have created a statutory prohibition against desecration of our flag. This part of his amendment was drafted to follow the guidance of the 2003 Supreme Court decision in Virginia v. Black, which upheld a Virginia law banning cross burning that is intended to intimidate. The Durbin amendment took a similar approach and prohibited desecration of the flag when it is intended to incite violence. The Durbin amendment also would have promoted respect for families of deceased members of the Armed Forces by prohibiting demonstrations at their funerals. The amendment was narrowly tailored to make these disrespectful demonstrations punishable.

In sum, debating a constitutional amendment on desecration of the flag, although politically popular, is not how the Senate should be spending its few remaining legislative weeks. But this is a campaign year, and the majority appears to want the Senate to spend time on topics which defer and deflect us from concentrating finding solutions to pressing issues facing our Nation: restoring fiscal discipline, creating safe and affordable housing for working families, securing our borders, expanding health insurance coverage to the uninsured, ensuring students have the skills and tools to compete in an ever-expanding global economy, and redeploying our troops as quickly as possible out of Iraq. Unfortunately, the majority has provided limited time to debate most of these issues.

I hope that with the rapidly dwindling number of days left in this session we will work to address the very real concerns that impact American families every day. I fear, however, that this debate is only a harbinger of what is to come and very clearly signals why we need a new direction.

Mr. DORGAN. Mr. President, 17 years ago the U.S. Supreme Court, in a 5-to-4 decision, struck down a Texas flag protection statute. The Supreme Court ruled that burning an American flag was a form of ''speech,'' and therefore protected under the first amendment of the Constitution.

I disagreed with the Court's decision then and I still do. I don't believe that the act of desecrating a flag is an act of speech. And I believe that our flag, as our national symbol, can and should be protected by law.

In the intervening years since the Supreme Court decision, I have supported Federal legislation that would make flag desecration illegal. Yet on several occasions, I have also voted against amendments to the Constitution to do the same.

I voted that way because, while I believe that flag desecration is despicable conduct that should be prohibited by law, I also believe that amending our Constitution is a step that should be taken only rarely, and then only as a last resort.

In the past year I have once again reviewed in detail nearly all of the legal opinions and written materials published by constitutional scholars and courts on all sides of this issue.

After that review, I have concluded that there remains a way to protect our flag without having to alter the Constitution of the United States. That is why I have cosponsored S. 1370, a bipartisan piece of legislation introduced by Senator BENNETT of Utah.

S. 1370 protects the flag by criminalizing flag desecration when its intended purpose is to incite violence. This is the same standard which makes it illegal to falsely cry ''fire'' in a crowded theater. Reckless speech that is likely to cause violence is not protected under the ''fighting words'' standard, long recognized by the Supreme Court of the United States. The Congressional Research Service believes that this type of statute will be upheld by the U.S. Supreme Court.

Last night, I voted for an amendment offered by Senator DURBIN, which incorporates many of the provisions of S. 1370, the bipartisan bill of which I am a cosponsor. The Durbin amendment would also prohibit the disruption of military funerals by demonstrators. This amendment would protect the flag, but do so without altering the Constitution.

I know that supporters of a constitutional amendment will be disappointed by my decision to support this statutory remedy to protect the flag, rather than support an amendment to the U.S. Constitution. I know they are impatient to correct a decision by the Supreme Court that they and I believe was wrong.

I have wrestled with this issue for a long time, and I respect those who passionately believe that we must amend the Constitution to protect the flag.

More than 11,000 constitutional amendments have been proposed since our Constitution was ratified. However, since the ratification of the Bill of Rights in 1791, only 17 amendments have been enacted.

Protecting the American flag can be accomplished without amending the Constitution, and that is a critically important point. I believe that future generations, and our founding fathers, would agree that it is worthwhile for us to find a way to protect our flag without altering the Constitution.

LOCAL LAW ENFORCEMENT ENHANCEMENT ACT OF 2005

Mr. SMITH. Mr. President, I rise today to speak about the need for hate crimes legislation. Each Congress, Senator KENNEDY and I introduce hate crimes legislation that would add new categories to current hate crimes law, sending a signal that violence of any kind is unacceptable in our society. Likewise, each Congress I have come to the floor to highlight a separate hate crime that has occurred in our country.

On June 10, 2006, Queens, NY, three gay men were out walking when a group of eight men began shouting antigay slurs at them. The group then surrounded and attacked them, striking one victim in the head with a baseball bat.

I believe that the Government's first duty is to defend its citizens, to defend them against the harms that come out of hate. The Local Law Enforcement Enhancement Act is a symbol that can become substance. I believe that by passing this legislation and changing current law, we can change hearts and minds as well.

HEALTHY FAMILIES ACT

Mr. KERRY. Mr. President, today I am proud to cosponsor the Healthy Families Act, S. 932 and S. 1085, introduced by my friend, Senator TED KENNEDY. This legislation will provide full-time employees with up to 7 paid sick days a year so that they can take care of their own medical needs or the medical needs of family members. Part-time employees would receive a prorata amount of paid sick leave. All employers—public and private—with at least 15 employees would be covered by the Healthy Families Act.

Today, 86 million workers in the United States do not have paid sick days. Thus, when faced with either a personal or family medical issue, they are forced to choose between caring for themselves or their loved ones and going to work to keep food on the table and a paycheck in the mail. This is not acceptable. People get sick every day. They should have the right to get medical treatment without jeopardizing their jobs or harming the people around them. The Healthy Families Act would guarantee them that right.

According to Harvard University's Global Working Families Project, 139 nations provide some sort of paid sick days; 177 of those nations guarantee at least a week of annual sick pay. The United States, however, has no such guarantee—the Federal Family and Medical Leave Act provides only unpaid sick leave for serious personal or family illnesses. This lack of paid sick leave puts our Nation's workforce, both present and future, at risk.

As ranking member of the Committee on Small Business and Entrepreneurship, I am extremely conscious of the regulatory burden that our businesses face particularly our small businesses. I believe that government should avoid weighing down small businesses with unnecessary regulations. However, the more I have examined this issue, the more obvious it becomes that this legislation benefits both employees and employers.

It does not take a rocket scientist to figure out that healthy employees are the key to a productive and vibrant economy. Healthy employees are more productive and often more efficient. But, without paid sick days, many employees will go to work rather than take time off to get regular preventative medical checkups or to recover from an attacking illness or to care for