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Senate

The Senate met at 9 a.m. and was called to order by the President pro tempore [Mr. THURMOND].

PRAYER

The Chaplain, Dr. Lloyd John Ogilvie, offered the following prayer:

Let us pray:

Almighty God, Sovereign of this Nation, our Creator, Sustainer, and loving heavenly Father, thank You for these moments of profound communion with You. We come to You just as we are with our hurts and hopes, fears and frustrations, problems and perplexities. We also come to You with great memories of how You have helped us when we trusted You in the past. Now, in the peace of Your presence, we sense a fresh touch of Your spirit. With receptive minds and hearts wide open, we receive the inspiration and love You give so generously. Make us secure in Your grace and confident in Your goodness. We need Your power to carry the heavy responsibilities placed upon us. Humbly we ask for divine inspiration for the decisions of this day. Since we are here to please You in all we do, our hope is that at the end of this day we will hear Your voice sounding in our souls. ''Well done, good and faithful servant.'' In the name of our Lord. Amen.

RECOGNITION OF THE ACTING MAJORITY LEADER

The PRESIDENT pro tempore. The acting majority leader is recognized.

SCHEDULE

Mr. THOMAS. Mr. President, this morning until 10:40 a.m. there will be a period for closing debate on Senate Joint Resolution 31. At 10:40 a.m. the Senate will recess until 2:15 p.m. today. At 10:40 a.m. the Senate will proceed to the House Chamber to hear an address by Israeli Prime Minister Shimon Peres to a joint meeting of the Congress which starts at 11 a.m. When the Senate reconvenes at 2:15 p.m., following 2 minutes of debate, the Senate will begin as many as five consecutive votes on amendments on Senate Joint Resolution 31. The first vote will be 15 minutes, the subsequent votes will be 10 minutes each, with 2 minutes of explanation in between each vote.

Following disposition of Senate Joint Resolution 31, it is the hope of the majority leader to turn to the consideration of the Bosnia legislation. In that the majority leader hopes to complete action on that matter by 12 noon on Wednesday, debate may go into the evening today if necessary. Therefore, votes are possible today on the Bosnia legislation.

RESERVATION OF LEADER TIME

The PRESIDENT pro tempore. Under the previous order the leadership time is reserved.

FLAG DESECRATION CONSTITUTIONAL AMENDMENT

The PRESIDING OFFICER (Mr. THOMAS). Under the previous order, the Senate will now resume consideration of Senate Joint Resolution 31, which the clerk will report.

The assistant legislative clerk read as follows:

A joint resolution (S.J. Res. 31) proposing an amendment to the Constitution of the United States to grant Congress and the States the power to prohibit the physical desecration of the flag of the United States.

The Senate resumed consideration of the joint resolution.

Pending:

Biden amendment No. 3093, in the nature of a substitute.

Hollings amendment No. 3095, to propose a balanced budget amendment to the Constitution of the United States.

Hollings amendment No. 3096, to propose a balanced budget amendment to the Constitution of the United States.

McConnell amendment No. 3097, in the nature of a substitute.

Mr. HATCH. Mr. President, today the Senate must decide whether this is freedom or the abuse of freedom—this right here—evidenced by this picture of the flag being burned by a bunch of antiflag activists.

Mr. President, it comes down to this: Will the Senate of the United States confuse liberty with license? Will the Senate of the United States deprive the people of the United States of the right to decide whether they wish to protect their beloved national symbol, Old Glory?

Is it not ridiculous that the American people are denied the right to protect their unique national symbol in the law?

We live in a time where standards have eroded. Civility and mutual respect—preconditions for the robust views in society—are in decline.

Individuals, rights are constantly expanded but responsibilities are shirked and scorned. Absolutes are ridiculed. Values are deemed relative. Nothing is sacred. There are no limits. Anything goes.

The commonsense testimony of R. Jack Powell, executive director of the Paralyzed Veterans of America, before the Senate Judiciary Committee in 1989 is appropriate here:

Certainly, the idea of society is the banding together of individuals for the mutual protection of each individual. That includes, also, an idea that we have somehow lost in this country, and that is the reciprocal, willing giving up of that unlimited individual freedom so society can be cohesive and work. It would seem that those who want to talk about freedom ought to recognize the right of a society to say that there is a symbol, one symbol, which in standing for this great freedom for everyone of different opinions, different persuasions, different religions, and different backgrounds, society puts beyond the pale to trample with.

● This ''bullet'' symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

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We all know that the flag is one overriding symbol that unites a diverse people in a way nothing else can or ever will. We have no king. We have no State religion. We have an American flag.

Today, the Senate must decide whether enough is enough. Today, the Senate must decide whether the American people will once again have the right to say, if they wish to, that when it comes to this one symbol, the American flag, and one symbol only, we draw the line.

The flag protection amendment does not amend the first amendment. It reverses two erroneous decisions of the Supreme Court. In listening to some of my colleagues opposing this amendment, I was struck by how many of them voted for the Biden flag protection statute in 1989. They cannot have it both ways. How can they argue that a statute which bans flag burning does not infringe free speech, and turn around and say an amendment that authorizes a statute banning flag burning does impinge free speech?

The suggestion by some opponents that restoring Congress' power to protect the American flag from physical desecration tears at the fabric of liberty is so overblown it is hard to take seriously. These overblown arguments ring particularly hollow because until 1989, 48 States and the Federal Government had flag protection laws. Was there a tear in the fabric of our liberties? To ask that question is to answer it—of course not. Individual rights expanded during that period while 48 States had the right to ban physical desecration of the flag.

I should add that the American people have a variety of rights under the Constitution. These rights include a right to amend the Constitution. The amendment process is a difficult one. The Framers did not expect the Constitution to be routinely amended, and it has not been. There are only 27 amendments to the Constitution. But the Framers of the Constitution did not expect the Senate to surrender its judgment on constitutional issues just because the Supreme Court rules a particular way.

The amendment process is there, in part, as a check on the Supreme Court and in an important enough cause. This is one of those causes.

Let me briefly address the pending amendments to Senate Joint Resolution 31. The McConnell amendment is a killer amendment. It would gut this constitutional amendment. It will completely displace the flag protection amendment should it be approved. A vote for the McConnell amendment is a vote to kill the flag protection amendment. Senators cannot vote for both the McConnell amendment and the flag protection amendment and be serious.

I say with great respect the Senator's amendment is a snare and a dilution. We have been down this statutory road before and it is an absolute dead end.

The Supreme Court has told us twice that a statute singling out a flag for special protection is based on the communicative value of the flag and, therefore, its misguided view violates the first amendment.

Even if one can punish a flag desecrator under a general breach-of-the-peace statute, the McConnell amendment is not a general Federal breach-of-the-peace statute. It singles out flag desecration involved in a breach of the peace. Johnson and Eichman have told us we cannot do that, we cannot single out the flag in that way. The same goes for protecting in a special way only one item of stolen Federal property, a Government-owned flag, or protecting in a special way only one item, a stolen flag desecrated on Federal property.

We all know why we would pass such a statute. Do any of my colleagues really believe we are going to fool the Supreme Court? Many of my colleagues, in good faith, voted for the Biden statute and the Court would not buy it. The Court took less than 30 days after oral argument and less than eight pages to throw the statute out, as they will this one.

They will do exactly the same to the McConnell statute. Even if the McConnell statute is constitutional—and it is not, with all respect—it is totally inadequate. Far from every flag desecration is intended to create a breach of the peace or occurs in a circumstance in which it constitutes fighting words.

Of course, many desecrated flags are neither stolen from the Federal Government nor stolen from someone else and desecrated on Federal property. Indeed, most of the desecrations that have occurred in recent years do not fit within the McConnell statute. Just as an illustration of its inadequacy, if the McConnell statute had been on the books in 1989, the Johnson case would have come out exactly the same way. Why? The Supreme Court said that the facts in Johnson do not support Johnson's arrest under either the breach-of-the-peace doctrine or the fighting words doctrine. Moreover, the flag was not stolen from our Federal Government. Finally, the flag was not desecrated on Federal property.

So the McConnell statute would not have even reached Johnson, and the case would have come out exactly the same. What, then, is the utility of the McConnell statute, as a practical matter, other than to kill the flag protection amendment?

The Biden amendment, on the other hand, insists if we are to protect the flag, we must make criminals out of veterans who write the name of their unit on the flag. If the statute that authorizes this had been enacted at the time, Teddy Roosevelt and his Rough Riders would have been criminals. Why? Because they put the name of their unit on the flag they followed up San Juan Hill, the flag which over 1,000 of their comrades died in protecting.

Moreover, the Biden amendment blurs the crucial distinction between our fundamental charter, the Constitution, and a statutory code. Read it. It actually puts a statute into the Constitution and, for the first time, I might add, says Congress can vote up or down on it if it wishes. We have not done that in the 206 years during which we have lived under the Constitution. We cannot do that to our Constitution today.

This same amendment was rejected 93 to 7 in 1990. It has not improved with age.

The two amendments by Senator HOLLINGS on the balanced budget and campaign finance reform are not relevant to the flag protection amendment and therefore are subject to a point of order. They should be debated and voted on at some other time, but do not destroy the flag amendment because of irrelevant matters on this occasion.

So, I urge my colleagues to support the flag protection amendment and reject the other amendments to be offered here today.

I reserve the remainder of our time and ask any time be divided equally.

The PRESIDING OFFICER. The Senator from Nebraska.

Mr. KERREY. Mr. President, I ask unanimous consent that 10 minutes in opposition be yielded to me.

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

Mr. KERREY. Mr. President, I do not believe that we are going to get Americans to stop desecrating our flag as a consequence of amending our Constitution. I just do not believe it is going to happen.

I see the distinguished Senator from Utah has a picture, a very disgusting picture of a young man, I believe, a young boy, perhaps, burning an American flag. Much of the desire to pass this constitutional amendment comes, in fact, from our observation that in some isolated instances, young people, angry about something, will desecrate a flag to make a point. Thus, we say, let us protect ourselves from these acts by amending the Constitution or passing a statute at the State level or passing, in this case, now in an amended form, a law at the Federal level saying that it is now against the law to desecrate the flag.

The respect for the flag is something that is acquired. One makes a choice based upon an understanding of what the flag stands for, and that understanding does not come in some simple fashion. It does not come with a snap of our fingers: Amend the Constitution, pass a law, and thus, all of a sudden, young people all across the Nation—or adults, for that matter—will immediately acquire respect for the flag based upon knowing that they will be punished if they do not.

That is basically the transaction here. We are saying, either respect the flag or we will punish you by invoking the law and perhaps fining you. I do not know, maybe there will be a jail sentence attached, some mandatory minimum perhaps that will be associated with the new criminal law of desecrating the flag.

Let me be clear on this. Many people are very confused, because I heard some people say, ''It is against the law to desecrate the dollar bill. Why is it not against the law to desecrate the flag?'' It is against the law to desecrate our flag. You cannot go down to the Iwo Jima Memorial or Arlington or up on the hill where the Washington Monument stands and burn a flag that is owned by the people of the United States of America. This issue here, this concern here is with a flag that some individual owns.

If the suspicion occurs, under this new constitutional amendment—I assume enabling legislation will occur as a consequence—that somebody, in their home, is desecrating their flag, it will now fall to the police or to the Federal law enforcement officials, I suspect, depending upon how the statute is written, to go into the home to make sure that individual is not desecrating his or her flag. That is the kind of response we are going to have our law enforcement people now charged with the responsibility of making.

I understand. I have spoken many times with American Legion members in Nebraska who are very enthusiastic about this amendment, or Veterans of Foreign Wars members, or Disabled American Veterans members who are very concerned about the loss of respect. They are very concerned about the loss of character.

Indeed, one of the most impressive things in community service right now, that has been over the course of my life, has been American Legion effort, and VFW and DAV effort, to provide programs for young people, to teach them the history of this country, to teach them about D-day, to teach them about what stands behind this flag, why this flag is so revered by those of us who have served underneath it. But we see in that moment, if it is Legion baseball or a VFW youth program, you see in that moment the kind of effort that is required to teach respect, for a young person to choose to acquire the character necessary to give the kind of reverence due the U.S. flag.

I know this amendment, now that it has been modified, stands an even better chance of passing. But make no mistake, there is going to be a consequence to this vote. This is not one of those deals where you just vote on it and say, Now I have kept faith with the American Legion, the VFW, the DAV, that have been lobbying very hard on it. There will be a consequence. We are going to pass a law and afterward there will be a law enforcement response. We are going to have an opportunity to measure, have we protected our flag as a consequence of amending the Constitution? Is there more reverence and respect? Do the young people of America now say, ''Gee, now that Congress has amended the Constitution, passed a law, and provided an environment where it is going to be illegal for us to burn the flag, we are now going to respect the flag more''? I do not think so.

We see an increase today of consumption of illegal drugs by 12- and 13- and 14- and 15-year-old youth who are using marijuana, who are using cocaine, who are using illegal drugs. We already have a law on the books where they will suffer tremendous consequences.

There is a decline in character today with the youth of America for a whole range of reasons, but we are not going to reverse that decline by simply passing a constitutional amendment and issuing a press release saying that we respect the flag and all sorts of other glowing statements that we might make.

I made a list of things that I would put down if I was trying to determine whether or not an individual had acquired, through effort, through work, through discipline, real character. It is not easy to do it. It is not just respect, reverence of the flag; it is respect and reverence for adults, the older people who have served, who put their lives at risk at Iwo Jima, who put their lives at risk at Normandy, who put their lives at risk at the Chosen Reservoir, who put their lives at risk at Khe Sanh, who put their lives at risk in Desert Storm, who put their lives at risk in Bosnia, who put their lives at risk every single day they wear the uniform of the United States of America and train to fly a plane and train to do the work that we ask them to do to protect us.

There are 38,000 people today in South Korea, Americans serving this country, putting themselves at risk as the North Koreans continue to press.

We need to teach our young people what it means to serve, and guide them in the acquisition of character and making the choices necessary to have character. To have character means that you are obedient to something higher than your own willful desire to satisfy short-term concerns. Obedience is not easy. It is not easy to be obedient to your parents. It is not easy to be obedient to your country—to answer the call, and say you are going to give yourself to some higher authority. It is much easier to say, ''Well, you know, freedom means to be willful. Freedom means to do whatever I want. It is not just burning a flag. If I want to consume marijuana, or consume cocaine, or do the opposite of what my parents tell me to do, that is what being free is all about. Freedom is not being obedient. That is to be a slave.''

Well, Mr. President, we need to teach young people that the pathway to freedom, in fact, is to be obedient to something other than your own desire to satisfy some short-term concern, physical or otherwise. To be an individual that acquires character means that you pay attention to what is going on around you. You do not daydream. To pay attention requires effort to note life around you—to note the passing not just of time. But your own life requires you to pay attention.

We need to help our young people learn what is necessary to do that.

