**PRAYER**

The Chaplain, Rev. James David Ford, D.D., offered the following prayer:

Breathe upon us, O gracious God, the full measure of Your grace and allow us to receive the full portion of Your many gifts. We confess that we have not been the people You would have us be or have done that which is pleasing to You. But we know too, O God, that Your mercy is without end and Your blessings are without number. So we place our hearts and souls before You and pray that Your strength will enable us to do justice, love mercy, and ever walk humbly with You. In Your name, we pray. Amen.

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**DECLARATION OF THE SPEAKER PRO TEMPORE**

The SPEAKER pro tempore laid before the House the following communication from the Speaker:

WASHINGTON, DC, December 11, 1995.

I hereby designate the Honorable C.W. Bill Young to act as Speaker pro tempore on this day.

NEWT GINGRICH, Speaker of the House of Representatives.

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**COMMUNICATION FROM THE CLERK OF THE HOUSE**

The SPEAKER pro tempore laid before the House the following communication from the Clerk of the House of Representatives:

WASHINGTON, DC, December 11, 1995.

Hon. NEWT GINGRICH, Speaker, U.S. House of Representatives, Washington, DC.

DEAR MR. SPEAKER: Pursuant to the permission granted in clause 5 of rule III of the Rules of the U.S. House of Representatives, the Clerk received the following messages from the Secretary of the Senate on Friday, December 8, 1995 at 11:45 a.m.; that the Senate passed S. 1431; that the Senate passed H.R. 2539; that the Senate passed H.R. 2076; that the Senate insisted on amendment—agree to conference report H.R. 2539; that the Senate insist on amendment—agree to conference report H.R. 2076; that the Senate insist on amendment—agree to conference report H.R. 2539.

With warm regards,

ROBIN H. CARLE, Clerk, U.S. House of Representatives.

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**COMMUNICATION FROM THE CLERK OF THE HOUSE**

The SPEAKER pro tempore laid before the House the following communication from the Clerk of the House of Representatives:

WASHINGTON, DC, December 11, 1995.

Hon. NEWT GINGRICH, Speaker, U.S. House of Representatives, Washington, DC.

DEAR MR. SPEAKER: Pursuant to the permission granted in clause 5 of rule III of the Rules of the U.S. House of Representatives, I have the honor to transmit a sealed envelope received from the White House on Friday, December 8, 1995 at 4:25 p.m. and said to contain a message from the President whereby he reports on actions to order the selected reserve of the armed forces to active duty.

With warm regards,

ROBIN H. CARLE, Clerk, U.S. House of Representatives.

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**COMMUNICATION FROM THE CLERK OF THE HOUSE**

The SPEAKER pro tempore laid before the House the following communication from the Clerk of the House of Representatives:

WASHINGTON, DC, December 11, 1995.

Hon. NEWT GINGRICH, Speaker, U.S. House of Representatives, Washington, DC.

DEAR MR. SPEAKER: Pursuant to the permission granted in clause 5 of rule III of the Rules of the U.S. House of Representatives, I have the honor to transmit a message from the President of the United States, which was read and, together with the accompanying papers, without objection, referred to the Committee on National Security and ordered to be printed:

To the Congress of the United States:

I have today, pursuant to section 12304 of title 10, United States Code, authorized the Secretary of Defense, and the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Department of the Navy, to order to active duty any units, and any individual members not assigned to a unit organized to serve as a unit, of the Selected Reserve to perform such missions the Secretary of Defense may determine necessary. The deployment of United States forces to conduct operational missions in and around former Yugoslavia necessitates this action.

A copy of the Executive order implementing this action is attached.

WILLIAM J. CLINTON.


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**MATTER SET IN THIS TYPEFACE**

This symbol represents the time of day during the House proceedings, e.g., □ 1407 is 2:07 p.m.

Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.

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H 14242

CONGRESSIONAL RECORD – HOUSE

December 11, 1995

Hon. NEWT GINGRICH,
Representative from Georgia.

DEAR MR. SPEAKER: Pursuant to the permission granted in Clause 5 of Rule III of the Rules of the House of Representatives, I have the honor to submit a sealed envelope received from the White House on Friday, December 8, 1995, at 4:25 p.m. and said to contain a message from the President whereby he submits a periodic report on the national emergency with Yugoslavia.

With warm regards,

ROBIN H. CARLE,
Clerk, U.S. House of Representatives.

WASHINGTON, DC,

REPORT ON NATIONAL EMERGENCY WITH YUGOSLAVIA—MESSAGE FROM THE PRESIDENT OF THE UNITED STATES (H. DO. 104-145)

The SPEAKER pro tempore laid before the House the following message from the President of the United States, which was read and, together with the accompanying papers, without objection, referred to the Committee on International Relations and ordered to be printed:

To the Congress of the United States:

On May 30, 1992, in Executive Order No. 12808, the President declared a national emergency to deal with the threat to the national security, foreign policy, and economy of the United States arising from actions and policies of the Governments of Serbia and Montenegro, acting under the name of the Socialist Federal Republic of Yugoslavia or the Federal Republic of Yugoslavia, in their involvement in and support for groups attempting to seize territory in Croatia and the Republic of Bosnia and Herzegovina by force and violence utilizing, in part, the forces of the so-called Yugoslav National Army (57 FR 21642, 1992). I expanded the national emergency in Executive Order No. 12934 of October 25, 1994, to address the actions and policies of the Bosnian Serb forces and the authorities in the territory of the Republic of Bosnia and Herzegovina that they control.

The present report is submitted pursuant to 50 U.S.C. 1641(c) and 1703(c) and covers the period from May 30, 1995, to November 29, 1995. It discusses Administration actions and expenses directly related to the exercise of powers and authorities conferred by the declaration of a national emergency in Executive Order No. 12808 and Executive Order No. 12934 and to expanded sanctions against the Federal Republic of Yugoslavia (Serbia and Montenegro) (the "FRY (S&M)"") and the Bosnian Serbs contained in Executive Order No. 12810 of June 2, 1992 (57 FR 24347, June 9, 1992), Executive Order No. 12831 of January 15, 1993 (58 FR 5253, January 21, 1993), Executive Order No. 12846 of April 25, 1993 (58 FR 25771, April 27, 1993), and Executive Order No. 12934 of October 25, 1994 (59 FR 54117, October 27, 1994).

1. Executive Order No. 12808 blocked all property and interests in property of the Governments of Serbia and Montenegro, or held in the name of the former Government of the Socialist Federal Republic of Yugoslavia or the Federal Republic of Yugoslavia, then or thereafter located in the United States or within the possession or control of United States persons, including their overseas branches.

