

ratified. Such a philosophy is not found in the original and historic intent of the First Amendment. Thus, in this Senator's view, the Supreme Court erred in *Texas v. Johnson* and in *United States v. Eichman*.

Since Johnson and Eichman, constitutional scholars have opined that an attempt by Congress to protect the flag with another statute would fail in light of the new interpretation currently embraced by the Supreme Court. Thus, an amendment is the only legal means to protect the flag.

This amendment affects only the most radical forms of conduct and will leave untouched the current constitutional protections for Americans to speak their sentiments in a rally, to write their sentiments to their newspaper, and to vote their sentiments at the ballot box. The amendment simply restores the traditional and historic power of the people's elected representatives to prohibit the radical and extremist physical desecration of the flag.

Restoring legal protection to the American flag will not place us on a slippery slope to limit other freedoms. No other symbol of our bi-partisan national ideals has flown over the battlefields, cemeteries, football fields, and school yards of America. No other symbol has lifted the hearts of ordinary men and women seeking liberty around the world. No other symbol has been paid for with so much blood of our countrymen. The American people have paid for their flag, and it is our duty to let them protect it.

This amendment offers Senators, from both sides of the aisle, the opportunity to stand united for the protection of the sacred symbol of our nation.

Restoring legal protection to the American flag is not, nor should it be, a partisan issue. More than 40 Senators, both Republicans and Democrats, have already joined with Senator FEINSTEIN and myself as original cosponsors of this amendment. I am pleased that this amendment has the unqualified support of our distinguished colleagues: Senators TED STEVENS; ZELL MILLER; JOHN MCCAIN; JOHN B. BREAU; LARRY E. CRAIG; JOHN E. ENSIGN; RICHARD G. LUGAR; BLANCHE LINCOLN; MAX BAUCUS; CHRISTOPHER S. BOND; TRENT LOTT; ERNEST F. HOLLINGS; MARK DAYTON; JEFF SESSIONS; E. BENJAMIN NELSON; JAMES M. INHOFE; JIM BUNNING; WAYNE ALLARD; SUSAN M. COLLINS; MICHAEL D. CRAPO; MICHAEL DEWINE; BILL FRIST; CHARLES E. GRASSLEY; CHUCK HAGEL; KAY BAILEY HUTCHINSON; PAT ROBERTS; JOHN W. WARNER; GEORGE ALLEN; SAM BROWNBACK; CONRAD R. BURNS; PETE V. DOMENICI; JUDD GREGG; RICK SANTORUM; RICHARD C. SHELBY; OLYMPIA J. SNOWE; LINDSEY GRAHAM; JOHN CORNYN; JAMES TALENT; LAMAR ALEXANDER; BEN NIGHTHORSE CAMPBELL.

Polls have shown that 80 percent of the American people want the opportunity to vote to protect their flag. Numerous organizations from the Amer-

ican Legion to the Women's War Veterans to the African-American Women's clergy all support the flag protection amendment. All 50 State legislatures have passed resolutions calling for constitutional protection for the flag.

I am, therefore, proud to rise today to introduce a constitutional amendment that would restore to the people's elected representatives the right to protect our unique national symbol, the American flag, from acts of physical desecration.

I ask unanimous consent that the text of the proposed amendment be printed in the RECORD.

I am very honored to be a cosponsor with my dear friend from California, Senator FEINSTEIN. I appreciate the effort and unwavering support she has put forth in this battle. I am proud and privileged to be able to work with her.