Third, I put down on my list of things for an individual to acquire character is that will have to learn to be considerate about others—not self-centered but considerate.

What the flag burning issue is all about—what the desecration issue is all about—is do not necessarily offend somebody. Do not offend them, not just by burning a flag, but by disrespecting their property rights, or disrespecting their right to speak. Be considerate of other people.

That is one of the things that one needs, if they are going to acquire character. But you need to be conscious of time, and aware of the gift of life.

All of us in this Chamber are old enough to have either been with somebody who is dying, or seen somebody lose their life. And we know how precious life is as a consequence of that loss. We have been with a parent, with a loved one, and have sat with them as the life left them. We have sworn that moment that we would never forget how precious life is. And we committed ourselves, at least for a short period of time, to change our ways, to abolish and banish the habits that cause us to behave in ways that we do not like and are not proud of.

One must acquire, in the words of Albert Schweitzer, ''a reverence for life''—a respect for life as opposed to being not just disrespectful but perhaps destructive as well; but all of these things, and more besides.

I made a list this morning. There are others beside the elements of character that we are trying to teach our young people that cause us to be alarmed when we watch daytime television, that lead to our wanting to amend the Constitution to protect the one symbol, the one icon that tends to bind us together as a nation. All of us have had various experiences as a consequence of serving under that flag.

If you force people to respect the flag by amending our Constitution, or by passing a law, you are not going to have people respect the flag more. That is not the pathway to produce less desecration of the flag—something, by the way, that happens very little at all. It is not, in my judgment, a great threat to this country. What is a great threat to this country is when 40 percent of our youth do not know what the cold war was; when 50 percent do not know whether Adolf Hitler was an enemy in the Second World War; when a large percentage of people are unable to associate with any of the narrative of this country—any of the over 200 years of narrative of heroic adventures and life laid down for freedom that causes us in this moment to say, ''Well, let us try to establish once and for all that we will have character in this country by amending our Constitution.''

Mr. President, I again know there is great desire on the part of the Legion, the VFW, and DAV, and many other well-intended people who are concerned about the flag and want to protect the

flag. To protect the flag takes us down a much different and a much more difficult road, one that I believe this country needs to follow. But I do not believe at all that we are going to increase the amount of respect that Americans have for their flag as a consequence of amending our Constitution. Indeed, I believe quite the opposite.

For those who think it is a fairly easy free vote—vote for it, and walk away—there will be consequences. We are going to amend laws. We are going to have the spectacle of people being arrested in their home, the spectacle of law-abiding citizens now being faced with all kinds of new charges and accusations that they do not respect the flag sufficiently.

Mr. President, I hope that there are 34 votes in this Senate to block this because I believe that the flag of the United States of America should not be politicized. And I believe it will—not by the well-intended Senators who are here today on the floor in support of this resolution, but by the actions that will occur as a consequence of this amendment.

Mr. President, I yield the floor.

Mr. MCCONNELL addressed the Chair.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. MCCONNELL. Mr. President, I understand that the time of the opponents on this is controlled by Senator BIDEN.

The PRESIDING OFFICER (Mr. JEFFORDS). We are not certain who is controlling the time.

Mr. MCCONNELL. I am an opponent of the amendment, so I yield myself 20 minutes.

The PRESIDING OFFICER. Without objection, it will be charged to either side.

Mr. MCCONNELL. Mr. President, when we talk about the American flag, we usually do not think of it as an abstraction. It is not just a design on canvas.

For most of us, the flag means even more than the treasured symbol of our Nation.

Often, we think about a particular American flag we have seen or owned, and the special memories that surround that flag.

Some of us may remember the flag our fathers took out every Fourth of July and displayed from a makeshift flagpole.

Some of us may remember saying the Pledge of Allegiance to the flag in our first grade classroom.

Or we may recall the beautiful sight of an American flag in a foreign country, reminding us of home and safety.

Personally, I think of the American flag that sits on the mantle in my Senate office, folded up into a neat triangle.

There is not a day that goes by without me seeing that flag and thinking about it, if only for a minute or two.

I am very proud of that flag, because it was the flag that draped my father's coffin at his funeral, after he died of cancer in 1990.

For the rest of my life, I will remember seeing that flag and being so proud that my father had earned the right to have an American flag laid upon his casket—the highest military honor—by serving his country courageously in wartime.

My dad was a scout in the U.S. Army, fighting with the Allies in Western Europe during World War II.

D-day had come and gone, and the Germans were aggressively counterattacking, in the desperate hope that the Allies would lose heart and relent, allowing Germany to rearm and retain control over itself. This is what we came to call The Battle of the Bulge.

Being a scout was one of the most dangerous jobs in the Army, because you usually went out alone or in small groups, with minimal firepower.

And the whole purpose of being a scout was to find the enemy—to locate his position and strength, and then report that information back to the unit command.

Since you were virtually defenseless as a scout, you did not want to engage the enemy, but often that was unavoidable given the nature of the task.

In fact, my dad lost two-thirds of his company in one hellish night of fighting; and he himself came home with the Purple Heart.

But at least he came home.

Those were difficult and anxious times, but there was also great clarity of purpose in America's participation in World War II.

And as I look at that folded-up flag in my office, what strikes me over and over again is that my dad voluntarily went to war—risked his life like so many others of his generation—not because he was interested in acquiring a piece of European real estate, but because he believed in the cause of freedom.

Protecting America's freedom—and restoring the freedom of other nations—that is why my dad went to war.

United States Rangers scaled the cliffs of Normandy not to conquer, but to free. General MacArthur returned to the Philippines, not to conquer, but to free.

Even as we speak, American troops are deploying to Bosnia, not to conquer, but to bring freedom from centuries of ethnic violence and bloodshed.

Freedom is and always has been the great cause of America, and we must never forget it.

If we have learned one thing from the astonishing collapse of global communism, it is that freedom eventually wins out over tyranny every time. Ronald Reagan predicted it, and as usual, he was right.

Freedom is the most powerful weapon America has in a watching world. Preserving freedom—even when every impulse we feel goes in the opposite direction—sets an example for other nations to follow when their road to freedom gets rough.

If we allow ourselves to compromise on freedom, what can we expect young democracies like Russia and Ukraine to do, when they are faced with the difficult issues and decisions that freedom brings?

If we want to spread freedom, we need to stand for freedom—without equivocation or compromise.

Just as importantly, freedom is what will preserve our own democracy for the long run. Without freedom, America will cease to be America.

What does our freedom consist of?

Perhaps the most fundamental freedom is the first one enumerated in the Bill of Rights: the freedom of speech. And freedom of speech means nothing unless people are allowed to express views that are offensive and repugnant to others.

The freedom of speech that is protected by the Constitution is not about reaching consensus, it is about conflict and criticism.

Freedom of speech knows no sacred cows.

As all of us here are painfully aware, the high offices we hold provide no insulation from attacks by the media, even those that are completely unfair and inaccurate.

And as much as I do not like it at times, that is the way it ought to be.

As Justice Jackson wrote in the 1943 decision, West Virginia State Board of Education versus Barnette:

> If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion or other matters.

The reason we have a first amendment is that the Founders of this Nation believed that, despite all the excesses and offenses that freedom of speech would undoubtedly allow, truth and reason would win out in the end.

As one constitutional scholar put it, the answer to offensive speech is not more repression, but more speech.

To put it another way, the best regulator of freedom—as paradoxical as that sounds—is more freedom.

The Supreme Court also has made it clear that the first amendment does not protect just the written or spoken word.

That is because ideas are often communicated most powerfully through symbols and action.

We do it all the time in political campaigns.

For example, as I have cited on this floor many times, the Supreme Court has held that spending on political speech is constitutionally indistinguishable from the speech itself.

And because campaign spending is so closely linked to political speech—the core of the first amendment—the Court has held that mandatory campaign spending limits are per se unconstitutional.

But that is only one example where something that appears to be conduct has a clear expressive purpose that falls within the ambit of the first amendment.

So to categorize something as conduct doesn't fully answer the question of whether it is also speech, and therefore protected by the Constitution.

Of course, when we see hateful people desecrating the American flag, we are instantly repulsed by it.

It strikes at the core of our emotions.

And it is not only because we love the flag and all that it symbolizes to us; it is also because of what is being communicated by such foul behavior.

Those who willfully desecrate our flag are saying that America is a lousy country, that its faults are beyond repair, and that it deserves to be torn down and reviled.

They are also saying—and this is something I take particular offense at—that men like my father—who spilled their blood to save America and liberate others—were involved in an unworthy cause.

Thus, burning the flag is a uniquely offensive way of disparaging their heroism and trivializing their sacrifice.

Ideas like these are not only reprehensible, they are also demonstrably false.

They are lies: lies about America, and lies about those who fought and died for our country.

Nevertheless, as divisive and distorted as these ideas are, as much as they deserve to be condemned, they are still protected by the first amendment.

The most revolutionary facet of our Constitution—what sets it apart from every other document in history—is that it confers its benefits not only on those who love this land, but also on those who hate it.

For years, people in other countries saw it as a weakness that we tolerated so much vitriolic dissent in America.

Now they are realizing it is our strength.

I think of the powerful testimony of Jim Warner, a prisoner of war in North Vietnam from 1967 to 1973, whom I had the privilege of meeting this year.

During his imprisonment, Jim had been tortured, denied adequate food, and subjected to over a year of solitary confinement.

When he was finally released, he looked up and saw an American flag. To use Jim's own words, ''As tears filled my eyes, I saluted it. I never loved my country more than at that moment.''

One can only imagine how much it grieved this patriot when a North Vietnamese interrogator showed him a photograph of some Americans protesting the Vietnam war by burning an American flag.

The interrogator taunted Warner by saying, ''There. People in your country protest against your cause. That proves you are wrong.''

But Jim Warner mustered every bit of strength he had and replied firmly, ''No—that proves I am right. In my country we are not afraid of freedom—even if it means that people disagree with us.''

As Jim tells the story, the North Vietnamese interrogator reeled back, ''His face purple with rage * * *. I was astonished to see pain, confounded by fear, in his eyes.''

Drawing on that incredible experience, Jim Warner wrote the following about the issue before us today:

> We don't need to amend the Constitution in order to punish those who burn our flag. They burn the flag because they hate America and they are afraid of freedom. What better way to hurt them than with the subversive idea of freedom? Spread freedom.
>
> When a flag was burned in Dallas to protest the nomination of Ronald Reagan . . . he told us how to spread the idea of freedom, when he said that we should turn America into a ''city shining on a hill, a light to all nations.''
>
> Do not be afraid of freedom, it is the best weapon we have.

''Spread freedom—spread freedom.'' If anything is a conservative creed, that is it.

That is why so many die-hard conservatives flatly reject the idea of a constitutional amendment to ban flag burning.

George Will called it a ''piddling-fiddling amendment.'' Cal Thomas said it was ''silly, stupid, and unnecessary.''

The National Review editorialized against it twice, saying it would ''make the flag a symbol of national disunity.''

The College Republicans, in their newspaper the Broadside, argued that a flag burning constitutional amendment would not accomplish much of anything.

And Charles Krauthammer warned that it would ''punch a hole in the Bill of Rights,'' concluding that, ''If this is conservatism, liberalism deserves a comeback.''

And what about the liberals?

Nat Hentoff wrote that a constitutional amendment to ban flag burning would itself be desecration of the flag and the principles for which it stands.

Barbara Ehrenreich wrote a hilarious essay in Time magazine, envisioning all the legal conundrums that a flag desecration amendment would create—especially in an age when flag motifs are used on everything from campaign bumper stickers to underwear.

At some point, flag desecration is in the eye of the beholder.

In all of these writings, from across the ideological spectrum, the theme is the same: to use Jim Warner's deeply-felt words again: ''Spread freedom. Don't be afraid of freedom. It's the best weapon we have.''

Let me conclude with a brief story. The night of September 13, 1814, was one of the darkest in our Nation's history.

The late Isaac Asimov wrote a fascinating account of this night, which was later published by Reader's Digest. I will attempt to summarize it:

Three weeks before that fateful September night, the British had succeeded in taking Washington, DC, and now they were heading up Chesapeake Bay toward Baltimore.

Their strategy was clear: if the British were able to take Baltimore, they could effectively split the country in two.

Then they would be free to wage war against the two divided sections: from the north, by coming down Lake Champlain to New England; and from the south, by taking New Orleans and coming up the Mississippi.

All that lay in the path of the British Navy was Baltimore. But first they had to get past Fort McHenry, where 1,000 American men were waiting.

On one of the British ships was an American named Dr. Beanes who had been taken prisoner earlier. A lawyer by the name of Francis Scott Key had been dispatched to the ship to negotiate his release.

The British captain was open to the idea, but they would have to wait; the bombardment of Fort McHenry was about to begin.

All through the night, Beanes and Key watched Fort McHenry being pummeled by cannon shells and rocket fire.

They were close enough in to hear the shouts and screams of men in mortal combat.

And all night long, they could see the American flag flying defiantly over the fort, illuminated by the bombs and explosions.

But when dawn came, the bombardment ceased and a dread silence fell over the entire battlescape.

Dr. Beanes and Francis Scott Key strained to see any signs of life from the battered ramparts of Fort McHenry.

And what they saw brought them incredible joy: despite the brutal onslaught of the night before, the American flag—torn and barely visible in the smoke and mist—still streamed gallantly over Fort McHenry.

The message was clear: the British were not going to get to Baltimore—and the war had taken a decisive turn in America's favor.

So let us get one thing straight: our flag survived the British naval guns at Fort McHenry.

Our flag weathered the carnage and cannon-fire of a national civil war.

Our flag still flapped angrily from the front deck of the U.S.S. *Arizona*—even after she had been blown in half and sunk at Pearl Harbor.

And our flag stood tall in the face of machine-gun and mortar fire at Iwo Jima.

Make no mistake: this is one tough flag—and it does not need a constitutional amendment to protect it.

All it needs is hardy men and women who believe in freedom and have the courage to stand up for it, whatever the circumstances.

Then we can say together with confidence the words Francis Scott Key penned after that September night in 1814: ''And the star-spangled banner in triumph shall wave O'er the land of the free and the home of the brave.''

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah is recognized.

Mr. HATCH. Mr. President, I listened to my friend and colleague. And there are very few people I have as much admiration for as I do the distinguished Senator from Kentucky. I think he is a gracious man and wonderful Senator. He has led the fight on a lot of very good issues.

The McConnell amendment has two fundamental flaws that should convince anyone who supports Senate Joint Resolution 31 or who wants to protect the flag to vote to reject the Senator's amendment. First, the Supreme Court will certainly strike down the statute as contrary to its decisions in Johnson and Eichman. Second, the McConnell amendment is so narrow that it will offer virtually no protection for the flag. The McConnell amendment would not even have punished Gregory Johnson, which is the cause celebre case that is really involved here, among others.

What message does that send about our society's willingness to defend its values?