Subsequently, Executive Order No. 12810 expanded U.S. actions to implement in the United States the United Nations sanctions against the FRY (S&M) adopted in United Nations Security Council (UNSC) Resolution 757 of May 30, 1992. In addition to reaffirming the blocking of FRY (S&M) Government property, this order prohibited transactions with respect to the FRY (S&M) involving imports, exports, dealing in FRY (S&M)-origin property air and sea transportation, contract performance, and export processing activity, promoting importation or exportation or dealings in property, and official sports, scientific, technical, or other cultural representation of, or sponsorship by, the FRY (S&M) in the United States.

Executive Order No. 12810 exempted from trade restrictions (1) transshipments through the FRY (S&M), and (2) activities related to the United Nations Protection Force (UNPROFOR), the Conference on Yugoslavia, or the European Community Monitor Mission.

On January 15, 1993, President Bush issued Executive Order No. 12831 to implement new sanctions contained in UNSC Resolution 787 of November 16, 1992. The order revoked the exemption for transshipments through the FRY (S&M) contained in Executive Order No. 12810, prohibited transactions with respect to the United States or a United States person or any entity, in or in those areas of the FRY (S&M) vessels and vessels is which a majority or controlled interest is held by a person or entity in, or operating from, the FRY (S&M), and stated that all such vessels shall be considered vessels of the FRY (S&M), regardless of the flag under which they sail.

On April 25, 1993, I issued Executive Order No. 12846 to implement in the United States the sanctions adopted in UNSC Resolution 820 of April 17, 1993. That resolution called on the Bosnian Serbs to accept the Vance-Owen peace plan for the Republic of Bosnia and Herzegovina and, if they failed to do so by April 26, 1993, called on member states to take additional measures to tighten the embargo against the FRY (S&M) and Serbian-controlled areas of the Republic of Bosnia and Herzegovina and the United Nations Protected Areas in Croatia. Effective April 26, 1993, the order blocked all property and interests in property of (1) commercial, industrial, or public utility undertaking, organized or located in those areas of the Republic of Bosnia and Herzegovina under the control of Bosnian Serb forces; (2) any entity, however organized or located, which is owned or controlled directly or indirectly by any person in, or resident in, those areas of the Republic of Bosnia and Herzegovina under the control of Bosnian Serb forces; and (4) any person for the purpose of any business carried on in those areas, either from the United States or by a United States person. The order also prohibits the entry of any U.S.-flagged vessel, from taxing and docking in the riverine ports of those areas of the Republic of Bosnia and Herzegovina under the control of Bosnian Serb forces. Finally, any transaction by any United States person that evades or avoids, or attempts to evade or avoid, any of the prohibitions set forth in the order is prohibited.

Executive order No. 12934 became effective at 11:59 p.m., e.d.t., on October 25, 1994, to take additional steps with respect to the crisis in the former Yugoslav, which FRY (S&M). I issued Executive Order No. 12934 in order to take additional steps with respect to the crisis in the former Yugoslav (59 FR 54117, October 27, 1994). Executive Order No. 12934 expands the scope of the national emergency declared in Executive Order No. 12808 to address the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States posed by the actions and policies of the Bosnian Serb forces and the authorities in the territory in the Republic of Bosnia and Herzegovina that they control, including their refusal to accept the proposed territorial settlement of the conflict in the Republic of Bosnia and Herzegovina.

The Executive order blocks all property and interests in property that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of United States persons. (Including the three overseas branches): (1) the Bosnian Serb military and paramilitary forces and the authorities in areas of the Republic of Bosnia and Herzegovina under the control of Bosnian Serb forces; (2) any entity, wherever organized or located, which is owned or controlled directly or indirectly by any person in, or resident in, those areas of the Republic of Bosnia and Herzegovina under the control of Bosnian Serb forces; and (4) any person for the purpose of any business carried on in those areas, either from the United States or by a United States person. The order also prohibits the entry of any U.S.-flagged vessel, from taxing and docking in the riverine ports of those areas of the Republic of Bosnia and Herzegovina under the control of Bosnian Serb forces. Finally, any transaction by any United States person that evades or avoids, or attempts to evade or avoid, any of the prohibitions set forth in the order is prohibited.

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International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.), the National Emergencies Act (50 U.S.C. 1601 et seq.), and section 301 of title 3 of the United States Code. The emergency declaration was reported to the Congress on October 12, 1994. Prior to the issuance of Executive Order No. 12934, pursuant to section 204(b) of the International Emergency Economic Powers Act (50 U.S.C. 1703 (b)) and the expansion of that national emergency under the same authorities was reported to the Congress on October 13, 1994. The additional sanctions set forth in related Executive orders were imposed pursuant to the authority vested in the President by the Constitution and laws of the United States, including the statutes cited above, section 1114 of the Federal Aviation Act (49 U.S.C. App. 1514), and section 5 of the United Nations Participation Act (22 U.S.C. 287c).

Effective June 30, 1995, the Federal Republic of Yugoslavia (Serbia and Montenegro) Sanctions Regulations, 31 C.F.R. Part 585 (the “Regulations”), were amended to implement Executive Order No. 12934 (60 FR 34144, June 30, 1995). The name of the Regulations was changed to reflect the expansion of the national emergency to the Bosnian Serbs, and now reads “Federal Republic of Yugoslavia (Serbia & Montenegro) and Bosnian Serb-Controlled Areas of the Republic of Bosnia and Herzegovina Sanctions Regulations.” Article 5(a) of the amended Regulations is attached.

Treasury’s blocking authority as applied to FRY (S&M) subsidiaries and vessels in the United States has been challenged in court. In Milena Ship Management Company, Ltd. v. Newcomb, 804 F. Supp. 846, 855, and 859 (E.D.N.Y. 1992) (aff’d, 995 F.2d 620 (2d Cir. 1993), cert. denied, 114 S.Ct. 877 (1944), involving five ships owned or controlled by FRY (S&M) entities blocked in various U.S. ports, the block was applied to the vessels. In IPT Company, Inc. v. United States Department of the Treasury, No. 92 Civ. 5542 (S.D.N.Y. 1994), the district court also upheld the blocking authority as applied to the property of a Yugoslav subsidiary located in the United States, and the case was subsequently settled.

Over the past 6 months, the Departments of State and Treasury have worked closely with European Union (the “EU”) member states and other U.N. member countries to coordinate implementation of the U.N. sanctions against the FRY (S&M). This has included continued deployment of Organization for Security and Cooperation in Europe (OSCE) sanctions assistance missions (SAMs) to Albania, Bulgaria, Croatia, the former Yugoslavia Republic of Macedonia, Hungary, Romania, and Ukraine to assist in monitoring land and Danube River traffic; support for the Former Yugoslavia (ICFY) monitoring missions along the Serbia-Montenegro-Bosnia border; bilateral contacts between the United States and other countries for the purpose of tightening financial and trade restrictions on the FRY (S&M); and ongoing multilateral meetings by financial sanctions enforcement authorities from various countries to coordinate enforcement efforts and to exchange technical information.

