

''(C) the term 'computer hardware', when used in conjunction with information security, includes computer systems, equipment, application-specific assemblies, modules, and integrated circuits;

''(D) the term 'generally available' means, in the case of computer software (including computer software with encryption capabilities), computer software that is widely offered for sale, license, or transfer including over-the-counter retail sales, mail order

transactions, telephone order transactions, electronic distribution, and sale on approval;

''(E) the term 'interactive computer service' has the meaning provided that term in section 230(e)(2) of the Communications Act of 1934 (47 U.S.C. 230(e)(2));

''(F) the term 'Internet' has the meaning provided that term in section 230(e)(1) of the Communications Act of 1934 (47 U.S.C. 230(e)(1));

''(G) the term 'is designed for installation by the purchaser' means, in the case of computer software (including computer software with encryption capabilities)—

''(i) that the computer software company intends for the purchaser (including any licensee or transferee), who may not be the actual program user, to install the computer software program on a computing device and has supplied the necessary instructions to do so, except that the company may also provide telephone help-line services for software installation, electronic transmission, or basic operations; and

''(ii) that the computer software program is designed for installation by the purchaser without further substantial support by the supplier;

''(H) the term 'license exception' means a general authorization applicable to a type of export that does not require an exporter to, as a condition of exporting—

''(i) submit a written application to the Secretary of Commerce; or

''(ii) receive prior written authorization by the Secretary of Commerce; and

''(I) the term 'technology' means specific information necessary for the development, production, or use of a product.

''§ 2806. Requirements for release of decryption key or provision of decryption assistance to a foreign country

''(a) IN GENERAL.—Except as provided in subsection (b), no investigative or law enforcement officer or key holder may release a decryption key or provide decryption assistance to a foreign country.

''(b) CONDITIONS FOR COOPERATION WITH FOREIGN COUNTRY.—

''(1) IN GENERAL.—In any case in which the United States has entered into a treaty or convention with a foreign country to provide mutual assistance with respect to decryption, the Attorney General (or the designee of the Attorney General) may, upon an official request to the United States from the foreign country, apply for an order described in paragraph (2) from the district court in which a key holder resides for—

''(A) assistance in obtaining the release of a decryption key from the key holder; or

''(B) obtaining decryption assistance from the key holder.

''(2) CONTENTS OF ORDER.—An order described in this paragraph is an order that directs the key holder involved to—

''(A) release a decryption key to the Attorney General (or the designee of the Attorney General) for furnishing to the foreign country; or

''(B) provide decryption assistance to the Attorney General (or the designee of the Attorney General) for furnishing to the foreign country.

''(3) REQUIREMENTS FOR ORDER.—A judge of a court described in paragraph (1) may issue an order described in paragraph (2) if the judge finds, on the basis on an application made by the Attorney General under this subsection, that—

''(A) the decryption key or decryption assistance sought is necessary for the decryption of a communication or information that the foreign country is authorized to intercept or seize pursuant to the law of the foreign country;

''(B) the law of the foreign county provides for adequate protection against arbitrary interference with respect to privacy rights; and

''(C) the decryption key or decryption assistance is being sought in connection with a criminal investigation for conduct that would constitute a violation of a criminal law of the United States if committed within the jurisdiction of the United States.

''(c) DEFINITION.—As used in this section, the term 'official request' has the meaning given that term in section 3506(c) of this title.''.

(b) CLERICAL AMENDMENT.—The chapter analysis for part I of title 18, United States Code, is amended by inserting after the item relating to chapter 123 the following new item:

''125. Encrypted wire or electronic communications and stored electronic information ..... 2801''.

SEC. 7. INTELLIGENCE ACTIVITIES.

(a) CONSTRUCTION.—Nothing in this Act or the amendments made by this Act constitutes authority for the conduct of any intelligence activity.

(b) CERTAIN CONDUCT.—Nothing in this Act or the amendments made by this Act shall affect the conduct, by officers or employees of the United States Government in accordance with other applicable Federal law, under procedures approved by the Attorney General, of activities intended to—

(1) intercept encrypted or other official communications of United States executive branch entities or United States Government contractors for communications security purposes;

(2) intercept radio communications transmitted between or among foreign powers or agents of a foreign power as defined by the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.); or

(3) access an electronic communication system used exclusively by a foreign power or agent of a foreign power as so defined.

ENCRYPTED COMMUNICATIONS PRIVACY ACT OF 1997—SUMMARY

Sec. 1. Short Title. The Act may be cited as the ''Encrypted Communications Privacy Act of 1997.''

Sec. 2. Purpose. The Act would ensure that Americans have the maximum possible choice in encryption methods to protect the security, confidentiality and privacy of their lawful wire and electronic communications and stored electronic information. Americans are free to choose an encryption method with a key recovery feature, in which another person, called a ''key holder,'' is voluntarily entrusted with a decryption key or with the means to decrypt, or has information that would enable the decryption of, encrypted communications or information. The Act would establish privacy standards for the key holder, and procedures for law enforcement officers and foreign countries to follow to obtain assistance from the key holder in decrypting encrypted communications and information.

Sec. 3. Findings. The Act enumerates fifteen congressional findings, including that a secure, private and trusted national and global information infrastructure is essential to promote citizens' privacy and meet the needs of both American citizens and businesses, that encryption technology widely available worldwide can help meet those needs, that Americans should be free to use, and American businesses free to compete and sell, encryption technology, programs and products, and that there is a need to develop a national encryption policy to advance the global information infrastructure and preserve Americans' right to privacy and the Nation's public safety and national security.

Sec. 4. Definitions. The terms ''decryption key'', ''encryption'', ''key holder'', and ''State'' as used in the Act are defined in section 6 of the Act.

Sec. 5. Freedom to Use Encryption.

(a) Lawful Use of Encryption. The Act legislatively confirms current practice in the United States that any person in this country may lawfully use any encryption method, regardless of encryption algorithm, key length or implementation selected.

The Act further makes clear that it is lawful under U.S. law for by any United States persons in a foreign country to use any encryption method. This provision is consistent with, though broader than, the Commerce Department's license exceptions published in the Federal Register on December 30, 1996, for temporary encryption exports that effectively replace the Department of State's personal use exemption. This personal use exemption that permits the export of cryptographic products by U.S. citizens and permanent residents who have the need to temporarily export the cryptographic products when leaving the U.S. for brief periods of time. For example, under this exemption, U.S. citizens traveling abroad are able to take their laptop computers containing copies of Lotus Notes software, many versions of which contain an encryption program otherwise not exportable.

(b) Prohibition on Mandatory Key Recovery or Key Escrow Encryption. The Act expressly bars the government from mandating that encryption technology or products be sold in interstate commerce with a key recovery feature.

(c) General Construction. Nothing in the Act is to be construed to require the use of encryption, the use of encryption with or without a key recovery feature, or the use of a key holder if a person chooses to use encryption with a key recovery feature.

Sec. 6. Encrypted Wire or Electronic Communications and Stored Electronic Information. This section of the act adds a new chapter 125, entitled ''Encrypted Wire or Electronic Communications and Stored Electronic Information,'' to title 18 of the United States Code to establish privacy standards for key holders and to set forth procedures that law enforcement officers, governmental entities and foreign countries must follow to obtain release of decryption keys or decryption assistance from key holders.

(a) In General. New chapter 125 has six sections.

§ 2801. Definitions. Generally, the terms used in the new chapter have the same meanings as in the federal wiretap statute, 18 U.S.C. 2510. Definitions are provided for ''decryption key'', ''decryption assistance'', ''encryption'' and ''key holder''. A ''key holder'' is a person located within the United States who is voluntarily entrusted by another independent person with the means to decrypt, or who has information that would enable the decryption of, that person's encrypted wire or electronic communications or stored electronic information. A key holder may, but is not required to be, a Federal agency.

This chapter applies to wire or electronic communications and communications in electronic storage, as defined in 18 U.S.C. 2510, and to stored electronic data. Thus, this chapter describes procedures for law enforcement to obtain assistance in decrypting encrypted electronic mail messages, encrypted telephone conversations, encrypted facsimile transmissions, encrypted computer transmissions and encrypted file transfers over the Internet that are lawfully intercepted pursuant to a wiretap order, under 18 U.S.C. 2518, or obtained pursuant to lawful process, under 18 U.S.C. 2703, and encrypted information stored on computers that is seized pursuant to a search warrant or other lawful process.

§2802. Prohibited acts by key holders

(a) UNAUTHORIZED RELEASE OF KEY.—Key holders will be subject to both criminal and civil liability for the unauthorized release of decryption keys or providing unauthorized decryption assistance.

(b) AUTHORIZED RELEASE OF KEY.—Key holders are authorized to release decryption keys or provide decryption assistance (1) with the consent of the key owner, (2) as may be necessarily incident to the provision of the key holder's service in possessing or controlling the key, or (3) to investigative or law enforcement officers authorized to conduct wiretaps and intercept wire or electronic communications, governmental entities authorized to access stored wire or electronic communications and transactional records, and governmental entities authorized to seize or compel production of stored electronic records, and upon compliance with the procedures set forth in subsection (c).

(c) REQUIREMENTS FOR RELEASE OF DECRYPTION KEY OR PROVISION OF DECRYPTION ASSISTANCE.—Generally decryption keys may be released and decryption assistance provided only pursuant to a court order issued upon a finding that the key or assistance is necessary to decrypt communications or stored data lawfully intercepted or seized. The standard for release of the key or provision of decryption assistance is tied directly to the problem at hand: the need to decrypt a message or information that the government is otherwise authorized to intercept or obtain. This will ensure that key holders need respond to only one type of compulsory process—a court order. Moreover, this Act will set a single standard for law enforcement, removing any extra burden on law enforcement to demonstrate, for example, probable cause for two separate orders (i.e., for the encrypted communications or information and for decryption assistance) and possibly before two different judges (i.e., the judge issuing the order for the encrypted communications or information and the judge issuing the order to the key holder).

(1) WIRE AND ELECTRONIC COMMUNICATIONS.—To obtain access to a decryption key or decryption assistance from a key holder, an investigative or law enforcement officer must present to the key holder a court order (or a certification issued under the emergency situation procedures in 18 U.S.C. 2518(7)) issued upon a finding that the decryption key or decryption assistance is necessary for the decryption of a communication that the officer is authorized to intercept. The order or certification shall specify the key or assistance being sought and identify the termination date of the period for which the release or assistance is authorized. Released keys or other decryption assistance may only be used in the manner and for the purpose and duration expressly provided by the court order.

The Act reinforces the principle of minimization. A key holder may only provide the minimal key release or decryption assistance needed to access the particular communications or information specified by court order. Under some key recovery schemes, release of a key holder's private key—rather than an individual session key—might provide the ability to decrypt every communication or stored file ever encrypted by a particular key owner, or by every user in an entire corporation, or by every user who was ever a customer of the key holder. The Act protects against such over broad releases of keys by requiring the court issuing the order to find the keys or decryption assistance being sought are necessary.

A key holder who fails to comply with the court order to provide a decryption key or decryption assistance may be penalized under current contempt or obstruction laws.

(2) STORED WIRE AND ELECTRONIC COMMUNICATIONS AND STORED ELECTRONIC INFORMATION.—

(A) A key holder is authorized to release a decryption key or provide decryption assistance to a governmental entity when directed to do so by a court order issued upon a finding that the key or assistance sought is necessary for the decryption of stored wire and electronic communications and transactional records, which a governmental entity is authorized to obtain under 18 U.S.C. §2703. The notice required to be given to subscribers or customers, under 18 U.S.C. §2703(b), shall include notice of the receipt of the key or assistance, as the case may be, by the governmental entity.

(B) A key holder is authorized to release a decryption key or provide decryption assistance to a governmental entity when directed to do so by a court order issued upon a finding that the key or assistance sought is necessary for the decryption of stored electronic information, which a governmental entity is authorized to seize or for which the governmental entity is authorized to compel production.

(C) A court order issued under either (A) or (B) must specify the decryption key or decryption assistance being sought, and the key holder may provide only such release or assistance as is necessary for access to the communications, records or information covered by the court order.

(3) USE OF KEY.—An investigative or law enforcement officer or governmental entity to which a decryption key has been released may use the key only in the manner, for the purpose and for the period expressly provided for in the court order or certification authorizing the release and use. At the end of the period for authorized release of the decryption key, the investigative or law enforcement officer or governmental entity must destroy and not retain the key and certify this has been done to the issuing court, if any.

(4) NONDISCLOSURE OF RELEASE.—A key holder may not disclose the release of a decryption key or provision of decryption assistance unless otherwise ordered to do so by law or legal process and then only after prior notification to the Attorney General or principal prosecuting attorney of a State or of a political subdivision of a State, as appropriate.

(d) RECORDS OR OTHER INFORMATION HELD BY KEY HOLDERS.—Key holders are prohibited from disclosing records or other information (not including decryption keys or the contents of communications) pertaining to key owners, except with the owner's consent or to an investigative or law enforcement officer, pursuant to a subpoena, court order or other lawful process. Investigative or law enforcement officers receiving such information are not required to notify the person to whom such information pertains. Key holders who violate this section are liable for civil damages as provided in subsection (f).

(e) CRIMINAL PENALTIES.—Key holders who violate this section for a tortuous, malicious or an illegal purpose, or for direct or indirect commercial advantage or private commercial gain, will be subject to a fine and up to 1 year imprisonment for a first offense, and fine and up to 2 years' imprisonment for a second offense. Other reckless and intentional violations would subject the key holder to a fine of not more than $5,000 and not more than 6 months' imprisonment.

(f) CIVIL DAMAGES.—Persons aggrieved by key holder violations may sue for injunctive relief, and actual damages or statutory damages of $5,000, whichever is greater. A civil action must be commenced not later than 2 years after the date on which the plaintiff first knew or should have known of the offense.

(g) DEFENSE.—A complete defense against any civil or criminal action is provided if the defendant acted in good faith reliance upon a court order, warrant, grand jury or trial subpoena or other statutory authorization.

§2803. Reporting requirements. The Attorney General is required to include in his or her report to the Administrative Office of the U.S. Courts, under 18 U.S.C. §2519(2), the number of orders and extensions served on key holders to obtain access to decryption keys or decryption assistance. The Director of the Administrative Office of the U.S. Courts is required to include this information, and the offenses for which the orders were obtained, in the report to Congress under 18 U.S.C. §2519(3).

§2804. Unlawful use of encryption to obstruct justice

Persons who willfully use encryption in an effort and for the purpose of obstructing, impeding, or prevent the communication of information in furtherance of a federal felony crime to a law enforcement officer, would be subject to a fine and up to 5 years' imprisonment for a first offense, and up to 10 years' imprisonment for a second or subsequent offense.

§2805. Freedom to sell encryption products

(a) IN GENERAL.—The Act legislatively confirms that it is lawful to sell any encryption, regardless of encryption algorithm, key length or implementation used, domestically in the United States or its territories.

(b) CONTROL OF EXPORTS BY SECRETARY OF COMMERCE.—Notwithstanding any other law, the Act vests the Secretary of Commerce with control of exports of hardware, software and technology for information security, including encryption for both communications and other stored data, except when the hardware, software or technology is specifically designed or modified for military use. Under the Act, the Secretary must grant export license exceptions to computer software, computer hardware and technology with encryption capabilities if the Secretary determines that a product with comparable security is commercially available from a foreign supplier without effective restrictions, is generally available in a foreign country, or if the product employs encryption from a foreign source that otherwise would be the sole basis for restriction.

The Secretary of Commerce would be required to grant a license exception for the export of computer software with encryption capabilities that is generally available, including mass market products (i.e., those generally available, sold ''as is'', and designed for installation by the purchaser) or in the public domain and generally accessible. For example, no license would be required for encryption products commercially available without restriction and sold ''as is'', such as Netscape's commercially available World Wide Web Browser with strong encryption, which can not be exported. Similarly, a license exception would be granted to export encryption software placed in the public domain and generally accessible, such as Phil Zimmermann's Pretty Good Privacy program, which has been distributed to the public free of charge via the Internet.

The Secretary of Commerce would also be required to grant a license exception for the export of computer hardware that would otherwise be restricted solely on the basis that it incorporates computer software with encryption capabilities described above, or so-called ''crypto-ready'' computer software or hardware incorporating an interface mechanism for interaction with encryption hardware or software. Finally, the Secretary

of Commerce would be required to grant a license exception for the export of encryption technology related or ancillary to the items described above, to enable American companies to license their technology for production, use and sale abroad.

Significantly, the government is authorized to continue export controls on countries that pose terrorism concerns, such as Libya, Syria and Iran, or other embargoed countries, such as Cuba and North Korea, pursuant to the Trading With the Enemy Act or the International Emergency Economic Powers Act.

§ 2806. Requirements for release of decryption key or provision of decryption assistance to a foreign country

The Act bars investigative or law enforcement officers and key holders from releasing a decryption key or providing decryption assistance to a foreign country except when certain conditions are satisfied. First, the foreign country must have entered into a treaty or convention to provide mutual assistance with respect to decryption. Second, the foreign country must make a formal request to the United States for such assistance. Third, the Attorney General or the Attorney General's designee must obtain an order from the district court in which the key holder resides directing the key holder to release the decryption key or provide decryption assistance. Finally, the order may only be issued if the judge finds that (1) the decryption key or decryption assistance being sought is necessary for the decryption of a communication or information that the foreign country is authorized to intercept or seize pursuant to its own domestic law; (2) the law of the foreign country provides adequate protection against the arbitrary interference of privacy rights; and (3) the decryption key or decryption assistance being sought is in connection with a criminal investigation for conduct that would constitute a violation of a criminal law of the United States if committed within the jurisdiction of the United States.

The grounds for issuance of the court order ensure that a U.S. court will examine the quality of legal protections in place in the foreign country on whose behalf of request for decryption assistance is made and that the United States does not facilitate the provision of decryption assistance to legal system that do not meet minimum international human rights standards or in cases that would violate American constitutional standards.

(b) TECHNICAL AMENDMENT.—The Act adds new chapter 125 and the new title in the table of chapters in title 18 of the United States Code.

Sec. 6. Intelligence Activities.—The Act does not authorize the conduct of intelligence activities, nor affect the conduct by Federal government officers or employees in intercepting (1) encrypted or other official communications of Federal executive branch or Federal contractors for communications security purposes; (2) radio communications between or among foreign powers or agents, as defined by the Foreign Intelligence Surveillance Act (FISA); or (3) electronic communication systems used exclusively by foreign powers or agents, as defined by FISA.

By Mr. BURNS (for himself, Mr. LEAHY, Mr. LOTT, Mr. NICKLES, Mr. DORGAN, Mrs. HUTCHISON, Mr. CRAIG, Mr. WYDEN, Mr. ASHCROFT, Mr. DOMENICI, Mr. THOMAS, Mr. CAMPBELL, Mrs. BOXER, Mr. BROWNBACK, Mrs. MURRAY, Mr. KEMPTHORNE, Mr. INHOFE, Mr. FAIRCLOTH, Mr. GRAMS, and Mr. ALLARD):

S. 377. A bill to promote electronic commerce by facilitating the use of strong encryption, and for other purposes; to the Committee on Commerce, Science, and Transportation.

THE PROMOTION OF COMMERCE ON-LINE IN THE DIGITAL ERA [PRO-CODE] ACT OF 1997

Mr. BURNS. Mr. President, when I want to communicate, sometimes I send a postcard. In that case, I know not to say anything that I don't want printed on the front page of the newspaper. Somebody, anybody, can read it. When I buy an envelope and put a stamp on it, I am taking a step toward securing that information. I have a reasonable expectation that people will not open my mail.

When I talk on the telephone—at least on a landline telephone—I have a reasonable expectation that nobody is listening in. Today, we are in a world that is characterized by the fact that nearly everyone has a computer and that those computers are, for the most part, connected to one another. In light of that fact, it is becoming more and more important to ensure that our communications over these computer networks are conducted in a secure way. It is no longer possible to say that when we move into the information age, we'll secure these networks, because we are already there. We use computers in our homes and businesses in a way that couldn't have been imagined 10 years ago, and these computers are connected through networks, making it easier to communicate than ever before. This phenomenon holds the promise of transforming life in States like Montana, where health care and state-of-the-art education can be delivered over networks to people located away from population centers. These new technologies can improve the lives of real people, but only if the security of information that moves over these networks is safe and reliable.

The problem today is that our computer networks are not as secure as they could be; it is fairly easy for amateur hackers to break into our networks. They can intercept information; they can steal trade secrets and intellectual property; they can alter medical records; the list is endless. Last Congress, FBI Director Freeh stated his profound concerns about the threat of economic espionage on a global basis. One solution to this, of course, is to let individuals and businesses alike to take steps to secure that information. Encryption is one technology that accomplishes that. Domestically, Americans are free to use strong encryption to secure their information—we are determined to make sure that that guarantee prevails.

I rise today to introduce a bill, similar to one I introduced during the 104th Congress, which designed to promote electronic commerce, both domestically and globally, by facilitating the use of strong encryption. Last Congress, my bill was criticized for not acknowledging the legitimate law enforcement and national security interests raised by the widespread use of strong, or unbreakable encryption. In response to those criticisms, this Congress, working with Senator LEAHY, Senator DORGAN, and Senator LOTT, has modified this bill to address those concerns. Our approach, though, encourages Government officials to abandon the head-in-the-sand approach that they've taken for the past 7 years, hoping that strong encryption would not become available globally, and take a proactive approach to addressing this technology. Because everyone agrees that this technology will eventually be widely available globally—many of us believe that the technology is already widely available globally—now is the time to get industry working with Government officials to teach them how to execute their duties in a global communications network where strong encryption is ubiquitous.

We believe that this bill lays the most responsible course for addressing this technology, and I am pleased to announce that the following Senators have signed onto this bill as original cosponsors: Majority Leader LOTT, Assistant Majority Leader NICKLES, Senator DORGAN, Senator WYDEN, Senator KAY BAILEY HUTCHISON, Senator CRAIG, Senator ASHCROFT, Senator DOMENICI, Senator MURRAY, Senator BROWNBACK, Senator KEMPTHORNE, Senator INHOFE, Senator BOXER, Senator FAIRCLOTH, Senator THOMAS, Senator GRAMS, and Senator ALLARD. With such impressive bipartisan support, I am extremely optimistic that the bill will be reported out of the Commerce Committee quickly and will pass the Senate during this Congress.

As I mentioned earlier, this legislation was drafted to not only address the concerns raised by industry but also to encourage law enforcement and national security officials to prepare themselves to do their job in an environment where strong, unbreakable encryption is everywhere. To date, the FBI/NSA/CIA have devoted their efforts in this area to maintaining the status quo and hoping that strong encryption does not become common worldwide. The evidence from a Commerce Department study conducted over a year ago, indicates that this has already taken place—the study identified 497 foreign-made products that were capable of offering encryption at a level in excess of that which domestic companies could export under the present export restrictions in 28 foreign countries. Therefore, this legislation encourages these officials to address this technology proactively. Essentially the bill was designed to accomplish the following:

Ending the imposition of U.S. Government-designed encryption standards. This is accomplished by restricting the Department of Commerce [NIST] from imposing Government encryption standards intended for use by the private sector, and by prohibiting the Department of Commerce from setting de facto encryption standards through use of export controls.

Promoting the use of commercial encryption. This is accomplished by prohibiting the restrictions on the sale of commercial encryption programs and products in interstate commerce; by prohibiting governmental imposition, expressly or in practice, of mandatory key escrow; and by permitting the export of, first, generally available software with encryption capabilities, and second, other software and hardware with encryption capabilities if exports of products with similar security have been exported for use by foreign financial institutions.

Protecting the national security and public safety. This is accomplished by, first, imposing industry reporting requirements upon companies wishing to export products with strong encryption; second, creating an Information Security Board whose purpose is to get industry experts and law enforcement/national security officers to work together—both publicly and privately—to address the execution of law enforcement/national security functions in an environment where strong encryption has widely proliferated; and third, by prohibiting exports of particular encryption software and hardware to identified individuals or organizations in specific foreign countries if there is substantial evidence that it will be diverted to, or modified for, military or terrorist end-use.