The McConnell amendment's primary fault is that the Supreme Court, following its mistaken Johnson and Eichman decisions, will strike it down as a violation of the first amendment. Both Johnson and Eichman make clear that neither Congress nor the States may provide any special protection for the flag. Because the Court views the flag itself as speech, any conduct taken in regard to the flag constitutes protected expression as well.

As Prof. Richard Parker of Harvard University Law School concludes: ''Since the flag communicates a message—as it, undeniably, does—any effort by government to single out the flag for protection must involve regulation of expression on the basis of the content of its message.'' So a careful reading of Eichman bears this point out. Even though the 1989 act was facially content-neutral, the Court found that Congress intended to regulate speech based on its content.

The McConnell amendment is not going to fool anyone, least of all the Supreme Court. Its purpose is clear: to protect the flag from desecration in certain, narrow instances. Unfortunately, the Supreme Court has said that the American people cannot do this, something they had a right to do for almost 200 years, a right they had exercised in 48 States and in Congress up to 1989, with the Johnson decision. Do we need a third Supreme Court decision striking down a third flag protection statute in just 6 years before the Senate gets the message?

Even if the Court were to find that the McConnell amendment was not intended to protect the flag from desecration, it will still find it unconstitutional. Under its decision in R.A.V. versus City of St. Paul, the Court will strike down any statute that draws content-based distinctions, even if, as in R.A.V., those distinctions are made within a category of unprotected speech. Thus, even though fighting words or words that incite a breach of the peace are unprotected, Congress cannot prohibit only certain types of speech within these areas of unprotected speech. However, it is this that the McConnell statute impermissibly does.

In fact, the Court in R.A.V. made clear that this doctrine would be applied to any flag protection statute. As Justice Scalia wrote for the Court: ''Burning a flag in violation of an ordinance against outdoor fires could be punishable, whereas burning a flag in violation of an ordinance against dishonoring the flag is not.'' Since the McConnell amendment is not a law of general applicability, but instead is one that singles out the flag for protection, it will be held to be unconstitutional by the Court.

Mr. President, the McConnell amendment is so narrow that it would not even have punished Gregory Johnson for his desecration of the flag. And in Johnson—this is a pretty good representation of what Johnson and others did.

In Johnson, the Court held that unless there was evidence that a riot ensued, or threatened to ensue, one could not protect the flag under the breach of the peace doctrine. Small protection, that. Do we really want to limit protection of the flag only to those narrow instances when burning it is likely to breach the peace? I think not.

Even if sections (b) and (c) of the McConnell amendment could survive constitutional scrutiny, which I do not believe they can, they are no substitute for real flag protection. Only those who steal and destroy flags that belong to the United States, or only those who steal the flag from others and destroy it on Government property, can be punished under the McConnell amendment. Gregory Johnson did not steal his flag from the United States; it was stolen from a bank building. He did not burn his stolen flag on Federal property. He burned it in front of city hall. If the amendment would not punish Gregory Johnson, who will it punish?

Adoption of the McConnell amendment will amount to the Government's unintended declaration of open season on American flags. Just do not burn it to start a riot. Just do not steal if from the Government. And just don't steal it and then burn it on Government property. Otherwise, the McConnell amendment declares, flag burners are free to burn away, just like they did on this occasion, represented by this dramatic photograph that is true.

Mr. President, I yield the floor.

Ms. MIKULSKI. Mr. President, I support and cosponsor the MCCONNELL amendment to ban flag burning. I oppose the burning of our U.S. flag. I oppose it today just as I always have.

Mr. President, I feel very strongly about this issue. I have voted for legislation to prohibit flag burning, and I have voted against amending the U.S. Constitution.

But, more than any other time in the past, I have grappled with today's vote to amend the Constitution to stop flag burning. This time the debate is different.

I truly believe that our Nation is in a crisis.

Our country is in a war for America's future. It's that's being waged against our people, against our symbols and against our culture. And I want to help stop it.

I firmly believe that we need a national debate on how to rekindle patriotism, values, and civic duty.

And if there is a way to do that, then I am all for it. It's important to me, and it's important to the future of our Nation.

Mr. President, I do not—and never have—intended or wished to inhibit America's freedom of speech. In fact, the first amendment—and others—got me where I am today.

I feel so strongly about this issue that I seriously considered supporting an amendment to the Constitution.

But, my colleague from Kentucky has offered an alternative to amending the Constitution that would protect the flag and protect the Constitution. I will support that alternative approach today.

Senator MCCONNELL's proposal does not amend the Constitution, but it will get the job done by punishing those people who help wage war against the symbol of this country and everything it stands for.

I know that we have gone down this road before by passing statutory language to ban flag burning only to have the Supreme Court overturn it. But, the McConnell amendment should pass constitutional challenge.

If there is a way to deal with and punish those who desecrate our U.S. flag without amending the Constitution, I am all for it. That is why I support the McConnell amendment.

The McConnell amendment says you cannot get away with abusing the flag of the United States. It means that you can't get away with using the flag to incite violence. The McConnell amendment says you can't use this Nation's symbol of freedom and turn it into a symbol of disrespect.

The McConnell amendment stands for the same things I do. It protects the principles embodied in our Constitution—as well as our U.S. flag.

Mr. SIMPSON. Mr. President, my remarks will last a very few moments. I believe the Senator from Virginia was here before I was and is seeking recognition.

The PRESIDING OFFICER. Does the Senator wish to speak in opposition?

Mr. SIMPSON. No. I will be speaking in accordance with the flag amendment desecration, with Senator HATCH.

Mr. HATCH. I yield 5 minutes to the distinguished Senator from Wyoming.

Mr. SIMPSON. Mr. President, I would like to make certain very brief comments on this pending resolution. For a

number of years, I have listened and been content—well, not always content, but I have listened—to the heated debate surrounding this amendment, and I now feel compelled to interject some rich personal thoughts of my own.

Many of the comments I have heard that are taking issue with this plan to amend the Constitution center around the issue of free speech. Opponents claim that if the flag desecration amendment is adopted, it will chill free speech, or will mean that a small majority will be free to determine exactly what activities constitute desecration. What these often self-proclaimed champions of free speech forget is that certain forms of speech are already regulated, including that category of speech known as fighting words.

Back in the 1950's, I was honored to serve my country in the U.S. Army. I served in the infantry in Germany for 2 years, in the 10th Infantry Regiment of the 5th Division, and with the 2d Armored Division, ''Hell on Wheels,'' serving with the 12th Armored Infantry Battalion. Every single day for over 2 years, I got up in the morning and I saluted that flag, marched in military parades behind it, maneuvered with it on the front of an armored personnel carrier, and was ready to die for it. All of us who served in the military did that, for that was our mission.

So when I see someone who has never been in the military—oftentimes you see that—and someone who does not have a shred of respect for the country, but much cynicism—throw a flag on the ground and urinate on it, or burn it, and claim he or she is exercising his or her right to free speech, it does rise to the level of fighting words to me, in my book. And I would surely be willing to bet it does in the books of a lot of other law-abiding citizens of this great country.

That is where I am coming from, and there are those who have served in the military and those who feel just as strongly on the other side, and I respect those views. But I do have a lot of trouble with people who were never in the military and hearing them express themselves on the issue on either side. That is clear, in my mind. So I more deeply respect the views of those who have worn the colors, who feel just as strongly on the other side, but I have great trouble listening to the prattle of those who have never even served in the Civil Air Patrol.

Recently, I read an article on flag desecration by Paul Greenberg in the July 6 copy of the Washington Times. He made several points I think bear reiterating. He claims, in a witty and substantial style, that ''our Intelligentsia'' have done their level best to ''explain to us yokels again and again that burning the flag of the United States isn't an action, but speech, and therefore a constitutionally protected right,'' and they cannot understand why a vast majority of the American public continues to want this amendment.

I agree with his conclusion that ''it isn't the idea of desecrating the flag that the American people propose to ban.'' Anyone is free to stand and to state how much they detest the flag, hate the flag and all that it stands for. ''It's the physical desecration of the flag of the United States that ought to be against the law.''

I could not agree more. For as Mr. Greenberg states so eloquently, some things in a civilized society should not be tolerated—such as vandalizing a cemetery, scrawling anti-Semitic slogans on a synagogue, scrawling obscenities on a church, spray-painting a national monument or, surely, for that matter, burning of the American flag. It really ought to be as simple as that. Period.

Thank you, Mr. President.

Mr. ROBB addressed the Chair.

The PRESIDING OFFICER. The Senator from Virginia is recognized.

Mr. ROBB. Mr. President, I yield myself 5 minutes against the time chargeable to those who oppose the amendment.

The PRESIDING OFFICER. The Senator is recognized for 5 minutes.

Mr. ROBB. Mr. President, I rise with a degree of reluctance because I'm taking the opposite side from so many friends, and veterans, and those who believe very strongly that we ought to have some constitutional protection for the flag.

But I myself feel very strongly that this would be the wrong move for us to make.

I, like many of our fellow Senators, served in the armed services. I served in combat. I am one of those who has always respected the flag. I never fail to rise to render appropriate honors. Indeed, like all others who served, I was willing to die for our flag if necessary—or for the underlying freedoms that our flag represents. And yet I believe that this amendment moves in the wrong direction.

We already have in place rules and regulations and statutes that prohibit desecration of our flag under certain circumstances. If the flag that is being burned does not belong to the individual that is burning it, there are already laws in place to cover that kind of physical destruction—or desecration. If the flag is being burned for the purpose of inciting a riot, or anything along those lines, there are already laws in place to prohibit that kind of activity.

Indeed, the manual that we have on our flag talks about the proper way to dispose of a flag. It is listed under ''Respect for the Flag.'' Section 176, paragraph K talks about the proper way to dispose of a flag that has been rendered no longer useful, one that is either tattered, torn, damaged, or somehow rendered less than an appropriate symbol of our country. The appropriate way to dispose of that flag is to burn that flag.

The difference that we are talking about with this amendment is the difference between an act and an expression of opinion, of speech. And it is in precisely those circumstances where the flag is burned to convey a message that the freedom that the flag represents—the basic democracy of this country—is challenged.

We nominate for the Nobel Peace Prize many in other countries who stand up to dissent peacefully against their government, who say that they believe their government is wrong for whatever reason. We have nominated, or others have nominated, everybody from Aung San Suu Kyi in Burma, who has just been released, to Nguyen Dan Que in Vietnam, Wei Jing Sheng in China, Nelson Mandella in South Africa, many in the former Soviet Union that were honored because they spoke up and spoke out.

And it is precisely when an individual is threatened by his or her government when he or she begins to speak out, that basic freedoms and democracy are most threatened. We know that the first sign that freedom or democracy is in trouble anywhere around the world is when the government starts locking up dissenters, when the freedom of the people to express their political opinions is stifled. And this is the distinction—the distinction between an act and a message—that I hope that we will be able to make when we consider this amendment.

The acid test of democracy is whether or not we can speak out in peaceful dissent against our Government without fear of being arrested, or prosecuted, or punished. And in this case, the amendment goes directly to the heart of that freedom.

Now I know that many who support this amendment—many of my fellow Senators, many other Members of Congress, and certainly leaders of veterans organizations, and others around this country—have a very noble cause and purpose. But I happen to believe that cause and purpose—that expression of devotion to our country—is best served if we don't amend the Constitution in this case.

Now I am not one that is arbitrarily opposed to amending the Constitution, but in this situation the amendment goes directly to the heart of what that Constitution protects for us and for all of our citizens.

So I would respectfully urge all of my colleagues to think long and hard with all due deference to their patriotism and resist the temptation to amend our Constitution in a way that would significantly undermine precisely the freedoms and the democracy that we seek to protect.

With that, Mr. President, I yield the floor and I thank the Chair.

Mrs. MURRAY. Mr. President, as an American, and the daughter of a disabled veteran, I take deep pride in our great Nation. To me, the flag symbolizes our strength, our democracy, and our unprecedented freedoms—freedoms that set us apart from every other country in the world. Our Constitution guarantees all of us this freedom, including the right to free speech. I believe we should be very cautious about

altering this document, because to do so alters the fundamental ideals on which our country was built.

I am deeply troubled by the implications of this proposal; namely, that some people believe it is now necessary to force Americans to respect their flag by enacting legislation demanding they do so. That is wrong and unnecessary. I do not believe this constitutional amendment will result in Americans having greater respect for authority, for our Government, or for our flag. Rather, I believe this amendment reinforces the idea that reverence for one's country and the symbols of one's nation must be imposed by law. And, I do not think that is what the American people need, nor do I believe this principle is consistent with our Nation's history of uncoerced respect for our country and flag. Instead, I hope parents will instill in their children, just as I have in mine, a deep respect for the flag. I also pray our Nation will never again be so divided that burning the flag becomes popular or acceptable.

But it is my father who spoke most directly to my heart on this issue. In World War II, my father fought for this Nation in the Pacific theater. He was wounded in battle and some doctors believe that the shrapnel in his leg may even be the cause of the multiple sclerosis from which he has suffered for the last 30 years. When I asked him his feelings about this constitutional amendment, he was saddened and offended. He explained that he had not fought for the U.S. flag; he had fought and suffers still for the freedom that our flag symbolizes. That freedom is what this Congress may vote to limit.

Mr. President, for the ideals embodied in our Constitution, for the respect I have for all our flag represents, and most personally, for my father's sacrifices, I will vote against this amendment.

Ms. MIKULSKI. Mr. President, I am deeply concerned about the desecration of the U.S. flag because of what it says about our culture, our values and our patriotism. But I must vote against this amendment to the U.S. Constitution.

Mr. President, I absolutely do not support the desecration of our flag. In 1989, I voted for legislation to prohibit flag desecration. And I regret that law was declared unconstitutional by the Supreme Court.

I not only support the flag. I support what the flag stands for. Our flag stands for our Constitution. The meaning of our flag is embodied in our Constitution—especially the first amendment.

Today, I continue to oppose the desecration of our flag, and I call on Americans to rekindle their patriotism, their values, and their civic duty.

I ask with all the passion and patriotism in me, that those who speak about constitutional rights, who talk about their freedom of speech, who talk about their freedom of expression—that they exercise community responsibility.

By community responsibility, I mean that each person take the right you have to speak, to march, and to organize, but remember when we desecrate symbols, we desecrate each other.

I do not wish to inhibit freedom of expression. But I want us to live in a culture that calls people to their highest and best mode of behavior. But we are not doing that in our society today.

We cannot build a society for the 21st century that advocates permissiveness without responsibility. For every right there is a responsibility. For every opportunity, there is an obligation.

I am very frustrated about what is going on in our country. I believe there is a war being waged—against our people, against our symbols, and against our culture.

When I go into the neighborhoods, moms and dads tell me that the toughest job in this country today is being a parent, providing for their families and teaching their children the values of our society.

Love your neighbor; love your country; be a good kid; honor your father and your mother; respect each other. These moms and dads feel that no one is looking out for them. The very values they teach in the home are being eclipsed and eroded by the culture that surrounds us. And some children do not even get that much attention.

