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5 Mr. Morrison. Thank you, Senator. It is a pleasure to
6 be back again testifying for the third time on this same
7 issue, and I am going to make the same three points I made
8 the last two times I appeared here.

9 Point number one, is the amendment enforceable? And if
10 so, by what means? And I do not mean the parts about how
11 many votes you have to get to raise taxes or to increase the
12 debt ceiling, but what is going to happen when the
13 inevitable happens and the appropriations bills are enacted
14 and, while they appear to add up on paper, everybody knows
15 that all the addition is made up of wishful thinking and we
16 suddenly realize that the budget is not going to be in
17 balance? What is going to happen then? Who is going to fix
18 it? Surely the President is not going to be allowed to fix
19 it on his own. The Congress, which caused the problem,
20 cannot very well fix it. Is the judiciary going to be
21 involved? And that is the question I have asked for 20
22 years now, and I cannot get an answer.

23 It appears perhaps in this bill that, because of the
24 limitation on the ability of the courts to raise taxes, the
25 bill implies that the courts will be involved. If that is

1 so, the Committee ought to say so and come forthright out
2 and say that if we mess up and do not have a balanced
3 budget, we are going to ask the Federal courts to fix it up.
4 That is point one.

5 Point two, who is going to be able to go to court to
6 sue to enforce this? Senator Lee has wisely put in a
7 standing provision in his bill under which a member of
8 either House, with a third of the members of the House, could
9 petition the court and have standing to sue. Unless there
10 is a provision in the constitutional amendment, not in any
11 legislation enforcing it, that gives somebody standing to
12 sue to enforce this amendment, there will be no one with
13 standing. And so all the wishful thinking about judicial
14 review will not take place.

15 I have no views on who should have standing or whether
16 anyone should have standing, but it is absolutely essential
17 to put it in S.J. Res. 6 as well as in S.J. Res. 2, as
18 Senator Lee has done so.

19 The third point I want to make is if we go to court, it
20 would be a complete disaster in the court system, and let me
21 explain why.

22 First, in order to have a litigation within the fiscal
23 year and to make anything meaningful, the remedy would have
24 to occur within the fiscal year. The lawsuit would have to
25 start almost immediately. Of course, that would be contrary

1 to all known past practices that the Congress would have
2 enacted all of its appropriation bills by October 1st, and
3 second, they would not make any changes along the way.
4 There would be no supplementals. But leaving those things
5 aside and engaging in wishful thinking, the first thing that
6 would have to happen is the budget would obviously not be
7 facially out of balance. It would be out of balance because
8 of wishful thinking. Somebody would have to go in and
9 figure out where all this wishful thinking came in and
10 figure out where the actual imbalance occurred. At that
11 point someone could bring a lawsuit, assuming that they had
12 ~~the~~ standing, and they would go into Federal court claiming
13 that the budget was not actually going to be in balance. At
14 that point this would not be simply a question of law.
15 There would be serious disputes of fact because people would
16 say, no, this is an accurate budget estimate, and so there
17 would be lots of discovery, lots of witnesses, and
18 eventually there would be a trial.

19 All of this, of course, assumes that Congress is not
20 going to make any changes in the budget along the way, and
21 second, that the conditions in the world are not going to
22 change. ~~We~~ ^{if} we are not going to have a recession, we are not
23 going to have more unemployment, we are not going to have an
24 additional war, ^{and} everybody is going to cooperate to keep all
25 the numbers the same.

1 In any event, there would be discovery; there would be
2 a trial; there would be briefs. A judge would write an
3 opinion, and then the case would go up to the Supreme Court.
4 The Supreme Court would have to decide it, all by the end of
5 June. At that point, assuming that the budget was found ^{to} not
6 be in balance, what would happen? We would have a Federal
7 judge who would have to decide how to bring it back into
8 balance. On what criteria would the judge decide? Could he
9 raise taxes? Probably not. Could he cut defense? Yes.
10 Could he cut interest on the debt? Who knows? There is no
11 way of knowing, and more importantly, do we want Federal
12 judges to make those kinds of decisions? That is what the
13 Congress is for, not ~~for~~ Federal judges.

14 Finally, if the judge made those decisions,
15 implementing them would be not over a total fiscal year but
16 over a month or two. You would have to compress, let us
17 say, a 10-percent deficit into 2 months, which would be in
18 effect cutting our three-quarters of the spending in the
19 last 2 months of the fiscal year. Are you going to fire
20 people? Are you going to stop building missiles? Are you
21 going to tell the FBI to stop investigating? No one has any
22 idea how that would work, and surely you could not carry it
23 over to the next fiscal year because you would be violating
24 Section 1.

25 Thank you very much, Senator.

1 back and follow up on a line of questioning, the line of
2 discussion you and I had 5 years ago. I asked at the time
3 whether it is not entirely plausible to assume that just as
4 in other instances where the Constitution imposes a super
5 majority threshold--for instance, where it is necessary to
6 override a Presidential veto, for the Senate to ratify a
7 treaty, where it is necessary for Congress to propose a
8 constitutional amendment--we have these super majority
9 thresholds of two-thirds.

10 Really, the purpose of most of the balanced budget
11 amendments that we are talking about is to impose some sort
12 of super majority threshold. That is the biggest single
13 effect. Whether we are talking about an amendment proposal
14 that does confer standing on Members of Congress, as
15 something that I proposed does, or something without it,
16 isn't it still safe to say that it is not entirely
17 unreasonable to expect that Congress would at least follow
18 the super majority threshold standard as it does in other
19 areas?

20 Mr. Morrison. I agree with you, Senator. It is
21 entirely correct that the Congress would follow it. Those
22 are all clear. There is no debate about two-thirds. But
23 the most important thing about all of those is that they are
24 all in one direction, that is, all of them are against
25 spending. They are all making it more difficult to raise

1 revenue, to increase the debt. If this amendment wanted to
2 strike out the first section that says the budget shall be
3 in balance as a requirement of law and put in the rest of it
4 there, that would not present an enforcement problem. It
5 would present a very difficult problem because it would be
6 all in one direction, and people would say this is about
7 preventing the programs that are designed to help the needy
8 and others and not to prevent anything else from happening.
9 ~~But that would be--those are all enforceable because they~~ *imply +*
10 ~~are playing it and nobody can contest them, and those rules~~ *could*
11 ~~are followed.~~ *nothing*

12 But the requirement in Section 1 that receipts and
13 expenditures be in balance in a year is not self-enforcing,
14 and that is the problem with that provision in the
15 amendment. But, of course, that is the heart of the
16 amendment. That is what is being sold to the American
17 people: We are going to balance the budget. It does not
18 say we are going to make it just more difficult to raise
19 taxes and raise the debt. You could pass a rule, I suppose,
20 tomorrow, just like the filibuster rule, that would say from
21 now on in the Senate, in order to raise the debt we are
22 going to require two-thirds. People would scream and shout
23 because they think it is unwise. But you could do that.
24 You do not require a constitutional amendment to do that.

25 Senator Lee. Right. Of course, a rule can be undone