We believe that getting law enforcement and national security officials to address this technology proactively is a more responsible and defensible position than mandating a key escrow or other key recovery system upon industry.

This legislation is vitally important to a wide range of domestic industries. The export restriction poses serious commercial threats to three distinct classes of industry: first, the industry that manufacturers and sells encryption software and hardware; second, industries that purchase encryption hardware and software and incorporate that technology into their products; and third, all industries that communicate with subsidiaries or customers over the global communications network.

THE ENCRYPTION MANUFACTURING INDUSTRY

While domestic companies presently hold a position of global leadership in the manufacture of products that provide strong encryption, this leadership is threatened by the provisions restricting the export of this technology. Because there are no import restrictions on the sale of this technology and because there are no domestic restrictions on the sale of this technology, foreign manufacturers of encryption technology have seized the opportunity provided by the continued application of these export restrictions to steal market share from domestic companies. Because we are already seeing hundreds of different foreign-made products offering strong encryption in the global marketplace, the foreign companies who manufacture these products are not only cornering the foreign market for this technology, they are beginning to compete for the U.S. market—as the global export of their product increases, their per-unit cost decreases; thus, domestic companies may soon find themselves competing for the U.S. market against a foreign product which offers comparable security but at a lower cost. In effect, these export restrictions are effectively exporting the entire encryption manufacturing industry.

INDUSTRIES THAT INCORPORATE ENCRYPTION TECHNOLOGY INTO THEIR PRODUCTS

The export restrictions apply not only to companies who are in the business of the manufacture and sale of encryption technology, but also to entire industries that purchase this technology and incorporate it into their products. The restrictions even apply to domestic industries who import encryption technology and incorporate it into their products. Furthermore, the restrictions prohibit export of products that are encryption-ready, that is, are designed to have the encryption package installed elsewhere. These industries suffer the same competition disadvantage in the global marketplace that our domestic encryption manufacturing companies face. Likewise, it will not be long before these industries find themselves (having already conceded all foreign markets to foreign competitors) competing for the U.S. market with foreign competitors offering similar products but at a lower price. Thus, continued application of the export restrictions on encryption technology could result in the export of a wide range of industries.

As information security becomes an increasingly important consideration, we are seeing a broad range of products that are incorporating encryption technology. For example, the entire telecommunications manufacturing industry—from cellular telephones to switches—has a direct stake in this debate. Likewise, virtually all manufacturing concerns are impacted. I am in the process of collecting statements from 23 separate industries who see the speedy resolution of this problem as critical to their survival in the global marketplace.

NIGHTMARE SCENARIO

During the first hearing on Pro-Code last Congress, one of the witnesses, Jim Bidzos, the founder and owner of RSA Data Security, a prominent domestic encryption manufacturing company, pointed out that the United States is presently on the verge of exporting, industry by industry, the lion's share of our country's industry base. At that hearing, he pointed out that Nippon Telephone & Telegraph [NTT], the largest company on the planet with $600 billion in annual revenues and $300 million in annual subsidies from the Japanese Government has just announced the production—and intention to export globally—of a computer chip that provided unbreakable encryption, with a key of 1,024 bit length. Thus, NTT is now in the position of cornering—quite easily, I might add—the global market on this technology and will soon be competing directly with RSA for the U.S. market with similar chips which, due to economies of scale, cost less to consumers. Once NTT has run all of its U.S. competitors out of business, it will be uniquely poised to take over every industry that incorporates the NTT chip into a product, in the exact same way as they took over the chips manufacturing industry.

COMPANIES WHO TRANSMIT PROPRIETARY INFORMATION OVER THE GLOBAL COMMUNICATIONS NETWORK

Not only do the export restrictions pose commercial problems for industries that manufacture or incorporate encryption technology into their products, they also raise serious economic threats to any industry that transmits proprietary information over the global communications network. Because the public communications network is global, the export restrictions effectively prohibit companies who wish to communicate with subsidiaries, partners, or customers outside the United States in a secure way; transmitting the hardware or software to international associates to provide communications security in excess of that allowable under the export restrictions violate those restrictions. The economic implications arising from this application of the export restrictions is staggering: petroleum companies can't send exploration data to overseas subsidiaries; automotive companies can't send design information to factories abroad; Walt Disney can't send the digital package of the movie the Lion King to its distributor in England; the list is endless. Thus, all intellectual property or other proprietary information that travels over the public network is put at risk of economic espionage as a result of this application of these export restrictions.

Finally, the controversy over this technology raises serious fourth amendment constitutional issues. In a new era where one's personal and economic information is increasingly rendered in digital form, the ability of the Government to peer into such data at will raises serious fourth amendment concerns.

Further, it raises first amendment constitutional issues as well. Last month, a California Appellate Court affirmed a favorable ruling in the first amendment challenge to the Arms Export Control Act [AECA] and the International Traffic in Arms Regulations [ITAR] in Bernstein versus U.S. Department of State. Bernstein involved a graduate student, Daniel J. Bernstein, who developed an encryption algorithm called Snuffle. He had articulated his mathematical ideas in two ways: in an academic paper and in a source code. The State Department denied Bernstein's request to export his cryptographic product for the purposes

of teaching the Snuffle algorithm, to disclose it at academic conferences, or to publish it in journals or online discussion groups. Bernstein alleged that the restrictions were: an unconstitutional prior restraint on speech; an infringement on his free speech; and infringed the rights of association and equal protection. The State Department moved to dismiss the case of the grounds that these issues were nonjusticible, and the Court denied the motion finding that source code was considered to be speech for the purposes of the first amendment analysis.

In light of the pressing commercial and constitutional impact of restricting the sale of this technology, both domestically and abroad, I believe that we must act now, before we effectively export entire industries. I encourage my colleagues to join me in supporting Pro-Code.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 377

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Promotion of Commerce On-Line in the Digital Era (Pro-CODE) Act of 1997''.

SEC. 2. FINDINGS; PURPOSE.

(a) FINDINGS.—The Congress finds the following:

(1) The ability to digitize information makes carrying out tremendous amounts of commerce and personal communication electronically possible.

(2) Miniaturization, distributed computing, and reduced transmission costs make communication via electronic networks a reality.

(3) The explosive growth in the internet and other computer networks reflects the potential growth of electronic commerce and personal communication.

(4) The internet and the global information infrastructure have the potential to revolutionize the way individuals and businesses conduct business.

(5) The full potential of the internet for the conduct of business cannot be realized as long as it is an insecure medium in which confidential business information and sensitive personal information remain at risk of unauthorized viewing, alteration, and use.

(6) Encryption of information enables businesses and individuals to protect themselves against the unauthorized viewing, alteration, and use of information by employing widely understood and readily available science and technology to ensure the confidentiality, authenticity, and integrity of information.

(7) In order to promote economic growth and meet the needs of businesses and individuals in the United States, a variety of encryption products and programs should be available to promote strong, flexible, and commercially acceptable encryption capabilities.

(8) United States computer, computer software and hardware, communications, and electronics businesses are leading the world technology revolution, as those businesses have developed and are prepared to offer immediately to computer users worldwide a variety of communications and computer hardware and computer software that provide strong, robust, and easy-to-use encryption.

(9) United States businesses seek to market the products described in paragraph (8) in competition with scores of foreign businesses in many countries that offer similar, and frequently stronger, encryption products and programs.

(10) The regulatory efforts by the Secretary of Commerce, acting through the National Institute of Standards and Technology, and other entities to promulgate standards and guidelines in support of government-designed solutions to encryption problems that—

(A) were not developed in the private sector; and

(B) have not received widespread commercial support,

have had a negative impact on the development and marketing of products with encryption capabilities by United States businesses.

(11) Because of outdated Federal controls, United States businesses have been prohibited from exporting strong encryption products and programs.

(12) In response to the desire of United States businesses to sell commercial products to the United States Government and to sell a single product worldwide, the Secretary of Commerce, acting through the National Institute of Standards and Technology, has sought to require them to include features in products sold both in the United States and foreign countries that will allow the Federal Government easy access to the plain text of all electronic information and communications.

(13) The Secretary of Commerce, acting through the National Institute of Standards and Technology, has proposed that United States businesses be allowed to sell products and programs offering strong encryption to the United States Government and in foreign countries only if the products and programs include a feature guaranteeing the Federal Government access to a key that decrypts information (hereafter in this section referred to as ''key escrow encryption'').

(14) The key escrow encryption approach to regulating encryption is reflected in the approval in 1994 by the National Institute of Standards and Technology of a Federal information processing standard for a standard of escrowed encryption, known as the ''clipper chip'', that was flawed and controversial.

(15) The current policy of the Federal Government to require that keys to decrypt information be made available to the Federal Government as a condition of exporting strong encryption technology has had the effect of prohibiting the exportation of strong encryption technology.

(16) The Federal Government has legitimate law enforcement and national security objectives which necessitate the disclosure to the Federal Government of general information that is neither proprietary nor confidential by experts in information security industries, including cryptographers, engineers, and others designated in the design and development of information security products. By relaxing export controls on encryption products and programs, this Act creates an obligation on the part of representatives of companies involved in the export of information security products to share information about those products to designated representatives of the Federal Government.

(17) In order to promote electronic commerce in the twenty-first century and to realize the full potential of the internet and other computer networks—

(A) United States businesses should be encouraged to develop and market products and programs offering encryption capabilities; and

(B) the Federal Government should be prohibited from promulgating regulations and adopting policies that discourage the use and sale of encryption.

(b) PURPOSE.—The purpose of this Act is to promote electronic commerce through the use of strong encryption by—

(1) recognizing that businesses in the United States that offer computer hardware and computer software made in the United States that incorporate encryption technology are ready and immediately able, with respect to electronic information that will be essential to conducting business in the twenty-first century to provide products that are designed to—

(A) protect the confidentiality of that information; and

(B) ensure the authenticity and integrity of that information;

(2) restricting the Department of Commerce with respect to the promulgation or enforcement of regulations, or the application of policies, that impose government-designed encryption standards; and

(3) promoting the ability of United States businesses to sell to computer users worldwide computer software and computer hardware that provide the strong encryption demanded by such users by—

(A) restricting Federal or State regulation of the sale of such products and programs in interstate commerce;

(B) prohibiting mandatory key escrow encryption systems; and

(C) establishing conditions for the sale of encryption products and programs in foreign commerce.

SEC. 3. DEFINITIONS.

For purposes of this Act, the following definitions shall apply:

(1) AS IS.—The term ''as is'' means, in the case of computer software (including computer software with encryption capabilities), a computer software program that is not designed, developed, or tailored by a producer of computer software for specific users or purchasers, except that such term may include computer software that—

(A) is produced for users or purchasers that supply certain installation parameters needed by the computer software program to function properly with the computer system of the user or purchaser; or

(B) is customized by the user or purchaser by selecting from among options contained in the computer software program.

(2) COMPUTING DEVICE.—The term ''computing device'' means a device that incorporates one or more microprocessor-based central processing units that are capable of accepting, storing, processing, or providing output of data.

(3) COMPUTER HARDWARE.—The term ''computer hardware'' includes computer systems, equipment, application-specific assemblies, modules, and integrated circuits.

(4) DECRYPTION.—The term ''decryption'' means the unscrambling of wire or electronic communications or information using mathematical formulas, codes, or algorithms.

(5) DECRYPTION KEY.—The term ''decryption key'' means the variable information used in a mathematical formula, code, or algorithm, or any component thereof, used to decrypt wire or electronic communications or information that has been encrypted.

(6) DESIGNED FOR INSTALLATION BY THE USER OR PURCHASER.—The term ''designed for installation by the user or purchaser'' means, in the case of computer software (including computer software with encryption capabilities) computer software—

(A) with respect to which the producer of that computer software—

(i) intends for the user or purchaser (including any licensee or transferee), to install the computer software program on a computing device; and

(ii) has supplied the necessary instructions to do so, except that the producer or distributor of the computer software program (or any agent of such producer or distributor) may also provide telephone helpline or onsite services for computer software installation, electronic transmission, or basic operations; and

(B) that is designed for installation by the user or purchaser without further substantial support by the supplier.

(7) ENCRYPTION.—The term ''encryption'' means the scrambling of wire or electronic communications or information using mathematical formulas, codes, or algorithms in order to preserve the confidentiality, integrity, or authenticity of such communications or information and prevent unauthorized recipients from accessing or altering such communications or information.

(8) GENERAL LICENSE.—The term ''general license'' means a general authorization that is applicable to a type of export that does not require an exporter of that type of export to, as a condition to exporting—

(A) submit a written application to the Secretary; or

(B) receive prior written authorization by the Secretary.

(9) GENERALLY AVAILABLE.—The term ''generally available'' means, in the case of computer software (including software with encryption capabilities), computer software that—

(A) is distributed via the internet or that is widely offered for sale, license, or transfer (without regard to whether it is offered for consideration), including over-the-counter retail sales, mail order transactions, telephone order transactions, electronic distribution, or sale on approval; or

(B) preloaded on computer hardware that is widely available.

(10) INTERNET.—The term ''internet'' means the international computer network of both Federal and non-Federal interconnected packet-switched data networks.

(11) SECRETARY.—The term ''Secretary'' means the Secretary of Commerce.

(12) STATE.—The term ''State'' means each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any Territory or Possession of the United States.

SEC. 4. RESTRICTION OF DEPARTMENT OF COMMERCE ENCRYPTION ACTIVITIES IMPOSING GOVERNMENT ENCRYPTION SYSTEMS.

(a) LIMITATION ON REGULATORY AUTHORITY CONCERNING ENCRYPTION STANDARDS.—The Secretary may not (acting through the National Institute of Standards and Technology or otherwise) promulgate, or enforce regulations, or otherwise adopt standards or carry out policies that result in encryption standards intended for use by businesses or entities other than Federal computer systems.

(b) LIMITATION ON AUTHORITY CONCERNING EXPORTS OF COMPUTER HARDWARE AND COMPUTER SOFTWARE WITH ENCRYPTION CAPABILITIES.—Except as provided in section 5(c)(3)(B), the Secretary may not promulgate or enforce regulations, or adopt or carry out policies in a manner inconsistent with this act, or that have the effect of imposing government-designed encryption standards on the private sector by restricting the export of computer hardware and computer software with encryption capabilities.

SEC. 5. PROMOTION OF COMMERCIAL ENCRYPTION PRODUCTS.

(a) PROHIBITION ON RESTRICTIONS ON SALE OR DISTRIBUTION IN INTERSTATE COMMERCE.—

(1) IN GENERAL.—Except as provided in this Act, neither the Federal government nor any State may restrict or regulate the sale in interstate commerce by any person of any product or program designed to provide encryption capabilities solely because such product or program has encryption capabilities. Nothing in this paragraph may be construed to preempt any provision of Federal or State law applicable to contraband or regulated substances.

(2) APPLICABILITY.—Paragraph (1) shall apply without regard to the encryption algorithm selected, encryption key length chosen, or implementation technique or medium used for a product or program with encryption capabilities.

(b) PROHIBITION ON MANDATORY KEY ESCROW.—Neither the Federal government nor any State may require, as a condition of sale in interstate commerce, that a decryption key, or access to a decryption key, be given to any other person (including a Federal agency or an entity in the private sector that may be certified or approved by the Federal government or a State).

(c) CONTROL OF EXPORTS BY SECRETARY.—

(1) GENERAL RULE.—Notwithstanding any other provision of law and subject to paragraphs (2), (3), and (4), the Secretary shall have exclusive authority to control exports of all computer hardware, computer software, and technology with encryption capabilities, except computer hardware, computer software, and technology that is specifically designed or modified for military use, including command, control, and intelligence applications.

(2) ITEMS THAT DO NOT REQUIRE INDIVIDUAL LICENSES.—Except as provided in paragraph (3)(b) of this subsection, only a general license may be required, except as otherwise provided under the Trading with the Enemy Act (50 U.S.C. App. 1 et seq.) or the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.) (but only to the extent that the authority of the International Emergency Economic Powers Act is not exercised to extend controls imposed under the Export Administration Act of 1979), for the export or reexport of—

(A) any computer software, including software with encryption capabilities, that—

(i) is generally available, as is, and designed for installation by the user or purchaser; or

(ii) is available on the date of enactment of this Act, or becomes legally available thereafter, in the public domain (including on the internet) or publicly available because it is generally accessible to the interested public in any form; or

(B) any computing device or computer hardware solely because it incorporates or employs in any form computer software (including computer software with encryption capabilities) that is described in subparagraph (A).

(3) COMPUTER SOFTWARE AND COMPUTER HARDWARE WITH ENCRYPTION CAPABILITIES.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the Secretary shall authorize the export or reexport of computer software and computer hardware with encryption capabilities under a general license for nonmilitary end-uses in any foreign country to which those exports of computer software and computer hardware of similar capability are permitted for use by financial institutions that the Secretary determines not to be controlled in fact by United States persons.

(B) EXCEPTION.—The Secretary shall prohibit the export or reexport of particular computer software and computer hardware described in this subsection to an identified individual or organization in a specific foreign country if the Secretary determines that there is substantial evidence that such software and computer hardware will be—

(i) diverted to a military end-use or an end-use supporting international or domestic terrorism;

(ii) modified for military or terrorist end-use, including acts against the national security, public safety, or the integrity of the transportation, communications, or other essential systems of interstate commerce in the United States;

(iii) reexported without the authorization required under Federal law; or

(iv) intentionally used to evade enforcement of United States law or taxation by the United States or by any State or local government.

(4) REPORTING.—

(A) EXPORTS.—The publisher or manufacturer of computer software or hardware with encryption capabilities shall disclose (for reporting purposes only) within 30 days after export to the Secretary such information regarding a program's or product's encryption capabilities as would be required for an individual license to export that program or product.

(B) REPORT NOT AN EXPORT PRECONDITION.—Nothing in this paragraph shall be construed to require, or to permit the Secretary to impose any conditions or reporting requirements, including reporting under subparagraph (A), as a precondition to the exportation of any such product or program.

SEC. 6. INFORMATION SECURITY BOARD.

(a) INFORMATION SECURITY BOARD TO BE ESTABLISHED.—The Secretary shall establish an Information Security Board comprised of representatives of agencies within the Federal Government responsible for or involved in the formulation of information security policy, including export controls on products with information security features (including encryption). The Board shall meet at such times and in such places as the Secretary may prescribe, but not less frequently than quarterly. The Federal Advisory Committee Act (5 U.S.C. App.) does not apply to the Board or to meetings held by the Board under subsection (d).

(b) PURPOSES.—The purposes of the Board are—

(1) to provide a forum to foster communication and coordination between industry and the Federal government; and

(2) to foster the aggregation and dissemination of general, nonproprietary, and nonconfidential developments in important information security technologies, including encryption.

(c) REQUIREMENTS.—

(1) REPORTS TO AGENCIES.—The Board shall regularly report general, nonproprietary, and nonconfidential information to appropriate Federal agencies to keep law enforcement and national security agencies abreast of emerging technologies so they are able effectively to execute their responsibilities.

(2) PUBLICATIONS.—The Board shall cause such information (other than classified, proprietary, or confidential information) as it deems appropriate, consistent with its purposes, to be published from time to time through any appropriate medium and to be made available to the public.

(d) MEETINGS.—The Secretary shall establish a process for quarterly meetings between the Board and representatives from the private sector with interest or expertise in information security, including cryptographers, engineers, and product managers. The Board may meet at anytime with one or more representatives of any person involved in the development, production, or distribution of encryption technology or of computing devices that contain encryption technology.

SEC. 7. STATUTORY CONSTRUCTION.

Nothing in this Act may be construed to affect any law intended to prevent the—

(1) distribution of descramblers or any other equipment for illegal interceptions of cable and satellite television signals;

(2) illegal or unauthorized distribution or release of classified, confidential, or proprietary information; or

(3) enforcement of Federal or State criminal law.

Mr. GRAMS. Mr. President, I rise in support of Senator BURNS' legislation, the Promotion of Commerce On-Line in the Digital Era (Pro-CODE) Act of 1997 and am pleased to be an original cosponsor of the bill.

This is important legislation which will create the proper balance between encryption technology export interests as well as national security interests. The administration's encryption policy was disappointing to me, since it tipped the balance too far in the direction of security and law enforcement concerns, risking important privacy rights of producers and users of cncryption technology.

Again our Government has found itself in the position of creating unilateral export controls that will do only one thing—essentially terminate export opportunities for U.S. companies. To limit U.S. companies from exporting encyrption technology at 56 bits without a costly key recovery system will simply price us out of the market. Many of our allies are ready to sell far more sophisticated technology without a key recovery system. It's not hard to see who will pick up most of a growing encryption technology global market.

Also, key recovery is not needed for encryption technology sold domestically or imported. If U.S. companies are forced to sell only the technology including the key recovery for cost savings reasons, it's also not hard to see how quickly the domestic market will dry up in favor of imports. The solution is not import controls. The Burns bill is the solution that 18 Senators of both parties have supported today.

Senator BURNS' bill protects national security interests. It would not allow exports over what is available from our allies. It also allows Commerce to prohibit specific exports where there is substantial evidence the technology will be diverted or used by terrorists, drug dealers and other criminals. Further, it creates an Information Security Board designed to get industry and law enforcement interests together to address this important issue.

I am sensitive to law enforcement and national security concerns, but the holes in the administration's policy are enormous and smack of politics more than sound policy. Criminals and terrorists will simply not use U.S. technology, or they will find a way to circumvent the key recovery system. Also, they can use encryption technology within the U.S. without the same scrutiny.

Senator BURNS has described the many problems and questions raised by a key recovery system held by a third party, so I won't belabor them. But the privacy concerns are real. I can't imagine why users would want to buy a product that simply puts at risk unwarranted release of the encrypted material. No matter how many protections can be built into the key escrow system, there is no way to avoid some misuse or abuse of the system.

Senator BURNS should be congratulated for his effort to correct this policy. I applaud his efforts and strongly support them as chairman of the International Finance Subcommittee of the Banking Committee which has jurisdiction over many export control issues.

By Mr. MURKOWSKI (for himself and Mr. STEVENS):

S. 379. A bill entitled the ''Native Alaskan Subsistance Whaling Provision''; to the Committee on Finance.

ALASKA SUBSISTENCE WHALING LEGISLATION

Mr. MURKOWSKI. Mr. President, I rise on behalf of myself and Senator STEVENS to introduce legislation that would resolve a dispute that has existed for several years between the IRS and native whaling captains in my State. Our legislation would amend the Internal Revenue Code to ensure that a charitable donation tax deduction would be allowed for native whaling captains who organize and support subsistence whaling activities in their communities.

Subsistence whaling is a necessity to the Alaska Native community. In many of our remote village communities, the whale hunt is a tradition that has been carried on for generations over many millennia. It is the custom that the captain of the hunt make all provisions for the meals, wages, and equipment costs associated with this important activity.

In most instances, the captain is repaid in whale meat and muktuck, which is blubber and skin. However, as part of the tradition, the captain is required to donate a substantial portion of the whale to his village in order to help the community survive.

The proposed deduction would allow the captain to deduct up to $7,500 to help defray the costs associated with providing this community service.

Mr. President, I want to point out that if the captain incurred all of these expenses and then donated the whale meat to a local charitable organization, the captain would almost certainly be able to deduct the costs he incurred in outfitting the boat for the charitable purpose. However, the cultural significance of the captain's sharing the whale with the community would be lost.

This is a very modest effort to allow the Congress to recognize the importance of this part of our Native Alaskan tradition. Last year, the Joint Committee on Taxation estimated that this provision would cost a mere $3 million over a 10-year period. I think that is a very small price for preserving this vital link with our natives' heritage.

I ask unanimous consent that the text of the legislation be included in the RECORD.