We should—and need to—have a national debate on these issues.

But we cannot change the culture by changing the Constitution. We change the culture by living the Constitution—by speaking out responsibly and by organizing. I support amendments to expand the Constitution, not constrict it.

Mr. President, I am a U.S. Senator because of amendments to the Constitution—amendments that allowed me to organize and to speak—amendments like the 1st amendment and the 19th amendment.

The first amendment allowed me to speak up and speak out in protest to save a Baltimore community whose homes were about to be leveled for a 16-lane highway.

We organized. We protested. We exercised free speech. I challenged the thinking of city hall and all the road planners. The community liked what I was saying. I spoke for them and their frustrations, and they encouraged me to run for political office.

That experience took me into neighborhoods where they said no woman could win. But, I did. And the 19th amendment—which gave women the right to vote—helped me get here. And I made history. That happened because of amendments to the Constitution.

So, I know the power of the Constitution. And I know the power of amending it.

But all the past amendments have expanded democracy and expanded opportunity. This amendment we consider today would constrict the very freedoms that have allowed me to be here.

Mr. President, I am thankful to the people of Maryland who sent me here, and America's veterans should know today I am voting for what they fought for and all the people who work every day to make our country great.

Yes, I believe we can and should have a law to end the desecration of our flag. Yes, we need more community responsibility, more patriotism, more civic participation, values, and virtue.

I hope to cast my vote today to continually use the Constitution to expand democracy and not to constrict it.

Now is not the time to change the course. Now is not the time to tamper with laws, precedents and principles that have kept us in good stead for two centuries.

Mr. President, I take amending the Constitution very seriously, and I will not vote today to change it.

Mr. HATFIELD. Mr. President, I support Senate Joint Resolution 31, the Flag Protection and Free Speech Act of 1995, introduced by the distinguished chairman of the Judiciary Committee, Senator HATCH. Let me compliment my friend from Utah for his steadfastness on this complex and at times emotional issue.

As one who saw the Stars and Stripes go up at Iwo Jima, I can say I share the feelings of pride for our flag that have been sincerely expressed by Senators on both sides of this debate. If the flag symbolizes this Nation and the freedoms it provides, the Constitution is the living legal document under which this nation was created and pursuant to which those freedoms are guaranteed. While I have consistently supported legislative measures to protect the flag from those misguided souls who would deface it, I have been reluctant to amend the Constitution to do so.

Unfortunately, it appears that passage of an amendment to the Constitution is the only avenue available to address this problem given the fairly clear decisions that have been issued by the Supreme Court on this precise legal point. In June 1989, the Supreme Court handed down the landmark decision of Texas versus Johnson, in which it overturned a Texas statute punishing flag desecration on the grounds that it violated the free speech protection guaranteed by the first amendment to the Constitution. This holding had the effect of overturning 48 State flag desecration statutes, including the Texas statute, and one Federal statute.

In October of that same year, this body passed the Flag Protection Act in direct response to the Johnson case. Legal scholars, including Harvard's Lawrence Tribe, advised Congress that the statutory approach being considered would pass constitutional muster. I supported this statutory effort and opposed the constitutional amendment voted on later that month.

On June 11, 1990, the Supreme Court, in U.S. versus Eichman, struck down the flag protection statute which I had supported the prior year. On June 26,

1990, the Senate failed in its attempt to assemble the two-thirds margin necessary to pass the constitutional amendment. However, on this occasion I voted in favor of the constitutional amendment because of the direct rejection of the statutory approach by the Supreme Court.

I intend to support Senate Joint Resolution 31 when it is voted on this week. While I will continue to listen to the arguments in favor of and against the amendment proposed by my friend from Kentucky, Mr. MCCONNELL, I am not convinced it would be upheld by the Supreme Court. Furthermore, I am concerned that it would apply only in rare cases and thus leaves too great a loophole for those who wish to deface the flag.

Mrs. BOXER. Mr. President, this is an important debate we are undertaking here today, in the Senate, because it focuses on changing the cornerstone of American democracy: the U.S. Constitution.

The Constitution's principles transcend the few words which are actually written. Hundreds of thousands of American men and women have made the ultimate sacrifice in defense of these principles. And this remarkable, living document continues to inspire countless others struggling in distant lands for the promise of freedom.

In the 204 years since the ratification of the Bill of Rights, we have never passed a constitutional amendment to restrict the liberties contained therein. In our Nation's history, we have only rarely found it necessary to amend the Constitution. There are only 27 amendments to the Constitution—only 17 of these have passed since the Bill of Rights.

The first amendment to the Constitution states:

> 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 to peaceably assemble, and to petition the Government for a redress of grievances.

The amendment before us would create a new constitutional amendment to enable the Congress to prohibit the physical desecration of the U.S. flag.

Desecration of the flag is reprehensible. The issue for me is since there are countless examples of actions and speech which are, in my opinion, morally reprehensible, are we starting down a path that will lead to amendment after amendment to the Constitution—changing the very nature of that magnificent document. Some of these reprehensible areas for me are: Shouting obscenities at our men and women in uniform; burning a copy of our Constitution or the Declaration of Independence; speaking obscenely about our country or its leaders; demeaning our Nation in any way; burning the Bible; vile speaking about religion or God; and denigrating the Presidency as an institution, no matter who is in office.

All these things are vile to me and I have nothing but contempt for people who do such things. But, I think the question is this: Is it necessary for the greatest Nation in the world to amend the greatest document in the world to outlaw each of these offenses?

The passage of a constitutional amendment to prohibit flag desecration is a priority for this Republican Congress. The House of Representatives led the charge by passing the constitutional amendment in June.

So, I say to my colleagues here in the Senate: We have a choice to make. Do we stand behind Speaker NEWT GINGRICH and the House of Representatives? Or do we stand with the Founding Fathers? I, for one, choose to stand with the Founders—Thomas Jefferson, James Madison, and Ben Franklin, among others.

I believe that many flag burnings can be addressed by existing constitutional statutes passed by the States and localities to prohibit or limit burning and open fires. States and localities have the ability to enforce these fire code provisions, thereby prohibiting or limiting incidents of flag burning for valid safety reasons.

For example, in the city of San Francisco, the city fire code contains a general ban on open burning. It states:

> It shall be unlawful for any person to ignite, kindle, light or maintain, or cause or allow to be ignited, kindled, lighted, or maintained, any open outdoor fire within the city and county of San Francisco.

In the cities of Chula Vista in San Diego County and Fountain Valley in Orange County, CA, open burning may only be conducted by notifying the fire department or obtaining a permit. An individual who fails to comply with the code can be found guilty of a misdemeanor.

In addressing open fires, the fire prevention code of New York City, states:

> It shall be unlawful for any person to kindle, build, maintain or use a fire upon any land or wharf property within the jurisdiction of the city of New York.

Violation of the code results in money fines or imprisonment.

So, it is clear that authority already exists for States and localities to control or limit the burning of flags under their ability to protect the safety of their residents. And while this only covers one form of desecration—burning—where a flag being desecrated belongs to someone else, or the United States, State laws against larceny, theft, or destruction of public property can be invoked against the offender.

In addition, S. 1335, the Flag Protection and Free Speech Act of 1995, introduced by Senators MCCONNELL, BENNETT, and DORGAN, would create new statutory penalties for damage or destruction of the flag. I support S. 1335 as an effort to punish the reprehensible conduct of flag desecration in a manner consistent with the Constitution.

S. 1335 would criminalize the destruction or damage of the flag in three circumstances. Where someone destroys or damages the flag with the intention and knowledge that it is reasonably likely to produce imminent violence or a breach of the peace, under S. 1335, such actions would be punishable with fines up to $100,000 and 1 year of imprisonment.

The McConnell legislation also creates stiff new penalties where an individual intentionally damages a flag belonging to the United States, or steals a flag belonging to someone else and damages it on Federal land. In either situation, the individual could be subject to penalties of up to $250,000 in fines and 2 years of imprisonment.

By creating tough criminal penalties for desecration of the flag through statute, we punish reprehensible conduct without having to amend the Constitution. Moreover, in a Congressional Research Service analysis of the Flag Protection and Free Speech Act of 1995, the American Law Division opined that S. 1335 should survive constitutional challenge based on previous Supreme Court decisions.

Mr. President, desecration of one our most venerated objects —the American flag—is deeply offensive to me and most Americans. But I do not believe we need to modify our Constitution in order to protect the flag. We can protect the flag with existing laws and through the enactment of new criminal penalties for damage and destruction of the U.S. flag without having to alter our guiding document, the U.S. Constitution.

Mr. KERRY. Mr. President, I went to Vietnam because another Congress told me I had to go to protect freedom—including the first amendment—and defeat communism. I went; and I am honored to have served, but, here I am—today—forced to come to the floor of the U.S. Senate to fight for freedom once again and engage my colleagues in a debate about a flag burning amendment.

Those same colleagues—on one hand—want to amend the first amendment for the first time in 200 years and abridge our most basic freedom in the name of patriotism—and on the other—cut benefits for veterans which is—in my view—the most unpatriotic thing we can do.

This is the ultimate irony.

Over the last few months—they have come to this floor with endless speeches about preserving this democracy—their agenda does exactly the opposite. It dishonors veterans with the most destructive budget to veterans that I have ever seen in my years here. My Republican colleagues came to the floor with Medicaid cuts this year that would have eliminated coverage for 4,700 Massachusetts veterans—2,300 of them under the age of 65, disabled, and ineligible for Medicare coverage. The remaining 2,400 are over 65 and 1,200 of them are in nursing homes.

Mr. President, if we vote to amend the Constitution and raise the symbols of this Nation to the level of freedom itself, and we chip away at the first amendment to protect the flag—then what next? What other symbol do we

raise to constitutional status? We all have special symbols to us that represent America and democracy, but to give them constitutional status is, at best, an extraordinary overreaction to a virtually nonexistent problem. According to the Congressional Research Service there were three—count them—three—incidents of flag burning in the United States in 1993 and 1994. That is not exactly a major problem in our country.

Even Roger Pilon of the Cato Institute, in a recent editorial, said that, and I quote:

> This issue is left-over from the dimmest days of the Bush administration, when a desperate grasp for symbols masked an abject want of ideas.

And it was Ronald Reagan who said, as my colleague from Kentucky, Senator MCCONNELL, pointed out in his editorial yesterday in the Washington Post, ''Don't be afraid of freedom; it is the best weapon we have.'' But here we are again—debating a constitutional amendment to abridge that freedom.

Mr. President, I, like everyone in this Chamber, abhor seeing anyone burning the flag under any circumstances. It hurts me to see it. It has always hurt me. I thought it was wrong in the Vietnam era, just as I do now, but I never saw the act of flag burning—nor could I ever imagine seeing it—as unconstitutional. To burn the flag is exactly the opposite—it is the fundamental exercise of constitutional rights—and we cannot fear it, stop it, or set a precedent that abridges basic freedoms to show our outrage about it.

What we must do is tolerate the right of individuals to act in an offensive, even stupid manner.

Mr. President, as a former prosecutor I know that most flag burning incidents can be prosecuted under existing law. If a person burns a flag that belongs to the Federal Government—that constitutes destruction of Federal property, which is a crime.

Mr. President, 54 years ago last week, was the day that Franklin Roosevelt said would ''live in infamy.''

And I ask: Do we honor those who have served their country so ably, so bravely—do we honor our veterans by changing the first amendment, by trimming out fundamental freedoms they fought for?

In fact, I suggest that if we pass this constitutional amendment, this day will go down—once again—as a day that will live in infamy. For it will be the day when the greatest country on Earth limited the basic freedoms because of the stupid, incentive, hurtful acts of a very few people on the fringes.

We are better than that, Mr. President. We are smarter than that. We are smart enough to honor our Nation, our liberty, and our veterans without sacrificing our freedom.

In the final analysis, I think if Congress and the country want to do something serious to help our veterans, then we should focus on the quality of veterans benefits, the ability of veterans to have access to health care—on the POW/MIA issue and issues like agent orange. These are the serious bread-and-butter and health issues for those who sacrificed so much for America, and I'm working hard to make sure that America keeps its contract with our veterans.

But I do not believe that keeping the faith with our veterans means changing the first amendment for the first time in 200 years.

Mr. President, the Constitution is hardly a political tool to be pulled from the tool chest when someone needs to tighten a nut or a bolt that holds together one particular political agenda.

This is not an easy vote for me. I've been told that there are veterans in my State—in Massachusetts—who feel so strongly about this issue that they will follow me all over the State if I vote against this amendment; but let me make it very clear that to me the flag is a symbol of this country, it is not the country itself. The Bill of Rights is not a symbol; it is the substance of our rights—and I will not yield on that fundamental belief and I will not yield in my deep and abiding commitment to the men and women who served this country and sacrificed so much for the freedoms symbolized by the Stars and Stripes.

I thank my colleagues and I yield the floor.

Mr. DODD. Mr. President, the Members of this body should not risk the desecration of our Constitution simply to express outrage against those who desecrate the flag.

The issue before us today has absolutely nothing to do with condoning the behavior of those few who choose to defile one of our most cherished national symbols. Every Senator is troubled when someone burns, mutilates, or otherwise desecrates an American flag. There is no question about that. The issue is whether we tinker with the Bill of Rights in an attempt to silence a few extremists who openly express their contempt for our flag.

I am very reluctant to amend our the Constitution. In over 200 years, we have only amended that fundamental text 27 times, and we have never amended the Bill of Rights. In my view, we should not risk undermining the freedoms in the Bill of Rights unless there is a compelling necessity. I do not believe that the actions of a few flag burners has created that necessity.

Throughout our history we have recognized that the best remedy for offensive speech is more speech, and not a limitation on the freedom of speech. Supreme Court Justice Oliver Wendell Holmes expressed this idea very eloquently in his opinion in *Abrams* v. *United States*, 250 U.S. 616, 630 (1919):

> [W]hen men have realized that time has upset many fighting faiths, they may come to believe even more than they believe the very foundations of their own conduct that the ultimate good desired is better reached by free trade in ideas—that the best test of truth is the power of the thought to get itself accepted in the competition of the market, and that truth is the only ground upon which their wishes safely can be carried out.

Clearly, flag burning has not fared well in the marketplace of ideas. Across this country, Americans are quick to express their disdain for those who desecrate the flag. The powerful symbolic value of our flag remains unscathed.

In the past, I have supported Federal statutes designed to balance the need to protect the flag with the freedom of speech. In 1989, I joined with other Members of Congress to help pass the Flag Protection Act. In my view, that legislation was a measured response to this issue. Regrettably, the Supreme Court struck down that statute in United States versus Eichman.

This year, Senator MCCONNELL has offered a more narrowly crafted measure. I will support that amendment and I urge my colleagues to do the same. We should continue to try to address this issue statutorily, rather than through the more dramatic step of amending the Constitution.