I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S.J. RES. 4

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States within 7 years after the date of its submission for ratification:

“ARTICLE—

“The Congress shall have power to prohibit the physical desecration of the flag of the United States.”.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 22—EX-PRESSING THE SENSE OF THE SENATE REGARDING THE IMPLEMENTATION OF THE NO CHILD LEFT BEHIND ACT OF 2001

Mr. DORGAN (for himself and Mr. CONRAD) submitted the following resolution; which was referred to the Committee on Health, Education, Labor, and Pensions:

S. RES. 22

Whereas all students, no matter where they live, should receive the highest quality education possible, and Congress and the President enacted the No Child Left Behind Act of 2001 (Public Law 107-110) to ensure high academic standards and the tools and resources to meet those standards;

Whereas the No Child Left Behind Act of 2001 imposes many new requirements and challenges for States, school districts, and individual educators;

Whereas many States and school districts are struggling to understand the requirements of the No Child Left Behind Act of 2001, even as additional regulations and guidance continue to be forthcoming from the Department of Education;

Whereas the small size, remoteness, and lack of resources of many rural schools pose potential additional problems in imple-

menting the No Child Left Behind Act of 2001;

Whereas many rural schools and school districts have very small numbers of students, such that the performance of a few students on the assessments required by the No Child Left Behind Act of 2001 can determine the progress or lack of progress of that school or school district;

Whereas the small number of students in many rural schools can make the disaggregation of testing results difficult and even statistically unreliable;

Whereas some of the options created for students attending failing schools, including the choice to attend another public school and the availability of supplemental tutoring services, simply may not be available in rural areas or may be prohibitively expensive due to the cost of transportation over long distances;

Whereas many rural schools already have shortages of teachers in key subject areas, rural teachers frequently teach in multiple subject areas, and rural teachers tend to be older, and lower paid than their urban counterparts;

Whereas many experienced teachers and paraprofessionals in rural schools may not meet the definition of “highly qualified” in the No Child Left Behind Act of 2001 and rural school districts will have difficulty competing with large school districts in recruiting and retaining quality teachers;

Whereas the No Child Left Behind Act of 2001 imposes many new requirements on schools and school districts, but the President's budget request for fiscal year 2003 does not provide the level of funding needed and authorized to meet those requirements and in fact cuts funding by \$90,000,000 for programs contained in the No Child Left Behind Act of 2001; and

Whereas a majority of the States are being forced to cut budgets and local governments are also struggling with revenue shortfalls that make it difficult to provide the increased resources necessary to implement the No Child Left Behind Act of 2001 in the absence of adequate federal funding: Now, therefore, be it

Resolved, That—

(1) the Secretary of Education should provide the maximum flexibility possible in assisting predominantly rural States and school districts in meeting the unique challenges presented to them by the No Child Left Behind Act of 2001 (Public Law 107-110);

(2) the President should, in his fiscal year 2004 budget request, request the full levels of funding authorized under the No Child Left Behind Act of 2001 for all programs, including the Rural Education Achievement Program (20 U.S.C. 7341 et seq.); and

(3) it is the sense of the Senate that, if the President does not request and Congress does not provide full funding for the No Child Left Behind Act of 2001 in fiscal year 2004, Congress should suspend the enforcement of the implementation of the requirements of the No Child Left Behind Act of 2001 until full funding is provided.

Mr. DORGAN. Mr. President, today, I am submitting a Sense of the Senate Resolution that expresses my concerns about the implementation of the No Child Left Behind Act.

I supported this law when it was passed by the Senate with overwhelming bipartisan support, and I still support it. In general, I think it is very appropriate and important for us as a Nation to demand very high standards of performance from our schools and to identify those schools that

should be doing better and give them the assistance they need to improve.

Having said that, I do have concerns that a lack of adequate funding and a potential lack of flexibility in the implementation of this new law could set out public schools up for failure, and that is wrong. All of us have an obligation, as parents, educators, concerned citizens, and policymakers, to get the implementation of this law right.

Nationwide, about 25 percent of public schools are rural. In North Dakota, fully 89 percent of our public school districts are rural. The No Child Left Behind Act imposes many new requirements that will be challenging for all States and schools to meet. However, rural school districts face unique challenges that are compounded by the small size, remoteness, and lack of resources facing many rural schools.

Rural educators in my State have pointed out a number of unique concerns facing them. For example, many rural school districts in North Dakota have very small numbers of students. The poor performance of just a few students on the tests required by the No Child Left Behind Act could result in a school being identified as needing improvement, even when most of the students are performing very well.