In accordance with licensing policy and the Regulations, the Office of Foreign Assets Control (OFAC) has exercised its authority to license certain transactions without regard to the FRY (S&M), which are consistent with U.S. foreign policy and the Security Council sanctions. During the reporting period, OFAC has issued numerous specific licenses regarding transactions pertaining to the FRY (S&M) or assets it owns or controls, bringing the total specific licenses issued as of October 13, 1995, to 1,020. Specific licenses have been issued: (1) for payment to U.S. or third country secured creditors, under certain well-defined circumstances, for preembargo import and export transactions; (2) for legal representation or advice to the Government of the FRY (S&M) or FRY (S&M)–located or controlled entities; (3) for transfers of funds outside the United States; (4) for limited transactions related to FRY (S&M) diplomatic representation in the United States, for patient, trademark, and copyright protection in the FRY (S&M) not involving payment to the FRY (S&M) Government; (6) for certain communications, news media, and travel-related transactions; (7) for the payment of crews’ wages, vessel maintenance, and emergency supplies for FRY (S&M)–controlled ships blocked in the United States; (8) for the removal from the FRY (S&M), or protection within the FRY (S&M), of certain property owned or controlled by U.S. entities; (9) to assist the United Nations in its relief operations and the activities of the UNPROFOR; and (10) for payment from funds outside the United States where a third country has licensed the transaction in accordance with U.N. sanctions. Pursuant to U.S. regulations implementing UNSC Resolutions, specific licenses have also been issued to authorize exportation of food, medicine, and supplies intended for humanitarian purposes in narrowly defined circumstances.

During the period, OFAC addressed the status of the unallocated debt of the former Yugoslavia by authorizing nonblocked U.S. creditors under the New Financing Agreement for Yugoslavia (Blocked Debt) to exchange a portion of the Blocked Debt for new debt (bonds) issued by the Republic of Slovenia. The completion of this exchange will mark the transfer to Slovenia of sole liability for a portion of the former Yugoslavia’s nearly $14 billion in unallocated debt of the FRY (S&M) for which Slovenia, prior to the authorized exchange, was jointly and severally liable. The exchange will relieve Slovenia of the joint and several liability for the remaining unallocated FRY (S&M) debt and pave the way for its entry into international capital markets.

During the past 6 months, OFAC has continued to oversee the liquidation of assets of Yugoslav subsidiaries of entities organized in the FRY (S&M). Subsequent to the issuance of Executive Order No. 12846, all operating licenses issued for these U.S.-located Serbian or Montenegrin subsidiaries or joint ventures were revoked, and the net proceeds of the liquidation of their assets placed in blocked accounts.

In order to reduce the drain on blocked assets caused by continuing to rent commercial space, OFAC arranged to have the blocked personality, files, and records of the two Serbian banking institutions in New York moved to secure storage. The personality is being liquidated, with the net proceeds placed in blocked accounts.

FAC has approved the sale of the M/V Kapetan Martinovic in January 1995, five Yugoslav-owned vessels remain blocked in the United States. Approval of the UNSC’s Sanctions Committee was sought and obtained for the sale of the M/V Kapetan Martinovic (and the M/V Bor, which was sold in June 1994).

With the FAC-licensed sales of the M/V Kapetan Martinovic and the M/V Bor, those vessels were removed from the list of blocked FRY (S&M) entities and merchant vessels maintained by FAC as a result of sales conditions that effectively extinguished any FRY (S&M) interest: the M/V Blue Star, M/V Budva, M/V Bulk Star, M/V Hanuman, and M/V Sumadija. The new owners of several other formerly Yugoslav-owned vessels, which have been sold to other countries, have petitioned FAC to remove those vessels from the list.

During the past 6 months, U.S. financial institutions have continued to block funds transfers in which there is a possible interest of the Government of the FRY (S&M) or an entity undertaking located in or controlled from the FRY (S&M), and to stop prohibited transfers to persons in the FRY (S&M). The value of transfers blocked has amounted to $137.5 million since the issuance of Executive Order No. 12808, including some $13.9 million during the past 6 months.

To ensure compliance with the terms of the licenses that have been issued under the program, stringent reporting requirements are imposed. More than 318 submissions have been reviewed by FAC since the last report, and more than 130 compliance cases are currently open.

In accordance with the issuance of Executive Order No. 12810, OFAC has worked closely with the U.S. Customs Service to ensure both that prohibited imports and exports (including those in which the
Government of the FRY (S&M) or Bosnian Serb authorities have an interest) are identified and interdicted, and that permitted imports and exports move to their intended destination without undue delay. Violations and suspected violations of the embargo are being investigated and appropriate enforcement actions are being taken. Numerous investigations carried over from the prior reporting period are continuing. Since the last report, FAC has collected 10 civil penalties totaling more than $27,000. Of these, five were paid by individual institutions for violative funds transfers involving the Government of the FRY (S&M), persons in the FRY (S&M), or entities located or organized in or controlled from the FRY (S&M). One U.S. company and one air carrier have also paid civil penalties related to unlicensed payments to the Government of the FRY (S&M) or other violations of the Regulations. Two companies and one law firm have also remitted penalties for their failure to follow the conditions of FAC licenses.

7. The expenses incurred by the Federal Government in the 6-month period from May 30, 1995, through November 29, 1995, that are directly attributable to the declaration of a national emergency with respect to the FRY (S&M) and the Bosnian Serb forces and authorities are estimated at about $3.5 million, most of which represent wage and salary costs for Federal personnel. Personnel costs were largely centered in the Department of the Treasury (particularly in FAC and its Chief Counsel’s Office, and the U.S. Customs Service), the Department of State, the National Security Council, the U.S. Coast Guard, and the Department of Commerce.

8. The actions and policies of the Government of the FRY (S&M), in its involvement and support for groups attempting to seize and hold territory in the Republics of Croatia and Bosnia and Herzegovina by force and violence, and the actions and policies of the Bosnian Serb forces and the authorities in the areas of Bosnia and Herzegovina under their control, continue to pose an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States. The United States remains committed to a unilateral Government of the FRY (S&M), persons in the FRY (S&M), or entities located or organized in or controlled from the FRY (S&M). One U.S. company and one air carrier have also paid civil penalties related to unlicensed payments to the Government of the FRY (S&M) or other violations of the Regulations. Two companies and one law firm have also remitted penalties for their failure to follow the conditions of FAC licenses.