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

S. 379

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. CHARITABLE CONTRIBUTION DEDUCTION FOR CERTAIN EXPENSES INCURRED IN SUPPORT OF NATIVE ALASKAN SUBSISTENCE WHALING.

(a) IN GENERAL.—Section 170 of the Internal Revenue Code of 1986 (relating to charitable, etc., contributions and gifts) is amended by redesignating subsection (m) as subsection (n) and by inserting after subsection (l) of the following new subsection:

''(m) EXPENSES PAID BY CERTAIN WHALING CAPTAINS IN SUPPORT OF NATIVE ALASKA SUBSISTENCE WHALING.—

''(1) IN GENERAL.—In the case of an individual who is recognized by the Alaska Eskimo Whaling Commission as a whaling captain charged with the responsibility of maintaining and carrying out sanctioned whaling activities and who engages in such activities during the taxable year, the amount described in paragraph (2) (to the extent such amount does not exceed $7,500 for the taxable year) shall be treated for purposes of this section as a charitable contribution.

''(2) AMOUNT DESCRIBED.—The amount described in this paragraph is the aggregate of the reasonable and necessary whaling expenses paid by the taxpayer during the taxable year in carrying out sanctioned whaling activities. For purposes of the preceding sentence, the term 'whaling expenses' includes expenses for—

''(A) the acquisition and maintenance of whaling boats, weapons, and gear used in sanctioned whaling activities,

''(B) the supplying of food for the crew and other provisions for carrying out such activities, and

''(C) storage and distribution of the catch from such activities.

''(3) SANCTIONED WHALING ACTIVITIES.—For purposes of this subsection, the term 'sanctioned whaling activities' means subsistence bowhead whale hunting activities conducted pursuant to the management plan of the Alaska Eskimo Whaling Commission.''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to all taxable years beginning before, on, or after the date of the enactment of this Act.

By Mr. DURBIN (for himself, Mr. KENNEDY, and Mr. KOHL):

S. 380. A bill to prohibit foreign nationals admitted to the United States under a nonimmigrant visa from possessing a firearm; to the Committee on the Judiciary.

EMPIRE STATE BUILDING COUNTERTERRORISM ACT

Mr. DURBIN. Mr. President, I rise today to introduce with Senators KENNEDY and KOHL the ''Durbin-Kennedy Empire State Building Counter-Terrorism Act of 1997.''

This legislation is spurred by the recent tragedy at the Empire State Building where a man in this country on a tourist visa shot and killed Chris Burmeister, a young Danish tourist, wounded six and then turned the gun on himself.

But this bill is about much more than that one tragedy. It is an effort to address a real problem and to pass a sensible measure to deal with it. The shooting at the Empire State Building has sadly served to reveal a glaring gap in our laws—a gap that any would-be terrorist could walk through.

The fact is that any foreign national who is coming into the United States on a tourist visa will probably pass through several airport security checks to determine whether or not he is carrying a firearm. But as we have learned in the tragedy at the Empire State Building, that foreign tourist can slip through our Nation's laws and can probably buy a gun once here in the United States more easily than you or I could.

The motivation for the killing in New York is not clearly terrorist in nature. But I do not want to wait until a terrorist exploits these loopholes in order to act. Let us close the gap now.

Let me briefly explain the problem. Currently, more than 20 million people a year come into the United States on nonimmigrant visas. Nearly 1 million of them came in via Chicago last year. And by the way, that number does not include people from Mexico and Canada. There are more than 50 types of nonimmigrant visas, including tourist visas, work visas, student visas, and diplomatic visas. These visas are issued to people who do not intend to reside permanently in the United States and they are issued without any kind of criminal background check of the applicant.

Under the Brady law, anyone who wants to buy a gun in this country has to undergo a criminal background check. In the last 28 months, this requirement has stopped more than 186,000 illegal gun purchases. Seventy percent of those denied were felons.

But what the Empire State Building shooting reveals is a gap in this law. Someone who just came to the United States on a tourist visa clearly does not have a criminal record in this country. Yet he or she may have such a record in their country of origin. The Brady bill cannot catch them since we do not search criminal records in foreign countries. So the tourist with a criminal record can easily get a gun.

It is frightening to anticipate the damage that a foreign terrorist could wreak by exploiting this gap. But closing this loophole is easy. And we should do it now. Not later.

The measure I propose is straightforward. It bars people who have come to this country on nonimmigrant visas from being able to purchase or possess a gun.

Let me emphasize that the vast majority of the people who come to this country on nonimmigrant visas do not have any kind of criminal background and do not intend to buy guns or harm anyone. And that is why the legislation has two important and sensible exceptions.

First, foreign nationals who enter this country on nonimmigrant visas and who are here for legitimate sporting purposes, law enforcement purposes or diplomatic purposes will be exempt. It only makes sense that someone who is here to take part in a shooting competition should be able to bring in their gun.

The second exception allows people here on nonimmigrant visas to buy a firearm if they have been in this country for 6 months and if they can prove that they do not have a criminal record in their country of origin.

Mr. President, this is a rational piece of legislation. We are all concerned with the growing terrorist threat in our country. No one who has followed the news in the last decade can be unaware of the fact that our Nation is a terrorist target. Well, we should not be putting guns in the hands of terrorists. This bill will stop that from happening.

I hope all of us can work quickly to pass this measure.

Mr. KENNEDY. Mr. President, the killings at the Empire State Building last Sunday were the shots heard 'round the country. The entire Nation was horrified to learn of the senseless assault on seven tourists, and hopefully we will be shocked into action to close the flagrant loophole in the gun laws that allowed the attack to happen. It's preposterous that a deranged alien could arrive in this country, set up temporary residence in a motel, buy a semiautomatic handgun, and start blasting away in a crowded tourist site. The gunman at the Empire State Building killed himself. One other person died, six were injured, and countless others on the observation deck at the time bear the psychological scars from this senseless atrocity. Most of the victims were visitors from other countries—France, Switzerland, and Argentina—and were there seeing one of the most famous symbols of America.

Imagine the nightmare for a 16-year-old French tourist who saw both her parents shot, or the 10-year-old girl from the Bronx whose father was wounded. The thoughts and prayers of all Americans are with the victims and their families.

The shock and disbelief turned to anger as we learned more about the circumstances of the shooting. The gunman, Abu Kamal, was in the United States on a tourist visa, and was easily able to purchase a Berreta semiautomatic handgun in Florida, even though there is a 90-day residency requirement under Federal law before aliens can purchase a handgun.

The current gaps in Federal law are appalling. A foreign national can come to the United States on a tourist visa, or a work visa, and then obtain a handgun legally with ease. There is virtually nothing to stop a terrorist from entering the United States on a tourist visa, and then purchasing a supply of weapons legally in the United States for use in a terrorist activity. There is no legitimate reason why someone who is in the United States temporarily should be able to purchase or carry a firearm here.

Senator DURBIN and I are introducing a bill today to close this gaping loophole. Our bill will prohibit foreign nationals who are in the United States on a nonimmigrant visa from possessing a firearm. Foreign nationals here on a tourist visa, or a temporary work visa, would be prohibited from carrying a firearm, and dealers would be prohibited from knowingly selling them a firearm. The INS already provides immigration information to law enforcement authorities conducting background checks on gun purchasers, so they are well-positioned to provide this additional information to firearms dealers.

The bill does not apply to permanent residents. In addition, a series of sensible exceptions will permit certain foreign nationals who are in the United States temporarily to carry a firearm. For example, foreign nationals performing official State functions, such as bodyguards and other Embassy personnel, would be exempted. Foreign nationals who are coming to the United States to go hunting would also be exempted. The Justice Department would have the discretion to grant additional exemptions to qualified applicants.

We intend to address in future legislation another major aspect of the gun violence problem in America—which is the widespread disparity between gun control laws in various States. It will be impossible to stop guns from coming into New York or Massachusetts, or elsewhere, if we don't solve this problem. Fifteen percent of the gun crimes committed in New York City in 1995 involved guns traced to Florida. Gunrunning will always be a profitable business, as long as some States make it as easy to buy guns as to buy groceries. We must address this larger problem, or we will continue to suffer these senseless acts of violence.

This bill cannot undo the tragedy last Sunday at the Empire State Building. But we can prevent future similar tragedies by closing the loopholes that exist in current Federal law that enable foreign nationals to obtain firearms too easily. I urge my colleagues to support this sensible and needed proposal.

Mr. President, I commend the Senator from Illinois for his forceful statement in support of this legislation which will address a gaping loophole that exists in the gun laws and which he has ably explained on the floor of the Senate this afternoon where individuals would be able to come into the United States on a temporary visa and be able to purchase not just perhaps one weapon but a whole series of weapons and be able to use them for whatever purposes they might want here in the United States or perhaps take them outside of the United States. This is a gaping loophole. With the information that is being acquired by the INS, there is no reason it cannot be made available to gun dealers around the

country with a minimum amount of interference in their ability to sell guns in conformance with other provisions of the law.

I think this is a really important piece of legislation, and I welcome the opportunity to work with the Senator. Hopefully, we will have it acted on as well as the other provisions that are before the Senate dealing with the massive movement of weapons from State to State. In my own State of Massachusetts, about 80 percent of the weapons that are used in crimes of violence are imported. As good as we have, in terms of the local and State control, we are not able to control it and deal with the issues of providing security to our people in our State.

But I thank the Senator and welcome the chance to join with him and look forward to working with him on the legislation.

By Mr. ROCKEFELLER (for himself, Mr. MACK, Mr. FRIST, Mr. MOYNIHAN, Mr. KENNEDY, Mr. ABRAHAM, Mr. KERREY, Mr. CRAIG, Mr. WELLSTONE, Mr. COCHRAN, Ms. MIKULSKI, Mr. CAMPBELL, Mr. LEAHY, Mr. JEFFORDS, Mrs. HUTCHISON, Mr. HOLLINGS, Mr. FAIRCLOTH, and Mr. BINGAMAN.

S. 381. A bill to establish a demonstration project to study and provide coverage of routine patient care costs for Medicare beneficiaries with cancer who are enrolled in an approved clinical trail program; to the Committee on Finance.

THE MEDICARE CANCER CLINICAL TRIAL COVERAGE ACT OF 1997

Mr. ROCKEFELLER. Mr. President, I am very pleased to be reintroducing a modest but important bill that would establish a demonstration project to assure Medicare beneficiaries with cancer that Medicare will cover their routine patient costs when part of a clinical research trial. I am especially proud to have Senator MACK joining me again as my key cosponsor. It is a privilege to work with Senator MACK, who knows the anguish of fighting cancer only too well. And, we are especially glad to be joined by so many of our colleagues, including Senators FRIST, MOYNIHAN, KENNEDY, ABRAHAM, KERREY, CRAIG, WELLSTONE, COCHRAN, MIKULSKI, CAMPBELL, LEAHY, JEFFORDS, HUTCHISON, HOLLINGS, and FAIRCLOTH.

Mr. President, cancer is the second leading cause of death in the United States. Medicare beneficiaries account for more than half of all cancer diagnoses, and 60 percent of all cancer deaths. Over 12,000 new cases of cancer will be diagnosed this year in my own State of West Virginia.

Access to clinical trials is especially important in the field of cancer. With today's rapid discoveries of new cancer therapies and the lack of effective treatments for some cancers, peer-reviewed clinical trials often provide cancer patients the best available care. Given differences in biological responses according to age, research is needed on the particular effects of cancer and cancer treatments on those age 65 and older. Our legislation will promote that vital research. At the same time, it will provide the Health Care Financing Administration with the information it needs on whether coverage for experimental therapies and treatments should be eventually extended to the entire Medicare population. In the long run, the coverage of patient care costs in clinical trials will save the health care delivery system millions of dollars by telling us at the earliest possible time which medical interventions work and which do not.

Our legislation is an effort to give Medicare beneficiaries the security and decency of knowing that if they are diagnosed with cancer, their treatment options will be determined by whatever therapy they and their doctor decide will give them the best shot of beating the disease. These life and death decisions should not be guided by what may or may not be paid for by the Medicare Program.

Currently, Medicare's payment policies are unclear and, as a result, unpredictable. There is anecdotal evidence that Medicare, in fact, usually pays for the routine patient care costs associated with clinical research trials. But when denials do happen, they tend to be arbitrary and random. This unpredictability discourages Medicare patients from enrolling in a clinical trial, even when it may medically be their best treatment option.

Three winners of the Nobel Prize in Medicine and Physiology have written me and Senator MACK in support of our legislation. They wrote, ''clinical trials represent the standard of care and are often the best hope for a successful treatment outcome. Only by supporting clinical research will we be able to advance the state of medical knowledge and learn more quickly which medical interventions are effective and which are not.''

Mr. President, our legislation is very targeted to give older Americans their best shot at fighting cancer. This bill does not create a new benefit. It merely ensures that patients enrolled in clinical studies receive Medicare coverage for the same type of routine patient care costs, such as hospital and physician fees, that would be covered outside of a trial setting. We are not asking Medicare to pay for the cost of research. These expenses will still be covered by trial sponsors, including pharmaceutical companies.

In establishing a demonstration project, this bill will also provide valuable information about the costs and benefits of providing coverage for clinical trials for other life threatening diseases. We started with cancer first because cancer is a major affliction of Medicare beneficiaries. In addition, there is a well-established national cancer clinical trial system to deliver this patient care.

Mr. President, this is the year to enact this bill into law. This proposal is a key Medicare reform to include in the action expected in the upcoming budget process that will deal with Medicare spending and policy.

Mr. President, I ask unanimous consent that additional material be printed in the RECORD.

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

S. 381

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Medicare Cancer Clinical Trial Coverage Act of 1997''.

SEC. 2. MEDICARE CANCER PATIENT DEMONSTRATION PROJECT.

(A) ESTABLISHMENT.—Not later than January 1, 1998, the Secretary of Health and Human Services (in this Act referred to as the ''Secretary'') shall establish a demonstration project which provides for payment under the medicare program under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) of routine patient care costs—

(1) which are provided to an individual diagnosed with cancer and enrolled in the medicare program under such title as part of the individual's participation in an approved clinical trial program; and

(2) which are not otherwise eligible for payment under such title for individuals who are entitled to benefits under such title.

(b) APPLICATION.—The beneficiary cost sharing provisions under the medicare program, such as deductibles, coinsurance, and copayment amounts, shall apply to any individual participating in a demonstration project conducted under this Act.

(c) APPROVED CLINICAL TRIAL PROGRAM.—For purposes of this Act, the term ''approved clinical trial program'' means a clinical trial program which is approved by—

(1) the National Institutes of Health;

(2) a National Institutes of Health cooperative group or a National Institutes of Health center;

(3) the Food and Drug Administration (in the form of an investigational new drug or device exemption);

(4) the Department of Veterans Affairs;

(5) the Department of Defense; or

(6) a qualified nongovernmental research entity identified in the guidelines issued by the National Institutes of Health for center support grants.

(d) ROUTINE PATIENT CARE COSTS.—

(1) IN GENERAL.—for purposes of this Act, ''routine patient care costs'' shall include the costs associated with the provision of items and services that—

(A) would otherwise be covered under the medicare program if such items and services were not provided in connection with an approved clinical trial program; and

(B) are furnished according to the design of an approved clinical trial program.

(2) EXCLUSION.—For purposes of this Act, ''routine patient care costs'' shall not include the costs associated with the provision of—

(A) an investigational drug or device, unless the Secretary has authorized the manufacturer of such drug or device to charge for such drug or device; or

(B) any item or service supplied without charge by the sponsor of the approved clinical trial program.

SEC. 3. STUDY, REPORT, AND TERMINATION.

(a) STUDY.—The Secretary shall study the impact on the medicare program under title

XVIII of the Social Security Act of covering routine patient care costs for individuals with a diagnosis of cancer and other diagnoses, who are entitled to benefits under such title and who are enrolled in an approved clinical trial program.

(b) REPORT TO CONGRESS.—Not later than January 1, 2002, the Secretary shall submit a report to Congress that contains a statement regarding—

(1) any incremental cost to the medicare program under title XVIII of the Social Security Act resulting from the provisions of this Act; and

(2) a projection of expenditures under the medicare program if coverage of routine patient care costs in an approved clinical trial program were extended to individuals entitled to benefits under the medicare program who have a diagnosis other than cancer.

(c) TERMINATION.—The provisions of this Act shall not apply after December 31, 2002.

MEDICARE CANCER CLINICAL TRIAL COVERAGE ACT OF 1997

CURRENT LAW

Medicare's policy regarding coverage of clinical trials is unclear. Medicare carriers occasionally deny coverage of physician services or hospital charges on the grounds that they have been provided in the context of a clinical trial. Patients or physicians may be at risk for the cost of items or services that are normally covered by Medicare if they choose to enroll in a clinical trial, even though such trials are regarded as the standard of care for treatment of cancer.

PROPOSED CHANGE

The Secretary of HHS would be required to conduct a demonstration project, beginning no later than January 1, 1998, which would study the feasibility of covering patient costs for beneficiaries diagnosed with cancer and enrolled in certain approved clinical trials. Eligibility for coverage would be dependent on approval of the trial design by one of several high quality peer-review organizations, including the National Institutes of Health, the Food and Drug Administration, the Department of Defense, and the Department of Veterans Affairs. No later than January 1, 2002, the Secretary would be required to report to Congress concerning any incremental costs of such coverage and the advisability of covering other diagnoses under the same circumstances. The demonstration project would sunset on December 31, 2002.

Supported by: National Coalition for Cancer Survivorship; Candlelighters Childhood Cancer Foundation; Cancer Care, Inc.; National Alliance of Breast Cancer Organizations (NABCO); US TOO International; Y-ME National Breast Cancer Organization; American Cancer Society; American Society of Clinical Oncology; American Society of Pediatric Hematology/Oncology; Association of American Cancer Institutes; Association of Community Cancer Centers; Cancer Research Foundation of America; North American Brain Tumor Coalition; Leukemia Society of America; National Breast Cancer Coalition; National Childhood Cancer Foundation; National Coalition for Cancer Research; Oncology Nursing Society; Prostate Cancer Support-group Network; and Society of Surgical Oncology.

Mr. MACK. Mr. President, I am pleased to join Senator ROCKEFELLER today as we introduce legislation to provide Medicare patients fighting cancer with coverage of benefits when they participate in approved clinical trials.

Under current law, Medicare will not generally pay for the costs of patient care if they are participating in clinical trials. Beneficiaries are denied access to clinical trials of promising new therapies because Medicare deems these therapies experimental, and therefore not qualified for coverage. This means cancer patients who are Medicare beneficiaries essentially have two choices when they have exhausted all traditional cancer therapies—either pay the costs of participating in a clinical trial themselves, or go without additional treatment. For all but the most wealthy beneficiaries, it is too cost-prohibitive to take part in a clinical trial.

Clinical trials are one of the most effective ways the Federal Government has of determining which treatments are most effective. Yet, researchers have told me they have difficulty accruing the required number of patients to participate in the trials they are conducting. Researchers have identified noncoverage by Medicare and private insurers as one of the primary reasons why patients do not participate in clinical trials. At a time when American researchers are making such tremendous progress in cancer genetics and cancer biology, it is essential that this knowledge be translated into new therapies through well-designed clinical trials. This legislation will help enhance our research efforts by facilitating broad patient participation in important cancer clinical trials.

Our legislation is limited to only the highest-quality clinical trials. Only those trials which have undergone the rigors of peer-review will be considered. These include trials approved by the National Institutes of Health [NIH], the Food and Drug Administration, the Department of Veterans Affairs, the Department of Defense, or organizations which are approved by the NIH, such as the American Cancer Society.

Like most of my colleagues, I am very reluctant to introduce legislation to expand Medicare at a time when the report of the Board of Trustees of Social Security and Medicare clearly shows that Medicare is going broke. My support of such legislation is conditional upon the added benefit providing a clear and needed service at no significant cost to taxpayers.

The legislation we introduce today does not add to Medicare's basic benefit package, but merely provides coverage for routine patient costs which Medicare is already obligated to reimburse when provided outside a clinical trial. Medicare will not be responsible for paying for research or new pharmaceutical products. In addition, Medicare beneficiaries will still be responsible for meeting deductibles and copayment requirements traditionally required by Medicare. Because these beneficiaries are cancer patients, they are already receiving, or will receive in the future, many of the medical services covered by this legislation.

Finally, this is a true demonstration program. In 2002, the Secretary of Health and Human Services must submit a report to Congress detailing any cost increases to the Medicare program and provide projects for future expenditures, if the program continues. Congress can then decide, based upon these data and any hearings which may take place, whether to enact legislation to make coverage of cancer clinical trials permanent.

Therefore, I am convinced this legislation meets my two criteria for expanding Medicare. First, there is an indisputable urgent need for this benefit and, second, I believe it will not add significantly to the costs of the Medicare system. In fact, the information we learn from these clinical trials may provide us with more cost-effective means of treating cancer patients.

As I have mentioned to my colleagues before, many members of my family have battled cancer. As a family, we have worked extensively with numerous cancer organizations. As a Senator, I have met with thousands of cancer patients throughout Florida and the rest of the United States. They have told me how important it is that patients themselves, not the Government, be responsible for making treatment decisions with their physicians. Patients desperately want to participate in clinical trials when traditional therapies are no longer beneficial. The legislation which Senator ROCKEFELLER and I introduce today, which has the enthusiastic support of cancer patient, physician, nurse, and research organizations, will empower cancer patients with more treatment choices in a cost-effective manner.

I want to commend Senator JOHN ROCKEFELLER for his leadership in bringing this issue to the forefront. Senator ROCKEFELLER has always been there for cancer patients, as evidenced by his landmark 1993 legislation which provided Medicare coverage of anticancer drugs. We've worked together on cancer issues on several occasions over the years, and it's always a pleasure to work with him.

Mr. President, our legislation would provide cancer patients who are Medicare participants with an additional choice at a time when a clinical trial may be their best, or only, hope for survival. I therefore urge my colleagues to cosponsor the Medicare Cancer Clinical Trial Program Coverage Act of 1997.

ADDITIONAL COSPONSORS

S. 61

At the request of Mr. LOTT, the names of the Senator from Utah [Mr. HATCH], the Senator from Kentucky [Mr. FORD], the Senator from Illinois [Ms. MOSELEY-BRAUN], and the Senator from Virginia [Mr. ROBB] were added as cosponsors of S. 61, a bill to amend title 46, United States Code, to extend eligibility for veterans' burial benefits, funeral benefits, and related benefits for veterans of certain service in the U.S. merchant marine during World War II.

S. 66

At the request of Mr. HATCH, the name of the Senator from Ohio [Mr. DEWINE] was added as a cosponsor of S. 66, a bill to amend the Internal Revenue Code of 1986 to encourage capital formation through reductions in taxes on capital gains, and for other purposes.

S. 202

At the request of Mr. LOTT, the names of the Senator from Alabama [Mr. SESSIONS], the Senator from Texas [Mrs. HUTCHISON], and the Senator from New York [Mr. D'AMATO] were added as cosponsors of S. 202, a bill to amend title II of the Social Security Act to eliminate the earnings test for individuals who have attained retirement age.

S. 211

At the request of Mrs. MURRAY, her name was added as a cosponsor of S. 211, a bill to amend title 38, United States Code, to extend the period of time for the manifestation of chronic disabilities due to undiagnosed symptoms in veterans who served in the Persian Gulf war in order for those disabilities to be compensable by the Secretary of Veterans Affairs.

S. 224

At the request of Mr. WARNER, the name of the Senator from Texas [Mrs. HUTCHISON] was added as a cosponsor of S. 224, a bill to amend title 10, United States Code, to permit covered beneficiaries under the military health care system who are also entitled to medicare to enroll in the Federal Employees Health Benefits program, and for other purposes.