In closing, I urge my colleagues to oppose this effort to amend the Constitution. We should continue to speak out against those who would desecrate the American flag, but we should not weaken its power by undermining the freedoms for which it stands.

Mr. PELL. Mr. President, today, the Senate is undertaking the solemn task of the considering an amendment to our Nation's Constitution. Indeed, the proposed language we are considering would, according to the Supreme Court and numerous legal observers, amend the Bill of Rights, the very core of personal liberties and freedoms enshrined and protected in our national charter.

The Congress has considered this issue before and while it has assented to statutorial protection of the flag, it rejected amending the Constitution for the same purpose, positions that I supported. I do so again today, believing that the our flag should be cherished and revered and find deliberated acts to desecrate it offensive. I also believe that the flag can be protected without infringing upon our first amendment guarantee of free expression.

In the Congress' last attempt to do so our approach was rejected by the Supreme Court. I believe that this time, however, the more carefully constructed statutes protecting the integrity of the flag offered by Senators BIDEN and MCCONNELL today stand a much better chance of passing constitutional muster and hope that my colleagues will join me in supporting them.

However, when it comes to amending the Constitution to prohibit flag desecration, I simply believe that that approach goes too far. The principles enshrined by our Founding Fathers in the Bill of Rights have not been altered in over 200 years and I cannot support the effort to do so here. Make no mistake: I love and respect the American flag

and all that it symbolizes. Nevertheless, as I have often said, I simply believe that our flag will wave more proudly if as we seek to protect it, we also protect the Bill of Rights.

Accordingly, I cannot support the proposed constitutional amendment to prohibit flag descration.

Mr. BRADLEY. Mr. President, our American flag is best protected by preserving the freedom that it symbolized. I cannot support a constitutional amendment that would limit that freedom. At the same time, I believe that anyone who burns the American flag is an ungrateful lowlife who fails to understand how special and unique our country is, and I tremendously respect those New Jerseyans who support this amendment and have urged my support with great dignity and conviction.

Like most Americans, I revere the flag as a symbol of our national unity. I want it protected from abuse. That is why I strongly supported the Flag Protection Act of 1989, which sought to punish those who would destroy our flag. That is why I regretted the Supreme Court's subsequent decision in United States versus Eichmann, which declared the law in violation of the first amendment. That is also why I enthusiastically support and today urge passage of another law that would make it illegal for someone to burn a flag, if the act itself would incite violence.

In our system, the first amendment is what the Supreme Court at a particular time says it is. The Court has said that the Flag Protection Act violates freedom of expression. A future Supreme Court may reverse that decision. Although I wish the Supreme Court had ruled the other way, it did not. The question now is whether protecting the flag merits amending the Bill of Rights.

In making the decision to oppose this amendment, I consulted my heart and my mind. My heart says to honor all those who died defending American liberty. My heart conjures up images of the marines holding the flag on Iwo Jima, the crosses in the fields at Flanders, the faces of friends who never came back from Vietnam.

My heart says, what a nation believes in, what it will preserve, what it will sacrifice for, fight for, die for, is rarely determined by words. Often people cannot express in language their feelings about many things. How do I know?

Because I struggle with it every day.

Remember the pain you felt when the *Challenger* exploded before your eyes? Remember the joy you felt when World War II and the Korean war ended? Remember the shock you felt when you learned of the assassinations of President Kennedy and Martin Luther King? Remember the feelings of attachment you have for the Lincoln Memorial, the Statue of Liberty, the U.S. flag?

These are symbols and shared memories for places, events, and things that tie us to our past, our country, and to each other, even when there are no words at all. When someone gives respect and recognition to them, we are moved, sometimes to tears. When someone demeans them or shows disrespect, we are outraged.

My heart says honor the flag, and I do. My mind says, when our children ask why America is special among the nations of the world, we tell them about the clear, simple words of the Bill of Rights, about how Americans who won our independence believed that all people were blessed by nature and by God, with the freedom to worship and to express themselves as they please. We found these truths to be self-evident before any other nation in the world did, and even before we created the flag to symbolize them.

Our Founding Fathers believed that fundamental to our democratic process was the unfettered expression of ideas. That is why the amendment that protects your right to express yourself freely is the first amendment, and politicians should never put that right at risk.

Now if this constitutional amendment passes, we will have done something no Americans have ever done—amended the Bill of Rights to limit personal freedom.

Even if you agree with the flag amendment, how can you know that the next amendment will be one you will like? You cannot. So let us not start. Once you begin chipping away, where does it stop? Do not risk long-term protection of personal freedom for a short-term political gain.

America's moral fiber is strong. Flag burning is reprehensive, but our Nation's character remains solid. My best judgment says we are in control of our destiny by what we do every day. We know the truth of Mrs. Barbara Bush's words that America's future will be determined more by what happens in your house than by what happens in the White House.

I have traveled America for over 25 years. I know we still have standards, insist on quality, believe in hard work, honesty, care about our families, have faith in God.

A rapidly changing world looks to us to help them define for themselves what it means to be free. Our leadership depends more than ever on our example. This is the time to be confident enough in our values, conscientious enough in our actions, and proud enough in our spirit to condemn the antisocial acts of a few despicable jerks without narrowing our basic freedoms.

My mind says that the best way to honor those who died to preserve our freedom is to protect those freedoms and then get on with the business of making America a better place.

I took an oath to support and to defend the Constitution of the United States. Each Senator has to decide in her own mind and in his own heart what he feels he must do, to fulfill the promise he made to preserve and to stand by the Constitution. Different Senators will arrive at different answers. For me, this amendment does not preserve the Constitution. To the contrary, it constricts, narrows, limits—makes it less than it was before. To preserve means to keep intact, to avoid decay, but this amendment would leave freedom of expression less intact, less robust, more in a state of decay. To support an amendment which would, for the first time in 204 years, reduce the personal freedom that all Americans have been guaranteed by the Constitution would be, for me, inconsistent with my oath. I will never break my oath.

Finally, in his dissenting opinion on flag burning, Justice Stevens warned us about using the flag ''as a pretext for partisan dispute about meaner ends.'' Politics can be a mean business, but it can also be a glorious business. Sometimes an event has unexpected consequences. Let's be frank; there is patriotism on both sides of this debate. So let me tell you what I believe about patriotism.

Patriotism—I know how it feels to be proud to be an American. I remember how I felt back in 1964 when the United States Olympic basketball team defeated the Soviet Union in the finals—I remember standing on the victory stand, with the gold medal around my neck, chills running up and down my spine, as the flag was raised and the national anthem played.

I was proud to have won—for myself and for my country.

Patriotism—it is like strength. If you have it, you do not need to wear it on your sleeve.

The patriot is not the loudest one in praise of his country, or the one whose chest swells the most when the parade passes by, or the one who never admits we could do anything better.

No, a patriot is one who is there when individual liberty is threatened from abroad, whether it is World War I, World War II, Korea, Vietnam, or even the wrongheaded action in Beirut in 1983—yes, that too. All those who served in these conflicts were defending liberty as our democracy chose, in its sometimes fallible way, to define the need to defend liberty.

But you do not need a war to show your patriotism. Patriotism is often unpretentious greatness. A patriot goes to work every day to make America a better place—in schools, hospitals, farms, laboratories, factories, offices, all across this land. A patriot knows that a welfare worker should listen, a teacher should teach, a nurse should give comfort. A patriot accords respect and dignity to those she meets. A patriot tries, in a secular as well as a spiritual sense, to be his brother's keeper.

When the only grandfather I ever knew came to America, he went to work in a glass factory. He worked with his hands, and he worked long and hard. After work he lived for three things: The first thing he lived for was going to the public library on a Saturday night to check out western novels,

which he would read and reread over and over again. The second thing he lived for was to sit on his front porch on summer nights with a railroad whistle in the background and listen on the radio to his real love, baseball. And the third thing he lived for was to tell his grandson—me—what America meant to him.

He said America was great because it was free and because people seem to care about each other. Those two, freedom and caring, are the two inseparable halves of American patriotism. As Americans who love our flag, we must not sacrifice the substance of that freedom for its symbol, and we must learn to care more about each other. We must not restrict our fundamental freedom. To do so, I believe, would betray the meaning of the oath I took to support the Constitution and the promise I made to myself to always do what I thought was right.

I oppose this amendment.

Mr. LEVIN. Mr. President, I cannot support the proposed constitutional amendment. I detest flag burning, but I also love the U.S. Constitution.

This country stands for a set of ideals of human freedom that are embodied in the Constitution and the Bill of Rights, and symbolized by the American flag. There are a handful of individuals who hold these ideals in such disrespect that they choose to express their hostility by taking a copy of the Constitution—or the flag—and burning it or tearing it up. The Supreme Court has ruled that however despicable this action may be, our Constitution protects these misguided individuals in the expression of their views—just as it protects the expression of hateful and despicable ideas by other misguided individuals.

As much as I revere the flag, I love the Constitution, the Bill of Rights, and the liberties that are enshrined in them. In a 1989 Washington Post article, James Warner—who was captured and held as a prisoner of war by the Vietnamese—eloquently explained the vital importance of the principles of freedom embodied in our Bill of Rights. Mr. Warner stated:

> I remember one interrogation where I was shown a photograph of some Americans protesting the war by burning a flag. ''There,'' the officer said. ''People in your country protest against your cause. That proves that you are wrong.''
>
> ''No,'' I said. ''That proves that I am right. In my country we are not afraid of freedom, even if it means that people disagree with us.''

I cannot let the despicable actions of the few who choose to express their misguided impulses by attacking our flag cause me to amend the Constitution and the Bill of Rights that have served us so well for 200 years. To do so would be to enable those few individuals to achieve something that no power on earth has been able to accomplish for over two centuries—to force us to modify the basic charter of our liberties that are guaranteed in the Bill of Rights.

Our Constitution has been amended only 17 times since the adoption of the Bill of Rights in 1789. The Bill of Rights itself has never been amended. A constitutional amendment is an extremely serious step, which is justified only to address a grave national problem. In this case, the proposed constitutional amendment is directed at an extremely small number of cases that have had no discernible impact on the health or security of the Nation. As the Port Huron Times Herald pointed out on October 14—

> Less than a handful choose flag-burning as their means of protest. It is so distasteful a display that no clear-thinking citizen could endorse it.

We should not agree to amend the Bill of Rights, which protects our most basic freedoms, to address the extreme behavior of a few erratic individuals.

I also do not believe that the proposed amendment is likely to succeed in actually protecting the flag in any case, because people who are so deluded or misguided as to burn a flag simply to get our attention are no less likely to do so just because there is a law against it. Indeed, they may be more likely to burn the flag if they believe that violation of a constitutional amendment will attract more attention to their antics. As the Traverse City Record-Eagle stated on November 2, a constitutional amendment—

> . . . won't even stop those few people who want to raise a ruckus by burning the flag from doing so. In fact, the extra attention a constitutional amendment would focus on the act might even encourage it.

Mr. President, the proposed amendment, as drafted, could also be easily evaded. The amendment does not define the flag. Does it cover Jasper Johns' famous painting of overlapping flags? Does it apply to a T-shirt with a picture of the flag on it? How about wearing a flag T-shirt with holes in it? Is a 49-star flag a flag of the United States? Does it apply if a flag is hung upside down? Would it prohibit the use of the flag in commercial advertisements? These questions, and dozens like them, would be left unanswered.

So the amendment would not only amend our Bill of Rights for the first time, it would do so without realistic prospect of successfully preventing the offensive activity at which it is directed.

Senator BIDEN's substitute amendment, unlike the underlying proposal, would at least address the objective actions of a person who burns or destroys a flag, rather than the subjective state of mind of that individual. I voted for the Biden alternative because it is preferable to the underlying proposal, even though it does not correct most of the problems that I have outlined.

Flag burning is reprehensible. If we could bar it by statute, without amending the bill of rights, I would do so. Indeed, I have voted for a flag-burning statute in the past and I voted for the McConnell-Bennett-Dorgan statute when it comes up for a vote. But I am not willing to tinker with our Bill of Rights and for this reason, I cannot vote for final passage of the proposed constitutional amendment.

In my view, Mr. President, we can show no greater respect to the flag than by showing contempt for those who disrespect it, while preserving the freedoms for which it stands. The constitutional amendment that is before us today is the same amendment that I voted against in 1990. My position has not changed, and I shall again vote against this proposed amendment.

Mr. SMITH. Mr. President, I rise in support of Senate Joint Resolution 31, the flag protection constitutional amendment. As an original cosponsor of Senate Joint Resolution 31, I am pleased to see that this important measure will be coming before the Senate for a final vote today.

Mr. President, the flag of the United States is the central, unifying, and unique symbol of our great Nation. Throughout our history, tens of thousands of Americans have given their lives while serving under our flag in time of war. In my own family, my father, Donald E. Smith, died in a Navy service-related incident during World War II. My family was presented with his burial flag. That flag means a great deal to us.

Desecrating the American flag is a deliberately provocative act. It is also an attack on the Nation itself, as symbolized by our flag. Such acts do not merit the protection of the law. On the contrary, those who commit them deserve to be punished by the law.

Mr. President, this constitutional amendment ought not to be necessary. The need for it became clear, however, when the Supreme Court of the United States struck down as unconstitutional both a State and a Federal flag protection statute. The Court held that such statutes violate the free speech protections of the first amendment to the Constitution.

I strongly disagree with those Supreme Court decisions. As the Court itself has recognized, our Nation's treasured right of free speech is not absolute. One does not have the right to yell fire! in a crowded theater, for example. In exceptional cases when the Government's interests are sufficiently compelling, the right to free speech may be carefully circumscribed. The Government's interest in protecting our Nation's central, unique symbol are sufficiently compelling, in my view, to justify limiting the right of political dissenters to desecrate the flag.

Mr. President, while the great Constitution that the Founders framed has survived many tests, it also has been amended 26 times. The people of the United States are not forced to accept a Supreme Court decision with which they fundamentally disagree. The Constitution itself grants the people, as represented by the Congress and the State legislatures, the right to amend it in order to reverse erroneous decisions by the Court.

I recognize that amending the Constitution is serious business. That is why we took the intermediate step of fashioning a Federal flag protection statute in the wake of the Court's decision striking down Texas's State law. When the Court also struck down the Federal statute, we had no choice but to move forward with this flag protection constitutional amendment.

Mr. President, I urge my colleagues to vote in favor of this constitutional amendment authorizing the Congress to enact legislation to protect our Nation's great flag. I am optimistic that this measure can be passed by the requisite two-thirds majority of the Senate today and will be submitted to the States for prompt ratification.

Thank you, Mr. President, I yield the floor.

Ms. SNOWE. Mr. President, I am proud to join Senators HATCH and HEFLIN to urge passage of the proposed constitutional amendment granting Congress the power to prohibit the physical desecration of the flag of the United States.