In addition, some of the options created under the No Child Left Behind Act for students attending schools identified for improvement simply may not be available in rural areas. For instance, most of the school districts in my State only include one school, so another public school choice is not an option. Likewise, the distance to the next nearest school district may be impractical or the cost of transportation may be prohibitively expensive. Similar concerns exist with the availability of supplemental tutoring services.

Many rural schools already have shortages of teachers in key subject areas, even though rural instructors frequently teach in multiple subject areas. Some of the experienced teachers and paraprofessionals in rural schools may not meet the new "highly qualified" requirements of the No Child Left Behind Act, and it will be very difficult for rural school districts to complete with large school districts in recruiting and retaining quality teachers.

I believe the No Child Left Behind Law provides States with the flexibility that is needed to address these and other concerns, if the Department of Education allows States to use that flexibility and the States take advantage of it. As President Bush himself said last week, "One size doesn't fit all when it comes to public education."

Of course, the other ingredient that is needed is funding. Even with the necessary flexibility, if schools do not have the resources to make needed reforms, they will not be able to improve.

When the Congress and the President last year reached bipartisan agreement on the No Child Left Behind Act, we agreed on the levels of funding that

would be necessary to meet the new expectations and requirements. That law authorizes \$31 billion for the No Child Left Behind Act in fiscal year 2003, a \$9 billion increase over the fiscal year 2002 level.

Unfortunately, barely a month after this legislation was signed into law, the President sent to Congress a budget that not only did not fully fund the increases in the No Child Left Behind Act, it actually cut funding by \$90 million.

One cut of particular concern to me is the President's proposal to eliminate funding for the Rural Education Achievement Program, REAP, which was funded in fiscal year 2002 at \$162.5 million. REAP funding is particularly important because it is targeted at small, rural districts that do not receive large enough amounts of money through the individual federal formula "title programs" to make substantive changes or investments. In addition, because small rural districts often lack the administrative staff to apply for competitive grants from the State and Federal level, they receive a smaller proportion of federal dollars than their suburban or urban counterparts.

For many rural school districts, REAP will mean an additional \$20,000 to \$60,000 in new funding that will help them to meet the challenges of implementing the No Child Left Behind Act. While this may not seem like much funding to an urban or suburban district, to a small rural district it makes a real impact.

As Congress completes work on the fiscal year 2003 Education appropriations bill, I hope we will provide the \$31 billion authorized in No Child Left Behind. I understand that Senator HARKIN plans to offer an amendment to bring the funding level up to the authorized amount. Given that the No Child Left Behind Act was passed by the Senate by an 87-10 vote, I would hope and expect that Senator HARKIN's amendment would receive similarly strong bipartisan support.

However, my Sense of the Senate resolution also calls on President Bush to request the authorized level of funding of \$34 billion in his fiscal year 2004 budget he will send to Congress next month, and it calls on Congress to appropriate that level of funding in fiscal year 2004.

If full funding is not provided in fiscal year 2004, my resolution expresses the "Sense of the Senate" that enforcement of the No Child Left Behind Act should be suspended. A moratorium on enforcement is not my preference. Our children would be much better off if Congress and the President simply lived up to their commitment to provide the level of funding and flexibility needed to implement this law correctly. That should be our goal.

However, without this funding, we are simply imposing an enormous "unfunded mandate" on states and local school districts. The reality is that the budget crises facing just about every

state and local government make it virtually impossible for states and local governments to make up for the lack of resources from the federal government.

Fundamentally, this can be a good law, and I think it would be a shame, and irresponsible to our children, if it cannot be implemented properly because Congress did not provide the resources it said it would.