S. 260

At the request of Mr. ABRAHAM, the name of the Senator from Nebraska [Mr. HAGEL] was added as a cosponsor of S. 260, a bill to amend the Controlled Substances Act with respect to penalties for crimes involving cocaine, and for other purposes.

S. 263

At the request of Mr. MCCONNELL, the name of the Senator from Illinois [Ms. MOSELEY-BRAUN] was added as a cosponsor of S. 263, a bill to prohibit the import, export, sale, purchase, possession, transportation, acquisition, and receipt of bear viscera or products that contain or claim to contain bear viscera, and for other purposes.

S. 306

At the request of Mr. FORD, the name of the Senator from Florida [Mr. GRAHAM] was added as a cosponsor of S. 306, a bill to amend the Internal Revenue Code of 1986 to provide a decrease in the maximum rate of tax on capital gains which is based on the length of time the taxpayer held the capital asset.

S. 347

At the request of Mr. CLELAND, the name of the Senator from Maryland [Ms. MIKULSKI] was added as a cosponsor of S. 347, a bill to designate the Federal building located at 100 Alabama Street NW, in Altanta, GA, as the ''Sam Nunn Federal Center.''

S. 348

At the request of Mr. MCCONNELL, the name of the Senator from North Carolina [Mr. HELMS] was added as a cosponsor of S. 348, a bill to amend title I of the Omnibus Crime Control and Safe Streets Act of 1968 to encourage States to enact a Law Enforcement Officers' Bill of Rights, to provide standards and protection for the conduct of internal police investigations, and for other purposes.

NOTICE OF HEARING

COMMITTEE ON ENERGY AND NATURAL RESOURCES, SUBCOMMITTEE ON NATIONAL PARKS, HISTORIC PRESERVATION, AND RECREATION

Mr. THOMAS: Mr. President, I would like to announce for the public that an oversight hearing has been scheduled before the Subcommittee on Parks, Historic Preservation, and Recreation.

The hearing, which will take place over 2 days, will be held on Thursday, March 13, 1997 and Thursday, March 20, 1997.Each session will begin at 2 p.m. in room SD–366 of the Dirksen Senate Office Building in Washington, DC.

The purpose of this oversight hearing is to address the future of the National Park System and to identify and discuss needs, requirements, and innovative programs that will insure Park Service will continue to meet its many responsibilities well into the next century.

Because of the limited time available for the hearing, witnesses may testify by invitation only. However, those wishing to submit written testimony for the hearing record should send two copies of their testimony to the Subcommittee on Parks, Historic Preservation and Recreation, Committee on Energy and Natural Resources, U.S. Senate, 304 Dirksen Senate Office Building, Washington, DC. 20510–6150.

For further information, please contact Jim O'Toole of the subcommittee staff at (202) 224–5161.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON ARMED SERVICES

Mr. BROWNBACK. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet on Thursday, February 27, 1997, at 9:30 a.m. in open session, to receive testimony concerning the Department of Defense actions pertaining to the Persian Gulf illness.

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

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. BROWNBACK. Mr. President, I ask unanimous consent that the Senate Committee on Commerce, Science, and Transportation be authorized to meet on February 27, 1997, at 10 a.m. on TV Violence.

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

COMMITTEE ON FINANCE

Mr. BROWNBACK. Mr. President, the Finance Committee requests unanimous consent to conduct a hearing on Thursday, February 27, 1997, beginning at 11 a.m. in room 215 Dirksen.

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

COMMITTEE ON INDIAN AFFAIRS

Mr. BROWNBACK. Mr. President, I ask unanimous consent that the Senate Committee on Indian Affairs be authorized to meet during the session of the Senate on Thursday, February 27, 1997 at 9:30 a.m. to approve the committee's letter to the Committee on the Budget concerning the committee's budget views and estimates for fiscal year 1998 for Indian programs. The meeting will be held in room 485 of the Russell Senate Office Building.

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

COMMITTEE ON LABOR AND HUMAN RESOURCES

Mr. BROWNBACK. Mr. President, I ask unanimous consent that the Committee on Labor and Human Resources be authorized to meet for a hearing on Reauthorization of Higher Education Act during the session of the Senate on Thursday, February 27, 1997, at 10 a.m.

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

COMMITTEE ON SMALL BUSINESS

Mr. BROWNBACK. Mr. President, I ask unanimous consent that the Committee on Small Business be authorized to meet during the session of the Senate for a hearing on S. 208, the HUBZone Act of 1997 on Thursday, February 27, 1997, which will begin at 9:30 a.m. in room 428A of the Russell Senate Office Building.

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

SUBCOMMITTEE ON HEALTH CARE

Mr. BROWNBACK. Mr. President, the Finance Committee Subcommittee on Health Care requests unanimous consent to conduct a hearing on Thursday, February 27, 1997, beginning at 2 p.m. in room SD–215.

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

SUBCOMMITTEE ON INTERNATIONAL RELATIONS

Mr. BROWNBACK. Mr. President, I ask unanimous consent that the Subcommittee on International Relations of the Committee on Foreign Relations be authorized to meet during the session of the Senate on Thursday, February 27, 1997, at 11 a.m. to hold a hearing.

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

SUBCOMMITTEE ON STRATEGIC FORCES

Mr. BROWNBACK. Mr. President, I ask unanimous consent that the Subcommittee on Strategic Forces of the Committee on Armed Services be authorized to meet at 2 p.m. on Thursday, February 27, 1997 to receive testimony on ballistic missile defense programs in review of the Defense authorization request for fiscal year 1998 and the future years defense program.

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

ADDITIONAL STATEMENTS

MACON RIDGE ENTERPRISE COMMUNITY

• Mr. BREAUX. Mr. President, on February 27, 1997, the Macon Ridge enterprise community, consisting of portions of Catahoula, Concordia, Franklin, Morehouse, and Tensas Parishes in Louisiana, is to be awarded the Community Empowerment Award by the American Association of Enterprise Zones.

I am very proud to have Louisiana's own Macon Ridge recognized as the best enterprise community in the Nation. The Macon Ridge Enterprise Community is an example to the Nation of the success that can be derived from community-based economic development.

The U.S. Department of Agriculture designated the Macon Ridge enterprise community as 1 of the 30 rural enterprise communities across the United States, from some 227 applicants, on December 21, 1994. The enterprise community is administered by the Macon Ridge Development Region, Inc., which is a multifaceted economic development organization serving 11 parishes in northeast Louisiana.

The Macon Ridge enterprise community has, in the first 12 months of operation, created or retained 523 jobs, started 3 business incubators, had over 523 residents in job training or literacy programs, and leveraged some $3.316 million in additional funding.

The executive director of the Macon Ridge enterprise community, Mr. Buddy Spillers, as well as the Macon Ridge Enterprise Community Advisory Council and the Macon Ridge Board of Directors, are to be commended for their tireless efforts to create the opportunities and partnerships in Macon Ridge which have brought about this progress.

In closing, Mr. President, I take this occasion to offer my sincere congratulations to the Macon Ridge enterprise community, not only for meriting this award, but for the vast economic development opportunities which it has created in Louisiana and for the outstanding model which it provides to the State and the Nation.•

TRIBUTE TO TERRY KOEHLER

• Mr. ABRAHAM. Mr. President, I rise today to extend my best wishes for a full and rapid recovery by Mr. Terry Koehler, a teacher at Lahser High School in Bloomfield Hills, MI. Involved in a very serious skiing accident in mid-February, Mr. Koehler is currently convalescing in Reno, NV.

In the meanwhile, the entire Bloomfield Hills community eagerly looks forward to Mr. Koehler's return. A quick glance at his extensive involvement throughout the school district and it is readily apparent why, at present, he is so sorely missed. In addition to his duties teaching math, Mr. Koehler is a coach with Lahser's championship winning boy's and girl's swim teams. He serves in the multiple roles of commissioner, coach, and player in the school's intramural basketball program. He runs the school chess club. And, as a major in the U.S. Army Reserves, Mr. Koehler's civic commitments are hardly limited to just Lahser High School.

Exceptional teachers are assets to any community, as are dedicated public servants. When someone exemplifies the finest qualities of both, their presence is all the more valued. Indeed, Terry Koehler is such an individual. I join his countless friends, colleagues, and students in wishing Terry, his wife Diane and the rest of his family strength and courage during this difficult time; and I look forward to the news of his return to good health, to the profession he so honorably serves and to the students whose lives he touches every day.•

NEW ENGLAND COMMUNITY LEADERSHIP INSTITUTE

• Mr. KERRY. Mr. President, I would like to recognize and commend the efforts of over 250 community residents from all over New England who are meeting next weekend in Boston at the First New England Community Leadership Institute. The 3-day conference of 34 classes, 16 roundtable discussions, and 4 networking group sessions is designed to educate, rejuvenate, empower, and excite the core constituents of the NeighborWorks Network of over 50 New England low- and-moderate-income communities. These new and emerging leaders are concerned about events taking place in their communities, willing to take on these challenges, and eager to become part of the solution. At this event, they will be able to share experiences and solutions, motivate and encourage each other, and lead their neighborhoods into the 21st century.

I would like to commend the tremendous leadership potential of the participants and their remarkable commitment to improving their neighborhoods. Without their support and hard work, the programs, initiatives, and collaborations being formed at the State and Federal level cannot succeed. In the neighborhoods in which these citizens work, we can already begin to see change taking place in the rising home ownership rates, decreasing crime rates, and growing community pride. These residents represent the best hope of the future in our neighborhoods and Massachusetts is proud to welcome them.•

TRIBUTE TO BRIG. GEN. CASIMIR PULASKI

• Mr. DURBIN. Mr. President, I rise today in honor of Casimir Pulaski, as we commemorate the 250th anniversary of his birth, and acknowledge his exemplary service to our country.

Casimir Pulaski was born in Warka, Poland on March 4, 1747. Before coming to America in 1777, he distinguished himself in Poland's battle for independence from Russia. Forced to flee his native country because of his activities on behalf of Polish freedom, he became an exile.

When Pulaski first arrived in America to aid the colonists in the American Revolution, he led a valiant counterattack at the Battle of Brandywine which saved the retreating American army from being cut off by the British.

At the insistence of Gen. George Washington, the Continental Congress appointed Pulaski brigadier general and the first commander of the American cavalry. His services in the field justly won him the title of ''Father of the American Cavalry.''

On October 9, 1779, at the Battle of Savannah, GA, Pulaski led a daring, but fatal, charge against the heavily fortified British forces occupying the city.

Today, the people of Illinois proudly remember General Pulaski's courageous sacrifice fighting for our Nation's independence, and his defense of the freedoms that we cherish in America.

The anniversary of Casimir Pulaski's birth will be celebrated on March 2, 1997, at a special dinner ceremony in Chicago. I want to take this opportunity to congratulate the Chicago Society of the Polish National Alliance for hosting this commemorative dinner, and commend its efforts to help restore the Pulaski Monument in Savannah, GA.

The Pulaski Monument, whose cornerstone was laid by the Marquis Lafayette in 1825, is currently in a state of disrepair. With the hard work and dedication of the Chicago Society and donations from the people of Savannah, this 55-foot-tall historic monument will soon stand with renewed glory as a symbol of patriotism for all future generations of Americans.

Mr. President, it is my great pleasure to pay tribute to Brig. Gen. Casimir Pulaski on behalf of my home State of Illinois. I invite my colleagues in the Senate to join me in commemorating this heroic patriot and in honoring the many accomplishments Polish-Americans have made throughout history.•

TRIBUTE TO ROBERT SANFORD, OWNER OF THE MASON VALLEY NEWS

• Mr. BRYAN. Mr. President, I rise today to pay tribute to newspaper publisher Robert Sanford, who is celebrating his 40th anniversary as owner of the Mason Valley News. Mr. Sanford's tireless stewardship has helped make the Mason Valley News one of the finest newspapers of its kind and a model for journalistic integrity.

The Mason Valley News is a weekly newspaper that serves northern Nevada. Since Mr. Sanford became owner

of the newspaper in 1957, the paper has quadrupled its circulation and tripled its size—all while remaining true to its roots.

Mr. Sanford's newspaper career started as a printer's devil when he was just 14 years old. After World War II, where he proudly served his country for 3 years in the Army, Mr. Sanford returned home to northern Nevada and gained experience working in virtually every aspect of the newspaper business. He came to own the Mason Valley News at the age of 35. Mr. Sanford's two sons, David and James, also work for the paper.

It is with great pride and pleasure that I congratulate Robert Sanford and the Mason Valley News on 40 years of dependability and accomplishment and I wish them the best of luck for another successful 40 years.●

MILWAUKEE'S MORSE MIDDLE SCHOOL ENGINEERING TEAM WINS NATIONAL ENGINEER'S WEEK REGIONAL FUTURE CITIES COMPETITION

● Mr. FEINGOLD. Mr. President, today I would like to recognize the achievement of three young women from the Milwaukee Morse Middle School. Together, Kayla Tepps, Alex Yale, and Carrie Schaffner, formed the winning team in the Regional Future Cities Competition sponsored by National Engineer's Week. They created a city plan using sophisticated computer simulation software that allowed them to analyze and measure effects of their designs on a living, changing city. The students then created a 3-dimensional model of their city to present in the competition along with their data. I commend the team's members on the quality and character of their hard work.

I am impressed with the active role these students have taken in their education. This sort of initiative leads to citizens who take an active role in their communities. Whether that role be in the political, social, or economic arena, these young women are an example of the potential that our country's youth hold to come up with new ways, better ways, to solve our problems. These three Wisconsinites are a example to their peers that women can and do succeed in pursuing subjects and careers currently dominated by men. For this I also commend their teacher, Dave Mongin, for taking an active role in his student's careers, and their engineer-mentor, Eyad Mizian, for taking an active role in his community. They truly represent the kind of leadership we need more of in today's schools. I offer these students my sincere congratulations, I am proud that they represent the State of Wisconsin.●

YOUNG ISRAEL OF FLATBUSH

● Mr. MOYNIHAN. Mr. President, I rise to pay tribute to the Young Israel of Flatbush, a major modern Orthodox synagogue in Brooklyn, NY, which is celebrating its 75th anniversary on March 2, 1997.

Young Israel of Flatbush has been intensely involved, and provided extraordinary leadership, on the local, national, and international scenes. It has anchored the enormous development of the Flatbush community in which it is located, which is well noted for its commitment to communal service. The Young Israel has long stood for the classic Jewish religious values which are among the shared principles of American democracy. In particular, the Young Israel has emphasized through the years aid and assistance to the needy, both at home and abroad.

During most of its 75-year history, Young Israel has been served by two outstanding spiritual leaders, Rabbi Solomon J. Sharfman who retired in 1984 after 45 years of service, and Rabbi Kenneth Auman, who currently occupies the pulpit. Through their distinguished leadership, in collaboration with a succession of lay partners, the Young Israel of Flatbush has been a source of strength in all aspects of civic and Jewish life, and at age 75, retains the vigor and optimism of a young congregation.

I am certain the Members of the Senate join me in saluting the rabbis, members, and officers of the Young Israel of Flatbush on this auspicious occasion and wish them continued success in every endeavor, sacred and temporal.●

RULES OF THE COMMITTEE ON COMMERCE

● Mr. MCCAIN. Mr. President, in accordance with Senate Rule XXVI, I hereby submit a copy of the Rules of the Committee on Commerce, Science, and Transportation for publication in the CONGRESSIONAL RECORD.

The rules follow:

[January 17, 1997]

RULES OF THE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

I. MEETINGS OF THE COMMITTEE

1. The regular meeting dates of the Committee shall be the first and third Tuesdays of each month. Additional meetings may be called by the Chairman as he may deem necessary or pursuant to the provisions of paragraph 3 of rule XXVI of the Standing Rules of the Senate.

2. Meetings of the Committee, or any subcommittee, including meetings to conduct hearings, shall be open to the public, except that a meeting or series of meetings by the Committee, or any subcommittee, on the same subject for a period of no more than 14 calendar days may be closed to the public on a motion made and seconded to go into closed session to discuss only whether the matters enumerated in subparagraphs (A) through (F) would require the meeting to be closed, followed immediately by a record vote in open session by a majority of the members of the Committee, or any subcommittee, when it is determined that the matter to be discussed or the testimony to be taken at such meeting or meetings—

(A) will disclose matters necessary to be kept secret in the interests of national defense or the confidential conduct of the foreign relations of the United States;

(B) will relate solely to matters of Committee staff personnel or internal staff management or procedure;

(C) will tend to charge an individual with crime or misconduct, to disgrace or injure the professional standing of an individual, or otherwise to expose an individual to public contempt or obloquy, or will represent a clearly unwarranted invasion of the privacy of an individual;

(D) will disclose the identity of any informer or law enforcement agent or will disclose any information relating to the investigation or prosecution of a criminal offense that is required to be kept secret in the interest of effective law enforcement;

(E) will disclose information relating to the trade secrets of, or financial or commercial information pertaining specifically to, a given person if—

(1) an Act of Congress requires the information to be kept confidential by Government officers and employees; or

(2) the information has been obtained by the Government on a confidential basis, other than through an application by such person for a specific Government financial or other benefit, and is required to be kept secret in order to prevent undue injury to the competitive position of such person; or

(F) may divulge matters required to be kept confidential under other provisions of law or Government regulations.

3. Each witness who is to appear before the Committee or any subcommittee shall file with the Committee, at least 24 hours in advance of the hearing, a written statement of his testimony in as many copies as the Chairman of the Committee or Subcommittee prescribes.

4. Field hearings of the full Committee, and any subcommittee thereof, shall be scheduled only when authorized by the Chairman and ranking minority member of the full Committee.

II. QUORUMS

1. Eleven members shall constitute a quorum for official action of the Committee when reporting a bill, resolution, or nomination. Proxies shall not be counted in making a quorum.

2. Seven members shall constitute a quorum for the transaction of all business as may be considered by the Committee, except for the reporting of a bill, resolution, or nomination. Proxies shall not be counted in making a quorum.

3. For the purpose of taking sworn testimony a quorum of the Committee and each subcommittee thereof, now or hereafter appointed, shall consist of one Senator.

III. PROXIES

When a record vote is taken in the Committee on any bill, resolution, amendment, or any other question, a majority of the members being present, a member who is unable to attend the meeting may submit his vote by proxy, in writing or by telephone, or through personal instructions.

IV. BROADCASTING OF HEARINGS

Public hearings of the full Committee, or any subcommittee thereof, shall be televised or broadcast only when authorized by the Chairman and the ranking minority member of the full Committee.

V. SUBCOMMITTEES

1. Any member of the Committee may sit with any subcommittee during its hearings or any other meeting but shall not have the authority to vote on any matter before the subcommittee unless he is a Member of such subcommittee.

2. Subcommittees shall be considered de novo whenever there is a change in the

chairmanship, and seniority on the particular subcommittee shall not necessarily apply.

VI. CONSIDERATION OF BILLS AND RESOLUTIONS

It shall not be in order during a meeting of the Committee to move to proceed to the consideration of any bill or resolution unless the bill or resolution has been filed with the Clerk of the Committee not less than 48 hours in advance of the Committee meeting, in as many copies as the Chairman of the Committee prescribes. This rule may be waived with the concurrence of the Chairman and the Ranking Member.●

RULES OF THE SELECT COMMITTEE ON INTELLIGENCE

● Mr. SHELBY. Mr. President, paragraph 2 of Senate Rule XXVI requires that not later than March 1 of the first year of each Congress, the rules of each committee be published in the RECORD.

In compliance with this provision, I ask that the Rules of the Select Committee on Intelligence be printed in the RECORD.

The rules follow:

SELECT COMMITTEE ON INTELLIGENCE—RULES OF PROCEDURE

RULE 1. CONVENING OF MEETINGS

1.1. The regular meeting day of the Select Committee on Intelligence for the transaction of Committee business shall be every other Wednesday of each month, unless otherwise directed by the Chairman.

1.2. The Chairman shall have authority, upon proper notice, to call such additional meetings of the Committee as he may deem necessary and may delegate such authority to any other member of the Committee.

1.3. A special meeting of the Committee may be called at any time upon the written request of five or more members of the Committee filed with the Clerk of the Committee.

1.4. In the case of any meeting of the Committee, other than a regularly scheduled meeting, the Clerk of the Committee shall notify every member of the Committee of the time and place of the meeting and shall give reasonable notice which, except in extraordinary circumstances, shall be at least 24 hours in advance of any meeting held in Washington, D.C. and at least 48 hours in the case of any meeting held outside Washington, D.C.

1.5. If five members of the Committee have made a request in writing to the Chairman to call a meeting of the Committee, and the Chairman fails to call such a meeting within seven calendar days thereafter, including the day on which the written notice is submitted, these members may call a meeting by filing a written notice with the Clerk of the committee who shall promptly notify each member of the Committee in writing of the date and time of the meeting.

RULE 2. MEETING PROCEDURES

2.1. Meetings of the Committee shall be open to the public except as provided in S. Res. 9, 94th Congress, 1st Session.

2.2. It shall be the duty of the Staff Director to keep or cause to be kept a record of all Committee proceedings.

2.3. The Chairman of the Committee, or if the Chairman is not present the Vice Chairman, shall preside over all meetings of the Committee. In the absence of the Chairman and the Vice Chairman at any meeting the ranking majority member, or if no majority member is present the ranking minority member present shall preside.

2.4. Except as otherwise provided in these Rules, decisions of the Committee shall be by a majority vote of the members present and voting. A quorum for the transaction of Committee business, including the conduct of executive sessions, shall consist of no less than one third of the Committee Members, except that for the purpose of hearing witnesses, taking sworn testimony, and receiving evidence under oath, a quorum may consist of one Senator.

2.5. A vote by any member of the Committee with respect to any measure or matter being considered by the Committee may be cast by proxy if the proxy authorization (1) is in writing; (2) designates the member of the Committee who is to exercise the proxy; and (3) is limited to a specific measure or matter and any amendments pertaining thereto. Proxies shall not be considered for the establishment of a quorum.

2.6. Whenever the Committee by roll call vote reports any measure or matter, the report of the Committee upon such measure or matter shall include a tabulation of the votes cast in favor of and the votes cast in opposition to such measure or matter by each member of the Committee.

RULE 3. SUBCOMMITTEES

Creation of subcommittees shall be by majority vote of the Committee. Subcommittees shall deal with such legislation and oversight of programs and policies as the Committee may direct. The subcommittees shall be governed by the Rules of the Committee and by such other rules they may adopt which are consistent with the Rules of the Committee.

RULE 4. REPORTING OF MEASURES OR RECOMMENDATIONS

4.1. No measures or recommendation shall be reported, favorably or unfavorably, from the Committee unless a majority of the Committee is actually present and a majority concur.

4.2. In any case in which the Committee is unable to reach a unanimous decision, separate views or reports may be presented by any member or members of the Committee.

4.3. A member of the Committee who gives notice of his intention to file supplemental, minority, or additional views at the time of final Committee approval of a measure or matter, shall be entitled to not less than three working days in which to file such views, in writing with the Clerk of the Committee. Such views shall then be included in the Committee report and printed in the same volume, as a part thereof, and their inclusion shall be noted on the cover of the report.

4.4. Routine, non-legislative actions required of the Committee may be taken in accordance with procedures that have been approved by the Committee pursuant to these Committee Rules.

RULE 5. NOMINATIONS

5.1. Unless otherwise ordered by the Committee, nominations referred to the Committee shall be held for at least 14 days before being voted on by the Committee.

5.2. Each member of the Committee shall be promptly furnished a copy of all nominations referred to the Committee.

5.3. Nominees who are invited to appear before the Committee shall be heard in public session, except as provided in Rule 2.1.

5.4. No confirmation hearing shall be held sooner than seven days after receipt of the background and financial disclosure statement unless the time limit is waived by a majority vote of the Committee.

5.5. The Committee vote on the confirmation shall not be sooner than 48 hours after the Committee has received transcripts of the confirmation hearing unless the time limit is waived by unanimous consent of the Committee.