Our flag occupies a truly unique place in the hearts of millions of citizens as a cherished symbol of freedom and democracy. As a national emblem of the world's greatest democracy, the American flag should be treated with respect and care. Our free speech rights do not entitle us to simply consider the flag as personal property, which can be treated any way we see fit including physically desecrating it as a legitimate form of political protest.

We debate this issue at a very special and important time in our Nation's history.

This year marks the 50th anniversary of the Allies' victory in the Second World War. And, 54 years ago last week, Japanese planes launched an attack on Pearl Harbor that would begin American participation in the Second World War.

During that conflict, our proud marines climbed to the top of Mount Surabachi in one of the most bloody battles of the war. No less than 6,855 men died to put our American flag on that mountain. The sacrifice of the brave American soldiers who gave their life on behalf of their country can never be forgotten. Their honor and dedication to country, duty, freedom, and justice is enshrined in the symbol of our Nation—the American flag.

The flag is not just a visual symbol to us—it is a symbol whose pattern and colors tell a story that rings true for each and every American.

The 50 stars and 13 stripes on the flag are a reminder that our Nation is built on the unity and harmony of 50 States. And the colors of our flag were not chosen randomly: red was selected because it represents courage, bravery, and the willingness of the American people to give their life for their country and its principles of freedom and democracy; white was selected because it represents integrity and purity; and blue because it represents vigilance, perseverance, and justice.

Thus, this flag has become a source of inspiration to every American wherever it is displayed.

For these reasons and many others, a great majority of Americans believe—as I strongly do—that the American flag should be treated with dignity, respect and care—and nothing less.

Unfortunately, not everyone shares this view.

In June 1990, the Supreme Court ruled that the Flag Protection Act of 1989, legislation adopted by the Congress in 1989 generally prohibiting physical defilement or desecration of the flag, was unconstitutional. This decision, a 5–4 ruling in U.S. versus Eichman, held that burning the flag as a political protest was constitutionally protected free speech.

The Flag Protection Act had originally been adopted by the 101st Congress after the Supreme Court ruled in Texas versus Johnson that existing Federal and State laws prohibiting flag-burning were unconstitutional because they violated the first amendment's provisions regarding free speech.

I profoundly disagreed with both rulings the Supreme Court made on this issue. In our modern society, there are still many different forums in our mass media, television, newspapers and radio and the like, through which citizens can freely and fully exercise their legitimate, constitutional right to free speech, even if what they have to say is overwhelmingly unpopular with a majority of Americans citizens.

When considering the issue, it is helpful to remember that prior to the Supreme Court's 1989 Texas versus Johnson ruling, 48 States, including my own State of Maine, and the Federal Government, had anti-flag-burning laws on their books for years.

Whether our flag is flying over a ball park, a military base, a school or on a flag pole on Main Street, our national standard has always represented the ideals and values that are the foundation this great Nation was built on. And our flag has come not only to represent the glories of our Nation's past, but it has also come to stand as a symbol for hope for our Nation's future.

Let me just state that I am extremely committed to defending and protecting our Constitution—from the first amendment in the Bill of Rights to the 27th amendment. I do not believe that this amendment would be a departure from first amendment doctrine.

I strongly urge my colleagues to uphold the great symbol of our nationhood by supporting Senator HATCH and the flag amendment.

Thank you very much.

Mr. KEMPTHORNE. Mr. President, I rise today to express my firm support for Senate Joint Resolution 31. As an original cosponsor of this resolution proposing a constitutional amendment to prohibit the desecration of the flag, I believe enactment of this resolution is an important step in restoring the right of this society to protect the symbol of our Nation.

Mr. President, the people of Idaho have clearly expressed their desire to be able to protect Old Glory. I am pleased to note the Idaho State Legislature passed a resolution to this effect 2 years ago. In asking the Congress to present an antiflag desecration amendment to the States for ratification, the Idaho Legislature stated, ''. . . the American Flag to this day is a most honorable and worthy banner of a nation which is thankful for its strengths and committed to curing its faults, and a nation which remains the destination of millions of immigrants attracted by the universal power of the American ideal . . .''.

Some have claimed the passage of this resolution will weaken the sanctity of the first amendment. To these people I would ask, was the first amendment weak during the first 198 years after its ratification? Until the Supreme Court ruled flag desecration to be protected free speech in 1989, 48 States and the Federal Government had statutes which penalized an individual for desecrating the flag. I do not believe the time in our Nation's history prior to 1989 may realistically be viewed as a dark period in which Americans were denied their constitutional rights. The truth is, protecting the flag of the United States has long been a proud part of our national history. What we are attempting to do today is preserve that history.

In fact, I believe it is interesting to note that the Supreme Court specifically noted in 1974 Smith versus Goguen that flag desecration was not protected speech under the Constitution. In overturning a Massachusetts State law which protected the flag, the Court ruled that the problem was the vagueness of the State law, not the underlying principle of the law. The Court went on to say, ''Certainly nothing prevents a legislature from defining with substantial specificity what constitutes forbidden treatment of United States flags.'' The Court further noted that the Federal flag desecration law, which was in effect at the time, was acceptable because it prohibited ''only acts that physically damage the flag.'' This law remained in effect until the Court s 1989 ruling.

As a member of the Senate Armed Services Committee, I have had the opportunity to meet the men and women of our Armed Forces around the world. These individuals put their lives on the line regularly, so that we may live in peace and safety. And while they are serving us, the American public, they do so under the Stars and Stripes. For those who are stationed overseas, the flag represents the rights and freedoms which they stand prepared to defend, even while on foreign ground. It also stands for their home, the Nation which proudly awaits their return when their duties are completed. For those who have finished their service to their country, the flag is a constant

reminder that the ideals for which they fought still live, and that their sacrifices were not in vain.

Mr. President, I do not believe any of us here today wants to limit or restrict the right of Americans to speak out in an appropriate manner. In fact, numerous Members of this body on both sides of the aisle have taken advantage of this right to speak out against Government policies, and, undoubtedly, will continue to do so whether or not they are Members of the Senate. I simply believe the physical mutilation of the flag falls outside the range of speech which should be protected. I also believe the citizens of the United States should have the opportunity to decide for themselves, whether they also feel the flag deserves special protection. That is what this resolution is all about. And it is this principle that I ask my colleagues to support today.

Mr. HEFLIN. Mr. President, I rise today in support of the resolution to amend the Constitution of the United States to protect the American flag. We have recently revised the language in order to address the concerns of a few of my colleagues. They have voiced reservations about allowing behavior toward the flag to be governed by a multiplicity of State laws. The language we have added to the amendment establishes that Congress, and not the States, must adopt a uniform standard for prohibited conduct as well as for a definition of the ''flag of the United States.'' I believe the amendment as it now stands is strengthened by these revisions.

Although much has been said about how this amendment will put a muzzle on the first amendment, this is not true. The adoption of this amendment will not diminish the first amendment's hallowed place among our liberties. Prior to the Supreme Court's decision in Johnson, the majority of the States had laws on their books which banned the desecration of the American flag. Prior to Johnson, free speech under the first amendment flourished, including unpopular opinions and political speech. I do not expect this to change once the amendment is adopted.

The opponents have hinged their fight against this amendment on the decisions of the Supreme Court in two opinions. First is the case of Texas versus Johnson, a 5-to-4 decision, in which the Court held that a Texas statute protecting the flag granted it special legal protections which offended the Court's concept of free speech. Second is United States versus Eichman, in which the Supreme Court, again in a 5-to-4 decision, struck down a content neutral statute enacted by the Congress following the Johnson decision.

In their dissent in Johnson, the Justices make clear the reasoning that I believe is behind many of the supporters of the amendment. Chief Justice Rehnquist for himself and Justices O'Connor and White stated:

For more than 200 years, the American flag has occupied a unique position as the symbol of our Nation, a uniqueness that justifies a governmental prohibition against flag burning in the way respondent Johnson did here.

It is the flag's uniqueness which we realize makes it more than simply a piece of cloth that needs special protection. It is a symbol that stands for patriotism, love of country, sacrifice, freedom—values that are the essence of what it means to be an American.

Senator MCCONNELL has introduced a bill, S. 1335, which is designed as a statutory protection for the flag. While I appreciate the efforts of the Senator from Kentucky, I do not believe that a statute would be upheld under the strict scrutiny of the Supreme Court. The Court in Eichman was clear that no statute will pass muster if it singles out the flag of the United States for protection against contemptuous abuse.

S. 1335 invokes the fighting-words doctrine, and seeks to punish any person who destroys a U.S. flag ''with primary purpose and intent to incite or produce imminent violence or breach of the peace.'' According to legal experts, the Supreme Court in Johnson expressly rejected the application of the fighting words or imminent breach of the peace rationales offered by the Texas statute. This precedence in hand along with other recent decisions of the Court will not allow this statute, if passed, to stand.

It has been suggested that a statute which is facially neutral or content neutral could survive the strict scrutiny of the Supreme Court; I do not believe that is so. First, for the statute to be truly facially neutral it would have to ban any and all forms of destruction of the American flag. Second, a facially neutral statute which did not permit an exception for disposal of a worn or soiled American flag by burning would not be desirable nor acceptable to most Americans.

Unfortunately, for the statute to be truly content or facially neutral, it could not allow for any intentional destruction of the flag, including the burning of a worn or soiled flag. Any variation from completely neutral language would undermine the entire statute and, in all likelihood, would be found to be in violation of the first amendment under the Court's strict scrutiny test.

During the debate surrounding this amendment, a question has been raised as to precisely what conduct is prohibited under the amendment. It has been claimed that by using the term ''desecration,'' we would outlaw almost any use of the flag or its image outside of displaying it in a parade or on a flag pole. I think that this is an incorrect and unfair interpretation of the conduct we are attempting to prohibit.

Those who interpret the language as overly broad have suggested that this amendment should be limited to outlawing only the burning, mutilation, or trampling of the flag. Although these are acts which I find despicable, I find acts such as spitting, urinating, wearing the flag as underwear to be equally outrageous. Unfortunately, under the limitations some have suggested to the amendment, these acts would be allowed. I do not think that this is what the American people had in mind in their support of this amendment.

Since the Supreme Court persists in striking down State and Federal statutes, regardless of how carefully crafted those statutes are, we have no alternative. The only avenue which remains open for protecting the American flag from desecration is through the procedure required to amend the Constitution of the United States. This procedure is difficult, and for very good reasons. The last time an amendment was ratified was almost 4 years ago; that was the 27th amendment, which took over 200 years to ratify.

Because of the sanctity of the Constitution, I do not take lightly an amendment, but as I stated, we have no alternative. I believe that the citizens of this Nation do not want to see the Constitution amended in most instances, but I also believe that they have shown through their actions that the protection of the flag is an important issue. Those actions include the grassroots support of groups such as the Alabama Department of Reserves Officers Association of the United States, which passed a resolution urging the U.S. Congress to pass this amendment.

I urge my colleagues to vote in favor of passage of this resolution. By voting in support of this resolution we send this matter to the States and let the people in each State make the final decision on this important matter.

Mr. SPECTER. Mr. President, I approach any constitutional amendment with hesitancy—especially one induring the first amendment.

At the outset, I believe there is a major difference between an amendment seeking to change the text of the first amendment—as is now pending in the House of Representatives on freedom of religion—and one to overrule a decision of the Supreme Court of the United States.

For me, a 5 to 4 decision on flag burning does not merit the difference due the language of the Bill of Rights. There is nothing in the text on freedom of speech requiring protection for flag burners. While their speech will still be protected, their acts will be prohibited.

In a somewhat analogous context, I have sponsored and pressed for a constitutional amendment to overturn the Supreme Court's decision in Buckley versus Valeo, which extended the protection of freedom of speech to an individual who spends unlimited amounts of his or her own money for a candidacy for public office.

It is accepted that freedom of speech is not absolute or unlimited. Justice Oliver Wendell Holmes articulated the classic statement that a person is not free to cry fire in a crowded theater. In a similar vein, the Supreme Court has interpreted the first amendment to exclude from its protection incitement to

imminent lawless action, fighting words, obscenity, libel, and invasions of privacy.

Based on the precedents and general principles of constitutional interpretation, it is my judgment that Texas versus Johnson was incorrectly decided. The burning of the flag is conduct—not speech. I have great respect for robust debate to the extreme. But a speaker may express himself or herself with great vigor without insults or expressions that would be reasonably interpreted as fighting words.

Since I studied Chaplinsky versus New Hampshire in law school, I have been impressed with the import of the fighting-words doctrine. In Chaplinsky, the defendant was criminally charged when his speech angered a mob and almost caused a riot. He claimed his speech was protected by the first amendment. The Supreme Court unanimously rejected his argument, holding:

> . . . the right of free speech is not absolute at all times and under all circumstances. There are certain well-defined and narrowly limited classes of speech, the prevention and punishment of which have never been thought to raise any Constitutional problem. These include the lewd and obscene, the profane, the libelous, and the insulting or 'fighting' words—those which by their very utterance inflict injury or tend to incite an immediate breach of the peace. It has been well observed that such utterances are no essential part of any exposition of ideas, and are of such slight social value as a step to truth that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality.

I take a back seat to no one in protecting constitutional rights and civil liberties. For years I have stood against those who have sought to strip the Federal courts of their jurisdictional to hear constitutional cases involving subjects such as school prayer and busing. I have opposed efforts to breach the wall of separation between church and state and to weaken the exclusionary rule. Earlier this year, I opposed proposals in the counterterrorism bill to expand wiretap authority and to deport aliens using secret evidence in violation of the basic norm of due process.

Our law acknowledges and respects expectations. People have real, legitimate and reasonable expectations that the flag of the United States will be treated with honor and respect.

Some of the Supreme Court's most liberal Justices, the greatest defenders of our civil liberties, have forcefully held flag burning is not protected speech. Chief Justice Earl Warren:

> . . . the States and the Federal Government do have the power to protect the flag from acts of desecration and disgrace.

Justice Hugo Black, the ardent exponent of first amendment absolutism:

> [i]t passes my belief that anything in the Federal Constitution bars a State from making the deliberate burning of the American flag an offense.

Justice Abe Fortas articulated:

> . . . the reasons why the States and the Federal Government have the power to protect the flag from acts of desecration committed in public.

The Bill of Rights has a special sanctity in establishing our Nation's values. There is no part of the text of the Bill of Rights which I would agree to amend.

While substantial deference should be given to Supreme Court decisions on constitutional interpretation, there are some circumstances where amendment is warranted, especially on split decisions like the 5 to 4 vote in the flag-burning case.

Like fighting words in Chaplinsky, libel in Sullivan, incitement of imminent lawless action in Brandenburg, and invasion of privacy in Cantrell, my judgment is that flag burning is not constitutionally protected by the first amendment.

