medical procedure which is legal under the U.S. Constitution.

I do not believe that there ought to be a litmus test which would disqualify a person from being Surgeon General if he/she has performed a medical procedure which is legal under the U.S. Constitution. It is already difficult to persuade qualified people to accept governmental appointments because so often the character of an individual is irreparably damaged by charges before the facts are known. What is printed in the newspaper, uttered on television, or heard on the radio simply cannot be erased. The facts cannot catch up with that.

I hope that the President and the Senate will give Dr. Foster an opportunity to state his case before we rush to judgment.

I thank the Chair, and again I thank my colleague from Minnesota for permitting the interruption.

BALANCED BUDGET AMENDMENT TO THE CONSTITUTION

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. WELLSTONE. Mr. President, let me just associate myself with the very, very thoughtful and important remarks of the Senator from Pennsylvania. I thank my colleague for the timely and I think judicious and very important statement that he made on the floor.

Mr. President, let me thank my colleague from Utah for his graciousness. I know he wanted to respond to some of the remarks of my colleague from West Virginia and the Senator from South Carolina.

Mr. President, let me, first of all, present a little bit of context, which I think is important to this debate. The Congressional Budget Office has calculated that to reach a balanced budget by 2002, subtracting interest that we would save from projected spending cuts, still we would have to cut a trillion dollars. The question is, where are we going to make the cuts? The question is, what kind of standard of fairness will be employed, and will this be some standard of fair sacrifice, shared sacrifice, if you will?

I have a lot of passion about this issue because I think this is the central issue of this Congress in this decade. But I think objectivity serves my subjectivity. I believe I can marshal evidence that will support my point of view, evidence that I want the people in Minnesota, our State, and people around the country, to carefully consider.

If you add to the equation the proposed $82 billion of defense increases over the next 5 years in the Contract With America, and in addition the $364 billion that would be required to pay for additional Republican tax cuts, Mr. President—by the way, tax cuts which I have not supported since I think it is difficult, to use the old Yiddish proverb, to dance at two weddings at the same time, and to be talking about deficit reduction while you are also in a bidding war to cut taxes yet further.

I believe the Senator from South Carolina was trying to speak directly to that contradiction.

Then we have $1.481 trillion of cuts before us. The question that the people in Minnesota and people around the country deserve an answer to is: Where are we going to be making the cuts? Who is going to be asked to sacrifice? Is it going to be by some standard of fairness? What is its impact going to be on people in Minnesota and around the Nation?

So far, Mr. President—and I would say this to my colleague from Arkansas who has been really trying to push hard for defense and other cuts to be made according to some standard of fairness—so far, what the Senator from North Dakota has called the Republican credibility gap really sort of just stares you in the face, because all we have heard so far from Republican proposals is that there will be $277 billion of cuts. Not as in tax cuts, but budget cuts.

So on the one hand we have $1.481 trillion of budget cuts that have to be made to have a balanced budget in the year 2002 and so far the only thing we have had listed is $277 billion.

Mr. President, that is one huge credibility gap. That is $1.200 trillion to go.

Mr. President, given this credibility gap, it is in this context and knowing that we would be involved in this historic debate that, from the very beginning of this 104th Congress, I have tried to push forward on the idea of accountability.

Mr. President, what I worry about is simple. Given a bidding war to cut taxes, given a bidding war not to decrease the Pentagon's budget but to increase the budget, understanding full well that Social Security is not going to be a part of this plan and is taken off the table, understanding that interest that we have to pay on debts can't go unpaid, then it is crystal clear to me that there are only a relatively few other areas where cuts can take place.

Mr. President, my concern is that the deficit reduction that will take place and the way in which we will meet a balanced budget deadline, if in fact we pass this balanced budget amendment, will be to make the cuts according to the path of least resistance; that is to say, ask some of the citizens in this country to tighten their belt who are least able to tighten their belt.

Mr. President, I came to the floor early on in the session and I had an amendment on the unfunded mandates bill. It was a sense-of-the-Senate amendment that we in the U.S. Senate would go on record that we would not pass any legislation, make any cuts that would increase homelessness or hunger among children. I could not get a majority vote. It was defeated on essentially a party-line vote. I want people in the country to know that. I could not get a majority vote.

Then I had another amendment that said if we are going to talk about accountability, we ought to have a child impact analysis. When we pass legislation out of committee, if there is a report that accompanies that legislation, there ought to be a child impact statement. Mr. President, I could not get a majority vote for that.

Then I came to the floor several weeks ago and offered a motion very similar to the amendment that our leader, Senator DASCHLE, has presented, which is now before us.

This amendment came straight from our State of Minnesota, where the Minnesota State Senate unanimously, and the House of Representatives, I think, three votes short of a unanimous vote, signed by the Governor January 20, sent a resolution here. I took the wording of that resolution and brought it to the floor of the Senate as an amendment which essentially said that if we pass a balanced budget amendment, before we send that amendment to the States, we should present to the States a detailed analysis of the impact of this amendment on our States.

Where will the cuts take place? What is the budget over the next 7 years? How will it shape the lives of the people we represent? Will this become some shell game where a State like Minnesota sees cuts, and then is required to raise taxes to make up the difference?

Under the balanced budget amendment, there will be cuts in higher education, in K–12 education, child nutrition programs, early childhood development programs, veterans programs, agriculture programs, health care programs, and others on which regular middle-class Minnesotans depend. No question about it. In fact, they would have to cut them 30 percent across the board to reach this target, given the parameters that have been set.

By the way, Mr. President, nowhere in the Contract With America, and not once in the debate that has taken place in the Senate from those who have been pushing so far for a balanced budget amendment, have I heard any analysis of all of the benefits of the tax loopholes and deductions that go to large corporations and large financial institutions in America. We will cut child nutrition programs; school lunch and school breakfast; women, infants, and children's programs, but we will not cut subsidies for oil companies.

Mr. President, this is the reason there is such resistance to this right-to-know amendment. I raise the question again on the floor of the Senate: What is it that we do not want the people in our States to know? Were the Minnesota Legislature, Democrats and Republicans alike, and the Governor correct in saying before they send the balanced budget amendment, please present an analysis of the cuts that will be ahead, and how it will affect our States so we know what we will have to pick up through an income tax or sales tax or property tax? And we are not willing to do that. That goes against the very essence of accountability.

Now, Mr. President, about a week ago, I filed a motion that I will make on the floor of the Senate at the appropriate time that would refer this House joint resolution to the Budget Committee with instructions to report it to the Senate with a report containing a detailed description of the 7-year budget plan.

I say to my colleagues, here is the one irony to the debate. There are many ironies, but here is one central irony. If we believe, and many do, that State legislators and Governors ought to understand the impact of this balanced-budget amendment, if we agree that they have a right to know exactly what it is that they will be voting on for ratification, if we agree that decisionmakers ought to know what they are voting on, if we agree that the people back in our States ought to have an understanding of what exactly is going to happen, where will the cuts take place, and how will it affect them, then it seems to me that we as Senators ought to also know what the impact of this plan will be on the people we represent before we vote on it.

That is why sometime during this very historic debate, I will move to refer this to committee so that the Budget Committee can present to Senators a detailed 7-year plan on how to get to balance by the year 2002, and then we will know what we are voting on.

Mr. President, I am not in favor of constitutional amendment, for all the reasons that Senator BYRD and others have spelled out, I think in a more profound way than I can. But as far as deficit reduction and moving toward balancing the budget, of course we should do that. But how can anyone vote on it until we know what the choices are? If we were going to have cuts in the Pentagon budget, if we were going to look at tax expenditures, if we were going to look honestly at how we knew to raise revenue, or if we were going to do this by some standard of fairness, I might be all for it; that is to say, an effort to move toward balancing the budget. But there is no accountability here.

Now, Mr. President, in the last part of my remarks today, I want to speak to one issue that I think tells the large story of what is going on. I also want to ask unanimous consent that the amendment that I will be filing today be printed in the RECORD. It would, at the appropriate place in section 1 of this balanced budget amendment, amend the section which reads ''total outlays for any fiscal year shall not exceed total receipts for the fiscal year unless,'' to add ''unless a majority of the whole number of each House of Congress shall determine that compliance with this requirement would increase the number of hungry or homeless children.'' I believe we should all be held accountable on this issue.

It seems to me a reasonable proposition that we do not want to do anything that would increase hunger or homelessness among America's children.

Mr. President, I will file another amendment, and I am not sure I was clear in my unanimous consent. I would like to have both amendments printed in the RECORD.

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

Mr. WELLSTONE. Mr. President, I will file another amendment that will say again, in the same place as the first, ''a balanced budget unless a majority of the whole number of each House of Congress shall determine that compliance with this requirement would not provide for the common defense and promote the general welfare.''

Mr. President, that comes from the Preamble to the Constitution and from section 8. When we are talking about the general welfare, it strikes me that if it becomes clear that we are going to cut Medicare, cut Medicaid, slash and burn, make higher education not affordable for young people, cut into child nutrition programs for our children, we are moving away from investing in our people, in our communities. That has had a lot to do with the general welfare.

Mr. President, there is one issue that I do not think has been discussed thoroughly on the floor that I want to talk about for a few moments, and then I want to yield because I know Senator BUMPERS is anxious to speak. That issue is Medicare.

Mr. President, let me be crystal clear with my colleagues: You cannot dance at two weddings at the same time. You cannot say you are for this balanced budget amendment but you are unwilling to lay out where you will make the cuts. But you already made it clear you want to increase the Pentagon budget, you already made it clear you want tax cuts, you already made it clear that Social Security is off the table, and then we look at the big expenditure items that are left, and Medicare is clearly one of them. Of course, Medicare will be cut deeply.

Now, let me take Members back to last year's debate. We had some health care proposals, the single-payer plan being one of them, about which the Congressional Budget Office and General Accounting Office, depending on which estimate we want to look at, talked about projected savings of up to $100 billion a year.

And Mr. President, we had other health care proposals—for example the President's plan—that talked about putting a limit on insurance company premiums. Some of us during that debate were talking about how we could contain costs. The single-payer plan contained health care system costs while also providing universal coverage with choice of doctor and a huge administrative savings. But, granted, the insurance companies would have to give something up.

And that's why Mr. President, very early on in the health care debate, the whole issue of how we contain health care costs by putting some limit on insurance company premiums was taken off the table. Huge amounts of money were pouring into the Congress in the form of campaign contributions. We saw a huge amount of lobbying from powerful interests. No way were they going to see any of their profit hurt. So what happened was, the special interests made the argument that premium limits—the only way you can do cost containment—would lead to rationing. What they neglected to say was that rationing only happens when you limit spending on one population without limiting the spending on the whole system.