5.6. No nomination shall be reported to the Senate unless the nominee has filed a background and financial disclosure statement with the committee.

RULE 6. INVESTIGATIONS

No investigation shall be initiated by the Committee unless at least five members of the Committee have specifically requested the Chairman or the Vice Chairman to authorize such an investigation. Authorized investigations may be conducted by members of the Committee and/or designated Committee staff members.

RULE 7. SUBPOENAS

Subpoenas authorized by the Committee for the attendance of witnesses or the production of memoranda, documents, records or any other material may be issued by the Chairman, the Vice Chairman, or any member of the Committee designated by the Chairman, and may be served by any person designated by the Chairman, Vice Chairman, or member issuing the subpoenas. Each subpoena shall have attached thereto a copy of S. Res. 400, 94th Congress, 2d Session and a copy of these rules.

RULE 8. PROCEDURES RELATED TO THE TAKING OF TESTIMONY

8.1. NOTICE.—Witnesses required to appear before the Committee shall be given reasonable notice and all witnesses shall be furnished a copy of these Rules.

8.2. OATH OR AFFIRMATION.—Testimony of witnesses shall be given under oath or affirmation which may be administered by any member of the Committee.

8.3. INTERROGATION.—Committee interrogation shall be conducted by members of the Committee and such Committee staff as are authorized by the Chairman, Vice Chairman, or the presiding member.

8.4. COUNSEL FOR THE WITNESS.—(a) Any witness may be accompanied by counsel. A witness who is unable to obtain counsel may inform the Committee of such fact. If the witness informs the Committee of this fact at least 24 hours prior to his or her appearance before the Committee, the Committee shall then endeavor to obtain voluntary counsel for the witness. Failure to obtain such counsel will not excuse the witness from appearing and testifying.

(b) Counsel shall conduct themselves in an ethical and professional manner. Failure to do so shall, upon a finding to that effect by a majority of the members present, subject such counsel to disciplinary action which may include warning, censure, removal, or a recommendation of contempt proceedings.

(c) There shall be no direct or cross-examination by counsel. However, counsel may submit in writing any question he wishes propounded to his client or to any other witness and may, at the conclusion of his client's testimony, suggest the presentation of other evidence or the calling of other witnesses. The Committee may use such questions and dispose of such suggestions as it deems appropriate.

8.5 STATEMENTS BY WITNESSES.—A witness may make a statement, which shall be brief and relevant, at the beginning and conclusion of his or her testimony. Such statements shall not exceed a reasonable period of time as determined by the Chairman, or other presiding members. Any witness desiring to make a prepared or written statement for the record of the proceedings shall file a copy with the Clerk of the Committee, and insofar as practicable and consistent with the notice given, shall do so at least 72 hours in advance of his or her appearance before the Committee.

8.6 OBJECTIONS AND RULINGS.—Any objection raised by a witness or counsel shall be ruled upon by the Chairman or other presiding member, and such ruling shall be the ruling of the Committee unless a majority of

the Committee present overrules the ruling of the chair.

8.7 INSPECTION AND CORRECTION.—All witnesses testifying before the Committee shall be given a reasonable opportunity to inspect, in the office of the Committee, the transcript of their testimony to determine whether such testimony was correctly transcribed. The witness may be accompanied by counsel. Any corrections the witness desires to make in the transcript shall be submitted in writing to the Committee within five days from the date when the transcript was made available to the witness. Corrections shall be limited to grammar and minor editing, and may not be made to change the substance of the testimony. Any questions arising with respect to such corrections shall be decided by the Chairman. Upon request, those parts of testimony given by a witness in executive session which are subsequently quoted or made part of a public record shall be made available to that witness at his or her expense.

8.8 Requests to Testify.—The Committee will consider requests to testify on any matter or measure pending before the Committee. A person who believes that testimony or other evidence presented at a public hearing, or any comment made by a Committee member or a member of the Committee staff may tend to affect adversely his or her reputation, may request to appear personally before the Committee to testify on his or her own behalf, or may file a sworn statement of facts relevant to the testimony, evidence, or comment, or may submit to the Chairman proposed questions in writing for the cross-examination of other witnesses. The Committee shall take such action as it deems appropriate.

8.9 CONTEMPT PROCEDURES.—No recommendation that a person be cited for contempt of Congress shall be forwarded to the Senate unless and until the Committee has, upon notice to all its members, met and considered the alleged contempt, afforded the person an opportunity to state in writing or in person why he or she should not be held in contempt, and agreed by majority vote of the Committee, to forward such recommendation to the Senate.

8.10. RELEASE OF NAME OF WITNESS.—Unless authorized by the Chairman, the name of any witness scheduled to be heard by the Committee shall not be released prior to, or after, his or her appearance before the Committee.

RULE 9. PROCEDURES FOR HANDLING CLASSIFIED OR SENSITIVE MATERIAL

9.1. Committee staff offices shall operate under strict precautions. At least one security guard shall be on duty at all times by the entrance to control entry. Before entering the office all persons shall identify themselves.

9.2. Sensitive or classified documents and material shall be segregated in a secure storage area. They may be examined only at secure reading facilities. Copying, duplicating, or removal from the Committee offices of such documents and other materials is prohibited except as is necessary for use in, or preparation for, interviews or Committee meetings, including the taking of testimony, and in conformity with Section 10.3 hereof. All documents or materials removed from the Committee offices for such authorized purposes must be returned to the Committee's secure storage area for overnight storage.

9.3. Each member of the Committee shall at all times have access to all papers and other material received from any source. The Staff Director shall be responsible for the maintenance, under appropriate security procedures, of a registry which will number and identify all classified papers and other classified materials in the possession of the Committee, and such registry shall be available to any member of the Committee.

9.4. Whenever the Select Committee on Intelligence makes classified material available to any other Committee of the Senate or to any member of the Senate not a member of the Committee, such material shall be accompanied by a verbal or written notice to the recipients advising of their responsibility to protect such material pursuant to section 8 of S. Res. 400 of the 94th Congress. The Clerk of the Committee shall ensure that such notice is provided and shall maintain a written record identifying the particular information transmitted and the Committee or members of the Senate receiving such information.

9.5. Access to classified information supplied to the Committee shall be limited to those Committee staff members with appropriate security clearance and a need-to-know, as determined by the Committee, and, under the Committee's direction, the Staff Director and Minority Staff Director.

9.6. No member of the Committee or of the Committee staff shall disclose, in whole or in part or by way of summary, to any person not a member of the Committee or the Committee staff for any purpose or in connection with any proceeding, judicial or otherwise, any testimony given before the committee in executive session including the name of any witness who appeared or was called to appear before the Committee in executive session, or the contents of any papers or materials or other information received by the Committee except as authorized herein, or otherwise as authorized by the Committee in accordance with Section 8 of S. Res. 400 of the 94th Congress and the provisions of these rules, or in the event of the termination of the Committee, in such a manner as may be determined by the Senate. For purposes of this paragraph, members and staff of the Committee may disclose classified information in the possession of the Committee only to persons with appropriate security clearances who have a need to know such information for an official governmental purpose related to the work of the Committee. Information discussed in executive sessions of the Committee and information contained in papers and materials which are not classified but which are controlled by the Committee may be disclosed only to persons outside the Committee who have a need to know such information for an official governmental purpose related to the work of the Committee and only if such disclosure has been authorized by the Chairman and Vice Chairman of the Committee, or by the Staff Director and Minority Staff Director, acting on their behalf. Failure to abide by this provision shall constitute grounds for referral to the Select Committee on Ethics pursuant to Section 8 of S. Res. 400.

9.7. Before the Committee makes any decision regarding the disposition of any testimony, papers, or other materials presented to it, the Committee members shall have a reasonable opportunity to examine all pertinent testimony, papers, and other materials that have been obtained by the members of the Committee or the Committee staff.

9.8. Attendance of persons outside the Committee at closed meetings of the Committee shall be kept at a minimum and shall be limited to persons with appropriate security clearance and a need-to-know the information under consideration for the execution of their official duties. Notes taken at such meetings by any person in attendance shall be returned to the secure storage area in the Committee's offices at the conclusion of such meetings, and may be made available to the department, agency, office, committee or entity concerned only in accordance with the security procedures of the Committee.

RULE 10. STAFF

10.1. For purposes of these rules, Committee staff includes employees of the Committee, consultants to the Committee, or any other person engaged by contract or otherwise to perform services for or at the request of the Committee. To the maximum extent practicable, the Committee shall rely on its full-time employees to perform all staff functions. No individual may be retained as staff of the Committee or to perform services for the Committee unless that individual holds appropriate security clearances.

10.2. The appointment of Committee staff shall be confirmed by a majority vote of the Committee. After confirmation, the Chairman shall certify Committee staff appointments to the Financial Clerk of the Senate in writing. No Committee staff shall be given access to any classified information or regular access to the Committee offices, until such Committee staff has received an appropriate security clearance as described in Section 6 of Senate Resolution 400 of the 94th Congress.

10.3. The Committee staff works for the Committee as a whole, under the supervision of the Chairman and Vice Chairman of the Committee. The duties of the Committee staff shall be performed, and Committee staff personnel affairs and day-to-day operations, including security and control of classified documents and material, and shall be administered under the direct supervision and control of the Staff Director. The Minority Staff Director and the Minority Counsel shall be kept fully informed regarding all matters and shall have access to all material in the files of the Committee.

10.4. The Committee staff shall assist the minority as fully as the majority in the expression of minority views, including assistance in the preparation and filing of additional, separate and minority views, to the end that all points of view may be fully considered by the Committee and the Senate.

10.5. The members of the Committee staff shall not discuss either the substance or procedure of the work of the Committee with any person not a member of the Committee or the Committee staff for any purpose or in connection with any proceeding, judicial or otherwise, either during their tenure as a member of the Committee staff at any time thereafter except as directed by the Committee in accordance with Section 8 of S. Res. 400 of the 94th Congress and the provisions of these rules, or in the event of the termination of the Committee, in such a manner as may be determined by the Senate.

10.6. No member of the Committee staff shall be employed by the Committee unless and until such a member of the Committee staff agrees in writing, as a condition of employment to abide by the conditions of the nondisclosure agreement promulgated by the Senate Select Committee on Intelligence, pursuant to Section 6 of S. Res. 400 of the 94th Congress, 2d Session, and to abide by the Committee's code of conduct.

10.7. No member of the Committee staff shall be employed by the Committee unless and until such a member of the Committee staff agrees in writing, as a condition of employment, to notify the Committee or in the event of the Committee's termination the Senate of any request for his or her testimony, either during his tenure as a member of the Committee staff or at any time thereafter with respect to information which came into his or her possession by virtue of his or her position as a member of the Committee staff. Such information shall not be disclosed in response to such requests except as directed by the Committee in accordance

with Section 8 of S. Res. 400 of the 94th Congress and the provisions of these rules, or in the event of the termination of the Committee, in such manner as may be determined by the Senate.

10.8. The Committee shall immediately consider action to be taken in the case of any member of the Committee staff who fails to conform to any of these Rules. Such disciplinary action may include, but shall not be limited to, immediate dismissal from the Committee staff.

10.9. Within the Committee staff shall be an element with the capability to perform audits of programs and activities undertaken by departments and agencies with intelligence functions. Such element shall be comprised of persons qualified by training and/or experience to carry out such functions in accordance with accepted auditing standards.

10.10. The workplace of the Committee shall be free from illegal use, possession, sale or distribution of controlled substances by its employees. Any violation of such policy by any member of the Committee staff shall be grounds for termination of employment. Further, any illegal use of controlled substances by a member of the Committee staff, within the workplace or otherwise, shall result in reconsideration of the security clearance of any such staff member and may constitute grounds for termination of employment with the Committee.

10.11. In accordance with title III of the Civil Rights Act of 1991 (P.L. 102–166), all personnel actions affecting the staff of the Committee shall be made free from any discrimination based on race, color, religion, sex, national origin, age, handicap or disability.

RULE 11. PREPARATION FOR COMMITTEE MEETINGS

11.1. Under direction of the Chairman and the Vice Chairman, designated Committee staff members shall brief members of the Committee at a time sufficiently prior to any Committee meeting to assist the Committee members in preparation for such meeting and to determine any matter which the Committee member might wish considered during the meeting. Such briefing shall, at the request of a member, include a list of all pertinent papers and other materials that have been obtained by the Committee that bear on matters to be considered at the meeting.

11.2. The Staff Director shall recommend to the Chairman and the Vice Chairman the testimony, papers, and other materials to be presented to the Committee at any meeting. The determination whether such testimony, papers, and other materials shall be presented in open or executive session shall be made pursuant to the Rules of the Senate and Rules of the Committee.

11.3. The Staff Director shall ensure that covert action programs of the U.S. Government receive appropriate consideration by the Committee no less frequently than once a quarter.

RULE 12. LEGISLATIVE CALENDAR

12.1. The Clerk of the Committee shall maintain a printed calendar for the information of each Committee member showing the measures introduced and referred to the Committee and the status of such measures; nominations referred to the Committee and their status; and such other matters as the Committee determines shall be included. The Calendar shall be revised from time to time to show pertinent changes. A copy of each such revision shall be furnished to each member of the Committee.

12.2. Unless otherwise ordered, measures referred to the Committee shall be referred by the Clerk of the Committee to the appropriate department or agency of the Government for reports thereon.

RULE 13. COMMITTEE TRAVEL

13.1. No member of the Committee or Committee Staff shall travel abroad on Committee business unless specifically authorized by the Chairman and Vice Chairman. Requests for authorization of such travel shall state the purpose and extent of the trip. A full report shall be filed with the Committee when travel is completed.

13.2. When the Chairman and the Vice Chairman approve the foreign travel of a member of the Committee staff not accompanying a member of the Committee, all members of the Committee are to be advised, prior to the commencement of such travel, of its extent, nature and purpose. The report referred to in Rule 13.1 shall be furnished to all members of the Committee and shall not be otherwise disseminated without the express authorization of the Committee pursuant to the Rules of the Committee.

13.3. No member of the Committee staff shall travel within this country on Committee business unless specifically authorized by the Staff Director as directed by the Committee.

RULE 14. CHANGES IN RULES

These Rules may be modified, amended, or repealed by the Committee, provided that a notice in writing of the proposed change has been given to each member at least 48 hours prior to the meeting at which action thereon is to be taken.

APPENDIX A—94TH, CONGRESS, 2D SESSION

S. RES. 400

To establish a Standing Committee of the Senate on Intelligence, and for other purposes

Resolved, That it is the purpose of this resolution to establish a new select committee of the Senate, to be known as the Select Committee on Intelligence, to oversee and make continuing studies of the intelligence activities and programs of the United States Government, and to submit to the Senate appropriate proposals for legislation and report to the Senate concerning such intelligence activities and programs. In carrying out this purposes, the Select Committee on Intelligence shall make ever effort to assure that the appropriate departments and agencies of the United States provide informed and timely intelligence necessary for the executive and legislative branches to make sound decisions affecting the security and vital interests of the Nation. It is further the purpose of this resolution to provide vigilant legislative oversight over the intelligence activities of the United States to assure that such activities are in conformity with the Constitution and laws of the United States.

SEC. 2. (a)(1) There is hereby established a select committee to be known as the Select Committee on Intelligence (hereinafter in this resolution referred to as the ''select committee''). The select committee shall be composed of fifteen members appointed as follows:

(A) two members from the Committee on Appropriations;

(B) two members from the Committee on Armed Services;

(C) two members from the Committee on Foreign Relations;

(D) two members from the Committee on Judiciary; and

(E) seven members to be appointed from the Senate at large.

(2) Members appointed from each committee named in clauses (a) through (D) of paragraph (1) shall be evenly divided between the two major political parties and shall be appointed by the President pro tempore of the Senate upon the recommendations of the majority and minority leaders of the Senate. Four of the members appointed under clause (E) of paragraph (1) shall be appointed by the President pro tempore of the Senate upon the recommendation of the majority leader of the Senate and three shall be appointed by the President pro tempore of the Senate upon the recommendation of the minority leader of the Senate.

(3) the majority leader of the Senate and the minority leader of the Senate shall be ex officio members of the select committee but shall have no vote in the committee and shall not be counted for purposes of determining a quorum.

(b) No Senator may serve on the select committee for more than eight years of continuous service, exclusive of service by any Senator on such committee during the Ninety-fourth Congress. To the greatest extent possible, one-third of the Members of the Senate appointed to the select committee at the beginning of the Ninety-seventh Congress and each Congress thereafter shall be Members of the Senate who did not serve on such committee during the preceding Congress.

(c) At the beginning of each Congress, the Members of the Senate who are members of the majority party of the Senate shall elect a chairman for the select committee, and the Members of the Senate who are from the minority party of the Senate shall elect a vice chairman for such committee. The vice chairman shall act in the place and stead of the chairman in the absence of the chairman. Neither the chairman nor the vice chairman of the select committee shall at the same time serve as chairman or ranking minority member of any other committee referred to in paragraph 4(e)(1) of rule XXV of the Standing Rules of the Senate.

SEC. 3. (a) There shall be referred to the select committee all proposed legislation, messages, petitions, memorials, and other matters related to the following:

(1) The Central Intelligence Agency and the Director of Central Intelligence.

(2) Intelligence activities of all other departments and agencies of the Government, including, but not limited to, the intelligence activities of the Defense Intelligence Agency, the National Security Agency, and other agencies of the Department of State, the Department of Justice; and the Department of the Treasury.

(3) The organization or reorganization of any department or agency of the Government to the extent that the organization or reorganization relates to a function or activity involving intelligence activities.

(4) Authorizations for appropriations, both direct and indirect, for the following:

(A) The Central Intelligence Agency and Director of Central Intelligence.

(B) The Defense Intelligence Agency.

(C) The National Security Agency.

(D) The intelligence activities of other agencies and subdivisions of the Department of Defense.

(E) The intelligence activities of the Department of State.

(F) The intelligence activities of the Federal Bureau of Investigation, including all activities of the Intelligence Division.

(G) Any department, agency, or subdivision which is the successor to any agency named in clause (A), (B), or (C); and the activities of any department, agency, or subdivision which is the successor to any department, agency, bureau, or subdivision named in clause (D), (E), or (F) to the extent that the activities of such successor department, agency, or subdivision are activities described in clause (D), (E), or (F).

(b) Any proposed legislation reported by the select committee, except any legislation involving matters specified in clause (1) or (4)(A) of subsection (a), containing any matter otherwise within the jurisdiction of any

standing committee shall, at the request of the chairman of such standing committee, be referred to such standing committee for its consideration of such matter and be reported to the Senate by such standing committee within thirty days after the day on which such proposed legislation is referred to such standing committee; and any proposed legislation reported by any committee, other then the select committee, which contains any matter within the jurisdiction of the select committee shall, at the request of the chairman of the select committee, be referred to the select committee for its consideration of such matter and be reported to the Senate by the select committee within thirty days after the day on which such proposed legislation is referred to such committee. In any case in which a committee fails to report any proposed legislation referred to it within the time limit prescribed herein, such committee shall be automatically discharged from further consideration of such proposed legislation on the thirtieth day following the day on which such proposed legislation is referred to such committee unless the Senate provides otherwise. In computing any thirty-day period under this paragraph there shall be excluded from such computation any days on which the Senate is not in session.

(c) Nothing in this resolution, shall be construed as prohibiting or otherwise restricting the authority of any other committee to study and review any intelligence activity to the extent that such activity directly affects a matter otherwise within the jurisdiction of such committee.

(d) Nothing in this resolution shall be construed as amending, limiting, or otherwise changing the authority of any standing committee of the Senate to obtain full and prompt access to the product of the intelligence activities of any department or agency of the Government relevant to a matter otherwise within the jurisdiction of such committee.

SEC. 4. (a) The select committee, for the purposes of accountability to the Senate, shall make regular and periodic reports to the Senate on the nature and extent of the intelligence activities of the various departments and agencies of the United States. Such committee shall promptly call to the attention of the Senate or to any other appropriate committee on committees of the Senate any matters requiring the attention of the Senate or such other committee or committees. In making such report, the select committee shall proceed in a manner consistent with section 8(c)(2) to protect national security.

(b) The select committee shall obtain an annual report from the Director of the Central Intelligence Agency, the Secretary of Defense, the Secretary of State, and the Director of the Federal Bureau of Investigation. Such reports shall review the intelligence activities of the agency or department concerned and the intelligence activities of foreign countries directed at the United States or its interest. An unclassified version of each report may be made available to the public at the discretion of the select committee. Nothing herein shall be construed as requiring the public disclosure in such reports of the names of individuals engaged in intelligence activities for the United States or the divulging of intelligence methods employed or the sources of information on which such reports are based or the amount of funds authorized to be appropriated for intelligence activities.

(c) On or before March 15 of each year, the select committee shall submit to the Committee on the Budget of the Senate the views and estimates described in section 301(c) of the Congressional Budget Act of 1974 regarding matters within the jurisdiction of the select committee.

SEC. 5. (a) For the purpose of this resolution, the select committee is authorized in its discretion (1) to make investigations into any matter within its jurisdiction, (2) to make expenditures from the contingent fund of the Senate, (3) to employ personnel, (4) to hold hearings, (5) to sit and act at any time or place during the sessions, recesses, and adjourned periods of the Senate, (6) to require, by subpena or otherwise, the attendance of witnesses and the production of correspondence, books, papers, and documents, (7) to take depositions and other testimony, (8) to procure the service of individual consultants or organizations thereof, in accordance with the provisions of section 202(i) of the Legislative Reorganization Act of 1946, and (9) with the prior consent of the government department or agency concerned and the Committee on Rules and Administration, to use on a reimbursable basis the services of personnel of any such department or agency.

(b) The chairman of the select committee or any member thereof may administer oaths to witnesses.

(c) Subpenas authorized by the select committee may be issued over the signature of the chairman, the vice chairman or any member of the select committee designated by the chairman, and may be served by any person designated by the chairman or any member signing the subpenas.

SEC. 6. No employee of the select committee or any person engaged by contract or otherwise to perform services for or at the request of such committee shall be given access to any classified information by such committee unless such employee or person has (1) agreed in writing and under oath to be bound by the rules of the Senate (including the jurisdiction of the Select Committee on Standards and Conduct[1] and of such committee as to the security of such information during and after the period of his employment or contractual agreement with such committee; and (2) received an appropriate security clearance as determined by such committee in consultation with the Director of Central Intelligence. The type of security clearance to be required in the case of any such employee or person shall, within the determination of such committee in consultation with the Director of Central Intelligence, be commensurate with the sensitivity of the classified information to which such employee or person will be given access by such committee.

SEC. 7. The select committee shall formulate and carry out such rules and procedures as it deems necessary to prevent the disclosure, without the consent of the person or persons concerned, of information in the possession of such committee which unduly infringes upon the privacy or which violates the constitutional rights of such person or persons. Nothing herein shall be construed to prevent such committee from publicly disclosing any such information in any case in which such committee determines the national interest in the disclosure of such information clearly outweighs any infringement on the privacy of any person or persons.

SEC. 8. (a) The select committee may, subject to the provisions of this section, disclose publicly any information in the possession of such committee after a determination by such committee that the public interest would be served by such disclosure. Whenever committee action is required to disclose any information under this section, the committee shall meet to vote on the matter within five days after any member of the committee requests such a vote. No member of the select committee shall disclose any information, the disclosure of which requires a committee vote, prior to a vote by the committee on the question of the disclosure of such information or after such vote except in accordance with this section.

(b)(1) In any case in which the select committee votes to disclose publicly any information which has been classified under established security procedures, which has been submitted to it by the executive branch, and which the executive branch requests be kept secret, such committee shall notify the President of such vote.

(2) The select committee may disclose publicly such information after the expiration of a five-day period following the day on which notice of such vote is transmitted to the President, unless, prior to the expiration of such five-day period, the President, personally in writing, notifies the committee that he objects to the disclosure of such information, provides his reasons therefor, and certifies that the threat to national interest of the United States posed by such disclosure is of such gravity that it outweighs any public interest in the disclosure.