Mr. COHEN. Mr. President, I have lamented on a number of occasions the erosion of civility in our public discourse. This is a trend that has had a negative impact on our politics and on the relationship between the Government and the citizenry. The heightened level of rhetoric, the slash-and-burn tactics, and the accusations of bad faith, have made it more difficult for politicians to communicate with each other and to communicate with those we represent. It has made it more difficult for reasonable people to reach agreement and far too easy for unreasonable voices to dominate the debate.

The breakdown in the tone of our discourse is symptomatic of a wider problem which many have described as a deterioration of civil society. Our civil society is the collection of public and private institutions, and accepted moral principles, that bind us together as a community of citizens. Civil society is what makes us a nation of community, rather than merely a group with common voting rights.

There is abundant evidence that our civil society is fraying around the edges. People lack faith in the capacity of government to act in the interest of the people. There is a growing lack of confidence in our public schools—one of the great unifying forces in our country. Americans are less engaged in fewer communal activities than we once were. We are much more apt to stay at home to rent a video, communicate on the faceless Internet, or channel-surf on cable TV, than we are to attend a PTA meeting, march in a parade—or even join a bowling league, as one Harvard professor's study revealed.

It is against this background that today we consider the constitutional amendment to prohibit desecration of the U.S. flag. The argument for protecting the flag is a weighty one: The U.S. flag is a unique symbol of our nationhood. When our troops go to battle to fight for our Nation, they march under the banner of the flag; each day when our children go to school, they pledge allegiance to the flag; when a national leader or world dignitary dies, the flag is flown at half mast; when one of our athletes wins a gold medal at the Olympic Games, the flag of the United States is raised; when a soldier or police officer dies, his or her coffin is draped with the flag; when immigrants are naturalized, they salute to the flag.

In this diverse Nation, respect for the flag is a common bond that brings us together as a nation. Our common reverence for the flag is part of what makes us citizens of a country, not just individuals that happen to live in the same geographic area.

There is also no denying that when the flag is burned, desecrated, despoiled, or trampled upon, the potency of the flag as a symbol is denigrated. When the flag is burned, whether by Iranian fundamentalists during the hostage crisis or by American protestors here at home, we are rightly outraged because these acts represent a direct affront to our Nation. By tolerating flag desecration, we are condoning actions that undermine the fabric of our national life.

Critics of the flag amendment have reminded us that because flags owned by the Government are still protected under current law, this amendment will only restrict what individuals can do with flags that they own personally. But the flag is not a mere piece of property like a car or television, it is more than the fabric and dye and stitching that make it up. The design of the American flag and the values it represents belong to all of us; in a sense, it is community property. ''We the people'' maintain part ownership of that flag and should be able to control how our property may be treated.

This is not a very radical principle. Federal law already controls what we can or cannot do with our own money. Anyone that ''mutilates, cuts, defaces, disfigures, or perforates'' a dollar bill can be fined or put in jail for 6 months. Similarly, in O'Brien versus United States the Supreme Court upheld the conviction of a protestor that burned his draft card on the ground that the Government had a substantial interest in protecting a document necessary for the efficient functioning of the selective service system. Why is our interest in protecting currency or Government documents any stronger than protecting our greatest national symbol?

Opponents of the flag amendment also maintain that it trivializes the Bill of Rights by carving out an exception to the first amendment. This argument is based on the classic libertarian belief that truth can only emerge from complete freedom of expression and that the Government cannot be trusted to distinguish between acceptable and unacceptable forms of action or speech.

This first amendment absolutism, however, is contrary to our constitutional tradition. The list of types of speech that may be regulated or banned by the Government according to our Supreme Court precedents is lengthy: libel, obscenity, fighting

words, child pornography, deceptive advertising, inciteful speech, speech that breaches personal privacy, speech that undermines national security, nude dancing, speech by public employees, infringements of copyright, and speech on public property, to name a few.

And consider how narrow the flag amendment's restriction of speech really is and how little it limits our ability to protest against the Government. Even if the amendment is enacted one could still write or say anything about the Government; one could still burn a copy of the Constitution or effigies of political leaders; indeed, one could put a picture of a flag being burned on the Internet and circulate it to millions of people across the world with the push of a button.

Recall the words the protestors chanted while Gregory Lee Johnson set a flag on fire and gave rise to this entire controversy: ''Reagan and Mondale, which will it be? Either one means World War III. Ronald Reagan, killer of the hour, perfect example of U.S. power. America, the red, white, and blue, we spit on you, you stand for plunder, you will go under.'' So regardless of whether we have a flag amendment, there are a multitude of ways to heap contempt on the government, should one choose to do so. The effect of the amendment on free expression would be negligible.

I also want to take issue with the contention that our liberal tradition prohibits us from ever making substantive value judgments about what is good speech and what is not or that we must always remain indifferent or neutral with respect to the ideas and images that bombard us over the airwaves or through the media.

Senator DOLE touched on this in a speech he gave earlier this year criticizing the violent movies being produced in Hollywood these days. It isn't inconsistent with the first amendment to speak out against movies that contain dozens of shootings, or gruesome acts of violence that are then copied in real life only days after the initial screening. It isn't an act of government censorship for politicians to criticize music containing lyrics that denigrate women, glorify cop killers as role models, and promote racial divisiveness.

Likewise, it is not government censorship when the people amend the Constitution to prohibit one narrow, repulsive form of expression. The process of amending the Constitution does not consist of a dictatorial tyrant exercising power over enslaved subjects; rather it is the act of free people exercising their sovereign power to impose rules upon themselves. By enacting this amendment through the process set forth in article V of the Constitution, ''We the people'' will be determining that the message being expressed by those who burn the flag is not worthy of legal protection. The amendment represents a subjective, value-laden judgment by the people that our interest in preventing the damage that flag desecration inflicts upon our national character outweighs the meager contribution that flag burning makes to the advancement of knowledge and understanding of ideas. The Supreme Court balances interests in this manner in almost every constitutional case it decides. Why is it that we have no qualms about deferring to the value-judgments made by unelected jurists but we become squeamish when making such judgments through our most solemn act of self-government—amending the Constitution?

I do not believe this flag amendment sets a bad precedent by carving out an exception to the first amendment or that the people will act irresponsibly by amending the Constitution in a frequent or cavalier fashion. For one thing, the Constitution, in its wisdom, makes that too difficult to do. Also, I trust the people. They understand the value of liberty. They understand that the only way for truth to emerge is through the exchange of ideas. They understand that it is a slippery slope from government-controlled censorship to tyanny. I am confident that it will be the rare occasion that the people make an exception to our general tolerance for free expression by targeting a form of expressive activity for special treatment. And I am confident that our national character will be improved, not weakened, by the protection of our unique symbol of nationhood.

I agree with Justice Stevens' opinion in Texas versus Johnson. He said:

> The value of the flag as a symbol cannot be measured. Even so, I have no doubt that the interest in preserving that value for the future is both significant and legitimate.
>
> Similarly, in my considered judgment, sanctioning the public desecration of the flag will tarnish its value, both those who cherish the ideas for which it waves and for those who desire to don the robes of martyrdom by burning it. That tarnish is not justified by the trivial burden on free expression occasioned by requiring an available, alternative mode of expression, including words critical of the flag, be employed.

So I support this resolution to send the flag protection amendment to the States for ratification. And I urge my colleagues to support it as well.

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

I ask unanimous consent that the time be divided equally.

The PRESIDING OFFICER (Mr. BURNS). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

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

How much time do we have on this side?

The PRESIDING OFFICER. Nine minutes.

Mr. GLENN. Mr. President, I gave a more lengthy speech on this subject last Friday. In fact, I talked for about an hour, I guess, because I felt strongly about what was going on with this piece of legislation. Rather than repeating those remarks of last Friday, I call attention to an article that appeared in the Cleveland Plain Dealer earlier this year by a columnist, Dick Feagler, a friend of ours who I have known for a long time. Dick writes sometimes with a humorous bent and a serious twist to it at the same time.

I read this into the RECORD in the time I have remaining here because I think it pretty much says it all. The title is, ''Flag Should Stay Sacred in Our Minds, Not Law.'' His article goes on like this:

> Here they go again. Congressional Republicans, backed by some Democrats, are pushing for a constitutional amendment against burning the flag.
>
> That old bandwagon has more miles on it than your grandma's Edsel. But there are always plenty of new passengers eager to hitch a ride. In our area, freshman Congressman Steven C. LaTourette has climbed aboard for a short trip toward the stoplight of reason.
>
> Every four years or so, I have to write a column about this issue and it always makes me feel bad. I am a flag guy. I was raised on John Wayne movies. I feel good on the Fourth of July, and humble on Memorial Day. I am the kid who, at age 12, slipped a sternly worded note under the door of a merchant who never took his flag down at sunset. There's a grand old flag flying next to my front door 20 feet from where I'm writing this—
>
> So every time this comes up, I ask myself, why don't I just go along with it. It would be so much easier. It would make my feel proud and patriotic and as American as a Marysville, Honda. Why not just support changing the Bill of Rights to keep Old Glory safe from the punks and the fanatics?
>
> Well, because it's dumb, that's why. That's one reason. There's a deeper reason, but I'll deal with the dumbness first. After all, as some of you keep reminding me, I've got enough dumbness in me now without increasing my inventory.
>
> If we make it against the law to destroy a flag, exactly what kind of flag are we talking about? Are we only talking about the official flag, made, I believe, in Taiwan, that you buy at the post office? How about the flag my father still has with 48 stars on it? Is that still THE flag?
>
> Suppose I run up a flag on my Singer and leave off a couple of stripes and a handful of stars? If I burn that, will I land in federal court? Who would go to that much trouble, you ask? Pal, you don't know your punks and fanatics.
>
> How about if I draw a flag on a piece of paper? Can I bum that? Suppose I draw it in black and white but it is still unmistakably a flag? Does it count? How about those little flags on toothpicks you stick in cocktail weenies? If I singe one of those will the FBI come vaulting over the patio hedge to nail me? Are we going to write a brand new amendment to the Constitution the covers the flag on the seat of a biker's britches? Is a flag decal a flag?
>
> Back in the '60s, I covered a dozen rallies where people burned their draft cards. The frequency of draft-card pyromania was so great that nobody bothered to apply for a replacement. When the hippie at the microphone announced it was arson time, the protesters just lit anything they weren't planning to smoke. If I announce I'm burning a flag, does that count, even if I'm not?
>
> Who is going to write the constitutional amendment that sorts all this out? It's beyond my poor powers, Yank George M.

Cohan is dead, and even if he was still with us, I doubt he could do better than a C-minus with this assignment.

I said there was a deeper reason. And there is.

you can't destroy the flag. Nobody ever has.

The British tried it twice and gave up forever. The South ripped the flag in two and slipcoverd their half, but we glued it back together with the blood of Gettysburg and Chattanooga. The flag always came through, just like the song about it says.

The Kaiser couldn't damage it. Hilter couldn't; Mussolini couldn't; Tojo gave it a really good try, but he couldn't. The flag survived the Chosen Reservoir and the Mekong muck.

And after all of that, we think we need a constitutional amendment to protect it from some crazy-eyed young idiot with a Bic to flick and a mouth full of narcissistic anti-government claptrap? We think that one match and a TV camera can do something that 200 years of world-class thugs couldn't do? I hope we have more faith than that.

Once in one of my lengthening number of yesteryears, it was my job to remove flags from the caskets of dead soldiers and fold them and present them smartly to mothers and widows. Those were always emotional moments.

But I never thought I was handing over THE flag in exchange for a young man's life. Both I and the woman behind the veil knew that the flag worth dying for is the big one you can't see or touch but you know is there. Right up there under God, like it says in the Pledge of Allegiance.

The only kind of help that flag needs from Congress is a nation worthy of it.

That concludes his writing. It was in the Plain Dealer earlier this year. I think that pretty much says it all.

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

The PRESIDING OFFICER. The Senator has 4 minutes and 8 seconds.

Mr. GLENN. Mr. President, I could not add a whole lot to that.

Let me say this. I do not know how we administer this thing if we do have it put into effect. I always thought we were supposed to be one Nation—one Nation—not a nation that passes amendments that says we are going to break this up and let 50 States make up their own minds about how they want to treat the flag. I think that is our job here, and I think we do it for the Nation right here. I think it is a mistake to let all this go out to the States.

I remember back in 1976 we were celebrating the Bicentennial and we had bikinis, flag bikinis advertised in papers. I remember once watching a rock and roll concert that year, and it was quite a spectacle. It was one to make your blood boil, because the lead guitarist, who was bared from the waist up, did not have a shirt or anything on, but he is going at it and strumming and banging away on this thing. Pretty soon his pants started to slide down, and, lo and behold, you guessed it: He had flag shorts on. The audience went wild.

I find that more objectionable than I do some of the things we are talking about, to protect the flag here from burning it. I do not know whether body fluids get spilled on the flag in situations like that, with the bikinis or whatever. But I find that reprehensible. Is that covered under something like this? We are leaving this up to 50 different States, yet we quote a Pledge of Allegiance that says ''one Nation''—one Nation, not a Nation of 50 separate entities, all free to make their own rules about how they want to treat the flag—''under God, indivisible, with liberty and justice for all.'' We do not say just for some and not for others, and we do not say the flag should have different treatment in different parts of the country either.

So I disagree with this approach that says there is such a big problem out there we somehow need to do something, passing a constitutional amendment to take care of a nonproblem, really. There is not a great, huge rash of flag burnings out there that showed disrespect for the flag. I was told there were none last year. Then I was corrected by some of the veterans who visited me in my office a few days ago last week, and they said, no, they could verify there were three flag burnings this year.

We have just under 270 million people in this country. That means one offense for every 90 million people. I really do not see that as being a tremendous problem for our country. We have a solution here out looking for a problem to solve. That does not make much sense to me.

The flag symbolizes the freedoms we have. It is not the freedoms themselves. It is not the freedoms themselves, and those are the things that are important. Everyone on both sides of this issue, both sides of the aisle love and defend the flag, and if anyone came in here and tried to burn a flag right here there would be enough people to attack that person, I can guarantee you, that we would take care of it ourselves. That is the way most of these things will be taken care of back in our individual States.

Without a doubt, the most important of the values are covered in the Bill of Rights. If we had not had that Bill of Rights put together, you know some of the States were prepared to not approve the Constitution of the United States. In that very first amendment we cover some very, very sacred things. We say in that very first amendment, ''Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof; or abridging the freedom of speech''—which is deemed to mean other examples—''or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.'' That is all there is in that article. It covers those things, but how important they are. Without that, we would not have had a Constitution of the United States.

My time is up, Mr. President. If anyone wishes to look at my remarks in more detail, the CONGRESSIONAL RECORD of last Friday has it complete. My time is up and I yield the floor.

The PRESIDING OFFICER. Who yields time?

The Senator from Utah.

Mr. HATCH. Mr. President, the July 24, 1995, Washington Post published a letter from Donald D. Irvin of Fairfax, VA. He wrote:

It is regrettable that a constitutional amendment to protect the flag is necessary as a way to express the will of the people in response to the misconception of the Supreme Court. But this is hardly the first time that this has had to be done.