Mr. President, I want to be clear on the floor of the Senate today that the very Senators who were most vociferous in their opposition to universal health care coverage—and we could not do universal coverage unless we could contain costs—the very Senators who blocked that legislation, the very Senators who yelled about rationing, right now when it comes to deep cuts in Medicare and Medicaid, which will lead to rationing among the elderly and the disabled and the poor, have nothing to say.

Their silence is deafening. And Mr. President, here is why. Looking at some Treasury Department estimates, total Medicare cuts would total $404 billion between 1996 and 2002. Medicare cuts in 2002 alone would equal $106 billion. That translates into roughly $10,000 per senior citizen over a 7-year period.

I hope that I was clear with these numbers. Let us not be fooling people in any State. I do not want to fool people in Minnesota. There are going to be deep cuts in Medicare. There have to be. There is no way you can get there any other way: $404 billion between 1996 and 2002; $106 billion in 2002.

Now, there are a number of ways that you could make these cuts. And none of them makes any sense in a country where we are trying to improve coverage and contain total system costs. One of the ways you could do it would be to reduce provider payments. Most hospitals—and I know, Mr. President, that you know this, especially in rural Minnesota—are already reimbursed by Medicare at less than cost. Let me just say this as best I can. We should be trying to improve health care in this country, not ruin it. When you cut the Medicare reimbursement, either your hospitals close—especially your rural hospitals—or your providers have to make it up some way, and this leads to charge shifting. Those people who have private health insurance are charged more and then their premiums go up and then less people can afford it. That is where we are heading.

Not only are we going to have this kind of vicious cost shifting, but in addition, those people who are going to be most severely hurt by these severe cuts in Medicare are going to be precisely the rural and public hospitals

that have been providing care to those citizens who have had the least care in this country and who have the most trouble accessing services.

A few days ago, I met with John Stindt, the CEO of Swift County-Benson Hospital in Benson, MN. Swift County-Benson is a small rural hospital 30 miles from Willmar, MN. Seventy-five percent of Swift County's revenues come from Medicare and 11 percent from Medicaid.

Last year they had a loss of $148,000 from operations. They have two family practice physicians and are desperately trying to hire more to handle their patient load. Mr. President, they do not have any room for any further cuts. Do not ask people who cannot tighten their belts to tighten their belts. Do not sacrifice the health care of citizens in this country who most need it. Cut the oil company subsidies, cut the insurance company subsidies, cut some of the large global corporation subsidies. I do not hear a word about cuts there. Deep cuts in Medicare, that is what is going to be. That is exactly the direction we are going in and that is why our colleagues do not want to spell out where they are going to make these cuts.

Mr. President, I lived 20 years in Northfield, MN and I can just tell you that severe cuts in Medicare are going to have just a cruel impact on rural communities. Hospitals in communities like Rush City, Aitkin, Grand Marais, Comfrey, Karlstad, Virginia, and Bigfork are all struggling to make ends meet.

Closing down local hospitals does not make a lot of sense, either from a health care or an economic development perspective. There was an article in the Minneapolis Star Tribune entitled ''When a Hospital Closes Its Doors.'' It talked about a hospital in Karlstad that closed last week because of financial difficulties—low Medicare reimbursements—and the inability to recruit doctors. It left a northwestern community in shock and limbo.

Mr. President, in Minnesota, 10 percent of the population already lives 30 miles from their doctor. We are seeing an increased reliance on helicopters to move people from rural areas to our cities to get care. It is not cheaper to transport people by helicopter. And in Minnesota, helicopters cannot fly in the fog and in the snowstorms.

We should be supporting community-based health care, not dismantling it. The reason that many of my colleagues do not want to vote for a right-to-know amendment and lay out where the cuts will take place and the impact these cuts will have on people that we represent is because they know we are going to have to make these cuts, they know it is wrong, they know what its impact will be and they are unwilling to step forward and be accountable.

In Minnesota, there is a shortage of 300 physicians and 180 midlevel providers in the rural communities. Places like University of Minnesota Duluth do a phenomenal job of training and retaining family practitioners who practice in rural communities. But, they need more than a pat on their back and a cut in their training budget to continue this work.

There are a number of other ways that these cuts will take place, but I just want to focus on one other. One option is to shift more of the cost back on the beneficiaries. Seniors already spend close to 25 percent of their household incomes on health costs, about $2,803 per person, and I am not including the health care costs of people that are in nursing homes.

I have received more than 1,000 letters from elderly citizens in Minnesota who are concerned about Medicare costs. Let me just read a few of them. A couple from Detroit Lakes, MN, writes:

> DEAR SENATOR WELLSTONE: My husband and I are concerned about Medicare cuts. When we reached 65, we were advised to sign up for Medicare, so we did, also taking out medigap insurance. We pay over $3,000 for medigap insurance plus the Medicare that is withheld from our Social Security. Medicare is a great help to decent taxpaying people. The GOP have a contract for the American people. We feel that Social Security and Medicare is also a contract with the American people.

A woman from Coon Rapids writes:

> We paid into both Social Security and Medicare all the working years of our life. Reducing the deficit must be done in a fair and balanced way. They did not ask our wealthiest citizens and corporations to share the burden by giving up their tax loopholes.

And she is absolutely right, absolutely right. Not one word, not one word in the Contract With America asking large corporations to share.

And finally a woman from Watertown, MN:

> I am writing to you about the proposal to cut Social Security and Medicare. I hope you will say no to these unfair and irresponsible cuts. I am 86 years old. My husband and I worked hard all our lives. He died 8 years ago after being in a nursing home for 5 years. That took all of our savings. I receive $489 a month from Social Security and I think I have saved enough for my funeral. We never wanted to be a burden to our children or anyone else. I recently had to go on medical assistance. I have enjoyed good health, and I am a foster grandparent to a child center three mornings a week. We never missed voting and really worked hard for conservation and betterment of our country. I hope this has not inconvenienced your time. Perhaps you did not find time to read it, but I surely hope you will vote ''no'' on that proposal.

Well, Mr. President, for me that letter pretty much says it all. And, of course, we hear discussions about also restructuring Medicare. I'm willing to hear some more details on this—none of which have been outlined for us—but it sounds to me like a poorly disguised way of forcing seniors into managed care and cutting their benefits. Managed care should be an option for seniors—not a mandate.

I conclude this way with first, a policy discussion and second, a ringing denunciation and enunciation.

Policy statement: We will have premium death spiral in health care if we go forward with this balanced budget amendment which will necessitate deep cuts in Medicare. What will happen is we will have to reduce the payments for our public programs—and many citizens are dependent on those programs—and providers will cost shift to those of us who have private insurance. The insurance premiums will go up, fewer people will be able to afford coverage and the base of payers becomes smaller and smaller. Then you get more cost shifting and premiums keep going up.

Mr. President, last session we were talking about universal health care coverage. We were talking about decent health care for our citizens. And last session, when we tried to do that, my colleagues, too many of them, talked about rationing. They said cost containment would be rationing—a catastrophic end to quality health care. Now we really are about to ration because we are talking about cuts for only certain programs. Now we are about to ration care for the elderly, ration care for the poor, and ration care for the disabled. But do you hear any of those same voices yelling now? No. As I said before, their silence is deafening.

I come from a State that had probably one of the greatest Senators ever to serve in the Senate, Hubert Humphrey. Hubert Humphrey said the test of a government and the test of a society is how we treat people in the dawn of their life, our children; in the twilight of their life, the elderly; and in the shadow of their life, people who are struggling with an illness or struggling with a disability or those who are needy and those who are poor.

I did not come to the Senate to vote for a balanced budget amendment—which is essentially a pig in the poke—when I do not even know what it means, and when I have no idea as a decisionmaker where the cuts are going to take place. I know full well, given the parameters of what has been laid out, that some of the deepest cuts and some of the cruelest cuts will have to affect the very people that Senator Humphrey talked about. I am not going to be a Senator who is going to vote for cuts directly or indirectly in nutrition programs for children, and I am not going to be a Senator who is going to vote for cuts in a way that takes one of the most successful parts of health care in this country and begins to dismantle it. I am talking about Medicare.

My mother and father both had Parkinson's disease, and every time I hear people criticize Medicare, I remember that for them Medicare was the difference between being able to make it and utter financial chaos and disaster.

So, Mr. President, I just want to remind my colleagues that this amendment in the Chamber right now, the minority leader's amendment, which has been superseded by the majority

leader's amendment, is right on the mark.

It is irresponsible, it is not being accountable, it is not being straightforward to vote for a balanced budget amendment unless we have the courage to lay out specifically where those cuts are going to take place, what kinds of choices we are going to make, and how it affects the people we represent. For my own part, I think people have made a big mistake. I think this 2002 date makes very little sense, given the parameters that have been spelled out. For myself, we need to have deficit reduction, and we need to invest in our people. That is the challenge for us, and we should do it. But we ought to be straightforward and lay out for the people in this country what that means to them. That I think is the only responsible approach to take, and as a Senator from Minnesota that is the position I take in this debate.

I yield the floor.

Mr. BUMPERS addressed the Chair.

The PRESIDING OFFICER. The Senator from Arkansas.

Mr. BUMPERS. Mr. President, there is a great story about Winston Churchill. It is probably apocryphal. Somebody was introducing him one night at a dinner, and they alluded to his drinking habits. And whoever it was that introduced him drew an imaginary line on the wall and said, I bet if all the whiskey Winston Churchill had drunk were put in this room, it would fill this room up to this mark. Churchill looked at that line, looked at the ceiling and said, ''Oh, so much to do and such a short time in which to do it.''

Now, here we have a constitutional amendment, and everybody has said everything that needs to be said—well, I guess everything that needs to be said has been said but everybody has not said it. So I come late to the debate, 10 days after it began, to put in my 2 cents' worth and express my undying opposition to this proposal.

When it comes to the Constitution of the United States, I belong to the wait-just-a-minute club. I confess that I voted for a constitutional amendment early on in my career in the Senate. I would not do it again.

I have taken plenty of political heat in my lifetime. I remember that great school prayer amendment in 1984 which would have allowed the school board or the State legislature to compose prayers or adopt prayers composed by others and demand their recitation by the students in school. And now it has become so commonplace to offer an amendment to cure every seemingly intractable problem.

As to the Contract With America, I join my colleague from West Virginia. I am not a party to that contract. My contract is with the people of America: the Constitution of the United States. But right in this session, there is a proposal to require a balanced budget, which is the debate now, a proposal to again address the prayer in school issue, and a proposal to limit the terms of Members of Congress, which I also consider to be a very bad idea. Every time we demonstrate to the people of America that we do not have the spine or the political courage to deal with a pressing problem, somebody says, ''Well, let's amend the Constitution.''