...
moving millions of people to the rolls of the uninsured by shredding the Medicaid safety net for millions of poor families and working families who need nursing home coverage for a loved one. It is making Medicare more insecure for millions of retirees. The maximum income for women on Medicare is $8,500 a year. And it is increasing the cost for the uninsured, a cost which will therefore be shifted to families who do have insurance and to employers who provide that insurance.

That is morally wrong, it is economically wrong, and the bill that I am introducing today goes against the prevailing tide in this Congress in order to try to correct it. I know that we are moving against the tide, but this is a matter of principle and it is well worth the fight.

I should say also that I am being joined in this effort by the gentleman from New York [Mr. HINCHENY], the gentleman from New York [Mr. OWENS], the gentleman from California [Ms. PELOSI], and the gentleman from Minnesota [Mr. OBERSTAR].

Last year’s health care battles have made it quite clear to me that while the public wants reform, they do not want to pay for it. They want nonbureaucratic reforms that can be made at the Federal level. But we can also create a Federal-State partnership that will leave to the States the major choices and to the public the right to choose the system they want, be it risk-sharing pools or use devices such as risk-sharing pools. States would be eligible to share in the Federal-State partnership that will arise because of existing conditions, income, employment, or other health status. Insurance companies could no longer renew or cancel coverage unless the premiums had not been paid, unless fraud or misrepresented had been involved, or the plan is ceasing coverage in an entire geographical area. Home and community-based services want to be provided as an option to institutional care when it would be medically appropriate.

Third, the Secretary of Health and Human Services would annually certify the plans. Only those States that participate will be eligible for Federal Medicaid funds, and participating States would be eligible to share in the Federal pool of funds created in the bill to assist States in the effort.

As I said earlier, currently self-employed individuals can deduct 30 percent of their health insurance costs on their Federal tax return. This bill would increase that deduction to 100 percent, and it would also allow workers whose employers do not provide health insurance to deduct up to 80 percent of their health insurance cost.

Congress is right to want to reform Medicare and Medicaid, but health care for persons struggling to make ends meet should not be squeezed in order to provide a rich man’s tax cut. Medicare and Medicaid reform should not be done in isolation. They should be done in the context of overall care reform, to effectively and fairly control costs, and to minimize cost-shifting to persons who are insured and to employers who do provide insurance. Until we can ensure that everyone has health coverage, the problem of cost-sharing will not go away. Cost-sharing is a hidden tax that continues to drive the cost of health care higher and higher. Until we get a handle on cost-sharing, prices will continue to rise forcing more people out of the system and escalating the problem.

There are nonbureaucratic reforms that can and should be made at the Federal level. But we can also create a Federal-State partnership that will leave to the States the major choices about how to deal with the shortcomings in today’s health care system.

That is why the bill I am introducing today, beyond the issue of insurance reform, will have only one Federal requirement. The requirement will simply be that States ensure that every citizen in each State has health insurance coverage, and that such coverage is comparable to that which is now available to Members of Congress, Federal employees and their families.

Under the plan, States could establish whatever system they want, be it public, private or a mixture of both. Each State would decide whether to use risk-sharing pools or subsidies to provide coverage for those who are unemployed, those who are working but unable to afford health insurance, and those who are high risk and unable to get insurance from carriers.

In the best Progressive tradition—and I mean that in a capital P because the Progressive Party was born in Wisconsin—in the best Progressive tradition, the American genius of democracy to help find alternative health care reform models that work. The elements of the plan would work like this.

States would be required to submit a plan by July 1, 1999, to the Secretary of Health and Human Services which would have to show that every citizen in that State is covered by health insurance which has benefits comparable to those available under the Federal Employees Health Benefits Plan. The requirement will simulate the insurance game would be changed to guarantee that people could no longer be turned away because of preexisting conditions, income, employment, or other health status. Insurance companies could no longer deny coverage unless the premiums had not been paid, unless fraud or misrepresented had been involved, or the plan is ceasing coverage in an entire geographical area. Home and community-based services want to be provided as an option to institutional care when it would be medically appropriate.

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If you look at the presentation of the budget, do not listen to the rhetorical lines about balancing the budget in 7 years. That is the little prayerful ritual that is being recited on this floor and on the so-called news talk shows, on the so-called news shows, the 9 and 10-second blips you get on television or here on the radio, that we are going to balance the budget in 7 years. It is merely a question of numbers.
Today, for example, you can read in the New York Times or in the Washington Post arguments about whether or not we are talking about numbers on Medicare.

You can see, and I have heard Mr. Speaker, in the national edition of the New York Times for today with a headline, GOP, the Republican Party, emphasizes points of similarity on Medicare. That is the attempt.

Then you have little graphs. Everybody has picked out that they want to show you, especially if the do not want you to understand what is really at stake.

What is at point where Medicare is concerned in the budget proposal, Mr. Speaker, is that, yes, there will be an increase in spending in both proposals, the President's proposal is it stands to this point, and the Republican proposal. The question is, is there going to be a sufficient increase to cover the number of people who need it?

The letter, from Wisconsin [Mr. Obey] who spoke just before me indicated very clearly that we are facing a situation, because we did not do national health care in the previous 2 years, a situation which is dire, which is going to cause more and more people to be lacking health insurance; going to cause us, I believe, the case can be made, to expand even more funds than are projected.

Everybody is trying to say, the Republican proposal says they are going to save Medicare. How are they going to save it? They are going to cut hundreds of billions of dollars. They are going to block-grant to the States the Medicaid Program, which means the States will become liable for Medicaid, or they will alter the eligibility requirements. Your mother, your father, yourself, you may not be eligible. Anybody out there who thinks that they are going to be freed of the consequences of the budget proposal, let me tell you, I believe me, better think about it again.

So I ask you, let us suppose, if both the Republicans and the Democrats are claiming, as they do on these charts, that they are increasing spending for Medicare, then how is it that they are going to take $270 billion in the Republican plan out of Medicare? How can you be increasing the spending and then taking money out of it supposedly in savings at the same time? I do not think you can do that. You cannot move forward and run backward at the same time.

Well, I will tell you how they say they are going to do it. They say we will increase the amount——

Mr. SCARBOROUGH. Will the gentleman yield?

Mr. ABERCROMBIE. Certainly.

Mr. SCARBOROUGH. I have discussed budget issues with the gentleman before and look forward to his budget plan that will balance the budget in the year 2002 and increase $1 trillion more.

Mr. ABERCROMBIE. Reclaiming my time, this is a perfect example if what I was talking about. You just heard the ritual cantation of balancing the budget in the year 2002. That will not happen. You can recite that like a prayer. You have no proposal. You have never made a statement that remotely reflects a balanced budget in the year 2002.

Mr. SCARBOROUGH. Will the gentleman yield?

Mr. ABERCROMBIE. Yes.