SENATE RESOLUTION 23—SUPPORTING A DECISION OF THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT RELATING TO THE ADMISSIONS POLICY OF THE UNIVERSITY OF MICHIGAN

Mr. DASCHLE (for himself and Mr. GRAHAM of Florida) submitted the following resolution; which was referred to the Committee on the Judiciary:

S. RES. 23

Whereas racial and ethnic diversity has far-reaching benefits for all students, non-minorities and minorities alike;

Whereas racial and ethnic diversity increases the range of ideas and perspectives raised in the classroom, generates complex thinking, and prepares students to become participants in a pluralistic democratic society;

Whereas racial and ethnic diversity has a positive effect on students' intellectual and personal development because such diversity causes students to challenge stereotypes, broaden perspectives, and sharpen critical thinking skills;

Whereas a study done in 2000 by the American College on Education and the American Association of University Professors found that students and faculty believe that having multiracial and multiethnic student populations has a positive effect on students' cognitive and personal development;

Whereas in 1955, 1 year after the Supreme Court decided *Brown v. Board of Education*, 347 U.S. 483 (1954), less than 5 percent of college students in the United States were African-American;

Whereas by 1990, because of affirmative action and other initiatives, over 11 percent of college students in the United States were African-American;

Whereas after the United States Court of Appeals for the Fifth Circuit ruled, in *Hopwood v. Texas*, 78 F.3d 932 (5th Cir. 1996), that the University of Texas Law School's affirmative action program was unconstitutional, Latino and African-American admissions to the law school plummeted by 64 percent and 88 percent, respectively;

Whereas after California's anti-affirmative action measure, Proposition 209, took effect, law school admissions dropped nearly 72 percent among African-American applicants and 35 percent among Latino applicants;

Whereas, even with affirmative action measures there continues to be significant racial disparities between the enrollment rates of minority students and white students;

Whereas in 1978, in *Regents of University of California v. Bakke*, 438 U.S. 265 (1978), the Supreme Court ruled that campus diversity is a "compelling governmental interest" that justifies race and ethnicity as one of many factors that a university may consider in developing a diverse student body;

Whereas the admissions policy of the University of Michigan adheres to the standards set out in the landmark *Bakke* decision;

Whereas the University of Michigan does not have racial quotas for admission, and instead uses many factors to select students, including race, social and economic background, geographic origin, athletic ability, and a relationship to alumni, as well as test scores, grades, and essay scores;

Whereas all of those factors help the University of Michigan select a diverse well-rounded student body that is not just racially diverse, but economically and geographically diverse; and

Whereas the University of Michigan's admissions policy so far has been upheld as constitutional by the United States Court of Appeals for the Sixth Circuit, in the case of *Grutter v. Bollinger*, 288 F.3d 732 (6th Cir. 2002); Now, therefore, be it

Resolved, that the Senate—

(1) strongly supports the decision of the United States Court of Appeals for the Sixth Circuit, in the case of *Grutter v. Bollinger*; and

(2) authorizes and instructs the Senate Legal Counsel to appear as *amicus curiae* in that case, in the name of the Senate, to defend the constitutionality of the University of Michigan's admissions policy to ensure a diverse student body.

AMENDMENTS SUBMITTED & PROPOSED

SA 4. Mr. LUGAR submitted an amendment intended to be proposed by him to the joint resolution H.J. Res. 2, making further continuing appropriations for the fiscal year 2003, and for other purposes; which was ordered to lie on the table.

SA 5. Mrs. CLINTON submitted an amendment intended to be proposed by her to the joint resolution H.J. Res. 2, supra; which was ordered to lie on the table.

SA 6. Mr. COLEMAN (for himself and Mr. DAYTON) submitted an amendment intended to be proposed by him to the joint resolution H.J. Res. 2, supra; which was ordered to lie on the table.

SA 7. Mr. GRAHAM, of Florida (for himself, Mr. NELSON, of Florida, and Mr. VOINOVICH) submitted an amendment intended to be proposed by him to the joint resolution H.J. Res. 2, supra; which was ordered to lie on the table.

SA 8. Mr. BYRD (for himself and Mr. ROCKEFELLER) proposed an amendment to the joint resolution H.J. Res. 2, supra.

SA 9. Mr. KERRY (for himself, Mr. KENNEDY, Mr. SCHUMER, and Mrs. CLINTON) submitted an amendment intended to be proposed by him to the joint resolution H.J. Res. 2, supra; which was ordered to lie on the table.