In 205 years, Mr. President, the Bill of Rights, the first 10 amendments to the Constitution, have not been tinkered with. So far as our Constitution is concerned, 205, coming on 206 years old, we have amended it 27 times including the 10 amendments which constitute the Bill of Rights. So actually, the people of this country in their infinite wisdom have seen fit to tinker with the Constitution only 17 times.

When you take out the constitutional amendment that said, ''We will not drink,'' and the ensuing constitutional amendment of 1933 that said, ''We will drink,'' only 15 times in 205 years have we chosen to tinker with this very precious document. There is a fellow named Robert Goldwin at the American Enterprise Institute. I do not know him, but I was reading an article by Robert Samuelson the other day where he quotes Robert Goldwin as saying, the first principle of a conservative should be ''Don't muck with the Constitution.''

Now, I do not agree with the American Enterprise Institute very often. I do not always agree with Robert Samuelson. But I can tell you there is infinite wisdom in that statement for everybody who considers himself or herself a conservative. ''Do not muck with the Constitution.''

When the House of Representatives came back into session, and Speaker GINGRICH told Members of Congress that they ought to read some of these early documents. Two that he mentioned were the Federalist Papers and Alexis de Tocqueville's ''Democracy in America.''

I read those in political science 103A. I read them again in law school, and have read them a couple of times since then. The Federalist Papers, written by James Madison, Alexander Hamilton, and John Jay, were published in New York newspapers explaining to the people what the Constitution would do, and why they ought to vote to ratify it. New York and Virginia were key States and were absolutely essential for the ratification of the Constitution.

Incidentally, do you know how old James Madison was when he wrote that magnificent series of papers? Hamilton wrote most of them. Hamilton was 31, and Madison was 37. I think John Jay was the old man in the crowd, and he was 44. But the point is that the most important point that Madison made in the Federalist Papers was that we have three separate branches of government, and we have created all these checks and balances so that one branch does not run amuck or usurp the powers of another. He said we should let the President nominate Supreme Court Justices, but Congress is the one that is going to have to sign off on them. Time after time Madison returned to the theme of checks and balances. Lets not muck with it now.

I will come back to this in a moment. There is absolutely no question that this amendment is utterly foolish, totally unenforceable, unless the courts, the judiciary branch of Government, enforce it. Who wants that? You go back home to the coffee shop, Senators. Go home this weekend and walk into small town America in the coffee shop, and say, ''We are passing that balanced budget amendment up there. We are going to get our house in order.''

Maybe some old farmer or small business owner says, ''Well, now, Senator, how you going to enforce that amendment?''

You say, ''Well, we are going to let the courts do that.''

And he is going to say, ''Wait just a minute. Are you telling me that you people are so spineless that you cannot deal with this deficit, and so you are going to put a few words in the Constitution and buck it over to the courts?''

I promise you that you just lost his vote.

If there is anything America does not need or want it is for the Court to say, ''Congress, you must raise taxes. Congress you must cut spending.'' Where? When? How much? In what programs? It is the height of folly.

You know sometimes we all ought to go listen to the folks at the coffee shop more often. I never will forget in 1979 speaking to the Nevada County Cattleman's Association. Jimmy Carter had just imposed a grain embargo on the Soviet Union. I voted for it. I thought, ''We will show those Soviets.'' And the embargo had an effect precisely opposite what we expected. It did not bother the Soviets at all. They just bought wheat in other places, and the American wheat farmers saw the price of their product go down dramatically.

So this old cowboy said, ''Senator, you voted for that grain embargo against the Soviet Union?''

I said, ''Yes. I did.'' By that time, I knew I had done the wrong thing, and, I said, ''I am sorry about that. I will never do it again.''

Then he said, ''I hope you won't Senator, because I think a fat, happy Russian is a lot less dangerous to us than a starving Russian.''

I said, ''You are wiser than most of the people I serve with in the U.S. Senate.''

I remember in 1981 when President Reagan came to town, he said, ''We are going to grow our way out of this deficit. We are going to have an economy so hot people will be paying more taxes, and we are going to balance this budget in nothing flat.'' That was in 1984. Those were his words. They were not mine.

Ronald Reagan is the one who said we will balance the budget by 1984, and that we might even do it in 1983. I remember it so distinctly. When we

asked him how, he said, ''We are going to cut taxes, double defense spending, and balance the budget.'' And with the utmost respect to everybody who was here at the time, I say it was a lunatic idea; sheer lunacy. When I die I want my epitaph to say, ''DALE BUMPERS was 1 of the 11 Senators in the U.S. Senate that voted no.'' Very shortly after that vote we saw the deficit start zooming. That was $3.5 trillion ago, Senator; 14 years and $3.5 trillion ago that we were told that was the way to balance the budget.

Did you know that if we had not done that, if we did not have those mammoth deficit increases during the 12 years before Bill Clinton became President—the deficit today would be $800,000, less than $1 million. Virtually every dime of the interest we are paying on the national debt today is due to the deficit from 1981 to 1992.

So everybody says, well, we mucked that up. We forgot something. What did we forget? We forgot to put a few words in the Constitution.

Mr. President, you could put all the words in the Constitution you want to put in, and it will not matter. I do not mean to be denigrating to anyone, but I can tell you what this is all about. It is about two or three things.

No. 1, it is about putting the balanced budget amendment into the Constitution, your simply declaring that we will achieve balance by the year 2002. Then everybody hoped and assumes that by the year 2002 the American people have forgotten what was said in 1995.

No. 2, what we are in effect saying is that we do not have the spine or the courage to do what we have to do to get the deficit under control. Therefore, let us put a few words in the Constitution that we can hide behind for at least another 7 years. Members will say, ''I probably will want to be out of here then anyway, so what difference does it make?''

Finally, Mr. President, the Contract With America says we will amend the Constitution, and we will balance the budget by 2002 or 2 years after the States ratify the Constitution, whichever is later.

I want you to think about that. What does that mean? It means that the people who are championing this amendment and saying ''Trust me,'' are also saying that we will cut spending by $1.6 trillion to $2 trillion over the next 7 years, and we will do it while increasing defense spending and we will not touch Social Security, and obviously, we cannot touch interest on the debt.

So what does that mean? That means that at least 30 percent of all the rest of Government spending has to be cut. There is not one person in this body, Republican or Democrat, who believes that is even remotely possible—not even remotely possible. Yet, we plow ahead asking the American people to not probe too deeply into what we are doing here, hoping they will not expose us for our hypocrisy and our cynicism.

When the year 2002 rolls around and the deficit is still soaring, we will have done exactly what Alexander Hamilton said we should guard carefully against, and that is: Do not raise people's expectations beyond the point of fulfillment. Every time you promise the American people something you fail to deliver, they become that much more cynical.

Mr. President, let me show you a chart here regarding the space station. Everybody knows that I think the space station is an utter waste of money. I saw the picture this morning of the Russian cosmonaut waving at the American astronauts. That is heady stuff—sending a shuttle up there and to come within 35 feet of the Russian space station *Mir*. I do not want to berate the space station, but that is the seventh space station Russia has had orbiting the Earth. One guy aboard has been on it 2 years. We say we want to put one up there, too. That is going to cost about $70 billion.

So last year, 63 Senators voted for a constitutional amendment to balance the budget, yet within 3 months, 43 of them voted to plow ahead with this $70 billion boondoggle, the space station. Some of the other amendments I offered last year to cut spending were just as embarrassing, or more so. So now we have people saying, ''Well, it did not work in 1981 when we proposed to cut taxes, raise defense spending, and balance the budget. But this time we really mean it, and we are going to put some words in the Constitution, and now it will work.'' Some very wise reporter here in Washington has properly called it deja voodoo.

You remember the comedian Flip Wilson, who use to say ''The Devil made me do it!'' I suppose people in this body think that in the future when they have to make the tough choices and cut spending, they will have the Constitution to rely on. They can go home, and when everybody is irritated because their program got cut, they can say, ''The Constitution made me do it!'' If we just put a few lines into the Constitution, you can go home and say, ''We had to cut Medicare, Social Security, and all of those things because the Constitution made me do it.'' But did it? Will it?

This proposal, as the Senator from Utah well knows, provides that if 60 people in this body want to vote to unbalance the budget, the budget will be unbalanced and we can have all the deficit spending we want. If you do not think they will do that, look at this chart. This bar represents the 60 votes it would require to unbalance the budget and these bars represent the votes we made on the 13 appropriations bills last year. The lowest vote on any appropriation bill was 71. On average the appropriations bills, where we do the real spending, passed with 84.5 votes.

So, do you think the Members of the Senate are not going to vote to unbalance the budget if it means a cut in Social Security and Medicare? When you mention those two programs, 100 Senators dive under their desks. Let us assume, for the sake of argument, that 60 Senators will not vote to unbalance the budget. Where does that leave you? Let us assume that the economy is in a recession, as it was in 1929 and 1930 and 1931, and only Government can bring it out and avoid a depression. So somebody comes on the Senate floor and says we have to vote for spending money we do not have because people are homeless, out of work, and they are hungry; we have to vote to unbalance the budget until we get over this recession. Forty-one Senators—a very slim minority—can say, no, we are not going to unbalance the budget. Forty-one Senators can bring this country to its knees by refusing to address a dramatic economic crisis in the country.

Do you know another thing I remember about the Reagan years and the Carter years? Senators, especially on that side of the aisle, decided they would quit voting to raise the debt limit to match spending. That's liking going into a restaurant and eating the biggest steak and when they bring the bill, you say, ''I am not going to pay it.'' So everybody thought this it would be a great campaign issue to vote not to raise the debt ceiling. They said, ''I voted for all these appropriations bills, all the spending; but now I have decided I am not going to vote to raise the debt ceiling.'' That happened five times in 5 years. And one time we brought the Government to a halt over the weekend and a good part of Monday and Friday, and it cost the taxpayers of this country $150 million. That is just peanuts compared to the damage we risk under this amendment. Under this amendment, 41 Senators can bring this country to its knees.

Do you think when that thing comes up on the floor, though, and somebody says we are going to have to cut Social Security 10 percent, cut 20 percent out of Medicare, we are going to have to close 18 veterans' hospitals, we are going to have to cut back civil service pensions, do you think 60 Senators will not vote in a minute to unbalance the budget?

(Mrs. HUTCHISON assumed the chair.)

Mr. BUMPERS. Madam President, to the lay people who may not understand the workings of Congress, here is the way it works. The Budget Committee goes into session when we first come into session, and they decide what revenues next year are expected to be, how much we are going to take in. And then they go through the various budget functions and they say, here is how much we are going to spend. And they say, in order to have a balanced budget, we have to cut spending by this amount. Let us assume, just for easy figuring, that they say we are going to have $2 trillion in revenues and here is our $2 trillion in expenditures, the budget is balanced.

They bring it before the Senate. It passes by a lopsided majority. We pat

ourselves on the back, give ourselves the good Government award, and go home happy as a clam.