Mr. SCARBOROUGH. From the scoring that I have seen, actually CBO scores that we balance the budget. But let me ask you this question——

Mr. ABERCROMBIE. Reclaiming my time, because, if you go to come into my time, you are going to have to be accurate.

All the CBO scoring, and CBO for those who do not know, is the Congressional Budget Office. Every chart of the Congressional Budget Office shows that the budget will not be balanced in 2002 unless you play an accounting trick which takes your deficit off-budget. Your proposal proposes to take some $636 billion from Social Security, plus interest, put it off-budget and pretend you do not owe it in the year 2002.

Every Congressional Budget Office chart, every analysis that they have, which I have before me, indicates that there will be a massive deficit shift in 2002 while you claim to have a balanced budget.

Mr. SCARBOROUGH. Well, if the gentleman will yield, a lot of people would accuse anybody coming to this floor and stating that the Republican budget does not go far enough to balance the budget as being a little bit less than sincere.

I think, and let me just say this, as I said before when I have seen the gentleman on the floor. I agree with you, that if we go that extra mile and find a way to get Social Security off-budget and, as I have said before, I agree with Mr. Obey because I think it is a laudable goal. If we go that extra mile, get Social Security off-budget, that is as far as the budget that the Republican Party put forward that Democrats, some conservative Democrats and moderate Democrats, have actually supported.

I think, and let me just say this, as I have said before when I have seen the gentleman on the floor. I agree with you, that if we go that extra mile and find a way to get Social Security off-budget and, as I have said before, I agree with Mr. Obey because I think it is a laudable goal. If we go that extra mile, get Social Security off-budget, that is as far as the budget that the Republican Party put forward that Democrats, some conservative Democrats and moderate Democrats, have actually supported.

Mr. SCARBOROUGH. My only point is this: When you come to the floor and when others come to the floor stating that the Republicans do not go far enough because we do not take Social Security off-budget, it seems a little bit less than sincere. The same question could be raised about Medicare.

Mr. ABERCROMBIE. Reclaiming my time. You have asked me a series of questions.

Let us go backward in them. Seeming less than sincere, I assure you I am quite sincere.

Let us go over what the deficits are, and I will tell you, before we go to the deficits, I will give you the answer to the first part of your question about what proposals have been on the floor. No proposals that has been on this floor is going to balance the budget in 7 years. That is almost impossible.

Mr. SCARBOROUGH. Is that why you have voted against those?

Mr. ABERCROMBIE. I have never said on this floor that the Republicans do not go far enough. To the contrary, if you want to eviscerate this country, that is up to you, and if you want to run for office in 1996 on the basis that you want to strip this country of every value that means anything in a republic, you can do that.

Mr. SCARBOROUGH. If the gentleman will yield, just to answer that point.

Mr. ABERCROMBIE. I still have the time.

Mr. SCARBOROUGH. How does evisceration——

Mr. ABERCROMBIE. Mr. Speaker, I have the time.

The SPEAKER pro tempore. The gentleman from Hawaii controls the time.

Mr. ABERCROMBIE. I have the time.

There is no budget proposal on this floor that is going to balance the budget in the year 2002. It cannot be done. It cannot be done unless you use the draconian methodology that would, as I indicate, eviscerate the capacity of the country to sustain itself, either socially or economically.
November 16, 1995

CONGRESSIONAL RECORD – HOUSE

American values by draconian cuts. Then the gentleman moves forward and says that the Republicans are actually spending more and the deficit increases. It brings to mind a Washington Post editorial that basically says that the Republican plan will be set aside and we are going to see what the Democrats propose. I am very interested in what the gentleman says when they say that a plan on Medicare, for instance, that increases spending by 45 percent is draconian.

Now, the gentleman went to school in Hawaii. I went to school in Florida and across the street from the Washington Times. If the gentleman had been educated, he would have 45 percent. Some other aspects of that plan deserved to be resisted, but the Republican proposal to get at the deficit partly by conferring Medicaid and for the so-called Medicare would not match the need, then we fall behind what the Republican proposal is, is that they want to throw a 10-foot rope to someone who is 12 feet out in the water and drowning. The fact that they are throwing a 10-foot rope does not do anything for the person who is drowning, because they need 12 feet in order to reach him.

What is happening is that under Medicare and the expenditures under the proposal by the Republicans is that the health insurance industry will be made richer. The Republicans are going to take nine steps backward. They are not going to have a sufficient amount of money to be able to deal with the need, particularly if they put in a provision in the so-called Medicare proposal that sees to it that more people are ineligible for Medicaid spending, so they will be showing up in the emergency rooms, and those who do have health insurance will be paying even higher premiums to take care of those who do not have insurance.

So, all the Republicans have done with this proposal and so-called increase is shift the burden of paying for it to those who already do have insurance.

Mr. SCARBOROUGH. The gentleman called it a so-called increase, and when you go up 45 percent, I understand if you believe that we need to go up 60 percent instead of 45 percent. That is fine. But the matter is, as we know, Medicare has been growing at a 10 percent clip.

Mr. ABERCROMBIE. Not in Hawaii, because we have health care in Hawaii. We have had it for 20 years.

Mr. SCARBOROUGH. Right. And I think the Democratic plan, let us just say Bill Clinton’s plan, was to push it up 6 percent, and in his testimony in 1993, when he talked about having a single-payer health care system nationalization of the system, and in Hillary Clinton’s testimony, the administration’s position was that Medicare needed to grow at twice the rate of inflation. That is exactly what happens under the proposal, which actually came about after the President and the Medicare board of trustees said back in April that Medicare was going bankrupt.

The gentleman again talks about cuts, and he talks about decreased payments. To me, just how is this fresh thinking? I think the philosophy of economics. I think it is generally agreed, at least by those of us here in the Congress, to eliminate it all in 1 year would probably be impossible.
Mr. ABERCROMBIE. And the way Democrats have.

Mr. SCARBOROUGH. Would the gentleman agree that, reading again from the same title I where the deficits were, as I indicated, that the public debt, which this year, 1996, will be $5.2 trillion, $5.2 trillion. In the year 2002, the public debt will be $6.7 trillion. That is an increase in the public debt; is it not?

Mr. SCARBOROUGH. It is, and if the gentleman would yield, I would like to ask the gentleman a question, because we are getting at a very good point. I want you to know, and I guess I should not publicize this any more than it has been publicized, but I was the only Republican to vote against reconciliation the first time through, because I did not think we went far enough to get the deficit down.

But let me say this, I know there was not a single Democrat, because I talked to a good number of them, that voted against this budget package because they did not think it cut enough. I know that to be the case, because the interesting thing that the Republicans have found themselves in this year is that we have aotive base that is pushing them to balance the budget immediately, now rather than later, the freshman class, of which I am a Member, where we put forward our own plan to balance the budget in 5 years, we have been savagely attacked, being called mean-spirited. You have heard what I would call demagoguery.