For example, the Dred Scott decision had to be corrected by the 13th and 14th amendments. Neither should have been necessary, but while the Supreme Court is an indispensable branch of government, on occasion the people have to ''explain'' the Constitution to it.

Although it is not incorporated within the text of the Constitution itself, Americans cite the pledge of allegiance to the flag ''and to the republic for which it stands.'' The republic is based upon the Constitution, which all naturalized citizens and those serving in military and official positions are sworn to defend. While native-born citizens are not otherwise required formally to make such an oath or to pledge allegiance to the flag—and indeed are free to refuse to do either without legal sanction—neither should they be free physically to desecrate the ultimate symbol of the Nation. . . .

There always will be a few demented souls who may desecrate the flag or violate any law. But arcane legal theories aside, too many people have sacrificed their lives for this country so that the rest of us can live free for us not to honor their memory and our allegiance to the republic by expressing through our highest standard of man-made law that Americans will not tolerate the wanton desecration of the one symbol ''for which it stands.''

I urge my colleagues to heed the commonsense voices of the American people and send this amendment to the States.

COMMON SENSE

Mr. President, I know there are lawyers and nonlawyers on both sides of the issue before us. But there has been a fair amount of discussion of legal principles involved in the flag protection debate. Frankly, lawyers sometimes make matters more complicated than they really are. That is one way lawyers drive up their market value. Sometimes a healthy dose of common sense goes much farther than lawyer talk in illuminating an issue.

In his trenchant dissent in the Texas versus Johnson case in 1989, Justice John Paul Stevens put the same thought this way:

The ideas of liberty and equality have been an irresistible force in motivating leaders like Patrick Henry, Susan B. Anthony, and Abraham Lincoln, schoolteachers like Nathan Hale and Booker T. Washington, the Philippine Scouts who fought at Bataan, and the soldiers who scaled the bluff at Omaha Beach. If those ideas are worth fighting for—and our history demonstrates that they are—it cannot be true that the flag that uniquely symbolizes their power is not itself worthy of protection from unnecessary desecration. [491 U.S. at 439].

In other words, denying the American people the right to protect their flag defies common sense.

Now, I wish we did not have to do this by constitutional amendment. We should not have to do so to ensure that the people can protect their flag.

I, like Earl Warren, Abe Fortas, Hugo Black, and Justice Stevens, believe the Constitution empowers Congress to protect the flag from physical desecration. But the Supreme Court twice has made clear that the statutory protection of the flag—because it is the flag—will be struck down under its interpretation of the Constitution. We have no choice here. Once the Supreme Court, by the narrowest of margins—5 to 4—orders us otherwise, and slams the door on us—and they did so twice—only the people can reverse that decision. And, in this process as prescribed under Article V of the Constitution, it is now up to the Senate to give the American people the opportunity to do so, if they so choose.

By sending this amendment to the States for ratification, the Senate opens the door to no other amendment, or statute, precisely because the flag is unique. There is no slippery slope here. The flag protection amendment is limited to authorizing the Federal Government to prohibit physical desecration of a single object, the American flag. It thus would not serve as a precedent for any legislation or constitutional amendment on any other subject or mode of conduct, precisely because the flag is unique. Moreover, the difficulty in amending the Constitution serves as a powerful check on any effort to reach other conduct, let alone speech which the Supreme Court has determined is protected by the first amendment.

This amendment does not allow Congress to prohibit any thought or point of view, but rather one narrow method of dramatizing that thought or viewpoint—by prohibiting one form of conduct; regulating action, not speech. No speech and no conduct, other than physical desecration of the American flag, can be regulated under legislation that would be authorized by the amendment.

As former Assistant Attorney General Charles J. Cooper testified:

> . . . if prohibiting flag desecration would place us on [a slippery slope of restrictions on constitutional protection of expression for the thought we hate,] we have been on it for a long time. The sole purpose of the Flag Protection Amendment is to restore the constitutional status quo ante Johnson, a time when 48 states, the Congress, and four Justices of the Supreme Court believed that the legislation prohibiting flag desecration was entirely consistent with the First Amendment. And that widespread constitutional judgment was not of recent origin, it stretched back about 100 years in some states. During that long period before Johnson, when flag desecration was universally criminalized, we did not descend on this purported slippery slope into governmental suppression of unpopular speech. The constitutional calm that preceded the Johnson case would not have been interrupted, I submit, if a single vote in the majority has been cast the other way, and flag desecration statutes had been upheld. Nor will it be interrupted, in my view, if the Flag Protection Amendment is passed and ratified.

That is the testimony of Charles J. Cooper, who, of course, was Assistant Attorney General of the United States, and is one of the leading constitutional experts here in Washington.

Mr. President, this is an extremely important issue. This issue will determine whether the United States wants to return to the values of protecting its national symbol the way it should be.

Should we pass this amendment today by the requisite 66 votes, there being only 99 Members of the Senate at present, this amendment would then be submitted to the States. We will leave it up to the people as to whether or not they want this amendment. My personal belief is that they will ratify this amendment. Three-quarters of the States, if not all of the States, will ratify this amendment so fast our heads will be spinning. I think the people want this. The polls show they want it. Although I do not believe we should do things just because the polls show it, in this case the polls show that the American people understand that this is a value that they want to maintain and uphold, and rightly so. This is a very important value, and, should we pass this amendment today, we will submit it to the States. And those issues of values, those issues of right and wrong, will once again be debated all over this country. It will be a very, very healthy thing in 1995 and 1996 to have these issues debated 207, years after we thought we were establishing values and virtue through the Constitution of the United States.

In all honesty, that debate needs to take place. It will be a much more effective debate, I think, than we have held here on the floor of the U.S. Senate. I believe it is one that is long overdue, and it could lead to a debate on other values in our society—other principles of good versus bad. I think it would be beneficial to the country to start reexamining some of these things, some of the permissive things, that we have allowed to occur in this society that have really denigrated our society. Whether to restore legal protection for our national symbol, the American flag, is an issue of such great constitutional import, one that will help us to start that debate.

I hope that our colleagues will vote for it today. I can accept whatever my colleagues do. But I hope they will vote for it. Should we pass it, the great debate on values will start. Should we not pass it, come 1997 we will be back with it again, and I think we will pass it at that time. But let us hope we can pass it today. I intend to do everything I can to see that it is passed.

Might I ask the Chair how much time remains on both sides?

The PRESIDING OFFICER. The Senator has 13 minutes remaining and the opposite side has no time left.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. HATCH. Mr. President, the argument that authorizing the prohibition of flag desecration violates the first amendment is of recent vintage. I have remarked before that the Johnson and Eichman decisions owe far more to evolving theories of jurisprudence than to the first amendment itself.

I think the Members of the First Congress who voted for the first amendment would be astonished to learn, two centuries later, that they had forbidden Congress from prohibiting flag desecration.

It is even more astonishing to believe that those who enacted the 14th amendment's due process clause, through which the first amendment's free speech guarantee has been applied to the States, believed they were forbidding the States from protecting Old Glory.

Indeed, during the Civil War, Congress awarded the Congressional Medal of Honor to Union soldiers who saved the American flag from falling into Confederate hands.

That Members of Congress who awarded the Medal of Honor for such heroics would also strip States of the right to protect the flag from those who would physically desecrate it seems to me to be far-fetched. As I have mentioned earlier, as recently as 1969, even Chief Justice Earl Warren, whose very name is an eponym for judicial activism among conservatives, wrote: ''I believe that the States and the Federal Government do have the power to protect the flag from acts of desecration and disgrace * * *'' (*Street* v. *New York*, 394 U.S. 576, 605 (1969) (Warren, C.J., dissenting)). Liberal Justice Abe Fortas agreed. And first amendment absolutist Justice Hugo Black was incredulous at the thought that the Constitution barred laws protecting the flag: ''It passes my belief that anything in the Federal Constitution bars a State from making the deliberate burning of the American flag an offense.'' (394 U.S. at 610).

That five Members of the Supreme Court have now said otherwise does not make their constitutional interpretation in this case wise or persuasive, any more than its decisions in the last century that Dred Scott should be returned to slavery, or that separate-but-equal treatment of the races passes muster under the equal protection clause made sense.

The pending amendment overturns the Johnson and Eichman decisions and clearly establishes in the text of the Constitution the power for Congress to protect the flag from physical desecration that those two decisions erroneously took away. It only addresses the Court's misguided, recent flag jurisprudence. It does nothing else; it does not disturb any other theories the Court has used to construe the Constitution.

THE AMERICAN FLAG DESERVES LEGAL PROTECTION REGARDLESS OF THE NUMBER OF FLAG DESECRATIONS IN RECENT YEARS

The Clinton administration testified that, in light of what it refers to as ''* * * only a few isolated instances [of flag burning], the flag is amply protected by its unique stature as an embodiment of national unity and ideals.'' [Testimony of Mr. Dellinger, June 6, 1995 at p. 1] I find that comment simply wrong.

First, aside from the number of flag desecrations, our very refusal to take action to protect the American flag clearly devalues it. Our acquiescence in the Supreme Court's decisions reduces its symbolic value. As a practical matter, the effect, however unintended, of our acquiescence equates the flag with a rag, at least as a matter of law, no matter what we feel in our hearts. Anyone in this country can buy a rag and the American flag and burn them both to dramatize a viewpoint. The law currently treats the two acts as the same. How one can say that this legal state of affairs does not devalue the flag is beyond me.

This concern is shared by others. Justice John Paul Stevens said in his Johnson dissent:

> . . . in my considered judgment, sanctioning the public desecration of the flag will tarnish its value. That tarnish is not justified by the trivial burden on free expression occasioned by requiring that an available alternative mode of expression—including uttering words critical of the flag—be employed. [491 U.S. at 437].

Prof. Richard Parker of Harvard Law School testified after Mr. Dellinger, and in my view, effectively rebutted his argument.

> If it is permissible not just to heap verbal contempt on the flag, but to burn it, rip it and smear it with excrement—if such behavior is not only permitted in practice, but protected in law by the Supreme Court—then the flag is already decaying as the symbol of our aspiration to the unity underlying our freedom. The flag we fly in response is no longer the same thing. We are told . . . that someone can desecrate ''a'' flag but not ''the'' flag. To that, I simply say: Untrue. This is precisely the way that general symbols like general values are trashed, particular step by particular step. This is the way, imperceptibly, that commitments and ideals are lost.

Second, as a simple matter of law and reality, the flag is not protected from those who would burn, deface, trample, defile, or otherwise physically desecrate it.

Third, whether the 45-plus flags whose publicly reported desecrations between 1990 and 1994 of which we are currently aware, and the ones which were desecrated so far this year, represent too small a problem does not turn on the sheer number of these desecrations alone. When a flag desecration is reported in local print, radio, and television media, potentially millions, and if reported in the national media, tens upon tens of millions of people, see or read or learn of them. How do my colleagues think, Rose Lee, for example, feels when she sees a flag desecration in California reported in the media? The impact is far greater than the number of flag desecrations.

Physical desecration of the American flag has occurred every year since the Johnson decision. I do not believe there is some threshold of flag desecrations during a specified time period necessary before triggering Congressional action. Certainly, critics of the amendment cite no such threshold. If it is right to empower the American people to protect the American flag, it is right regardless of the number of such desecrations in any 1 year. And no one can predict the number of such desecrations which may be attempted or performed in the future.

If murder rarely occurred, would there not be a need for statutes punishing it? Espionage prosecutions are not everyday occurrences. Treason prosecutions are even more infrequent, but treason is defined in the Constitution itself and no one suggests we repeal that provision or treason statutes.

Our distinguished colleague from Alabama, Senator HEFLIN, also responds to the criticism that there are too few flag desecrations to justify an amendment by noting: ''in my judgment, this is the time, in a cool, deliberate, calm manner, and in an atmosphere that is not emotionally charged to evaluate values. I think that is something that makes it appropriate to do it now. I [believe] that there have to be in this Nation some things that are sacred.'' I think my friend from Alabama is absolutely right.

Mr. President, I believe our time is about all up, and I would be happy to yield it back unless somebody wants to speak.

The PRESIDING OFFICER. I might inform the Senator he has 2 minutes and 30 seconds remaining.

Mr. HATCH. I will be happy to yield it back. I understand the other side's time is consumed.

RECESS

The PRESIDING OFFICER. If there is no objection, the Senate will stand in recess until the hour of 2:15 this afternoon.

There being no objection, the Senate, at 10:37 a.m., recessed until 2:15 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer [Mr. COATS].

FLAG DESECRATION CONSTITUTIONAL AMENDMENT

The Senate continued with the consideration of the joint resolution.

AMENDMENT NO. 3093

The PRESIDING OFFICER. Under the previous order, the question is on amendment No. 3093 offered by the Senator from Delaware. Under the previous order, there are 2 minutes of remaining debate time equally divided.

The Senator from Utah.

Mr. HATCH. Mr. President, I normally would want the distinguished Senator from Delaware to go first, but let me say this. This amendment is doubly flawed. First, it does not offer proper protection to the flag. A veteran writing the name of his or her unit on a flag is a criminal if we pass the statute authorized by this amendment.

Second, we have never in 206 years written a statute into the Constitution. This amendment is a textbook example of blurring the distinction between our fundamental charter, our Constitution, and a statutory code. We cannot do this to our Constitution.

The same amendment was rejected 93 to 7 in 1990. And it has not improved with age. There is a better way to protect the flag: vote down the Biden amendment, and then vote for the Hatch-Heflin-Feinstein amendment.

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

Mr. BIDEN. I ask that you withhold that request.

Mr. HATCH. I withhold.

Mr. BIDEN addressed the Chair.

The PRESIDING OFFICER. The Senator from Delaware is recognized.

Mr. BIDEN. I understand we have 1 minute.

Mr. President, I believe that the amendment of my friend from Utah is fatally flawed. For the first time ever, it puts the Federal Government in the position of the State governments of choosing what types of speech they think are appropriate. My amendment protects the flag, plain and simple. It is straightforward. It does not allow the Government to choose. It defines it. It says the flag cannot be burned, trampled upon. It is very specific.

I ask that my colleagues look at it closely and, hopefully, support it. I ask for the yeas and nays on my amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to amendment No. 3093 offered by the Senator from Delaware. The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. LOTT. I announce that the Senator from Texas [Mrs. HUTCHISON] is necessarily absent.

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

The result was announced—yeas 5, nays 93, as follows:

[Rollcall Vote No. 597 Leg.]

YEAS—5

Biden	Levin	Pell
Hollings	Nunn	

NAYS—93

Abraham	Bradley	Chafee
Akaka	Breaux	Coats
Ashcroft	Brown	Cochran
Baucus	Bryan	Cohen
Bennett	Bumpers	Conrad
Bingaman	Burns	Coverdell
Bond	Byrd	Craig
Boxer	Campbell	D'Amato