Then, October 1 rolls around and it looks as though the economy is not doing so well. Within 5 or 6 months, it is obvious that we are going to have a $50 billion deficit.

So what happens? Well, somebody goes to court and says, ''Why, those clowns told us they had a balanced budget, and look here. They are going to run a $50 billion deficit.''

Who can sue? First of all, will the Federal courts have jurisdiction? We do not know. Not one person in this body can answer that question.

Second question: Who has standing to challenge the budget in Federal court? Everybody? Taxpayers? State and local governments? Foreign nationals? We do not know.

Third question: What will we do while the current budget is tied up in court? We do not know.

Fourth question: How will the amendment force Congress to reach an agreement as to what they are going to cut or what tax hikes they are going to adopt? We do not know.

Fifth: Would the courts find that enforcement of the balanced budget amendment is a political question on which they refuse to rule? We do not know.

Sixth question: Can the Congress just ignore the amendment as drafted, and go merrily on their way? They probably can, and they probably would.

Another scenario: Let us assume that even before October 1, in the beginning of the year 2002, as soon as Congress adopts the budget resolution, 6 months before October 1, somebody says, ''Why, you guys are crazy. What are you talking about? You're projecting a $2 trillion income. You're not even going to come close.''

They go to court even before the year starts and say, ''Those people are mucking with the figures, cooking the books. They say they are going to have an income of $2 trillion when they are going to be lucky to have $1.9 trillion. Make them do it right. Make them cut more spending or raise taxes.''

And let us assume for the purposes of argument that court then says, ''You're right. I agree with you. Those people have overestimated revenues by $100 billion,'' and issues an order to Congress to close the gap and Congress does not do it. Can the court raise taxes to make us comply with this amendment? Maybe.

Would that not be a beautiful thing to see? Would that not be something? James Madison would be whirling so hard in his grave, it would be like a fan in the kitchen. He would be saying, ''What have those clowns done to abdicate their responsibility to another branch of Government, the one thing I warned against?''

Madam President, I could go on with scenarios like this.

Senator JOHNSTON has an amendment that is going to clarify this. It is going to say the courts can take jurisdiction over these questions. I think it ought to be clarified. Can they or can they not? And if the courts cannot take jurisdiction, if the courts have no role to play in this, who is going to enforce it? There is nobody left but us. If we are the ones that are already flagrantly violating the constitutional amendment we are debating here today, we are flagrantly violating it, do you think we are going to correct it?

Let us assume, finally, one further scenario. Let us assume that my colleague, Senator PRYOR over here, is so upset about the fact that he does not believe we have a balanced budget, and maybe the court has already said ''You are right. The budget is $100 billion off, but this is a political question and we are not going to get involved in it. This would be meddling in legislative affairs and we are not going to do it.''

So then Senator PRYOR goes to court and says: ''I want an injunction to prevent the Treasury Department from issuing one single bond, T-bill, or note to pay off that $100 billion deficit for this year.''

A court might take jurisdiction of a case like that. The plaintiff would simply be saying that if compliance with the balanced budget amendment is a political question and the courts are not going to make Congress pass a balanced budget, then keep them from doing anything, namely, issuing scrip, bonds, notes to cover the deficit.

Some will say the courts will not do that, but in fact they already have. Most people here have heard of Missouri versus Jenkins, the Kansas City segregation case where the courts ordered the city of Kansas City to raise taxes. The Supreme Court affirmed it.

You know something, Madam President, if I went home to that same coffeeshop I talked about a moment ago and I told my friends sitting around the coffee shop in Charleston, AR, that the effect of this amendment would be to turn the budget over to the courts and the courts would have jurisdiction to raise taxes or cut spending, the balanced budget amendment would not have a 75-percent approval rating; it would be lucky to get a 25-percent approval rating.

Madam President, we keep dealing with distractions and issues that are not relevant to the real problems of this country.

The Contract With America has some things in it which are legitimate and which Democrats ought to join Republicans in passing, as we have already done on the congressional compliance question. In thumbing through the Federalist Papers yet once again this weekend, I found that James Madison talked considerably about the House. Strangely, he did not say Congress or the Senate. He said the House of Representatives should be very careful not to pass a law from which they are protected.

So we are 205 years late passing a bill to make us comply with the laws other people have to comply with, and I was happy to vote for that bill.

But this idea that we are going to do middle-class tax cuts—when it comes to doing what is popular, Madam President, let me tell you something that is interesting. Seventy-nine percent of the people say they favor a balanced budget amendment to the Constitution. Over 80 percent favor the right-to-know amendment, which is the pending business here. The right-to-know amendment simply says if you people in Congress are so hot for this amendment and you can balance the budget by the year 2002, you tell us now how you are going to cut between $1.5 and $2 trillion between now and the year 2002.

That is an absurdity on its face. It is as utterly impossible as my soaring out of here into the heavens, flapping my arms.

We have a right to know. And the reason everybody is silent is because they do not have a clue as to how they would even come close to cutting that kind of spending. It is ridiculous in the extreme.

Yesterday, the Joint Tax Committee, which does the best job of estimating, says the Republican tax cuts over the next 10 years—listen to this, I say to the Senator—those tax cuts are $704 billion. Add that to the trillion-dollar base line just for the first 7 years, $704 billion in lost revenue for the middle-class tax cut plus the capital gains tax cuts and the IRA's. That ought to cause people to wake up screaming.

What is the biggest item on the budget now? Interest. Interest on the debt. But talk about how popular this amendment is, the right to know is popular, too. Know what else is popular? The idea that if we can find $80 or $200 billion in spending cuts to provide for a middle-class tax cut, we should apply that money to reducing the deficit, rather than a tax cut. And 81 percent of the people favor that idea, Senator.

I disagree with the President's budget to this extent. I am not willing to accept $190 to $200 billion a year in deficits for the next 7 or 8 years. We can do better. We can do a lot better. I have seven bills pending that will save $133 billion over the next 15 years, $33 billion over the next 5 years.

Madam President, we have big problems. We have a crime problem. We have welfare problems. Our educational system has been failing miserably. Our culture is degenerating. On that point, is it not curious that when people are becoming increasingly uncivil to each other and we have crime on every street corner, the proposals in the House are to cut funding for the Corporation for Public Broadcasting, the one station we can watch without getting blood all over ourselves. One small piece of culture left, and they want to torpedo that.

That is not enough. They want to abolish the Education Department. Take ourselves back to the stone age

while we are at it. And abolish the National Endowment for the Arts, without which the State of Arkansas probably would not have the Arkansas Symphony. Who cares about the old music that Bach and Beethoven and all those guys wrote 200 or 300 years ago? Get rid of that, too. The National Endowment for the Humanities who gave Arkansas a $50,000 grant when I was Governor and allowed Betty Bumpers to start artist programs in every first grade in the State. Get rid of that. What are we doing teaching first graders about art? What a waste. They are trying to scrap every smidgen of culture left in this society.

There are not any words that we can put into the Constitution, Madam President, that are going to stiffen one single spine. Not one word in the Constitution will make somebody vote against Social Security or the space station, the latter, particularly if there is a contract providing 500 jobs in your State. No, words in the Constitution do not change people's character. We vote for what is popular around here.

James Madison, again, ''Do not take that stale bait of popularity * * *,'' as opposed to what is best for the country. Many of the people of this country think there is enough waste, fraud, and abuse to balance the budget. A lot of them think if we change our salaries and the pension fund we could balance the budget. Take away our airport parking, install term limits. With issues like that, nobody will notice much of anything we do around here.

In August 1993 we did something that we are asking the Republicans to do this year. I will never forget the month or the year. We said we would get the budget deficit going down, and keep it going down. We said we would do that by raising taxes on the wealthiest 1.2 percent of the people in this country by $250 billion, and cutting spending by $250 billion. And we did it. We did it just before the August recess. I voted for it, unhappily. Even though we told people exactly what we were going to cut, exactly what the tax hike would be, we still did not get one single Republican vote. Not one.

Now the $500 billion in deficit reduction we promised over the next 5 years, has turned into nearly $600 billion, maybe headed for $700 billion. It was the most courageous thing, the most important thing that has been done since I have been in the Senate.

I have screamed my head off about the deficit. I have offered amendments here every fall to cut spending. I might as well be shouting in a rain barrel. But we passed that bill, 50 votes from Democrats alone, plus the Vice President in the Senate Chamber. Everybody knew exactly what we were doing.

And now we are saying, You tell us exactly how you will come up with almost $2 trillion in spending cuts in the next 7 years. Why should they not? People on Social Security want to know if they are included. People on Medicare, people on Medicaid, people who pay taxes, want to know what it will do to them.

Mrs. BOXER. Madam President, would the Senator yield for a question?

Mr. BUMPERS. Madam President, I am happy to yield.

Mrs. BOXER. I say to the Senator, Madam President, he is so eloquent in bringing home this point to the American people. We put ourselves out here on the line and we cast a tough vote.

By the way, I serve on the Budget Committee. I will tell the Senator that Members should have heard the Republicans in the Budget Committee. I have their comments in writing. ''This thing will lead to higher deficits. This budget will lead to unemployment. This will be the worst thing that ever happened.'' In fact, we have the best economy that we have had in 25 years.

So I would say to my friend, since our colleagues will not tell Members what they have in mind for the American people, we have to make some educated guesses on that point. I would ask my colleague this: Is it not true that the Republicans said they would not touch Social Security even though they are not supporting removing it from this amendment? Have they not said they are taking that off the table?

Mr. BUMPERS. Madam President, the Senator is absolutely right. They have said they will not touch Social Security, and obviously they cannot avoid interest on the debt. Although they did not say defense was off the table, they said, ''We will increase defense spending.'' I think one could assume if they increase spending it is also off the table.

Mrs. BOXER. Madam President, I was going to make that point.

The contract calls for increases in military spending, even though, as we know, we are spending in excess of two to five times than of all our enemies combined. So if they take Social Security off the table, I say to my friend, and if defense is taken off the table, and if they come through with a $700 billion tax cut, I ask my friend what is going to happen to Medicare? What is going to happen to veterans' benefits? What is going to happen to crime fighting? What will happen to the Border Patrol? What will happen to roads and highways and freeways and research on breast cancer that is so important, and AIDS and other things that are real threats to the people of this Nation.

If the Senator, who has been around here a lot longer than I, could paint that picture I would greatly appreciate it.

Mr. BUMPERS. Madam President, let me just say that common sense dictates three or four conclusions that seem obvious to me.

No. 1, the Contract With America says we will not include Social Security or interest on the debt. Obviously we cannot do anything about interest on the debt. We have to pay it. As I said, they are proposing to increase defense spending. That leaves Medicare, and Medicaid, and it leaves nondefense domestic discretionary spending.