(3) If the President, personally in writing, notifies the select committee of his objections to the disclosure of such information as provided in paragraph (2), such committee may, by majority vote, refer the question of the disclosure of such information to the Senate for consideration. The committee shall not publicly disclose such information without leave of the Senate.

(4) Whenever the select committee votes to refer the question of disclosure of any information to the Senate under paragraph (3), the chairman shall not later than the first day on which the Senate is in session following the day on which the vote occurs, report the matter to the Senate for its consideration.

(5) One hour after the Senate convenes on the fourth day on which the Senate is in session following the day on which any such matter is reported to the Senate, or at such earlier time as the majority leader and the minority leader of the Senate jointly agree upon in accordance with paragraph 5 of rule XVII of the Standing Rules of the Senate, the Senate shall go into closed session and the matter shall be the pending business. In considering the matter in closed session the Senate may—

(A) approve the public disclosure of all or any portion of the information in question, in which case the committee shall not publicly disclose the information ordered to be disclosed,

(B) disapprove the public disclosure of all or any portion of the information in question, in which case the committee shall not publicly disclose the information ordered not to be disclosed, or

(C) refer all or any portion of the matter back to the committee, in which case the committee shall make the final determination with respect to the public disclosure of the information in question.

Upon conclusion of the information of such matter in closed session, which may not extend beyond the close of the ninth day on which the Senate is in session following the day on which such matter was reported to the Senate, or the close of the fifth day following the day agreed upon jointly by the majority and minority leaders in accordance with paragraph 5 of rule XVII of the Standing Rules of the Senate (whichever the case may be), the Senate shall immediately vote on the disposition of such matter in open session, without debate, and without divulging the information with respect to which the vote is being taken. The Senate shall vote to dispose of such matter by one or more of the means specified in clauses (A),

[1] Name changed to the Select Committee on Ethics by S. Res. 4, 95–1, Feb. 4, 1977.

(B), and (C) of the second sentence of this paragraph. Any vote of the Senate to disclose any information pursuant to this paragraph shall be subject to the right of a Member of the Senate to move for reconsideration of the vote within the time and pursuant to the procedures specified in rule XIII of the Standing Rules of the Senate, and the disclosure of such information shall be made consistent with that right.

(c)(1) No information in the possession of the select committee relating to the lawful intelligence activities of any department or agency of the United States which has been classified under established security procedures and which the select committee, pursuant to subsection (a) or (b) of this section, has determined should not be disclosed shall be made available to any person by a Member, officer, or employee of the Senate except in a closed session of the Senate or as provided in paragraph (2).

(2) The select committee may, under such regulations as the committee shall prescribe to protect the confidentiality of such information, make any information described in paragraph (1) available to any other committee or any other Member of the Senate. Whenever the select committee makes such information available, the committee shall keep a written record showing, in the case of any particular information, which the committee or which Members of the Senate received such information under this subsection, shall disclose such information except in a closed session of the Senate.

(d) It shall be the duty of the Select Committee on Standards and Conduct[1] to investigate any unauthorized disclosure of intelligence information by a Member, officer or employee of the Senate in violation of subsection (c) and to report to the Senate concerning any allegation which it finds to be substantiated.

(e) Upon the request of any person who is subject to any such investigation, the Select Committee on Standards and Conduct[1] shall release to such individual at the conclusion of its investigation a summary of its investigation together with its findings. If, at the conclusion of its investigation, the Select Committee on Standards and Conduct[1] determines that there has been a significant breach of confidentiality or unauthorized disclosure by a Member, officer, or employee of the Senate, it shall report its findings to the Senate and recommend appropriate action such as censure, removal from committee membership, or expulsion from the Senate, in the case of a Member, or removal from office or employment or punishment for contempt, in the case of an officer or employee.

SEC. 9. The select committee is authorized to permit any personal representative of the President, designated by the President to serve as a liaison to such committee, to attend any closed meeting of such committee.

SEC. 10. Upon expiration of the Select Committee on Governmental Operations With Respect to Intelligence Activities, established by Senate Resolution 21, Ninety-fourth Congress, all records, files, documents, and other materials in the possession, custody, or control of such committee, under appropriate conditions established by it, shall be transferred to the select committee.

SEC. 11. (a) It is the sense of the Senate that the head of each department and agency of the United States should keep the select committee fully and currently informed with respect to intelligence activities, including any significant anticipated activities, which are the responsibility of or engaged in by such department or agency: *Provided,* That this does not constitute a condition precedent to the implementation of any such anticipated intelligence activity.

(b) It is the sense of the Senate that the head of any department or agency of the United States involved in any intelligence activities should furnish any information or document in the possession, custody, or control of the department or agency, or person paid by such department or agency, whenever requested by the select committee with respect to any matter within such committee's jurisdiction.

(c) It is the sense of the Senate that each department and agency of the United States should report immediately upon discovery to the select committee any and all intelligence activities which constitute violations of the constitutional rights of any person, violations of law, or violations of Executive orders, presidential directives, or departmental or agency rules or regulations; each department and agency should further report to such committee what actions have been taken or are expected to be taken by the departments or agencies with respect to such violations.

SEC. 12. Subject to the Standing Rules of the Senate, no funds shall be appropriated for any fiscal year beginning after September 30, 1976, with the exception of a continuing bill or resolution, or amendment thereto, or conference report thereon, to, or for use of, any department or agency ofthe United States to carry out any of the following activities, unless such funds shall have been previously authorized by a bill or joint resolution passed by the Senate during the same or preceding fiscal year to carry out such activity for such fiscal year.

(1) The activities of the Central Intelligence Agency and the Director of Central Intelligence.

(2) The activities of the Defense Intelligence Agency.

(3) The activities of the National Security Agency.

(4) The intelligence activities of other agencies and subdivisions of the Department of Defense.

(5) The intelligence activities of the Department of State.

(6) The intelligence activities of the Federal Bureau of Investigation, including all activities of the Intelligence Division.

SEC. 13. (a) The select committee shall make a study with respect to the following matters, taking into consideration with respect to each such matter, all relevant aspects of the effectiveness of planning, gathering, use, security, and dissemination of intelligence:

(1) the quality of the analytical capabilities of the United States foreign intelligence agencies and means for integrating more closely analytical intelligence and policy formulation;

(2) the extent and nature of the authority of the departments and agencies of the executive branch to engage in intelligence activities and the desirability of developing charters for each intelligence agency or department;

(3) the organization of intelligence activities in the executive branch to maximize the effectiveness of the conduct, oversight, and accountability of intelligence activities; to reduce duplication or overlap; and to improve the morale of the personnel of the foreign intelligence agencies;

(4) the conduct of covert and clandestine activities and the procedures by which Congress is informed of such activities;

(5) the desirability of changing any law, Senate rule or procedure, or any Executive order, rule, or regulation to improve the protection of intelligence secrets and provide for disclosure of information for which there is no compelling reason for secrecy;

(6) the desirability of establishing a standing committee of the Senate on intelligence activities;

(7) the desirability of establishing a joint committee of the Senate and the House of Representatives on intelligence activities in lieu of having separate committees in each House of Congress, or of establishing procedures under which separate committees on intelligence activities of the two Houses of Congress would receive joint briefings from the intelligence agencies and coordinate their policies with respect to the safeguarding of sensitive intelligence information;

(8) the authorization of funds for the intelligence activities of the Government whether disclosure of any of the amounts of such funds is in the public interest; and

(9) the development of a uniform set of definitions for terms to be used in policies or guidelines which may be adopted by the executive or legislative branches to govern, clarify, and strengthen the operation of intelligence activities.

(b) The select committee may, in its discretion, omit from the special study required by this section any matter it determines has been adequately studied by the Select Committee To Study Governmental Operations With Respect to Intelligence Activities, established by Senate Resolution 21, Ninety-fourth Congress.

(c) The select committee shall report the results of the study provided for by this section to the Senate, together with any recommendations for legislative or other actions it deems appropriate, no later than July 1, 1997, and from time to time thereafter as it deems appropriate.

SEC. 14. (a) As used in this resolution, the term ''intelligence activities'' includes (1) the collection, analysis, production, dissemination, or use of information which relates to any foreign country, or any government, political group, party, military force, movement, or other association in such foreign country, and which relates to the defense, foreign policy, national security, or related policies of the United States, and other activity which is in support of such activities; (2) activities taken to counter similar activities directed against the United States; (3) covert or clandestine activities affecting the relations of the United States with any foreign government, political group, party, military force, movement or other association; (4) the collection, analysis, production, dissemination, or use of information about activities of persons within the United States, its territories and possessions, or nationals of the United States abroad whose political and related activities pose, or may be considered by any department, agency, bureau, office, division, instrumentality, or employee of the United States to pose, a threat to the internal security of the United States, and covert or clandestine activities directed against such persons. Such term does not include tactical foreign military intelligence serving no national policy-making function.

(b) As used in this resolution, the term ''department or agency'' includes any organization, committee, council, establishment, or office within the Federal Government.

(c) For purposes of this resolution, reference to any department, agency, bureau, or subdivision shall include a reference to any successor department, agency, bureau, or subdivision to the extent that such successor engages in intelligence activities now conducted by the department, agency, bureau, or subdivision referred to in this resolution.

SEC. 15. (This section authorized funds for the select committee for the period May 19, 1976, through Feb. 28, 1977.)

SEC. 16. Nothing in this resolution shall be construed as constituting acquiescence by the Senate in any practice, or in the conduct of any activity, not otherwise authorized by law.

APPENDIX B—94TH CONGRESS, 1ST SESSION

S. RES. 9

Amending the rules of the Senate relating to open committee meetings

Resolved, That paragraph 7(b) of rule XXV of the Standing Rules of the Senate is amended to read as follows:

''(b) Each meeting of a standing, select, or special committee of the Senate, or any subcommittee thereof, including meetings to conduct hearings, shall be open to the public, except that a portion or portions of any such meetings may be closed to the public if the committee or subcommittee, as the case may be, determines by record vote of a majority of the members of the committee or subcommittee present that the matters to be discussed or the testimony to be taken at such portion or portions—

''(1) will disclose matters necessary to be kept secret in the interest of national defense or the confidential conduct of the foreign relations of the United States;

''(2) will relate solely to matters of committee staff personnel or internal staff management or procedure;

''(3) will tend to charge an individual with crime or misconduct, to disgrace or injure the professional standing of an individual, or otherwise to expose an individual to public contempt or obloquy, or will represent a clearly unwarranted invasion of the privacy of an individual;

''(4) will disclose the identity of any informer or law enforcement agent or will disclose any information relating to the investigation or prosecution of a criminal offense that is required to be kept secret in the interest of effective law enforcement; or

''(5) will disclose information relating to the trade secrets or financial or commercial information pertaining specifically to a given person if—

''(A) an Act of Congress requires the information to be kept confidential by Government officers and employees; or

''(B) the information has been obtained by the Government on a confidential basis, other than through an application by such person for a specific Government financial or other benefit, and is ruired to be kept secret in order to prevent undue injury to the competitive position of such person.

Whenever any hearing conducted by any such committee or subcommittee is open to the public, that hearing may be broadcast by radio or television, or both, under such rules as the committee or subcommittee may adopt.''.

SEC. 2. Section 133A(b) of the Legislative Reorganization Act of 1946, section 242(a) of the Legislative Reorganization Act of 1970, and section 102 (d) and (e) of the Congressional Budget Act of 1974 are repealed.

AIRPORT AND AIRWAY TRUST FUND REINSTATEMENT ACT OF 1997

Mr. LOTT. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 19, H.R. 668.

Mr. SPECTER. Mr. President, reserving the right to object, by the number, I am not certain that this is the tax bill.

Mr. LOTT. Mr. President, that is the airline ticket tax issue.

Mr. SPECTER. Mr. President, reserving the right to object, we have had this discussion with the distinguished chairman of the Finance Committee, Senator ROTH, and the distinguished ranking member, Senator MOYNIHAN. We have worked out an arrangement where Senator MOYNIHAN is prepared to have as the effective date the enactment date of this legislation—perhaps I should yield to my distinguished colleague, Senator MOYNIHAN, for him to speak for himself.

Mr. MOYNIHAN. Yes. I would like to say, first of all, that I very much appreciate the judgment of the Senator from Pennsylvania that the bill will be enacted, and that I propose to amend it such that it takes effect upon enactment as against the day it is actually passed, which is the precedent. But with that agreement, that it will be enacted.

Mr. SPECTER. Mr. President, that is satisfactory. Enactment, after it is passed by both Houses and signed by the President, is the effective date that it becomes law.

Mr. MOYNIHAN. That is correct. I also agree, hearing now that it will become law.

Mr. ROTH. Reserving the right to object.

Mr. SPECTER. Mr. President, if I may just finish the comment, I have great admiration for Senator MOYNIHAN. I don't know whether it will become law or not. If it does, so be it. I just want to be sure that enactment is not the day we pass it, but the enactment of the statute is the day which it becomes law after passage by the Congress and signed by the President.

With that understanding, I do not object.

Mr. LOTT. I thank the Senator from Pennsylvania and the leadership of the Finance Committee, the Senator from Delaware and the Senator from New York. I thank them very much for their leadership.

The PRESIDING OFFICER. Is there objection?

Mr. GRAHAM. Mr. President, reserving the right to object, I would like to make a statement for the RECORD prior to final disposition of this matter.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Florida that he be allowed to make a statement?

Mr. LOTT. Mr. President, reserving the right to object, I would like to inquire. Is the Senator from Florida suggesting that he would like to make a statement at this point in the RECORD?

Mr. GRAHAM. I would like to make a statement at this point in the RECORD prior to the disposition of this matter.

Mr. LOTT. Mr. President, could I inquire how long this might take?

Mr. GRAHAM. Approximately 10 minutes.

Mr. LOTT. Mr. President, I note the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. LOTT. Mr. President, I ask unanimous consent that after the statement of the Senator from Florida, my unanimous-consent request again recur with H.R. 668.

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

Mr. LOTT. I yield the floor.

The PRESIDING OFFICER. Under the order, the Senator from Florida is recognized.

Mr. GRAHAM. Mr. President, what concerns me—and why I want to make this statement before we vote it—is the irony of what we are doing at this hour of the night. We have spent the past several days, the past several weeks, debating an amendment of the U.S. Constitution to require a balanced budget. I support that amendment and look forward to voting for it on Tuesday.

In the midst of that debate, we now at this hour are going to take up legislation to extend the airline ticket tax, which has been expired for 10 of the past 14 months. I support that. We should reenact the airline ticket tax. In my opinion, we should not have allowed it to expire as we have.

But what is significant about what we are about to do is that we are extending the airline ticket tax to September 30, 1997. Why are we doing that? Is it because we do not need the resources of this revenue source beyond September 30, 1997? Clearly not.

There are extensive needs in the national aviation system. There are extensive needs in virtually every community which has an airport—a commercial airport or a general aviation airport—which benefits by the resources derived from this tax.

In light of that, why are we enacting this extension from now until September 30, 1997? We paid a heavy price because of the fact that this tax has been allowed to lapse twice in the past 14 months. This tax expired on January 1, 1996. It was nearly 8 months later, August 27, 1996, that it was reenacted. That reenactment, however, was only until the end of the calendar year 1996, December 31. It has lapsed since that date until today.

So since January 1, 1996 until today, the tax has been in effect approximately 4 months. It has been in a lapse status for 10 months. Every day that this tax is not in effect reduces the revenue to the aviation trust fund by over $15 million; approximately $500 million a month is lost to the support of safety in the air because of our failure to keep this tax consistently, stably in place.

In light of that history, I ask again, why today are we only enacting this until September 30, 1997? Why are we not making this a permanent tax today as it has been for most of its history?

Well, Mr. President, I must sadly report that we are doing this for exactly the reason that we have gotten into a $5.4 trillion national debt. Here tonight, in the middle of the debate on a

balanced budget amendment to the Constitution of the United States, we are about to engage in what I consider to be one of the more hypocritical actions in terms of our real commitment to a balanced budget.

What is the significance of having this tax lapse on the 30th of September? The significance is that we are going to count in our budget for the period that will begin October 1, 1997, $6 billion of revenue for the next 10 years, or $60 billion of additional revenue based on the way in which the U.S. Senate scores its legislation. The House, which uses a 5-year rule, is going to score $30 billion of additional revenue because we are allowing this tax to lapse on the 30th of September.

Mr. President, I know you are a prominent business person and deal with complex financial matters. You say, how can this be? What has actually happened in the last 14 months is, we have lost $5 billion of real revenue. Four percent of the Federal deficit for fiscal year 1997 will be the loss of revenue by allowing this ticket tax to lapse for 10 of the past 14 months. Yet, Mr. President, we are about to set up a process where it is almost guaranteed to lapse again.

The reason we are doing it is because under our arcane budget rules, if the tax is not in place as of the beginning of the fiscal year, we can assume that it is all fresh, new revenue and therefore we have found $60 billion in order to support other spending or to finance tax reductions. It is no real additional money. In fact, every expectation is there will be less real money because there will be a hiatus in this tax after September 30.

Why do I feel relatively confident, although sadly so, that there will be a hiatus in this tax after September 30, 1997? The answer is because we have virtually ordained that it shall be. Why have we done so? Because last year we passed an aviation reform bill, and in that bill we provided that the Secretary of Transportation and the Secretary of the Treasury would report to the Congress on their collective recommendations as to what kind of permanent method of taxation we should use for commercial aviation.

There is a dispute that has broken out between various segments of the commercial aviation industry as to how the tax should be structured. The interesting thing is that we are about to pass a bill in which the tax will expire on September 30. When do you think the report that we have already requested will be submitted to Congress? The answer is in October 1997. So we are not even going to get the report upon which we are supposed to make a judgment until after this tax has expired.

I suggest we are virtually guaranteeing that we will have yet another lapse in this tax, yet another hole in the trust fund that millions of Americans look to, albeit in a distant, obscure way, but they look to it with hopes that that trust fund will help make their period in the skies above America a safer experience.

The fact is that we have removed $5 billion of that safety over the last 14 months, and we are about to pass a bill that is virtually guaranteeing that we will remove more of it. And we are doing it solely, in my judgment, in order to be able to create a fictitious $60 billion that we can then use in order to justify other spending—not spending in aviation but spending in any area that we choose to do so, or reduction of taxes. If you want to know why in the last 20 years we have added almost $4.5 trillion to the national debt, you are looking here tonight at an example of the very kind of accounting gamesmanship that has gotten us into our current posture.

It had been my original intention to offer an amendment to this bill, as I did in the Finance Committee, to extend this bill at least to the end of the calendar year so that we would have an opportunity to consider the October report, make a reasoned judgment, and enact whatever permanent reforms we want to enact without suffering another lapse in revenue.

However, I recognize at this late hour the chances of such an amendment being successfully considered are nil. I also recognize the importance of getting this tax back in place as rapidly as possible so that we can stop the loss of the $5 billion.

Now, some might say, isn't it a good idea to have this tax lapse for 10 of the last 14 months. Has that not resulted in a bonanza of savings to American commercial aviation users? The fact is there has been some of that. Some airlines have, in fact, reduced their ticket price by the amount that was represented by the 10-percent tax which is embedded in that price. Others have not done so. So in some instances the American flying consumer has paid the same amount for the ticket but has not received the benefit of investment in the safety of our airways.

It will be my intention as soon as possible to introduce legislation that will make this tax permanent and will eliminate the ''Perils of Pauline'' that we have experienced first in August 1996 and now again in February 1997.

One of the reasons that we are rushing to enact this now is that the train is almost at the ''damsel in distress.'' The FAA has said that they are in a position now that within the next few weeks, if not days, they will be in a position of having to send out notices to aviation facilities across the country that they cannot meet their obligations because the trust fund will have been depleted.

For that reason, I do not believe it is prudent to add one additional absurdity on top of the pile of absurdities that are represented by our actions relative to this aviation tax over the last 14 months. I regret that we are taking this action. I am afraid that it casts a pall on our seriousness of commitment to a balanced budget amendment when we have often used the analogy with a balanced budget that it is like a serial killer who has written on the wall, ''Stop me before I kill again,'' that we need the balanced budget amendment to say, ''Stop us before we commit deficit again.''

Well, this is a good example of why we will need that constitutional amendment because clearly we are not showing that kind of discipline in adopting this legislation tonight. This is not a proud day for the Senate. It is not a happy day for the U.S. taxpayers. I hope that we can indicate to them that they will do better at some future date.

I thank the Chair.

Mr. LOTT addressed the Chair.

The PRESIDING OFFICER. The majority leader.

Mr. LOTT. Mr. President, I renew my unanimous-consent request to proceed to the consideration of Calendar No. 19, H.R. 668.

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

The clerk will report.

The legislative clerk read as follows:

A bill (H.R. 668) to amend the Internal Revenue Code of 1986 to reinstate the Airport and Airway Trust Fund excise taxes, and for other purposes.

The Senate proceeded to consider the bill.

Mr. MOYNIHAN. Mr. President, this is the first bill passed by the Committee on Finance in the 105th Congress, and characteristically, it was adopted by unanimous vote. I would point out that 6 of the 10 major pieces of legislation reported by the Senate Finance Committee during the 104th Congress also were passed unanimously. We are off to a good start in the Finance Committee this year, and I hope we maintain this fine tradition under the able leadership of Senator ROTH.

We are here today because the taxes levied to finance the airport and airway trust fund have expired. These taxes largely support the operations of our Federal Aviation Administration, including our Nation's air traffic control system. They also finance our airport improvement program, providing grant money for important airport equipment and infrastructure improvements. Collection of these taxes is critical to maintaining and improving our national air transportation system and continuing to fund airport modernization projects, aviation safety enhancements, and airport security efforts.

On February 4, the Finance Committee held a hearing on the status of the trust fund, which we found to be critical. There is an unexpected shortfall in the trust fund. The Treasury Department had transferred estimated trust fund excise tax receipts to the trust fund based upon an assumption—now known to be inaccurate—regarding the timing of tax receipts. The Treasury Department was required to reverse this transfer, and we are informed that a correcting transfer of almost $1.2 billion has been made.

The trust fund will be depleted much sooner than expected, which has consequences. FAA informs us that while the air traffic control system will be funded through the end of the fiscal year, funds for FAA capital programs will be depleted in March. If we do not act promptly, FAA will be forced to halt new airport improvement grants, and to cancel contracts that are designed to improve airports and airway systems in every part of the country. These programs could include better bomb detection equipment, improvements for better communication between pilots and controllers, and safety and security studies.

The Finance Committee under Chairman ROTH'S leadership moved quickly. One day after our hearing, we unanimously reported out a bill to extend the trust fund taxes through the end of the fiscal year, or September 30, 1997, and to allow Treasury to transfer trust fund tax receipts to the trust fund, no matter when the taxes are collected.

The House has now passed identical legislation. It therefore falls to us in the Senate to pass this bill, promptly and without amendment, and to send it to the White House for the President's signature.

Mr. HOLLINGS. Mr. President, I rise today in support of H.R. 668 which extends the aviation ticket tax through the end of fiscal year 1997. This tax is essential to the day-to-day operation of our Nation's aviation system. Money to improve, maintain, and run our airports is wholly supported by fees paid by the users of the air transportation system. It is not paid for by the taxes we all pay on April 15. Air travelers paid for our airports in the form of a 10 percent ticket tax every time they flew prior to December 31, 1996. That money has been going into the airport and airway trust fund, and the money is then disbursed through the appropriations process.

We have told people to pay this tax, and we have told them we will then spend it on airports and making improvements to the air transportation system. I know that there is a great need to refurbish our Nation's airports. In South Carolina, I visit small airports and see the condition of the runways. Small airports cannot generate the funds needed without the assistance of the Federal Aviation Administration, which provides the necessary money from the trust fund.