Mr. ABERCROMBIE. I would never say anything like that.

Mr. SCARBOROUGH. Of course you would not. That is Hawaiian manners. It encourages me that I find somebody coming to the floor on the other side of the aisle who is saying, “Hey, maybe we need to push a little harder; we need to do more to balance the budget.”

Mr. Speaker, I think today is a historic day in the 104th Congress. Let me say this to the gentleman. I will ask him to work together with me to come up with a proposal that will take Social Security off budget and raise the revenue to keep Social Security off budget, while still moving forward.

Let me tell my colleagues a great idea. I think we need to get together a BRAC-like task force where we get people from AARP, and economists, and we need to get together and look and see, take a serious look at this CPI, the consumer price index that PAT MOYNIHAN has been talking about saying it is 1 percent higher, which might succeed in 5 years, and he task force that the seniors will take part in, we roll that money over and get Social Security off budget; keep off budget the money that we save for the Social Security system through the CPI adjustments.

Is that something that the gentleman would like to work on with me in a bipartisan manner? Because I really do think we are making progress here today. This is historic.

Mr. ABERCROMBIE. Mr. Speaker, reclaiming my time, I am glad the gentleman thinks it is so historic.

Mr. SCARBOROUGH. Mr. Speaker, I have not heard a Democrat say that the Republican plan did not go far enough.

Mr. ABERCROMBIE. I think the Republican plan goes way too far. That is my point. I do not believe it is a plan. It is a kind of incantation, a magic formula that would have all of the reality of Merlin the Magician.

The gentleman indicated that he would like to have a BRAC-like commission. BRAC, for those who do not know, is the Base Realignment Closure Commission. I think we may be closing down the opportunity for a whole lot of people in this country if we went as far and as fast as the gentleman indicated.

I would never characterize the gentleman personally, but I believe that such an approach would be an extreme approach. It would not be warranted, given the social stability and the economic stability of our country.

Now, I still have the time, if the gentleman would be kind enough to let me respond. The gentleman indicated that the freshman class of Republicans have put forward a balanced budget proposal which might succeed in 5 years, and he asked me at the same time, would we work, could we work together to take Social Security off budget?

Mr. Speaker, I am sure the gentleman is aware, and therefore he must have misspoke, I am sure he is aware that in the budget proposals right now, that Social Security already is listed as off budget. The problem is that we are taking money from it.

Now, does the freshman proposal of the Republicans, the freshman Republican proposal take money from the Social Security trust fund in order to help balance the budget?

Mr. SCARBOROUGH. Not that I am aware of.

Mr. ABERCROMBIE. I would be mightily amazed, then, as to where they are going to get the money. The gentleman is aware that the Republican proposal that is on the floor so far from the Committee on the Budget does not take from the Social Security trust fund?

Mr. SCARBOROUGH. Is the gentleman still speaking to me?

Mr. ABERCROMBIE. Yes, I am.

Mr. SCARBOROUGH. No, not any more than Democratic proposals in the past have, again using the framework that we use that the Democrats have used for 40 years. That is why I was asking the gentleman, and I just got a note that I have got to leave the floor in 10 minutes, if he would be interested in working with me in figuring out a way of putting together a BRAC-type task force to adjust the consumer price index and its impact on Social Security, and whatever money is saved, we roll over into the Social Security trust fund, whereby pouring billions and billions of dollars to keep Social Security solvent after the year 2002.

Mr. ABERCROMBIE. My answer to the gentleman is I would be delighted to work with him at any time on such a proposal, and I would be delighted to have further discussions on the realities of Social Security and its trust fund.

Mr. SCARBOROUGH. Great. I would love to. I think coming from Florida, obviously, it is extremely important to the people in our State. I heard that time and time again when I was campaigning a year ago. And I do not think the Social Security off budget? And, of course, we can say that it is off budget, but the fact of the matter is that the Democrats, when they controlled Congress, and the Republicans this year, have not put up that Chinese wall to separate the two. If we can work together, I do think this would be a historic moment.

Mr. ABERCROMBIE. Mr. Speaker, I reiterate, I would be delighted to work with the gentleman at any point. Speaking as I do as the Representative of the southernmost State in the United States, Hawaii, I would be glad to do that.

Mr. Speaker, I particularly appreciate the dialog with the gentleman from Florida. [Mr. SCARBOROUGH]. I have listened with interest and with close regard to his remarks on the floor in previous times, and I think that it is well worth it at this point to explicate just for a moment or two or on some of the points that he raised, because they do fit into the context of my general discussion.

Mr. Speaker, you may recall that I had indicated that there is, in fact, in the budget document proposal of the Republican Party, a deficit this year. Some $245 billion. There is, at least, in the budget resolution as presented so far, which will go on up to $108 billion in the year 2002. It accumulates, obviously. The public debt is increasing.

We move then to Social Security, because the gentleman from Florida is quite correct. His constituents are sharp. They understand what is happening. We have an accounting trick in...
the Federal Government, which all parties have utilized to this point, in which we say that the Social Security revenues are off budget.

Now, I do not know about your budget. Well, I do know about your budget, Mr. Speaker. I heard you say, very clearly, that revenues going out will match. That is what we have neglected to tell mom and dad. The fact that we will be balanced. But we have some difficulties and we did not get what the truth is. We cannot get away with that. People who try to pretend that what they owe really does not count because it is off budget and act accordingly, sometimes end up in front of long-robed judges with prison sentences. I do not want that to happen. I suppose at best, find themselves shamefacedly saying to their spouses, “Yes, actually we have not balanced the budget. We actually owe more money than we can pay.”

But where Social Security is concerned, Mr. Speaker, I want to indicate that according to the Congressional Budget Office, the revenues for Social Security are in excess of what is needed for expenditure this year, and on up to the year 2002.

Let me repeat that. There are more revenues coming into Social Security trust fund than there are revenues going out. That means there is a surplus. Here is where the real surplus is. There is no surplus in the Treasury. There is a surplus in the Social Security fund.

So, the constituents of the good gentleman from Florida, when they say let us take it really off budget, what they mean is do not use it as an accounting trick. Do not take money to pay your bills from Social Security, and leave an IOU in the Social Security trust fund. My point, Mr. Speaker, is that this budget document put forward by the gentleman from Georgia [Mr. Gingrich] and his budget team, shows, for example, in 1996, $374 billion, almost $375 billion coming into the Social Security trust fund, and about $300 billion going out. A surplus clearly of about $74 billion, which we would prefer not to, but it could be used.