In order to reach a balanced budget under that scenario, we would have to cut crime prevention, education, highways, law enforcement, everything that goes to making us a decent civilization. We would have to cut every one of those by at least 30 percent. In my opinion, in 2002 we would still have a deficit. I appreciate the Senator raising the question.

If you want to do what is popular, vote for this amendment. There is not any question about its popularity. Public opinion is contradictory about it because the people also support the right to know amendment which would require to say what we are going to cut. Seventy-four percent of the American people want the middle-class tax cut to be applied to the deficit instead of their tax bill. They want that to go on the deficit. Yet, the same people who are hot for a middle-class tax cut ignore the popular will of the people on that one.

But I am willing to admit I am going to vote ''no'' on this, and that is not the popular vote. So if you want to do what is popular, you vote ''aye.''

If you really, in your heart of hearts, believe that you can meet the mandate that I just laid out for you about balancing the budget in the year 2002, for God's sake vote ''aye'' if you think you can do that.

If you think the Founding Fathers did not know what they were doing when they crafted this most magnificent of all organic laws in the world, vote ''aye.''

If you are one of the 11 new Senators who came to this body in January and you do not have the courage to do what you told those voters you were going to do when you were campaigning about spending cuts, you vote ''aye.''

If you want to postpone the tough choices until the problem is even worse than it is now, vote ''aye.''

With an ''aye'' vote, you get 7 more years of grace in which the budget will balloon. The Senator from Utah has a chart over there showing how much the debt has gone up since we have been debating this. If this constitutional amendment were on the books right now, or any time in the future, that chart would be exactly the same. Nothing would be changed by a balanced budget amendment.

But if my colleagues believe that the highest calling they have is their duty to the Constitution, to be honest with their constituents, if they believe that their constituents can handle the truth no matter how unpleasant, even though all they have been getting is talk-show idiocy, distortions, pap, and partisan snapping, then they should vote ''no.'' And then they should follow that with a few courageous votes on cutting spending, even if it tears their hearts out to cast those votes.

Ten times nobler is the man who bit the bullet in his quest to fulfill the promise of a great nation than the man

who reaps the contempt and hatred of historians and, thereafter, the people, because political expediency overcame our nobler instincts.

If you take that stale bait of popularity over what is best for our country, you are, in effect, saying, ''Let this great Nation perish.''

I yield the floor, Madam President.

Mr. PRYOR addressed the Chair.

The PRESIDING OFFICER. The Senator from Arkansas is recognized.

Mr. HATCH. Madam President, I am happy to have the Senator from Arkansas recognized. I hope he will be the last speaker of the day. I would like to say a few words in closing, and we can recess the Senate. I am hoping he will be the last speaker.

Mr. PRYOR. Madam President, I thank my distinguished and good friend from Utah for allowing me to speak at this time. I want to compliment my worthy friend and colleague from Arkansas for delivering one of the eloquent, forceful, and thoughtful speeches of this debate on amending the Constitution with a balanced budget amendment.

Although we always marvel at this great constitutional system that we have, somehow or another, we cannot help tinkering with it. We love to mess with our Constitution. Over 10,000 proposals in our some 200 years of history have been introduced in the Congress to amend the Constitution. But over this same 200-year period, we have adopted only 17 since our Bill of Rights containing the first 10 amendments was enacted.

These relatively few amendments which have actually survived the amending process suggest how very difficult it is to amend the Constitution, as our Founding Fathers intended it to be, and also just how high the stakes really are.

Efforts to make our Government budget more responsible date back not just 2 or 3 years ago, but they date back to the early days of our forefathers. And these efforts have taken on various forms from reorganizing our budget process to amending the Constitution.

Today's debate, whether to authorize a constitutional amendment to be sent out to the States to balance the Federal budget, has been unfolding, Madam President, since 1982 when the Congress first attempted and failed to write a constitutional amendment to balance the budget.

After this first attempt, proponents have pushed and failed to authorize the amending process in 1986, 1990, and 1994.

I have participated in each of these four very difficult debates, and I have argued at length, not only here but in my home State of Arkansas, on the merits and the demerits of amending our Constitution with such an amendment.

In these debates, the U.S. Senate, and my friends on each side of the aisle—all of us together—have struggled during this debate to overcome our differences. But what is so striking today is not our differences, but our common goal, a goal that every Member of this body agrees with: The goal of achieving a balanced budget.

No one quarrels with this debate. No one quarrels with this notion. No one quarrels with this goal. It is the one unifying idea that binds us. At the same time, it is the course of this particular devise of achieving our common goal, a constitutional amendment, which fractures us so very deeply, and there is a fundamental reason for this.

Americans have shaped their lives through laws, and for more than 200 years, the Constitution has been at the very core, the very center of our Nation of laws. It is the world's oldest written charter in continuous effect.

When we change the Constitution, Madam President, we alter who we are as a people. We change our lives by changing the way we govern ourselves. So before taking this ominous step of changing who we are as a people, we have an obligation to fully explore the consequences of amending our Constitution.

These consequences are neither obvious or simple. By this, I mean that by solving one problem, we may be creating a whole new set of problems. Certainly the consequences of balancing the budget will create a wide range of hardship and difficulty for some Americans—some of which will be foreseen and some of which will not.

So before we launch into this long and complex process of changing our Constitution of changing our lives, along with those who will follow, the American people deserve and expect our honesty and they deserve our leadership.

Madam President, I have been carrying around with me for the past several weeks a report from the Bipartisan Commission on Entitlement and Tax Reform. We call this effort in the Senate the Kerrey-Danforth commission, cochaired in a bipartisan manner by Senator BOB KERREY and Senator John Danforth. Senator John Danforth, of course, is no longer a Member of this body. I want to congratulate the authors of this report and I hold it out to my colleagues and the American people as an effort of true leadership and honesty in explaining today's budget dilemma in which we find ourselves.

Finding No. 3 in this report, on pages 10 and 11, tells us a story we just cannot run away from. It is found actually on this chart, Madam President, and it starts in 1963, when mandatory spending, which is comprised mainly of Social Security, Medicare, Medicaid, military retirement, civil retirement, and interest on the debt, amounted to 29.6 percent of our Federal outlays. We see those combined, net interest on the debt and entitlements, on the chart as mandatory spending of 29.6 percent of our Federal outlays.

Madam President, we see in the blue-green area of the pie chart what happened also in 1963 in the area of discretionary spending. The remaining portion represented some 70 percent of the total Federal outlays, while some 30 percent was mandatory.

Chart No. 2, Madam President, shows the story when 30 years later, in 1993, mandatory spending is now at 61 percent, that is, entitlements of 47 percent, and net interest of 14 percent. Add the two and we find 61 percent of our budget is comprised of mandatory expenditures and discretionary spending shrunk to only 39 of total Federal outlays.

The third chart is revealing, Madam President, because the third chart indicates what is going to happen in 8 years. Eight years from now, only 1 year after this proposed constitutional amendment to balance the budget will go into effect. If we continue as we are at this time, we are going to see mandatory spending increased to 72 percent. That is net interest on the debt, 13.8; entitlements, 58.2, and discretionary spending, Madam President, down to the very small percentage of 28 percent.

Now, what does all this mean when we actually put ourselves in this straitjacket of a constitutional amendment over the next 7 years to balance the Federal budget.

Two weeks ago, Dr. Robert Reischauer was before the Senate Finance Committee. He was testifying before our committee, and I asked him what does this mean if we are to balance the budget? His answer, and I quote, Madam President,

> I do not think that you can find them out of discretionary spending, especially if you listen to the concerns that many of your colleagues have about defense spending and think that defense spending is over one-half of discretionary spending. Clearly, the major portion of the answer has to lie in the entitlement area or in the tax code. And there is no escaping that.

Clearly, Madam President, the major portion of the dollars needed to be cut to balance the budget has to come from entitlements or the Tax Code, and there is no escape from that fact.

In the next question, I asked Dr. Reischauer before the Senate Finance Committee, if we exclude Social Security, which we should, from a balanced budget amendment, then what is going to be left for us to find the funds to balance the budget?

Dr. Reischauer responded by citing among others Medicare, Medicaid, civil service, military retirement, veterans pensions, and veterans compensation, student loans, farm price support systems, AFDC, food stamps, and SSI.

The point is, Madam President, the consequences of a balanced budget will definitely be felt by all Americans, present and future, who depend on these programs which Dr. Reischauer cited in his testimony a few days ago.

Now, how will these Americans be affected? This is the question that we in Congress must do our dead level best to be honest with the American people about. With no plan set forth to

achieve a balanced budget by the year 2002, it is impossible, absolutely, totally impossible to tell the people even our best guess of the consequences of balancing the Federal budget.

Madam President, I do not wish to blame any one person or any political party or any sponsor of this particular amendment before the Senate today for not having a specific plan because the cuts would be extremely painful, extremely unpopular, and standing alone both Democrats and Republicans have much to lose by offering such a plan at this time.

In the absence of a plan at this date, a number of studies and reports are now coming out, that are now being issued which break down in very real terms the effect of actually balancing the budget with across-the-board spending cuts.

Madam President, I can say that those findings from these reports are sobering. CBO estimates that the balanced budget amendment would require a cut of $1.2 trillion in Federal spending over the next 7 years. What does that mean? The Treasury Department has now reported that a balanced budget amendment for the State of Arkansas would require reducing Federal grants and other annual spending in the State by some $3 billion—$416 million lost per year in Medicaid, $65 million lost per year in highway funding, $225 million a year in lost funding for education, for job training, environment and housing, and $1.1 billion per year in lost benefits for the elderly.

These are enormous, unthinkable numbers that mean little when we say them, but what does it mean to actual people? It means that seniors will see massive reductions in health care benefits along with the hospitals and the doctors who serve them. In turn, the cost of the public health care burden is going to be shifted to private employers and their employees. It means millions of requests by seniors for rides to the doctor's office, grocery store, and pharmacy will go unanswered. It means millions and millions of home delivered meals will not get delivered, will not go to the homes of the elderly persons who are disabled.

Some now claim that these findings are meant only to spread fear and to scare people about the balanced budget amendment. However, Madam President, I think that the people making this claim are missing the point. Sometimes being honest in budgeting is a very, very frightful proposition, but it is my responsibility, it is our responsibility collectively to explain in advance the best way we can—what we are going to do and how we are going to do it—even if it scares us all.

I know, Madam President, that the President has received a lot of criticism in the last few hours about the submission of his budget that he sent to the Congress yesterday.

Here is the budget. ''A Citizens Guide to the Federal Budget'' is the first booklet. We have all of the appendices to the budget that he has proposed. We have an ''Analytical Perspective of the Budget of the United States Government.'' We have ''Historical Tables, Budget of the United States Government,'' and then finally the document that most of us hopefully have seen, the ''Budget of the United States Government,'' in a form that I think most of us hopefully can comprehend.