Our problem now is that the ticket tax expired at the end of 1996. Due to budget games, the money that we thought would be in the trust fund is not there. Originally we were advised that the trust fund would be broke in July, but it will be depleted as early as March. If this situation is not corrected, millions of dollars in airport modernization projects, aviation safety enhancements, and airport security efforts will have to be delayed or terminated. The obvious answer to this untenable situation is to reinstate the aviation ticket tax, and that is why I am supporting H.R. 668. I urge my fellow colleagues to quit playing budget games and start fulfilling one of government's primary functions—preserving the safety of the American people.

Mr. MCCAIN. Mr. President, I rise today in strong support of the legislation before us to reinstate the aviation excise taxes, which support important aviation safety and security improvements, as well as system capacity enhancements. It is our duty to take action now to restore this vital revenue stream. I commend the Finance Committee for recognizing the urgency of this situation and moving the legislation forward on a fast track.

The aviation excise taxes lapsed on December 31, 1996. Current estimates show that if we do not restore the aviation trust fund taxes immediately, the trust fund balance will be insufficient to pay for the safety and security programs we approved last year as part of the Federal Aviation Reauthorization Act of 1996. The Federal Aviation Administration predicts, and budget officials confirm, that under current circumstances capital spending on aviation will come to a halt in March. We are clearly doing the right thing by approving this legislation in these emergency circumstances.

I am disappointed, however, that we could only agree to extend the current tax structure for aviation improvements until the end of September. I fear we will face another tax lapse at that time, and risk jeopardizing the trust fund sponsored programs again. The taxes for aviation safety and security should remain in place until we are ready to offer a suitable alternative to the current structure. Congress last year established the National Civil Aviation Review Commission to study and make recommendations along these lines. The term of the tax extension should coincide with this process.

Nevertheless, I endorse this legislation because my foremost priority right now is restoring the viability of the trust fund. I realize that if the Senate successfully extended the term of the reinstatement beyond September, the House would object. We would have to take the issue up in conference, and thus delay resolution of a situation that has already reached critical mass. Realistically, we would probably end up in a position no better than the one we are in today.

That said, we should be clear about one of the main reasons we are setting ourselves up for another lapse. The dedicated aviation trust fund taxes have fallen victim to congressional budget games. The excise taxes that support our aviation system expired late last year and late the year before, following years of uninterrupted renewal. Congress figured out that if it allows the aviation taxes to lapse, it can reinstate the taxes later, and use the revenues to offset tax cuts or increased spending elsewhere in the budget.

This is budget chicanery, pure and simple. We should use the taxes paid by air travelers and shippers exclusively for aviation safety, security and capacity improvements. When we use these aviation revenues to offset spending elsewhere in the budget, the American people rightfully question how we intend to use their dedicated aviation taxes.

More important, we should not play with this dedicated aviation revenue stream, simply to take advantage of convoluted congressional budget procedures. The need for budget process reform is clear. I will continue to work with my colleagues in the Senate to impress upon them the reality that it does not matter if revenues and appropriations are accounted for on different sides of the ledger. Even if the excise tax revenues are deposited in the trust fund, deficit pressures will reduce incentives to spend these funds for their dedicated purpose—aviation safety and capacity improvements.

Budget process reform is a debate for a later date. Today, I rise in full support of this legislation to reinstate the aviation excise taxes on a short term basis to support critical aviation safety and security improvements. We must remain vigilant in seeing this legislation through to enactment. Any further lapse in the taxes that support the trust fund would jeopardize safety-related capital improvements, and shake the public confidence in the Government's ability to safeguard the Nation's air travelers.

We should all be held accountable for not letting the excise taxes that support our aviation system lapse in the future. It would be wrong and irresponsible for us to let the aviation trust fund get caught up in our budget games again.

Mr. FORD. Mr. President, I want to first thank Senator ROTH and Senator MOYNIHAN, the entire Finance Committee, and its staff, for acting quickly on reinstating, for a short term, the taxes that fund the Federal Aviation Administration [FAA]. Many of you may not be aware of how the FAA is funded, or how critical its mission is to our economy.

The FAA receives its funds from two sources—the general fund and the airport and airway trust fund. The trust fund, up until December 31, of last year, was supported by a series of excise taxes—a 10 percent ticket tax, a 6.25 percent freight waybill tax, a $6 international departure tax, and two noncommercial aviation fuel taxes. For Fiscal Year 1997, the appropriation for the FAA was $8.563 billion. A total of $3.1 billion comes from the general fund, and $5.3 billion from the trust fund.

One thing many of us fail to really comprehend is how important aviation is to our economy. We know that a safe and efficient air traffic control system, and a well functioning FAA, are key components to our economy. The President recently recognized the importance of aviation to our country by stepping in to stop a strike at American Airlines.

Let me put some numbers out to explain how critical aviation is—the total annual impact of aviation to our economy is $771 billion. That is a staggering figure, but we all know that travel for business and travel for tourism are key components of our local economies.

Failure to reinstate this tax will bring the FAA effectively to a halt. Yes, the air traffic controllers would be paid, as would the other FAA staff. But, my colleagues should understand that no money—absolutely no money, would be available to buy new air traffic control equipment and to fund airport development.

This is not a simple problem. The FAA has under contract billions of dollars for new equipment. If the FAA is not able to pay its contractors, it will have to give them adequate notice to shut down the programs. This means more than not buying a piece of equipment next week, but shutting down existing programs underway. The lawyers will be suing each other for years.

I want to also state that last year, this body worked hard to pass an authorization bill for the FAA. As those of you that were here will recall, we stayed in session an extra week to get that bill through. That bill was and is important because it set a course for doing something different for the FAA—fundamentally changing the way it does business and how we fund that agency.

The long-term funding question remains unanswered. To answer that question, this body voted to establish a 21-member Commission. The work of the Commission must move forward, and it must be done expeditiously. With reconciliation looming, any change in the current system—a new tax system or a new user fee system—must be worked out now. The entire aviation industry must agree to how much money the FAA needs, and who, and how to pay for it.

I know that many of my colleagues share this view, and look forward to working this matter out with them.

The lapse in the ticket tax and the uncertainty over funding, is something our high technology, safety organization—the FAA—cannot afford. Our constituents and families cannot afford it either.

Mr. McCAIN. Mr. President, I rise to discuss an important issue related to reinstatement of the aviation excise taxes. Financing for the Federal Aviation Administration [FAA], and for the aviation safety and security initiatives it supports, is an issue of critical importance in both the short and the long term. That is why the last Congress established a process for achieving a long-term solution.

The Federal Aviation Reauthorization Act of 1996 created the National Civil Aviation Review Commission, and tasked it with developing specific legislative proposals for long-term FAA funding. Unfortunately, the administration has failed to appoint any of the 13 members it is responsible for appointing to the Commission despite the fact that the reauthorization act was signed into law nearly 5 months ago. This Commission has very important responsibilities and it needs to begin its work soon. The exercise we are engaged in today clearly demonstrates that need.

The Commission has a limited time in which to complete its tasks and must begin its work immediately. In fact, an independent assessment of the funding needs of the FAA should be completed this week. The assessment was prepared specifically for the Commission s use. However, because the administration has failed to make any appointments, there probably will not be a Commission to receive the assessment.

The aviation leadership of the Commerce Committee wrote to the President on January 28 to request that he take action to ensure that the commissioners are appointed immediately. I have also made Transportation Secretary Slater aware on numerous occasions of the urgency of the Commission appointments.

Mr. President, I ask unanimous consent that a letter to the President on this subject from Senators GORTON, HOLLINGS, FORD, and myself be printed at this point in the RECORD.

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

U.S. SENATE, COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, DC, January 28, 1997.

Hon. WILLIAM J. CLINTON,
The President,
The White House,
Washington, DC.

DEAR MR. PRESIDENT: As you know, the Federal Aviation Reauthorization Act of 1996, Public Law 104–264, established the National Civil Aviation Review Commission to address the two very important issues of aviation safety and long-term funding of the national air transportation system, particularly the Federal Aviation Administration. We worked closely with the Administration to craft this legislation, and we appreciate the Administration's support. However, the act set down a firm time line for the Commission to follow in accomplishing its many tasks, including important issues related to aviation safety. It is time now to move forward and enable the Commission to do its work.

Thirteen members of the Commission are to be appointed by the Secretary of Transportation. Given the time constraints of the act and the critical nature of the Commission's duties, we hope that you will act swiftly to ensure the appointment of these commissioners. We expect that the Congressional leadership will move forward in concert with the Administration in making its own appointments. However, the leadership has waited for the Administration to make a move before it completes its appointments so that Congressional appointees can provide any needed balance in the composition of the Commission.

We urge you to take action to ensure that these commissioners are appointed as soon as possible. The Commission has a great deal to accomplish and time is running short. In February, an independent assessment of the funding needs of the FAA should be completed and the work of the Commission must begin in earnest. Knowing of your commitment to a safe and secure aviation system, we look forward to your swift action on this matter.

Sincerely,

JOHN MCCAIN,
Chairman.
SLADE GORTON,
Chairman, Aviation Subcommittee.
ERNEST F. HOLLINGS,
Ranking Member.
WENDELL H. FORD,
Ranking Member, Aviation Subcommittee.

Mr. LOTT. Mr. President, I wonder if the distinguished chairman of the Commerce Committee will yield for a question?

Mr. McCAIN. Mr. President, I would be happy to yield to the distinguished majority leader.

Mr. LOTT. I thank the Senator. As the chairman knows, the congressional leadership also has responsibility for appointing eight of the members of the commission. I wanted to confirm my understanding of the congressional leadership's responsibility for making appointments to the commission. Am I correct in believing that the congressional appointees were designed to ensure that the commission is not composed simply of people representing just the views of the administration?

Mr. McCAIN. The majority leader is absolutely correct. As mentioned in our letter to the President, the chief sponsors of the FAA reauthorization bill wanted to be sure that the commission was a balanced group. We fully expected the administration to act very quickly to appoint commissioners, so that then the congressional leadership would have an opportunity to address any perceived biases or omissions.

Mr. LOTT. I appreciate your confirming my understanding of the intent of the reauthorization act. Also, I join you in urging the administration to make its appointments without delay. The commission must begin working on a long-term funding solution so that we can avoid such problems as we are addressing today.

Mr. McCAIN. I would like to thank the majority leader for providing me this opportunity to clarify the matter of appointments to the National Civil Aviation Review Commission. His support and leadership have been instrumental in the efforts of the Commerce Committee to address the needs of the National Aviation Transportation System.

At this point, I once again urge the administration to assume responsibility for making appointments to the National Civil Aviation Review Commission, so that the long-term funding needs of the FAA can be addressed.

Mr. FAIRCLOTH. Mr. President, on H.R. 668, had this been a rollcall vote, I would like for the RECORD to reflect that I would have voted ''no.''

No one is more supportive of aviation safety than myself. I have pointed out

on the Senate floor that I have actually been in a plane crash.

But, I oppose this measure because I believe that the American people are taxed too much. Why is it that general revenues, collected through income taxes, are not enough to cover such basic government services as safe skies.

Further, even if we were to impose such a fee, we should find offsetting spending and tax cuts so that we do not increase the tax burden on the American people. Regrettably, this effort failed in the House of Representatives.

Finally, this tax could be restructured so that it does not punish traveling Americans, but such a report on restructuring is not due until October of this year.

For all of these reasons I oppose the ticket tax.

Mr. LOTT. Madam President, I ask unanimous consent the bill be considered read a third time, passed, and the motion to reconsider be laid upon the table.

The PRESIDING OFFICER (Ms. COLLINS). Without objection, it is so ordered.

The bill (H.R. 668) was passed.

Mr. LOTT. Madam President, I thank the distinguished chairman from Delaware for his efforts in this matter. I think it is clearly the right thing to do. The alternative would have been a catastrophe with our aviation programs in this country. We did not really have any alternative, and I think we have taken the right step. The proof that it is the right thing to do is that it passed overwhelmingly in the House, I think close to 370 votes perhaps, and in the Senate, while there are some reservations about it, we are able to move it with unanimous consent.

So I thank the leadership of the committee.

Mr. MOYNIHAN. Will the majority leader yield for a comment?

Mr. LOTT. I will be delighted to yield.

Mr. MOYNIHAN. Madam President, this is the first measure to be reported from the Committee on Finance, and once again it was reported unanimously. In the last Congress, of the 10 major measures that came out under the leadership of Senator ROTH, 6 were unanimous, which speaks of his chairmanship and prudence and desire to enhance revenues.

Mr. LOTT. I am glad the Senator put it so delicately, Madam President.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. ROTH. Madam President, I would just like to say to the distinguished majority leader, it would not have been possible to have gotten this through unanimously without the active support of the ranking member, and I publicly thank him for his contribution.

I should also like to point out that what we did is exactly what was requested by the administration.

Mr. LOTT. Yes.

Mr. ROTH. To carry it out until September 30. And that is exactly what we did. I think this is a wise move. It protects the safety of our air passengers. I thank the leader for his help in this matter.

Mr. LOTT. Madam President, I thank the Chair.

Mr. MOYNIHAN. Madam President, may I just concur in those remarks. May I also report that the trust fund began in the administration of President Nixon, and our distinguished Senator from Utah was the person who managed the representation up on Capitol Hill, from the Department of Transportation.

MEASURE READ THE FIRST TIME—S. 378

Mr. LOTT addressed the Chair.

The PRESIDING OFFICER. The majority leader.

Mr. LOTT. I understand that S. 378, introduced today by Senator THOMPSON, is at the desk, and I ask for its first reading.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A bill (S. 378) to provide additional funding for the Committee on Governmental Affairs of the Senate.

Mr. LOTT. I now ask for its second reading, and I object to my own request on behalf of Senators on the Democratic side of the aisle.

The PRESIDING OFFICER. The bill will be read a second time on the next legislative day.

Mr. LOTT. Madam President, I yield the floor.

PARTIAL-BIRTH ABORTIONS

Mr. BROWNBACK. Madam President, I would like to draw the Senate's attention to a statement that was made yesterday by an individual heavily involved in the debate on partial-birth abortions. Like most Americans, I oppose partial-birth abortions. These latest facts which have now come to light show that the defense of this indefensible procedure has been built on some outright lies.

Yesterday, Wednesday, February 26, in the New York Times, there was a story that ran on page A–11, detailing the admissions of Ron Fitzsimmons, the executive director of the National Coalition of Abortion Providers. In the course of that article, and in another published in the American Medical News dated March 3, Mr. Fitzsimmons admits to lying, ''through [his] teeth,'' during his defense of partial-birth abortions, when he said that the procedure was used rarely and only on women whose lives were in danger or whose fetuses were damaged.

''It made me physically ill'' to make these statements, he said. ''I told my wife the next day, 'I can't do this again.' ''

The lies he admitted to focus on three major issues about partial-birth abortion, which is a terrible procedure, a late-term child being pulled out, mostly delivered, turned over, and then the abortion performed.

The lies he admitted to focus on three major issues: No. 1, the number of these abortions performed annually in the United States; No. 2, the physical health of the mother and child involved; and, No. 3, the timing of the majority of partial-birth abortions.

In an April 10, 1992, news conference announcing his veto of a ban on this procedure, H.R. 1833, the Partial-Birth Abortion Ban Act, the President said, ''This terrible problem affects a few hundred Americans every year.'' And that has been continued to be claimed by a number of others. Yet, Mr. Fitzsimmons' admission is different. In the New York Times he now says the ''procedure is performed far more often than his colleagues have acknowledged, and on healthy women bearing healthy fetuses.''

The Medical News story reports on an investigation done by the Record, a Bergen County, NJ, newspaper, and they stated this:

> The New Jersey paper reported last fall that physicians at one facility performed an estimated 3,000 abortions a year on fetuses between 20 and 24 weeks of which at least half are by intact D&E [dilation and evacuation]. One of the doctors was quoted as saying, ''We have an occasional amnio abnormality, but it's a minuscule amount . . . most are for elective, not medical reasons; people who did not realize, or didn't care, how far along they were.''

The Washington Post investigation turned up similar findings.

I report that and put that forward here to the Senate, as this is an issue that is one of the front 10 Senate bills to face this body. It is a bill I hope we can act on. It is a bill, passed last year by both the House and Senate and vetoed by the President, to ban this late-term-abortion procedure, a procedure that is an abhorrent procedure, opposed by virtually all American people. Now we are finding out from some of the leading people advocating on the other side that they misrepresented—indeed, he said, ''outright lied'' about the number and the timeframe as to when these were performed.

I hope we can move forward aggressively and quickly on banning this procedure in America. And I hope the President will reconsider, in light of these factual statements, in light of this information that is coming forward from particular people involved directly in the industry, and that he will sign the bill this year, when we pass this, to ban this horrendous procedure that has continued to be allowed in our civilized country.

I commend all Senators to read this article that appeared yesterday in the New York Times, and the article I cited that is going to be appearing in the Medical News. I think it will add new light to this situation, and, hopefully, we can move forward, united, to take away this terrible situation that continues to happen in our country.

With that I yield the floor.

PROGRAM

Mr. BROWNBACK. Mr. President, for the information of all Senators, the Senate will be in session tomorrow for a period of morning business. As announced earlier, there will be no rollcall votes during Friday's session of the Senate. The Senate will also be in session on Monday, for a period of morning business. However, no rollcall votes will occur on Monday.

Under the previous order, the Senate will resume the balanced budget amendment on Tuesday. By order, a vote will occur on passage of the constitutional balanced budget amendment on Tuesday, at 5:15 p.m. For the information of my colleagues, that will be the next rollcall vote.

APPOINTMENT BY THE MAJORITY LEADER

The PRESIDING OFFICER. The Chair, on behalf of the majority leader, pursuant to Public Law 93–415, as amended by Public Law 102–586, announces the appointment of Michael W. McPhail, of Mississippi, to the Coordinating Council on Juvenile Justice and Delinquency Prevention.

MEASURE PLACED ON THE CALENDAR—S.J. RES. 18

Mr. BROWNBACK. Madam President, I ask unanimous consent that Senate Joint Resolution 18 be placed on the calendar.

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

ORDERS FOR FRIDAY, FEBRUARY 28, 1997

Mr. BROWNBACK. Madam President, I ask unanimous consent that when the Senate completes its business today it stand in adjournment until the hour of 10 a.m. on Friday, February 28. I further ask, immediately following the prayer, the routine requests through the morning hour be granted and there then be a period of morning business with Senators to speak for up to 5 minutes each, except for the following: Senator THOMAS for up to 30 minutes, Senator DASCHLE or designee for up to 30 minutes, Senator HAGEL for 10 minutes, Senator LIEBERMAN for 10 minutes, Senator REID for 15 minutes.

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

ADJOURNMENT UNTIL 10 A.M. TOMORROW

Mr. BROWNBACK. If there is no further business to come before the Senate, I now ask the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 7:16 p.m, adjourned until Friday, February 28, 1997, at 10 a.m.

NOMINATIONS

Executive nominations received by the Senate February 27, 1997:

IN THE COAST GUARD

THE FOLLOWING REGULAR AND RESERVE OFFICERS IN THE U.S. COAST GUARD TO BE PERMANENT COMMISSIONED OFFICERS IN THE GRADES INDICATED:

To be commander

CATHERINE M. KELLY

To be lieutenant

MONICA L. LOMBARDI
MICHAEL E. TOUSLEY
LATICIA J. ARGENTI
THOMAS F. LENNON
SLOAN A. TYLER
DONALD A. LA CHANCE II
KAREN L. LLOYD
MITCHELL L. HARVEY
MARK A. HARRISON
ROBERT A. RINELLI
ERNESTO T. ROIG
RICHARD T. TEUBNER
ALBERT W. WYLIE

To be lieutenant (junior grade)

ROBERT M. HENDRY
MARK S. YOUNG
MICHAEL K. SAMS
MARK S. GILL
CHRISTOPHER CURATILO
WILLIAM D. BELLATTY
LESLIE W. CLAYBORNE
DENNIS J. O'MARA
KEVIN G. MORGAN
JOHN K. PARK
SCOTT A. BEAUREGARD
HECTOR A. AVELLA
MICHAEL A. MACON
DAVID L. GARRISON, JR.
CHERI BENIESAU
EDWIN W. PARKINSON III
STEVEN A. MAGARO
JAMES E. NOE, III
SHANNAN D. BROWN
THOMAS W. MCDEVITT
SAMUEL J. GOSWELLEN
ROBERT S. BLANCHARD
TRISTE A. PERCIVAL
GREGORY STANCLIK
JEAN M. TIERNEY
MICHAEL E. PLATT
PATRICK W. CLARK
BRANDON D. JONES
MICHAEL D. EVANISH
MICHAEL A. ARGUELLES
CHARLES W. TENNEY
FRANCISCO S. REGO
PATRICK B. OATES
FREDERICK R. READ
ANTHONY J. ALAIRD
PATRICK J. MURPHY
RANDALL J. NAVARRO
ROBERT L. SMITH, JR.
GERALD D. SLATER
LAWRENCE C. GOERSS
SEAN P. REGAN
JEROME F. SINNAEVE
MARK G. PHIPPS
CHARLES G. SMITH
CAREY L. HIXSON
STEVEN A. LANG
VINCENT E. PATTERSON
JEFFREY F. CRANE
SCOTT X. LARSON
JERRY A. HUBBARD
JOHN A. THOMPSON
BENJAMIN A. BENSON
DANIEL J. HIGMAN
STEPHEN G. LEFAVE
WILLIAM J. DEGREE
RALPH L. BENHART, JR.
NANCY J. TRAUX
STUART M. SOCKMAN
GARY K. POLASKI
THOMAS S. WAGNER
GREGORY M. RAINEY
BRYAN L. DURR
DOUGLAS C. DIXON
JOSEPH E. DEER III
BION B. STEWART II
DAVID W. SAUNDERS
BENJAMIN L. SMITH II
JOHN A. BRENNER
RICHARD W. CONDIT
JUAN LOPEZ
RICHARD O. ELLIS
CORNELL I. PERRY, JR.
JAMES V. ROCCO
DARELL SINGLETERRY
LAMAR V. JOHNSON
MARK D. GORDON
RICHARD A. GRIMM
ROCKY L. COLE
JASON A. MERRIWEATHER
PATRICK J. ST. JOHN
JEFFREY A. JANSZEN
LLOYD A. MALONE, JR.
VERNON E. GRAIG
CLAIRMONT A. AUSTIN
JAMES B. MORAN, JR.
NICHOLAS R. KOESTER
STEVEN J. SAGER
BURT A. LAHN
JAMES A. HEALY
MICHAEL E. KASZUBA
THERESA L. TIERNEY
JESS P. LOPEZ
CHARLES E. JOHNSON
ROBERT L. SEALE III
STEPHEN D. JUTRAS
JAMES R. LANGEVIN
QUENTIN C. KENT III
MICHAEL C. LONG
BRYAN E. DAILEY
KATHRYN C. DUNBAR
DAWN M. KALLEN
PATRICK W. MC MAHON
KENNETH S. KOSTECKI
BRYAN R. BENDER
PAUL R. BISSAILLON
WARREN J. RUSSELL
ERIC J. GANDEE
FRANCIS COLANTONIO, JR.
IAN R. KIERNAN
JOHN P. SHERLOCK
MICHAEL A. SMITH
STEPHEN H. OBER
DALE C. FOLSOM
TIMOTHY E. DARLEY
JAMES F. MILLER
JOHN M. SEDWICK
LEONARD A. JONES
CAROL L. MC CARTHER
MICHAEL S. LOY
DARYL R. PELOQUIN
ANTHONY J. NYGRA
ZACHARY H. PICKETT
CHRISTOPHER R. KAPLAN
GEOFFRY D. OWEN
GREGG G. KELLY
GARY F. BALL
NICOLE S. GIRARD
RICHARD L. JUNG
ROBERT M. SCHAMBIER
STEVEN J. PRUYN
GEOFFREY J. WARREN
MATTHEW R. WALKER
KEITH A. OVERSTREET
JOHN M. MARIAN
Christopher D. Beltrand
Eugene E. Johnson
Thomas A. Griffitts
Tung T. Ly
Edwin Diaz-Rosario
Michael R. Guerin
James M. Reilly
Edward C. Newman
Arthur R. Shuman III
RONALD W. REUSCH