The problem is that in order to achieve this balance, both in the year 1996 and 1997, and on to the year 2002, the proposal of the Republican budget is to take money from Social Security, leave an IOU for the principal plus interest, and in the year 2002, be able to claim that by borrowing from Social Security, they have balanced the budget. I will indicate again, Mr. Speaker, that is not the case. What they have done is shift the deficit. They are not balancing the budget. They are shifting the deficit. It is as if we were taking our checking account and our savings account and then taking the savings account of our mom and dad, drawing down on the savings account of our mom and dad, and then telling our family that we have balanced the budget and paid all of our bills.

Mr. Speaker, every bill that comes in this year 2002, we will be able to pay, and the numbers coming in and the revenues going out will match. That is to say, they will be balanced. But we have neglected to tell mom and dad that we took money out of their savings account in order to accomplish that.

Mr. Speaker, the way I add it up, and the way I went to school, as the gentleman from Florida indicated, I am sure we had similar math experiences, the way I add it up, we owe our mom and dad. The fact that we call it off budget in the Government does not mean that we owe our mom and dad any less money.

What is the Social Security trust fund? The Social Security trust fund is for those who are eligible to collect those benefits at a certain time in their life when they have retired at a certain age and under certain circumstances. When they meet the qualifications of it, they get the benefit. One of the arguments made by young people is that there may not be sufficient funds in the Social Security trust fund to meet their needs when they are eligible for it. I would say if we keep taking from this fund, and leaving IOU's in it with no plan to pay it back, that is exactly what is going to happen at some point in time. Not now. Not in 2002. But as we get past that time, 2013, 2020, 2050, you and I will not be here in 2050, Mr. Speaker, and that is one of the real difficulties that I have with this proposal.

Mr. Speaker, when we are saying is for short-term political benefit, rhetorical benefit that will help us in an electoral capacity, “I balanced the budget,” that kind of discussion with the voters, that we are going to leave the children and grandchildren and great-grandchildren bereft of those funds which are supposedly in there for their benefit.

One of the reasons that that is so is that we are going to have an ever-increasing number of people who are eligible for Social Security and a decreasing number of people who will be working to pay the Social Security taxes to put into the fund to see that it remains solvent. That is a genuine problem that we have to look at.

I believe that government is for the long term; not for the short term. I believe that the decisions that I make today have an impact on generations to come. I think I have to take that kind of responsibility. I cannot make a decision. I take that back. I am sure I am as human as anybody else. I think I start thinking at any given time during the day. “What is in my immediate interest? How will I have to explain this? What is going to be the impact on me?” I am up for election in 1996. I intend to run 1996. How do I explain to my constituents what they need to know, rather than perhaps what they would like to hear?

Mr. Speaker, I think my obligation as a Member of Congress is to tell people what they need to know; not necessarily what they would like to hear. What they would like to hear is that we can cut more and at the same time save more; that we can balance the budget, but at the same time we can increase the deficit.

Mr. Speaker, I suppose that people would like to hear that, but I think my constituents, and I am sure that the constituents of the gentleman from Florida are the same, they do not want to hear a fairy tale. They do not want to be told something that is not true or that they are going to be fiscally secure, that their future is going to be soundly based economically and socially and we will have stability in this country, and then find out that is not so. They would rather know the truth. I think we have to figure out what needs to be done to get to the goal that we want to achieve.

Yes, it is true that Democratic administrations and Republican administrations have used Social Security in a similar way. That does not make it right. The difference has been in the past that when they went into the Social Security trust fund, they never pretended they were balancing the budget with it. Rather, they were meeting current expenses.

The debt that we have now, between $480 and $500 billion that we owe in principal, I am not sure whether interest is involved in that or what the interest is at this point, but we owe up to almost a trillion dollars right now to Social Security. I do not know of any plan to pay it back. It is a paper transaction, according to those who want to use it for the bookkeeping trick that it is. But, nonetheless, it is really a trillion dollars that is going to come out of that fund in the future.

Now we propose, in the name of balancing the budget, not just meeting current expenses. Let me explain a little further. If we went to our mom and dad and said to them, “Look, we are having a tough time. There was a hurricane.” Mr. Speaker, as you know, Florida has suffered through more than one devastating hurricane. Hawaii suffered through a hurricane. Hurricane Iniki hit that hit the island of Kauai. California's tragic earthquake. Just take those three national disasters. We are talking about tens of billions of dollars worth of damage and subsequent investment by the people of this country in the infrastructure and social stability of just those three States, California, Hawaii, and Florida, all across the spectrum of our society, literally and otherwise.

Mr. Speaker, I consider that an investment in the people of our country. I do not object to that. We have these kinds of disasters. So, I suppose I could go to mom and dad and say, “Mom, we have had a disaster occur. We have had some difficulties and we did not get enough from you. My salary did not cover the expenses that came up. There was the car crash; there was the hurricane that came through. We have got to fix the roof. We have to get the plumbers in and the carpenters. We do not have enough money coming in. We need to borrow money from right now in order to meet these expenses.”

Mr. Speaker, we could do that. We would prefer not to, but it could be
done. So, when the accusation, if you will, is made that administrations in the past, and as I say, they have been Democrat and Republican administrations, when these administrations in the past have borrowed, taken Social Security and voted for the budget, it was to meet the current expenses. They did not come to the well of the floor, or go on television on news shows and to their constituents and say, "Oh, we are balancing the budget now."

Mr. Speaker, can we balance the budget if we are taking money from the Social Security trust fund and have no plan to pay it back; pay the principal, let alone pay the interest back? That is what is to happen. The surpluses are here. There is no question that there is extra money.

Now, is it really extra money? The reason that these surpluses are there, Mr. Speaker, as you may recall, in the 1980's, the same kind of argument was made. The revenue was going to be used to pay for the deficit, therefore, we have to have a new system to deal with it. What we did, Mr. Speaker, is that the Social Security tax was raised, the amount of money that was required of us. We all see it now. It is called the F-I-C-A, the FICA tax. That is our Social Security tax. We pay the tax and that goes into the fund.

It goes into a fund right now, Mr. Speaker, and this was acknowledged by the Congress, acknowledged by the people of this country that they would put more money into the fund every year than was actually going to be paid out because at some point in the future those two lines would pass one another.

We wanted to make sure that we had sufficient funds in the Social Security to take care of those folks that were coming after us down the line, that was going to be used to fix, forward, not backward or look in place, run place, but to look forward. The whole society made the decision to do that. So when we use the word surplus, that is not really true. What it is, is a savings account to be drawn on at the proper time by those who are eligible for Social Security.

I know, Mr. Speaker, that this sounds like pretty much of a basic course that I am delivering here. Some people may be saying: I know all of that; why is he going through something so obvious? The reason I am, Mr. Speaker, is I do not believe that most people in the country know that, instead of building up the savings in the Social Security trust fund so that everybody who is eligible for it is able to receive the benefits that we have been systematically taking the money from there, looting it, embezzling it, borrowing it, mortgaging it, you can run the whole spectrum of adjectives and descriptive phraseology.