What this says, Madam President, is our President has kept faith with his part of the contract. He has submitted a budget. It may be controversial. As my colleague Senator BUMPERS just said, we may not be willing to accept $180 billion deficits into the outyears. But be that as it may, this is at least a good faith effort to let the people of America know where we stand with the budget, and to know what our plans are with the budget.

However, as we look around the Senate Chamber today, on the eve of a very critical vote on the balanced budget amendment, the right-to-know amendment, offered by the distinguished minority leader, Senator DASCHLE, and several colleagues, we find that there is absolutely not one scintilla, not one scintilla of a plan offered by the proponents of the constitutional amendment to balance the budget, to show us how that budget is going to be balanced, to show us if it is going to require new revenues, or to show us the number of dollars that we are going to have to cut spending.

Madam President, here is a blank piece of paper. There is nothing on it. And, thus far, this is about all we have from the proponents of this amendment to tell us how they plan to balance the budget.

Our colleague, Senator DOMENICI, the distinguished Senator from New Mexico and chairman of the Budget Committee, has been very straightforward from the outset of this debate. But should not we be just as straightforward about the consequences to millions of Americans who are going to be impacted by these cuts? We should know the plan of action. We should know how they propose to balance the budget.

No one who is a part of this debate is suggesting we do nothing to balance the budget. That is not an option. We all want to balance the budget. The price of doing nothing is too high. What is at the core of this debate is the right of Americans to see the direction we are heading to achieve this goal before we take this drastic step of amending our 200-year-old Constitution. Without this direction, I believe such a proposal is going to do more harm than good.

During this debate an amendment to exclude Social Security from this balanced budget amendment is going to be offered and I am going to be supporting that amendment. The Social Security System is a 60-year-old contract with the American people. It has worked. It has worked well. And if changes need to be made, I am willing and ready to consider them. We made some changes back in 1983 that put our Social Security System back in a very good financial posture. But I will consider them on their own merit, not as a part of any across-the-board spending cut because I think our contract with the elderly people of our country as they pay into Social Security is a separate contract which they started some 60 years ago. And this is a contract of 60-year standing that I plan to honor and I hope our colleagues in the Senate will honor.

The Democratic Joint Economic Committee has recently estimated that if both Social Security and Medicare were included in across-the-board spending cuts, the average senior citizen in America would lose some $2,000 a year in Social Security benefits; some $1,500 a year in Medicare benefits. The consequences of this debate to retirees, to widows, to the disabled are too important to subject them to broad brush budget cuts. And I will not support a constitutional amendment that allows this to happen.

In last week's debate it was pointed out the balanced budget amendment does not require a balanced budget. This is true. Section 1 of the proposed amendment that is before this body at this time allows for three-fifths of both the House and the Senate to waive the requirement for a balanced budget. So, if the amendment as proposed does not require a balanced budget, what does it do? That is the question today.

One, this proposal gives the President and two-fifths plus 1 of either Chamber a procedural lock on deficit spending and debt ceiling limits.

Let us place to one side the argument that we are frustrating the democratic process by allowing minority rule of our economic order. That point has been made repeatedly. I think it has been made well.

Madam President, let us take another look at the amendment and compare that, to see how this proposal fits into the framework, the overall global framework of the Constitution. Compare it to, say, the first amendment.

The proposed amendment before us is going to allow, if adopted, a supermajority to waive the requirement of a balanced budget. In this respect, this amendment is truly a first. It is a first in the 200-year history of our constitutional Republic. We have never had such an amendment. This is the first time. Let us compare it, if we might, to the first amendment:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble; and to petition the Government for a redress of grievances.

Madam President, nowhere in this language of the Constitution in the first amendment does it even suggest about providing that: Congress shall make no law respecting the establishment of religion unless three-fifths of

each House passes legislation specifying otherwise. And to suggest so would be ludicrous.

When we take the oath of office to protect and defend this Constitution, do we do so unless three-fifths of each house of Congress passes legislation specifying otherwise? Of course not. If the proponents of a balanced budget amendment believe it is so important to our way of life, why is this procedural loophole included?

This is not the only loophole. Let us look at section 6, which provides that the ''estimates of outlays and receipts may be used by Congress when drafting legislation to enforce and implement the provisions of this amendment.''

This may be the biggest loophole of all. The amendment will be enforced by ''estimates,'' agreed to by Congress. Even on our best, our luckiest days, estimates are just that, good faith estimates, but often they differ greatly. They change over time. And estimates in the wrong hands for the wrong reasons can be very, very destructive.

Do we really want to introduce this notion into our Constitution? I think not. It is just one more example of why the balanced budget amendment will not balance the budget. And what happens, finally, Madam President, if Congress does not balance the budget? What happens if this straitjacket that we have placed ourselves in is such that we cannot abide by those rules? Would the Federal courts be called upon to enforce them? Are we going to be like Kansas City when the Federal judge, who was unelected, appointed for life said: I will raise the taxes, I will run the schools? Many have grave doubts whether the courts should assume this role. This is the role for the Congress. This is a role for the President. Further, even Federal judges today are very skeptical that the courts would assume this particular role.

Judge Robert Bork has predicted that ''hundreds, if not thousands, of lawsuits would arise from such an amendment.''

No tinkering with our Constitution is going to substitute for the courage it will take actually to balance the Federal budget. The introduction of gimmicks and loopholes and uncertainty into the Constitution will not give us the courage or the political cover to reach this goal.

The Declaration of Independence, the Constitution, the Bill of Rights—are housed just a few blocks from here. In fact, this morning I was sitting in my office and I was thinking about this vote that we are going to have tomorrow, Wednesday, at high noon; a vote whether to require that the public and the Congress have the right to know basically the glidepath or some of the numbers as to how we are going to achieve a Federal budget, if we support this constitutional amendment.

I got to thinking about the Declaration and the Constitution and the Bill of Rights. We talk about them all the time in this body. I remembered I had not seen those documents since I was about 16 years of age.

So I called up the Archives. I said, ''Would it be possible for me to come down on short notice and have explained to me how we protect and look after these very sacred documents?'' So I got in the car. I went to the Archives. I found that on each day at 10 o'clock sharp every day, except Christmas, on display we find the Declaration of Independence, the Constitution, and the Bill of Rights.

These founding documents of our country are in cases shielded by tinted glass and inert gases. Each evening these cases are lowered into a recessed, reinforced vault. If the Capital of our country were attacked, the vault would continue to protect its contents long after the city above ceased to exist. The Constitution, the Bill of Rights, and the Declaration of Independence for this country would survive long after all of us were gone.

The scene at the National Archives, I think, reinforces the reverence we have for these documents. This scene, I think, demonstrates the degree of respect for the Founding Fathers who wrote these particular documents.

While I was standing there this morning—and I took several members of our staff, Madam President, to the National Archives to see the Constitution, the Declaration of Independence, and the Bill of Rights once again—I watched the people as they walked in. As they approached these documents, they approached them with reverence, with quiet, and deep respect for the environment in which they were in.

There was a couple. I started visiting with them quietly. They were from Washington State. I introduced myself. They introduced themselves. They said that this was their very first trip to Washington, DC. They said that they thought they would never have the opportunity to be so close to the reason that this country has become so great and so powerful as it is today.

It makes me shudder to think that we would, in effect, remove this Constitution from its specially protected environment in the National Archives and inscribe on its parchment something that we believe is a bad idea. The reverence inspired by the Constitution comes from the impression that it is permanent and that it is enduring. A bad idea cannot endure, and we should not discolor the Constitution with it. We should not taint it. We should not stain this magnificent document with such an untried extreme as this particular amendment presents.

Madam President, can we balance the budget without this amendment?

Madam President, I see my distinguished friend from Utah rising. I want him to know, if he will allow me about 2 or 3 more minutes, I am going to sit down and let him conclude today's activities in the Senate, if that would be permissible with the distinguished manager.

Can we balance the budget without a constitutional amendment? The answer is ''yes.'' Is it going to be easy? The answer is ''no.''

The 1990 and 1993 deficit reductions which were passed represent over $1 trillion in deficit reduction. I voted for them. We did this without a balanced budget amendment. We can do it again, and we can do it by keeping the Constitution intact. It is very difficult, and some may not have liked it. It was uncomfortable. It caused heartburn. But I think very few would disagree with the fact that we reduced the deficit of the U.S. Government, and once again, we did it by keeping the Constitution of our country intact.

Some Democrats lost their seat in this Congress to vote on the 1990 and 1993 deficit reduction bills. But these individuals did it anyway because they knew that their first obligation was to their country, to their children and to their grandchildren, and they knew they must make tough choices. Many who support this balanced budget proposal have never voted for a tough deficit reduction package. To vote on this amendment does not in any way ensure that they will in the future.

Whatever the outcome of this debate might be, Madam President, I hope that I will be able to continue to make the tough votes to reach this goal. I support a balanced budget. But I will not support a bad idea to achieve it.

To our colleagues in the Senate who have just arrived here—and I note that all 11 have signed a letter recently, dated January 18, 1995. The new freshmen Members of the U.S. Senate which have come from 10 of our great States in this Union, have all supported this balanced budget amendment. I would like to say a word, Madam President, in closing to those fine new colleagues of ours. That is this: This is going to be the easiest vote that they have ever cast. This is an easy vote for them. It is an easy vote for anyone in this body because it says that we are going to propose an amendment to the Constitution that requires a balanced budget, but it ultimately does not require a balanced budget; that we are going to propose an amendment to the Constitution that says we are going to let the next Congress basically balance the budget. We are going to let the next President basically balance the budget. And what we will be doing in the meantime is sending out press releases and stating what a great thing we have done by supporting a constitutional amendment to balance the budget.

Madam President, I hope our colleagues will rethink this position. I know they realize—because they are not only good people, they are smart people—we did not get ourselves as a country, as a Nation, into this predicament in 7 years. And let us be honest, we are not going to get ourselves out of it in 7 years.

Madam President—and I say to my wonderful friend of long standing from Utah who has been eloquent in his

management and his statements on this issue—I would like to conclude my statement this afternoon by quoting a paragraph from a 1993 book that has just come out. It is called ''Amending America,'' written by Richard Bernstein and Jerome Agel. Up here on the top on the cover, I say to my colleague from Utah and the distinguished occupant of the chair, it says: ''If We Love the Constitution So Much, Why Do We Keep Trying to Change It?''

A paragraph from page 185 in the book states this, which is relative to the debate in 1992 on the constitutional amendment:

In June 1992, Stanley Collender, the director of Federal budget policy for Price Waterhouse, pointed out another problem with enforcing the amendment. Under present law, no person would have standing to bring suit to compel Congress to obey this amendment. If the courts could not enforce it, then the amendment would have no teeth and its failure would breed contempt for the Constitution and the rule of law, again, echoing the disaster of constitutional prohibition.