IN THE AIR FORCE

THE FOLLOWING-NAMED OFFICERS FOR APPOINTMENT TO THE GRADES INDICATED IN THE U.S. AIR FORCE UNDER TITLE 10, UNITED STATES CODE, SECTIONS

To be colonel

JOHN L. BUSH, 0000
RICHARD W. COMLEY, 0000
JAMES M. KEAGLE, 0000
JAMES P. KIPPERT, 0000
GARRY W. MATHESON, 0000
KENT M. MCLEAN, 0000
MICHAEL J. NICHOLS, 0000

To be lieutenant colonel

JEFFERY C. BRENTON, 0000
DOUGLAS B. DYER, 0000
CLYDE M. EGGETT, 0000
SAMUEL P. FYE, 0000
CHARLES W. HORTON, 0000
DANIEL E. JOHNSON, 0000
WILLIE B. TOMONY, 0000

To be major

JERRY A. COOPER, 0000
ROSS P. GOERES, 0000
WILLIAM R. KENT III, 0000
BRADFORD LOYD, 0000
STEPHEN A. MAYS, 0000
ROBERT A. RENNICKER, 0000
RALPH T. SMART, 0000
DAVID G. TALABA, 0000

IN THE ARMY

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE RESERVE OF THE ARMY UNDER TITLE 10, UNITED STATES CODE, SECTION 12203:

To be colonel

LARRY W. RACSTER, 0000

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES AIR FORCE UNDER TITLE 10, U.S.C., SECTION 624:

To be colonel

BARRY S. ABBOTT, 0000
CANDACE C. ABBOTT, 0000
DOUGLAS E. ACKLIN, 0000
ANTHONY J. ADAMICK, 0000
MICHAEL P. AEILLO, 0000
ROBERT R. ALLARDICE, 0000
CRAIG R. ALLEN, 0000
C.D. ALSTON, 0000
DAVID N. ANDERSON, 0000
HOWARD P. ANDRUS, JR., 0000
THOMAS D. ARDERN, 0000
PAMELA A. ARIAS, 0000
JOHN A. ARRIGO, 0000
ARTHUR E. BAER, JR., 0000
CAROLYN M. BALVEN, 0000
JOHN A. BARTON, 0000
BROOKS L. BASH, 0000
MICHAEL J. BASLA, 0000
CARLA D. BASS, 0000
RONALD L. BEAN, 0000
JAMES D. BEASON, 0000
FRANK E. BEATY, 0000
JOSEPH C. BEBEL, 0000
DAVID R. BEECROFT, 0000
SCOTT W. BERRY, 0000
DAVID F. BIRD, JR., 0000
STEVEN A. BITLER, 0000
GARY L. BLEDSOE, 0000
RONALD R. BLICKLEY, 0000
JANET C. BLOOM, 0000
MARK S. BORKOWSK, 0000
JEFFREY S. BOULWARE, 0000
JOHN P. BOWLER, 0000
THOMAS L. BOWLEN, 0000
PAUL D. BRADEN, 0000
WILLIAM T. BRADEN, 0000
WILLIAM W., BRADLEY, JR., 0000
CLIFTON L. BRAY, JR., 0000
TED A. BREWER, 0000
ROBERT B.BREWSTER, 0000
JEFFREY S. BROWN, 0000
THOMAS D., BROWN, JR., 0000
FRANCIS M. BRUNO, 0000
RAYMOND T. BULL, 0000
JAMES A. BUNYARD, 0000
BOYCE B., BURLEY III, 0000
JAMES R. BURLING, JR., 0000
KEVIN P. BURNS, 0000
PAUL F. CAPASSO, 0000
STEVEN R. CAPENOS, 0000
HERBERT J. CARLISLE, 0000
CHARLES G. CARPENTER, 0000
FLOYD L. CARPENTER, 0000
STEPHEN R. CARR, 0000
RICHARD M. CHAPIN, 0000
RANDALL W. CHAPMAN, 0000
EDD P. CHENOWETH, 0000
ALLAN D. CHILDERS, 0000
CRAIG T. CHRISTEN, 0000
LANCE D. CHRISTIAN, 0000
KENNETH A.CINAL, 0000
JAY L. CLARK, 0000
ROY A. CLELAND, 0000
ROBERT M. CLOWERS, 0000
DOUGLAS R. COCHRAN, 0000
ROBERT A. COE, 0000
DONALD C. COLEMAN, 0000
JOHN D. COLLIER, 0000
DONAL J. COLLINS, 0000
WILLIAM M. COLLINS, 0000
JOHN M. COPELAND, 0000
ROGER T. CORBIN, 0000
JOHN O. COWAN, 0000
MICHAEL D. CRANE, 0000
GREGORY C. CRYSTAL, 0000
JOHN R. CULCLASURE, 0000
JOHN C. CULPEPPER, 0000
PAUL W. CURTIS, 0000
CHARLES CZARNIECKI, 0000
JOHN M. DAILEY, 0000
MICHAEL C. DAMRON, 0000
THOMAS L. DARNER, 0000
JOEL D. DAVID, 0000
GERALD D. DAVIDSON, 0000
CHARLES R. DAVIS, 0000
JAMES S. DAVIS, 0000
MICHAEL K. DEACY, 0000
RICHARD P. DEAVEL, 0000
MICHAEL E. DEHART, 0000
PAUL A. DETTMER, 0000
HARRY J. DEVAULT, 0000

RICHARD T. DEVEREAUX, 0000
FRANTZ DEWILLIS, 0000
GARY W. DILK, 0000
DANIEL R. DINKINS, JR., 0000
SHARON R. DISLER, 0000
ROBERT D. DORSEY, 0000
WILLIAM K. DOTY, JR., 0000
GAIL R. DUKE, 0000
DAVID D. DYCHE, 0000
DANIEL R. EAGLE, 0000
JOHN L. EASLEY, 0000
JEFFREY W. EBERHART, 0000
STEVEN R. EDDY, 0000
JOHN R. EDINGER, 0000
JACK B. EGGINTON, 0000
DAVID W. EIDSAUNE, 0000
JAMES K. EKEN, 0000
RICHARD K. ELDARD, 0000
DANIEL E. ELDRIDGE, 0000
JACK H. ELDRIDGE, 0000
GUS G. ELLIOTT, JR, 0000
ELIZABETH A. ENAS, 0000
THOMAS D. ENTWISTLE, 0000
ROBERT D. ESKRIDGE, 0000
DAVID G. ESTEP, 0000
DANIEL L. FALVEY, 0000
STEPHEN F. FARRY, JR., 0000
GREGORY A. FEEST, 0000
THOMAS P. FINNEGAN, 0000
MICHAEL S. FITZ, 0000
DAVID L. FLEMING, 0000
LEO FLORICK, 0000
ALFRED K. FLOWERS, 0000
JAMES M. FORD, 0000
PATRICIA M. FORNES, 0000
NEAL I. FOX, 0000
WALTER FRANT, 0000
KENNETH M. FREEMAN, 0000
GREGORY B. FRICK, 0000
MARK W. FRY, 0000
MYRNA L. FULLER, 0000
RANDAL D. FULLHART, 0000
TIMOTHY D. GANN, 0000
PATRICK J. GARCIA, 0000
RAY T. GARZA, 0000
JOHN F. GAUGHAN, II, 0000
JONATHAN D. GEORGE, 0000
PETER W. GEURTZ, 0000
KRIS D. GIANAKOS, 0000
RICHARD M. GIBALDI, 0000
FREDERICK C. GILBERT, 0000
ANDREW G. GILMORE, 0000
LEE GLASER, 0000
EDWARD O. GOEHE, 0000
ADRIAN GOMEZ, 0000
JOHN C. GOODMAN, 0000
JEFFREY S. GORDON, 0000
FRANK GORENC, 0000
LOWELL E. GRAHAM, 0000
STEVEN GRAHAM, 0000
ANTIONETTE L. GREEN, 0000
SANDRA A. GREGORY, 0000
THOMAS E. GRIFFITH, 0000
REYES GUERRA, 0000
MARK A. GUNZINGER, 0000
PAUL F. GUZOWSKI, 0000
DALE R. HANNER, 0000
WILLIAM E. HANSON, 0000
RICHARD C. HARDING, 0000
DONALD L. HARGARTEN, 0000
ROBERT H. HASELOFF, 0000
CHARLES W. HASSKAMP, 0000
MICHAEL L. HAUSER, 0000
RONNIE DAVOSE HAWKINS, JR. 0000
ERNST K. HAYNES, 0000
MICHAEL W. HAZEN, 0000
MICHAEL G. HAZENFIELD, 0000
WILLIAM J. HEINEN, 0000
DONALD W. HENNEY, III, 0000
DAVID R. HENSLEY, 0000
JOHN S. HEUMANN, 0000
DARRYL H. HICKMAN, 0000
ALVIN L. HICKS, 0000
TED A. HILBUN, 0000
STANLEY L. HILL, 0000
EVAN J. HOAPILI, 0000
MICHAEL J. HOELZEL, 0000
LEE V. HOFFMAN, JR., 0000
ERIC H. HOGANSON, 0000
JAMES R. HOLADAY, 0000
EDWARD C. HOLLAND, III, 0000
MARK A. HOMRIG, 0000
DONALD L. HOOVER, 0000
BILLY J. HOPPE, 0000
ROBERT W. HUGHES, 0000
LUCY E. HURLBUT, 0000
JAMES R. HUTCHINSON, 0000
THOMAS W. HYDE, 0000
MICHAEL J. ILTIS, 0000
RICHARD J. INGENLOFF, 0000
DAN A. ISBELL, 0000
ROBERT B. IVERSON, 0000
RANDAL K. JAMES, 0000
RANDALL L. JAMES, 0000
GORDAN R. JANIEC, 0000
DAVID S. JANIK, 0000
GRAIG L. JARVIS, 0000
DAVID J. JOHNSON, 0000
ELWOOD K. JOHNSON, JR., 0000
JAMES S. JOHNSON, 0000
NORMAN E. JOHNSON, 0000
WAYNE M. JOHNSON, 0000
MARK F. JOHNSTON, 0000
DUANE A. JONES, 0000
FRASER B. JONES, JR., 0000
DANIEL W. JORDAN, III, 0000
JAN M. JOUAS, 0000
DENNIS M. KAAN, 0000
JEFFREY P. KALOOSTIAN, 0000
EDWARD L. KASL, 0000
KARL A. KASZUBA, 0000
JAMES D. KELLEY, 0000
TERRILL L. KEMP, 0000
KEVIN G. KENKEL, 0000
JAMES S. KENT, 0000
OLEN S. KEY, 0000
CAROL D. KING, 0000
RICHARD A. KNISELEY, 0000
DONALD T. KNOWLES, 0000
RAYMOND O. KNOX, 0000
THOMAS J. KOCH, 0000
PER A. KORSLUND, 0000
JOSEPH E. KUBACKI, 0000
DAVID KUHNS, 0000
JEFFREY A. KWALLEK, 0000
DAVID A. LAFAVE, 0000
HORACE L. LARRY, 0000
ELISABETH A. LEASURE, 0000
RONALD LEE, 0000
ERWIN F. LESSEL, III, 0000
DOUGLAS R. LINCOLN, JR., 0000
DAVID C. LOEWER, 0000
THOMAS C. LORIMER, 0000
DONALD LUSTIG, 0000
JEROME S. MACKEN, 0000
MICHAEL M. MAHAR, 0000
TIMOTHY J. MALLOY, 0000
LEMUEL F. MARLOW, 0000
MICHAEL C. MARRO, 0000
FRANCES C. MARTIN, 0000
MATTHEW F. MARTORANO, 0000
BOBBY GRAHAM MATHIS, 0000
DENNIS M. MATTHEWS, 0000
JOSEPH A. MAY, 0000
EDWARD D. MAYFIELD, 0000
DENNIS M. MC CARTHY, 0000
WILLIAM N. MC CASLAND, 0000
FAYNE A. MC DOWELL, 0000
WILLIAM L. MC GILL, 0000
JAMES F. MC GOVERN, JR., 0000
RICHARD A. MC INTOSH, 0000
STEPHEN J. MC NAMARA, 0000
MICHAEL J. MC PHAIL, 0000
CRAIG R. MC PHERSON, 0000
CRAIG S. MENSCHNER, 0000
RONNE G. MERCER, 0000
CARMEN M. MEZZACAPPA, 0000
CHRISTOPHER D. MILLER, 0000
DOUGLAS L. MILLER, 0000
MICHAEL M. MILLER, 0000
EDDIE R. MIMS, JR., 0000
DARPHAUS L. MITCHELL, 0000
THOMAS C. MOE, 0000
EDWARD J. MONAHAN, 0000
JOE S. MORALES, 0000
RANDY E. MORRIS, 0000
WILLIAM E. MOSELEY, 0000
HAROLD W. MOULTON II, 0000
JOSEPH F. MUDD, JR., 0000
KENT A. MUELLER, 0000
LINDA S. MURNANE, 0000
WILLIAM P. MURRAY IV, 0000
DAVID T. NAKAYAMA, 0000
CURTIS V. NEAL, 0000
JOSE A. NEGRON, JR., 0000
PAUL M. NEIHEISEL, 0000
JOHN M. NEILL, 0000
KATHLEEN J. NEVIN, 0000
MICHAEL J. NEWELL, 0000
MARK J. NICHOLS, 0000
DAVID R. NOBLE, 0000
JONATHAN C. NOETZEL, 0000
RONALD J. NORMAN, 0000
JONATHAN S. NORWOOD, 0000
ANDREW E. NOTESTINE II, 0000
GREGORY J. O BRIEN, 0000
RICK E. ODEGARD, 0000
DANNY R. OHNESORGE, 0000
GEORGE T. O NEAL, 0000
WILLIAM B. OSBORNE, 0000
MICHAEL F. O SHEA, 0000
HANS J. OTTEN, 0000
ALLAN D. OVERBEY, 0000
THOMAS C. OWSKEY, 0000
JAMES V. PAINTER, 0000
JOHN W. PASSEY, 0000
JAMES C. PATCH JR., 0000
BRUCE L. PATERSON, 0000
MICHAEL S. PETERS, 0000
STEPHEN J. PITOTTI, 0000
JAMES E. PORTER, III, 0000
JOHN M. POUTIER, 0000
RAFAEL PUBILLONES, 0000
DAVID V. PULLIAM, 0000
WILLIAM R. QUINN, 0000
DOUGLAS L. RAABERG, 0000
RAYMOND R. RANDALL, 0000
STEVEN W. RAPP, 0000
RODERICK D. REAY, 0000
MICHAEL S. REESE, 0000
ROBERT S. REESE, 0000
JOSEPH M. REHEISER, 0000
MICHAEL J. RENNER, 0000
WILLIAM J. REW, 0000
JOHN F.C. RHOADES JR., 0000
WALTER E. RHOADS, 0000
RONALD P. RICHARDSON, 0000
JOHN E. RICHEY, 0000
NORMAN R. RIEGSECKER JR., 0000
TOMMY M. RISENHOOVER, 0000
ANNA S. RIVERS, 0000
WILLIAM P. ROBB, 0000
RANDY D. ROBERTS, 0000
THOMAS S. ROBERTS, 0000
DEAN C. RODGERS, 0000
WILLIAM H. ROEGE, 0000
MARIANNE R. ROGERS, 0000
PAUL M. ROJKO, 0000
PATRICK M. ROSENOW, 0000
JAMES A. ROWE, 0000
DANIEL J. RUNYAN, 0000
DONALD E. RYAN JR., 0000
MICHAEL Y. RYAN, 0000
JAMES T. RYBURN, 0000
PHILLIP M. SABREE, 0000
WALTER W. SAEGER JR., 0000
DAVID A. SARVER, 0000
ROBERT K. SAXER, 0000
WALTER J. SCHELL, 0000
ROGER A. SCHILL, 0000
CHARLES E. SCHMELING, 0000
STEPHEN D. SCHMIDT, 0000
JACK C. SCHOFIELD, 0000
JOANNE S. SCHOONOVER, 0000
LARRY G. SCHULTZ, 0000
MARK D. SCHULTZ, 0000
JAMES R. SCHUMACHER, 0000
DAVID J. SCOTT, 0000
RICHARD A. SEARFOSS, 0000
CYNTHIA L. SEGERSTEN, 0000
WILLIAM W. SELAH, 0000
GARY R. SELIN, 0000
PAUL J. SELVA, 0000
THOMAS D. SHEARER, 0000
WILLIAM B. SHIELDS, 0000
WILLIAM J. SHIREY, 0000
STEVEN D. SHIRLEY, 0000
JOHN C. SIDES, 0000
STANLEY P. SIEFKE, 0000
MARTIN J. SIEROCKI, 0000
JIMMIE L. SIMMONS, JR., 0000
NICHOLAS A. SIPOS, 0000
MARK H. SKATTUM, 0000
THOMAS C. SKILLMAN, 0000
MARK T. SMITH, 0000
CHARLES E. SNAVELY, 0000
JOHN A. SNIDER, 0000
RANDALL L. SOILEAU, 0000
MARK S. SOLO, 0000
KATHLEEN M. SPATOLA, 0000
JAMES W. SPENCER, 0000
KEVIN K. SPRADLING, 0000
MARK E. STEARNS, 0000
CARL A. STEEL, 0000
JAMES A. STEVENS, 0000
RICHARD A. STEVENS, 0000
WILLIAM P. STEWART, JR., 0000
MARK D. STILL, 0000
FREDERICK R. STRAIN, 0000
JON E. STROBERG, 0000
DONNA J. STROMECKI 0000
MICHAEL P. SULLIVAN 0000
JAMES O. SUTTON III 0000
RICHARD W. TAYLOR 0000
CHARLIE A. TEMPLETON 0000
SAM C. THERRIEN 0000
PATRICK J. THOMAS 0000
DARRYL W. THOMPSON 0000
FREDERICK H. THOMPSON 0000
RICHARD W. TOBIN, II 0000
THOMAS P. TOOLE 0000
ROBERT L. TRAPP 0000
DAVID M. TRASK 0000
ROBERT K. TRAYLOR 0000
JOE E. TYNER 0000
HUGO S. VALDIVIA 0000
MICHAEL R. VANHOUSE 0000
CHARLES S. VOELKER 0000
CONRAD M. VONWALD 0000
STEVEN P. WACHOLTZ 0000
CHRISTOPHER J. WALECKA 0000
LARRY R. WALKER 0000
CLINTON G. WALLACE 0000
CARY R. WALLINGTON 0000
BRADFORD E. WARD 0000
JAMES H. WEIDNER 0000
NORMAN A. WEINBERG 0000
GARY C. WEST 0000
JOHN M. WEST 0000
JOHN M. WESTON 0000
CHARLES M. WHITEHURST 0000
KENNETH L. WHITLEY 0000
JAMES A. WHITMORE 0000
STEPHEN S. WHITSON 0000
CLARK P. WIGLEY 0000
CHARLEY L. WILLIAMS 0000
PAUL WILLIAMS 0000
PAUL S. WILLIAMS 0000
WILLIAM J. WILLIAMS 0000
DAVID WILLIAMSON 0000
DANNY S. WILMOTH 0000
WALTER W. WILSEY II, 0000
JOE D. WILSON 0000
STUART E. WILSON 0000
STEPHEN A. WOJCICKI, 0000
CRAIG WOLFENBARGER, 0000
ROBERT E. WOOD, 0000
ROBERT J. WOOD, 0000
STEPHEN K. WOODS, 0000
STEVEN L. WOOLF, 0000
STEPHEN E. WRIGHT, 0000
MICHAEL M. WYKA, 0000
TERRENCE J. YOUNG, 0000
NICHOLAS F. ZUNIC III, 0000

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES AIR FORCE AND FOR REGULAR APPOINTMENT (IDENTIFIED BY AN ASTERISK (*)) UNDER TITLE 10, U.S.C., SECTIONS 624 AND 531:

To be major

*MITTY J. ALEXANDER, 0000
*MICHAEL J. ANDERSEN, 0000
*LAWRENCE M. ANDERSON, 0000
*SARITHA R. ANJILVEL, 0000
KENNETH A. ARNOLD, 0000
*RENEE T. BENNETT, 0000
*DONNIE W. BETHEL, 0000
*SCOTT K. BRADSHAW, 0000
*KENNETH W. BULLOCK, 0000
BARBARA L. BURGESS, 0000
*JAMES R. CANTRALL, 0000
*TODI S. CARNES, 0000
*GUILLERMO R. CARRANZA, 0000
*DAVID S. CASTRO, 0000
*LOUIS J. CHERRY, 0000
KERIC B. O. CHIN, 0000
*ROBERT H. CHRISTIAN, 0000
*STEVEN E. CONEY, 0000
*DOUGLAS P. CORDOVA, 0000
*THOMAS J. COUTURE, 0000
*DOUGLAS B. COX, 0000
*JOHN A. COX, JR., 0000
*DAVID S. DALES, 0000
*EDWIN H. DANIEL, JR., 0000
*KIRK L. DAVIES, 0000
*RICHARD D. DESMOND, 0000
*STEVEN J. DUNN, 0000
DAVID J. DUSSEAU, 0000
*JULIA P. ECKART, 0000
STEVEN J. EHLENBECK, 0000
*DAVID A. EVERS, 0000
*CELESTE R. GAMACHE, 0000
*THERESA M. GERRITZEN, 0000
*RUPINDER S. GILL, 0000
*RONALD J. GOODEYON, 0000
*SARA A. GUENTHER, 0000
*AMY A. HARDMAN, 0000
*ERIN C. HOGAN, 0000
TERESA K. HOLLINGSWORTH, 0000
*DARLA W. JACKSON, 0000
*GARY M. JACKSON, 0000
JOSEPH D. JACOBSON, 0000
*TARA R. JENNER, 0000
*MICHAEL E. JONASSON, 0000
PHILLIP J. KAUFFMAN, 0000
*DAVID A.G. KENDRICK, 0000
*JOSEPH P. KINLIN, 0000
*SIGURDS M. KROLLS, 0000
*BRENT H. LANDIS, 0000
*GREGORY E. LANG, 0000
*KIMBERLY A. LUDWIG, 0000
PETE R. MARKSTEINER, 0000
*TIMOTHY D. MATHENY, 0000
*TERRY L. MCELYEA, 0000
*MICHAEL L. MCINTYRE, 0000
*PATRICK W. MOUDY, 0000
*JAY W. MOUNKES, 0000
*PHILIP G. MOWRY, 0000
*WILLIAM E. MOXLEY, 0000
*ISSAC J. NEHUS, 0000
*MARGO S. NEWTON, 0000
*MICHAEL J. OSULLIVAN, 0000
*MARGERETTA A. OVERLY, 0000
*JEFFREY S. PALMER, 0000
*REBECCA E. PEARSON, 0000
PERRY J. PELOQUIN, 0000
*PAMELA T. PERRY, 0000
JAMES B. ROAN, 0000
*JORGE H. ROMERO, 0000
*JEFFREY P. RUDE, 0000
*VERNOLA A. SCHLEGEL, 0000
*GLENN W. SEBESTA, 0000
STEPHEN M. SHREWSBURY, 0000
*JEFFREY J. SLAGLE, 0000
*MARK S. TESKEY, 0000
KENNETH M. THEURER, 0000
*BETH A. TOWNSEND, 0000
*LISA L. TURNER, 0000
*DONNA M. VERCHIO, 0000
*THOMAS R. WILLIAMS III, 0000
*LISA A. WINNECKE, 0000
*SANDRA M. WOZNIAK, 0000
THOMAS F. ZIMMERMAN, 0000