SA 10. Mr. NELSON, of Florida submitted an amendment intended to be proposed by him to the joint resolution H.J. Res. 2, supra; which was ordered to lie on the table.

SA 11. Mr. NELSON, of Florida submitted an amendment intended to be proposed by him to the joint resolution H.J. Res. 2, supra; which was ordered to lie on the table.

SA 12. Mr. NELSON, of Florida submitted an amendment intended to be proposed by him to the joint resolution H.J. Res. 2, supra; which was ordered to lie on the table.

SA 13. Mr. KENNEDY (for himself, Mr. DASCHLE, Mr. DODD, Mr. REED, Mr. BINGAMAN, Mrs. MURRAY, Mrs. CLINTON, Ms. MIKULSKI, Mr. JEFFORDS, Mr. SCHUMER, Mr. LAUTENBERG, Mr. SARBANES, Mr. JOHNSON, and Mr. KOHL) proposed an amendment to the joint resolution H.J. Res. 2, supra.

SA 14. Mr. GRAHAM, of Florida (for himself and Mr. NELSON, of Florida) submitted an amendment intended to be proposed by him to the joint resolution H.J. Res. 2, supra; which was ordered to lie on the table.

SA 15. Mr. GRAHAM, of Florida (for himself and Mr. NELSON, of Florida) submitted an amendment intended to be proposed by him to the joint resolution H.J. Res. 2, supra; which was ordered to lie on the table.

SA 16. Mr. KENNEDY submitted an amendment intended to be proposed by him to the joint resolution H.J. Res. 2, supra; which was ordered to lie on the table.

SA 17. Mr. LAUTENBERG submitted an amendment intended to be proposed by him to the joint resolution H.J. Res. 2, supra; which was ordered to lie on the table.

SA 18. Mr. LAUTENBERG submitted an amendment intended to be proposed by him to the joint resolution H.J. Res. 2, supra; which was ordered to lie on the table.

SA 19. Mr. GREGG proposed an amendment to the joint resolution H.J. Res. 2, supra.

SA 20. Ms. SNOWE submitted an amendment intended to be proposed by her to the joint resolution H.J. Res. 2, supra; which was ordered to lie on the table.

SA 21. Ms. SNOWE submitted an amendment intended to be proposed by her to the joint resolution H.J. Res. 2, supra; which was ordered to lie on the table.

SA 22. Mr. MCCAIN submitted an amendment intended to be proposed by him to the joint resolution H.J. Res. 2, supra; which was ordered to lie on the table.

SA 23. Mr. GRASSLEY (for himself and Mr. BAUCUS) submitted an amendment intended to be proposed by him to the joint resolution H.J. Res. 2, supra; which was ordered to lie on the table.

SA 24. Mr. DAYTON submitted an amendment intended to be proposed by him to the joint resolution H.J. Res. 2, supra; which was ordered to lie on the table.

SA 25. Mr. DAYTON submitted an amendment intended to be proposed by him to the joint resolution H.J. Res. 2, supra; which was ordered to lie on the table.

SA 26. Mr. LOTT submitted an amendment intended to be proposed by him to the joint resolution H.J. Res. 2, supra; which was ordered to lie on the table.

SA 27. Mr. REED (for himself, Ms. COLLINS, Mr. DAYTON, Mr. JEFFORDS, Mr. DEWINE, Mr. KENNEDY, Mr. SARBANES, Ms. CANTWELL, Ms. STABENOW, Mrs. CLINTON, Mr. DODD, Mr. KERRY, Mr. LEVIN, Mr. CORZINE, Mr. LEAHY, Mr. DURBIN, and Ms. SNOWE) submitted an amendment intended to be proposed by him to the joint resolution H.J. Res. 2, supra; which was ordered to lie on the table.

SA 28. Mr. KENNEDY submitted an amendment intended to be proposed by him to the joint resolution H.J. Res. 2, supra; which was ordered to lie on the table.