Mr. Collender concluded, ''This whole effort is nothing but a scam.''

Madam President, I am not calling this effort a scam, but I do call it misguided, and I truly believe that there is another way to attack the national debt and our deficit, and at the same time keep our revered and respected Constitution intact.

I thank the Chair and I thank my colleague from Utah, Senator HATCH, for having the patience to sit and listen and for managing this legislation.

Mr. HATCH. Madam President, I want to make a few comments before we close for the day. If the courts cannot enforce the balanced budget amendment—and they will not be able to—I do not believe there is any way people can meet across the board the standing justiciability and the political questions in order to have the courts enforce the balanced budget amendment. The only way it is going to be enforced is through moral suasion, because it will be part of the Constitution and it will be enforced just like the States enforce their amendments to their constitutions. They revere their State constitutions and the State Governors and legislatures balance the budget in accordance with the State constitution. It will be the same here.

Every Member of this body is sworn to uphold the Constitution, and the moral suasion alone will cause us to do what we should. That does not mean we cannot get a three-fifths vote or a constitutional majority. Maybe we can, in cases of severe distress and difficulty. This is the only chance that we have to pass something that will get spending under control.

If there is ever an argument as to why we need a balanced budget amendment, the Senator from Arkansas was extremely eloquent in talking about the importance of this budget. The fact of the matter is that this budget agreement, I think, is a great argument for the balanced budget constitutional amendment. It is not because I want to criticize it so much as it is that the President has thrown in a sponge.

If you read this budget, over the next 12 years, we are not going to go toward a balanced budget at all, but we will be at a $200 billion deficit for the next 12 years. What happens to our kids and grandkids? Who cares about them? Can we not do something to stop this incessant spending? I think we can. Here we have a Democrat and Republican amendment to do this.

Madam President, by codifying these terms and concepts in our Constitution, the supporters of the Daschle amendment will constitutionalize the very processes that have produced trillions of dollars in red ink. This is the politics of the past. It is business as usual.

We may find that we have to go about the budget process differently at some point in the future. But the Daschle amendment locks us pretty much into one particular process.

Instead of working for change, the supporters of the Daschle amendment want to freeze the status quo in place. Is that what the American people want?

I must say, the Daschle amendment fits hand in glove with the Clinton budget—there is no real change there either. President Clinton promises at least $200 billion in deficits as far ahead as we can project, year after year.

Instead of attacking the deficit, the President's budget plans attack the wallets of our citizens. Our citizens will wind up paying more taxes to pay the ever growing interest on our skyrocketing national debt. And our citizens will pay more for the material things they want in life, from housing to automobiles to everyday consumer spending. These deficits will keep interest rates higher than they otherwise would be. These deficits will crowd out the private sector, resulting in fewer jobs and lower wages.

The President campaigned on change. He has demonstrated he is part of the status quo.

I ask unanimous consent that a letter to me from Lincoln Oliphant be printed in the RECORD.

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

U.S. SENATE,
REPUBLICAN POLICY COMMITTEE,
Washington, DC, February 7, 1994.

Hon. ORRIN G. HATCH,
Chairman, Committee on the Judiciary, U.S. Senate, Washington, DC.

Re the Daschle amendment is anti-constitutional

DEAR MR. CHAIRMAN: This is the first of two letters that assess the constitutional implications of the Daschle amendment.

H.J.Res. 1, proposing an amendment to the Constitution relative to a balanced budget, is being debated on the Senate floor. On Friday, February 3, 1995, Senator Daschle moved to commit H.J. Res. 1 to the Judiciary Committee with instructions to report back forthwith with a Daschle substitute amendment.

The Daschle substitute would add to H.J. Res. 1 a new and lengthy and complicated section 9 that requires Congress to use the processes of the Congressional Budget Act to reach a balanced budget. Senator Daschle's section 9 is longer than the original H.J. Res. 1, and it is far more complicated. For example, subsection 9(b) of the Daschle amendment reads as follows:

''The directives required by subsection (a)(3) shall be deemed to be directives within the meaning of section 310(a) of the Congressional Budget Act of 1974. Upon receiving all legislative submissions from Committees under subsection (a)(3), each Committee of the Budget shall combine all such submissions (without substantive revision) into an omnibus reconciliation bill and report that bill to its House. The procedures set forth in section 310 shall govern the consideration of that reconciliation bill in the House of Representatives and the Senate.''

The Daschle amendment sounds like it came out of the Code of Federal Regulations, not the Constitution of the United States, but Article V of the Constitution which governs amendments does not require constitutional amendments to be written elegantly or even well. This paper is not, however, concerned with the coarseness of the Daschle language, nor with its merits *per se*, but with its fitness for inclusion in the Constitution of the United States.

WHAT THE DASCHLE AMENDMENT MEANS FOR THE CONSTITUTION OF THE UNITED STATES

The Daschle amendment seeks to take a statute of the United States, the Congressional Budget Act of 1974, and graft it onto the Constitution of the United States. This appears to mean that a future amendment to the Budget Act would constitute a change in the Constitution of the United States.

Section 310 of the Congressional Budget Act, 2 U.S.C. 641 (1988 ed. & Supp. V 1993), was enacted on July 12, 1974, P.L. 93–344, §310, 88 Stat. 315. It was amended on Dec. 12, 1985, P.L. 99–177, 99 Stat. 1053, and again on Nov. 5, 1990, P.L. 101–508, 104 Stat. 1388–608, −618, −620. In the future, these kinds of amendments (which were relevant to the Budget Act), and all other amendments to section 310 (no matter their relevance to budgetary matters), will be incorporated into the Constitution of the United States through the language of the Daschle amendment, if ratified.

''Constitutionalizing'' a statute of the United States is unprecedented because it is antithetical to the Constitution of the United States. The Daschle amendment allows Congress and the President (or Congress alone when it overrides a presidential veto) to re-enter the constitutional text at will and change it. This is *anti-constitutional*.[1]

The Daschle amendment is open-ended, there is no limit on future amendments. It would ''constitutionalize'' the Congressional Budget Act on the date of enactment and forever thereafter, however amended. The Daschle amendment could have avoided the possibility of future amendments by providing that the trust funds were to be ''constitutionally fixed'' on a date certain. This would have been a large step away from the charge of anti-constitutionalism, though it would have brought charges of grotesque constitutional drafting because it would have made chunks of the Budget Act a permanent part of the Constitution of the United States. America's Constitution-makers have stayed away from such rigidity because

[1] Footnotes at the end of article.

they have believed that laws like the Budget Act should be able to be amended without requiring a constitutional amendment.

The Daschle amendment is at cross-purposes with the structure and intent of the American Constitution—it threatens such fundamentals as the separation of powers, federalism, and the rule of law, as will be shown below.

THE PRACTICAL EFFECT OF THE DASCHLE AMENDMENT: THE EXAMPLE OF ARTICLE V

Article V of the Constitution provides the sole method for amending the Constitution. It reads in relevant part:

''The Congress, whenever two-thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two-thirds of the several States, shall call a Convention for proposing amendment, which, in either case, shall be valid to all Intents and Purposes, as part of this Constitution, when ratified by the Legislatures of three-fourths of the several States * * *''

The sole mode of amendment established by the Constitution, therefore, involves only the States and the Congress, and Article V requires the consent of a super-majority of both. The President has no formal role in the proposing or ratifying of constitutional amendments. *Hollingsworth v. Virginia*, 3 U.S. 378 (1798). The Judicial Branch has no formal role in the proposing or adopting of amendments and only a limited role in reviewing Article V cases. *Coleman v. Miller*, 307 U.S. 433 (1939) (many issues arising under Article V are political questions which are nonjusticiable).

In the ordinary Article V case (the convention method for proposing amendments never having been used), two-thirds of the Senate and two-thirds of the House of Representatives propose an amendment to the Constitution which can be adopted only by the consent of three-fourths of the States. There is no other way to amend the Constitution—unless the Daschle amendment is ratified!

If the Daschle amendment is adopted, there will be two additional ways in which the Constitution may be amended:

First, if Congress passes a bill to amend relevant sections of the Congressional Budget Act and the President signs the bill, the Constitution will be changed.

Second, if Congress passes a bill to amend the relevant sections of the Congressional Budget Act and the President vetoes the bill, Congress can enact the bill unilaterally by overriding the President's veto by a two-thirds vote.

By allowing Congress alone, or Congress with the concurrence of the President, to change the Constitution, the Daschle amendment overthrows settled understandings of the separation of powers[2] and federalism.[3] The Daschle amendment is, therefore, anti-constitutional.

Additionally, the Daschle amendment is anti-constitutional because it undermines the concept of a written Constitution superior to all other enactments. U.S. Const. Art. VI. *The Federalist* no. 78 (''No legislative act . . . contrary to the Constitution can be valid''). See also, *Marbury v. Madison*, 1 U.S. 137, 177 (1803) (''Certainly all those who have framed written constitutions contemplate them as forming the fundamental and paramount law of the nation''). The excerpt from *Marbury v. Madison* that appears in the Appendix emphasizes this weakness of the Daschle amendment.

Sincerely,

LINCOLN C. OLIPHANT,
Counsel.

FOOTNOTES

[1] The word ''anti-constitutional'' signifies a proposal that is contrary to the structure and purposes of the founders' constitution. A statutory provision which is forbidden by the constitution is said to be ''unconstitutional'' (and that is the subject of our second letter on the Daschle amendment), but a proposed constitutional amendment that would stand the Constitution on its head is ''anti-constitutional.''

[2] The Constitution of the United States is predicated on a separation of the legislative, executive, and judicial powers. U.S. Const. Art. I, Art, II & Art. III. *The Federalist* No. 47 (''The accumulation of all powers, legislative, executive, and judiciary, in the same hands . . . may justly be pronounced the very definition of tyranny. Were the federal Constitution, therefore, really chargeable with the accumulation of power . . . no further arguments would be necessary to inspire a universal reprobation of the system. I persuade myself, however, . . . that the charge cannot be supported'').

[3] The Constitution of the United States is predicated on federalism, a diffusion of powers between the national government and the States, See, e.g., U.S. Const. Art. I, sec. 8 (enumerated powers), Amend, X (reserving powers to the States), & Amend. XI (protecting States against lawsuits). *The Federalist* No. 45 (''The powers delegated by the proposed Constitution to the federal government are few and defined. Those which are to remain in the State governments are numerous and indefinite. The former will be exercised principally on external objects, as war, peace, negotiation, and foreign commerce . . . The powers reserved to the several States will extend to all the objects which, in the ordinary course of affairs, concern the lives, liberties, and properties of the people'').

APPENDIX

MARBURY V. MADISON—1 CRANCH (5 U.S.) 137, 176–78 (1803)

''That the people have an original right to establish, for their future government, such principles as, in their opinion, shall most conduce to their own happiness is the basis on which the whole American fabric has been erected. The exercise of this original right is a very great exertion; nor can it, nor ought it, to be frequently repeated. The principles, therefore, so established, are deemed fundamental. And as the authority from which they proceed is supreme, and can seldom act, they are designed to be permanent.

''This original and supreme will organizes the government, and assigns to different departments their respective powers. It may either stop here, or establish certain limits not to be transcended by those departments.

The government of the United States is of the latter description. The powers of the legislature are defined and limited; and that those limits may not be mistaken, or forgotten, the constitution is written. To what purpose are powers limited, and to what purpose is that limitation committed to writing, if these limits may, at any time, be passed by those intended to be restrained? The distinction between a government with limited and unlimited powers is abolished, if those limits do not confine the persons on whom they are imposed, and if acts prohibited and acts allowed, are of equal obligation. It is a proposition too plain to be contested, that the constitution controls any legislative act repugnant to it; or, that the legislature may alter the constitution by an ordinary act.

''Between these alternatives there is no middle ground. The constitution is either a superior paramount law, unchangeable by ordinary means, or it is on a level with ordinary legislative acts, and, like other acts, is alterable when the legislature shall please to alter it.

''If the former part of the alternative be true, then a legislative act contrary to the constitution is not law: if the latter part be true, then written constitutions are absurd attempts, on the part of the people, to limit a power in its own nature illimitable.

''Certainly all those who have framed written constitutions contemplate them as forming the fundamental and paramount law of the nation, and, consequently, the theory of every such government must be, that an act of the legislature, repugnant to the constitution, is void.

'' * * *

''It is emphatically the province and duty of the judicial department to say what the law is. . . . If two laws conflict with each other, the courts must decide on the operation of each.

''So if a law be in opposition to the constitution; if both the law and the constitution apply to a particular case, so that the court must either decide that case conformably to the law, disregarding the constitution; or conformably to the constitution, disregarding the law; the court must determine which of these conflicting rules governs the case. This is of the very essence of judicial duty.

''If, then, the courts are to regard the constitution, and the constitution is superior to any ordinary act of the legislature, the constitution, and not such ordinary act, must govern the case to which they both apply.

''Those, then, who controvert the principle that the constitution is to be considered, in court, as a paramount law, are reduced to the necessity of maintaining that courts must close their eyes on the constitution, and see only the law.

''This doctrine would subvert the very foundation of all written constitutions. It would declare that an act which, according to the principles and theory of our government, is entirely void, is yet, in practice, completely obligatory. It would declare that if the legislature shall do what is expressly forbidden, such act, notwithstanding the express prohibition, is in reality effectual. It would be giving to the legislature a practical and real omnipotence, with the same breath which professes to restrict their powers within narrow limits. It is prescribing limits and declaring that those limits may be passed at pleasure.

''[I]t thus reduces to nothing what we have deemed the greatest improvement on political institutions, a written constitution. . . .''

Mr. HATCH. Two more things, Madam President. We started this morning by pointing out our balanced budget amendment debt tracker. You can see we have been in debate for 9 days now. You can see the green mark is up from the $4.8 trillion baseline we have. Each day, the national debt is going up almost $1 billion as we debate this. It is really mind boggling.

Let me point this out to our general public. This chart is ''Calculating the Deficit Under President Clinton.'' This budget puts us in this deficit picture. We are in 1995, right here. In 1994, the deficit was projected to be 3.2; in 1995, 194.7; in 1996, 192.5; in 1996, 193.1; in 1997, 193.4, and then 194.4, and on into the future. This is all red ink for our children and grandchildren and everybody in this country.

Over the next 5 years, we will have a $1.39 trillion total increase, projected increase in the deficit from 1994 to the year 2000—billions of dollars in debt, with not one hope for anybody of bringing that line down unless we pass this balanced budget amendment. That is why we are fighting so hard for it now and why we are asking colleagues to

consider voting for it. We are also asking the people to be heard with regard to this.

Eighty-five percent of the people want a balanced budget amendment. There is good reason for it and that is a perfect illustration why. On both of these charts, this continual red-ink deficit, and the continual going up—even while debating it on a daily basis, it is going up $1 billion a year.

I do not want to keep the Senate any longer. We are prepared to close the Senate. I will end my remarks at this point.

APPOINTMENTS BY THE MAJORITY LEADER

The PRESIDING OFFICER. The Chair, on behalf of the majority leader, pursuant to Senate Resolution 105, adopted April 13, 1989, as amended by Senate Resolution 280, adopted October 8, 1994, announces the following appointments and designations to the Senate Arms Control Observer Group:

The Senator from Alaska [Mr. STEVENS] as majority Administrative Cochairman; and

The Senator from South Carolina [Mr. THURMOND] and the Senator from Indiana [Mr. LUGAR] as Cochairmen for the majority.

APPOINTMENTS BY FINANCE COMMITTEE CHAIRMAN

The PRESIDING OFFICER. The Chair announces on behalf of the Chairman of the Finance Committee, pursuant to section 8002 of title 26, U.S. Code, a substitution in the membership of the Joint Committee on Taxation. The Senator from Kansas [Mr. DOLE] has resigned from the joint committee and will be replaced by the Senator from Utah [Mr. HATCH] for the duration of the 104th Congress only. Therefore, the membership of the Joint Committee on Taxation for the 104th Congress is as follows: the Senator from Oregon [Mr. PACKWOOD], the Senator from Delaware [Mr. ROTH], the Senator from Utah [Mr. HATCH], the Senator from New York [Mr. MOYNIHAN], and the Senator from Montana [Mr. BAUCUS].

MORNING BUSINESS

Mr. HATCH. Madam President, I ask unanimous consent that there now be a period for morning business, with Senators permitted to speak therein for not to exceed 10 minutes each.

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

TRIBUTE TO LT. GEN. EDWARD CRAIG

Mr. HEFLIN. Madam President, I rise today to pay tribute to one of the Marine Corps' most outstanding leaders, Lt. Gen. Edward Craig, who recently passed away.

Lieutenant General Craig was born in Danbury, CT, in 1896. He later attended St. Johns Military Academy in Delafield, WI. Upon graduation from the academy in 1917, he was commissioned a second lieutenant in the Marine Corps, and reported for duty on August 23, 1917.

In November 1917, he was assigned to duty with the 8th Marine Regiment, and in April 1919, was ordered to foreign shore duty in Haiti and later with the Second Provisional Brigade marines in the Dominican Republic.

His overseas World War II commands began in the summer of 1943 when he was given command of the 9th Marine Regiment at Guadalcanal. He was my regimental commander. He inspired great confidence in his officers and men. He was a superb battle commander. He led this regiment in the Bougainville invasion that fall. While remaining the colonel in charge of this regiment, he was in the forefront in the liberation of Guam, for which he was awarded the Navy Cross. The last of his World War II involvements included service in the 5th Amphibious Corps in the fall of 1944. As the corps operations officer, Lieutenant General Craig designed and actually participated in the landing and assault on Iwo Jima in 1944. He returned to the United States from the Pacific in July 1945.

Following the end of World War II, he was again ordered overseas as assistant division commander of the 1st Marine Division, reinforced, in Tientsin, China.

On June 1, 1947, he was assigned as commanding general, 1st Provisional Marine Brigade, Fleet Marine Force, on Guam, where he remained for 2 years.

When the Korean conflict began he was assigned to Korea and served as the commanding general of the 1st Provisional Marine Brigade and participated in fighting around the Pusan perimeter. He later served as assistant division commander of the 1st Marine Division and took part in the landing at Inchon and operations in northeast Korea.

At the time of his retirement on June 1, 1951, he was the director of the Marine Corps Reserve and was a veteran of more than 33 years of Marine Corps service.

All of his endeavors in the service led to many well-deserved medals and honors. They include the Navy Cross; the Distinguished Service Medal; the Silver Star Medal; the Legion of Merit; the Bronze Star Medal; and the Air Medal with Citation; and the Navy Unit Citation. His other decorations and medals include the Presidential Unit Citation; the Navy Unit Citation; two Korean Presidential Unit Citations; the Victory Medal; the Haitian Campaign Medal in 1919; the Marine Corps Expeditionary Medal with one Bronze Star, Dominican Republic 1919–21, and China 1924; the Second Nicaraguan Campaign Medal, 1929–30; the American Defense Service Medal with Fleet Clasp; the American Campaign Medal; the Asiatic-Pacific Campaign Medal with four Bronze Stars; the World War II Victory Medal; the China Service Medal, 1947, the Navy Occupational Medal, Japan 1946; and the Korean Campaign Medal.

Memories of Lt. Gen. Edward Craig and his wife, Mrs. Marion Mackie Craig will always be with me. He was truly an American hero and a marine's marine.

TRIBUTE TO JUDGE WILLIAM C. SULLIVAN

Mr. HEFLIN. Madam President, I want to pay tribute and offer my congratulations to my dear friend Judge William C. Sullivan on his new-found lifestyle—retirement.

Before starting his legal career in 1951, and becoming a circuit judge for Talledega County, Bill served in the U.S. Navy; played on a semi-pro baseball league; and was mayor of Lincoln, AL.

When recalling my many memories of Judge Sullivan, I remember a rather humorous occasion which occurred in the summer of 1954. A police chief came to a baseball game in which Sullivan was a player only to tell him a gubernatorial candidate, ''Big Jim'' Folsom, wanted to see him. William sent word back to Jim that he would have to wait until the end of the game before he would break loose.

When the two met, Bill of course in his soiled uniform, Big Jim was in disbelief—he even told Bill Sullivan he did not look like a mayor. Sullivan simply smiled and reminded Big Jim he was only a candidate, and not a Governor.

The two later reunited when Big Jim swore Bill in as a judge 4 years later.

Perhaps Judge Sullivan is most known for a 1962 civil rights case he presided over in which the late Supreme Court Justice Thurgood Marshall was an acting attorney.

Bill and I share one belief—we both agreed the transition from attorney to judge was difficult because once we became judges, we simply acted as referees. Thus, we could not ''slug it out'' in court with other attorneys.

Judge Sullivan obviously knew his stuff. He went 20 years without a single reversal.

Bill and his followers are proud of the fine job he did while serving on the Alabama Pattern Jury Instructions Committee, since it was his panel that published a reference book for jury instructions in civil cases used by most judges and lawyers in the State today.

Bill has said he will not miss the workload, but will miss the challenging cases being played out in the courtroom.

Upon his retirement, Talledega lost one of its best judges. I wish him all the best in his retirement and commend him for his leadership over the years.