SA 29. Mr. KENNEDY submitted an amendment intended to be proposed by him to the joint resolution H.J. Res. 2, supra; which was ordered to lie on the table.

SA 30. Mrs. MURRAY (for herself, Mrs. HUTCHISON, Mr. BYRD, Ms. SNOWE, Mr. HOLLINGS, Mr. CHAFEE, Mr. BIDEN, Mr. SPECTER, Mr. LEAHY, Mr. CARPER, Mr. LAUTENBERG, Mr. CORZINE, Mr. KERRY, Mr. ROCKEFELLER, Mr. DODD, Mrs. CLINTON, Mr. REID, Mr. JEFFORDS, Ms. COLLINS, and Mr. DURBIN) proposed an amendment to the joint resolution H.J. Res. 2, supra.

SA 31. Mr. SCHUMER submitted an amendment intended to be proposed by him to the joint resolution H.J. Res. 2, supra.

SA 32. Mr. HARKIN (for himself, Mrs. FEINSTEIN, Mr. LEAHY, Mr. BIDEN, Mr. KOHL, Mr. JOHNSON, Mr. NELSON, of Florida, Mr. ROCKEFELLER, Mr. AKAKA, Mr. JEFFORDS, Mrs. MURRAY, and Mr. LAUTENBERG) proposed an amendment to the joint resolution H.J. Res. 2, supra.

SA 33. Mr. CRAIG (for himself, Mr. DORGAN, Mr. CRAPO, Mrs. MURRAY, Mr. JOHNSON, Mr. CONRAD, and Mr. ALLARD) submitted an amendment intended to be proposed by him

to the joint resolution H.J. Res. 2, supra; which was ordered to lie on the table.

SA 34. Mr. CRAIG (for himself, Mr. BURNS, Mrs. MURRAY, Mr. SMITH, Mr. CRAPO, Mr. BAUCUS, Ms. CANTWELL, and Mr. WYDEN) submitted an amendment intended to be proposed by him to the joint resolution H.J. Res. 2, supra; which was ordered to lie on the table.

TEXT OF AMENDMENTS

SA 4. Mr. LUGAR submitted an amendment intended to be proposed by him to the joint resolution H.J. Res. 2, making further continuing appropriations for the fiscal year 2003, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ____ . Of the amount appropriated by this title for Atomic Energy Defense Activities for Defense Nuclear Nonproliferation, \$8,000,000 shall be available to the Secretary of Energy to carry out a program to encourage graduate students in the United States, and in the Russian Federation, to pursue careers in areas relating to nonproliferation.

SA 5. Mrs. CLINTON submitted an amendment intended to be proposed by her to the joint resolution H.J. Res. 2, making further continuing appropriations for the fiscal year 2003, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ____ . HEALTH EXAMINATIONS OF EMERGENCY SERVICES PERSONNEL.

From amounts previously appropriated in chapter 13 of title I of Public Law 107-206 (116 Stat. 894) to the Federal Emergency Management Agency to respond to the September 11, 2001, terrorist attacks on the United States, not less than \$90,000,000 shall be made available, until expended, for baseline and follow-up screening and clinical examinations and long-term health monitoring and analysis for emergency services personnel and rescue and recovery personnel, of which not less than \$25,000,000 shall be made available for such services for current and retired firefighters.

SA 6. Mr. COLEMAN (for himself and Mr. DAYTON) submitted an amendment intended to be proposed by him to the joint resolution H.J. Res. 2, making further continuing appropriations for the fiscal year 2003, and for other purposes; which was ordered to lie on the table; as follows:

On page 928, line 24, strike "\$3,000,000" and insert in lieu thereof "\$10,000,000".

SA 7. Mr. GRAHAM of Florida (for himself, Mr. NELSON of Florida, and Mr. VOINOVICH) submitted an amendment intended to be proposed by him to the joint resolution H.J. Res. 2, making further continuing appropriations for the fiscal year 2003, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place insert:

Notwithstanding any other provision of law, the Corps of Engineers, using funds made available by this Act and funds made available under any Act enacted before the