The fact of the matter is we have been taking from the Social Security trust fund, funds that were meant to be there to be saved in order to provide for the benefits for those who are eligible at the time that they become eligible. What we have is massive amounts of IOU's in there. That is not real money. That money has been spent. It is not in the fund and the budget are the same; the President's budget is the same. What the President is trying to say is, if you want to try and go through this balancing act, you have to admit that you are taking it from Social Security. We do not want to take it from Social Security, you are going to have to make sure then that you do not make these drastic cuts. If you make these drastic cuts, you are going to have to take it not only from Social Security, but you are going to have to increase taxes or cost-shift the burden to others in the society in order to pay the bills.

Now, there is one way not to pay the bill; do not let people be eligible for the payments. I understand that. When the payments had been made, perhaps they had not gone far enough, I cannot imagine what he would have in mind. We are already attacking agriculture, the people who grow our food. We are already attacking education, the teachers of the country and our children and young people. We are already attacking Medicare, the only health care system available to millions upon millions of people in the Nation at any kind of a reasonable cost. If one wants to talk about making savings, that is another story. Attacking waste, fraud, and abuse, I am all for it. Believe me, it can be done. But I do not want to hear a lot of discussion from people who a year ago said there was no problem with health care now suddenly saying, it is going to go broke.

If it is going to go broke, you fix it. That is what you do. You fix it. You do not cut it. If you cut it, you have not dealt with the problems that are already being dealt with. Will people not be sick tomorrow? Will we suddenly stop having accidents? I understand now that we are going to increase the speed limit in this country. In some places I guess you will be able to drive as fast as you want. Do you think there is not going to be any automobile accidents, there is not going to be reper- cussion that come from those automobile accidents as a result of having no speed limits whatsoever, that somebody is not somehow going to pay for that?

Are we going to take people when they come to the hospital after one of these accidents and say, I am sorry, we have not have a budget that says we only have this much money, you will have to stay in the street? I do not think that is the kind of country that we can be. So the question is, Are we getting the kind of service that we need to have at a cost that is sufficient and fair and are we getting the kinds of services that we need at a cost that is sufficient and fair?

Mr. Speaker, I want to indicate, I will reiterate from my previous discussion what is going to happen once this so-called balanced budget comes into effect.

Mr. Speaker, let me take that time remaining then to give you some of the implications if this so-called balanced budget, which is really a shifting of the costs takes place. I will not use my own judgment on this. I will go to one of the editorials. The gentleman from Florida previously quoted an editorial to me from someone who no doubt has health insurance. So I quote an editorial as well for someone who no doubt has health insurance.

The USA Today from November 6 of this year, entitled the "Balanced Budget Myth": "Each day"—I am quoting now from that USA Today editorial.

Each day the debate over balancing the budget produces another dire warning. The cuts are too deep, say the Democrats. Taxes are too high, say the Republicans. Many people have already begun and as a result of the compromise and beginning over who will win a few weeks from now, one truth will remain; both sides will be lying because neither is talking about a truly balanced budget at all.

This is my complaint, parenthetically, Mr. Speaker.

The nonpartisan Congressional Budget Office underscored that point recently. It pointed out that come 2002, when the budget will be balanced, under the Republican plans the Government will still be borrowing more than $100 billion a year. This is done by writing IOU's from the Trust Fund to Social Security and other trust funds that the Congress declares off budget.

Mr. Speaker, that is not me talking. That is USA Today talking. They are quoting tables that I quoted from last week indicating that that is exactly the case. We are taking from Social Security in order to offset the budget deficit that we have.

This is the point then, what happens from that? To understand that we look ahead to 2005. That is just 10 years away. About the time it takes for an 11-year-old child to go from grade school through college. Think of that, Mr. Speaker, grade school through college. We have heard on this floor over and over again during this budget debate that we have to pay attention to the children. What is going to happen in 2005 when that 11-year-old child goes to college.

This year a critical balance tips. Increased costs for Social Security will begin to deplete Congress' cushion because the Social Security Trust Fund is a fiction, filled with nothing but Government promises to pay. Congress has repeatedly used the fund. By 2013, when the trust fund peaks, taxpayers will feel a hard bite. They will have to start doing what the trust funds were supposed to do; pay for the retirement of 75 million baby boomers. That budget will plummet into a sea of red ink.

That is what is going to happen. Mr. Speaker, the facts are these: Whether
it is the Republican plan, the Republican proposal, or the Democratic response, unless and until we deal honestly with the issue of actually coming into balancing, we are not going to be able to succeed. With the President’s initiative and the deficit background, the rate of the deficit declined. That is to say, the absolute number of the deficit has gone down. The rate of the deficit has gone down. It has done so for 3 years. This has not happened since 1945 and the Truman administration. This is what needs to be done.

Instead of the hacksaw approach, instead of the meat-ax approach, we need to take a gradual approach that will see to it that we are able to meet our obligations to Social Security, able to meet our obligations to our children, able to meet our obligations to our national defense, able to meet our obligations to ourselves as a society. Only then when we are truly honest with ourselves about what the deficit will be, how we will do it, how we will gradually have indicated that there are ways of doing that, paying for our capital expenditures the way cities, States, and families do, paying for our operating expenses within a budget that recognizes we do not only live on a year-to-year basis and other such reforms, I think we can achieve that goal.

Until that time, Mr. Speaker, I remain opposed to the continual people coming to the floor and elsewhere and making the pronouncement that they are balancing the budget when they are in fact shifting the deficit and actually attacking the Social Security trust fund in order to provide the basis for that rhetorical device. Unless and until, Mr. Speaker, we deal honestly with the American people as to what the costs of Government actually are to meet our fundamental obligations, we will find ourselves subject to the demand that the people who will have to pay for it will be our children, will be our grandchildren.

They will look back on this time and say, they knew because somewhere, somehow, if only in the record of this Congress. Congress, somebody will be reading through the Congressional Record and say, it was there. They were on the floor. It is not just Neil Abercrombie talking about it. It is the USA Today. It is Bill Walsh in USA Today. It is Lars-Eric Nelson in the Daily News. It is even the Washington Post editorial writers, when they get around to being halfway honest about the Social Security trust fund borrowing or embezzling, whatever word you want to use. It is on this floor now. A dialog and a discussion has been started between Republicans and Democrats, not just between myself and the gentleman from Florida, but others as well. If we want to deal with this, let us pass a budget that admits in 1996 that it is not balanced. Let us make a faith effort to try and keep that deficit from rising. Let us keep the rate of the deficit going down. And next year, let us come back here with a budget reform proposal, a bill, that will put forward a long-term plan, 10 years, 20 years, 30 years. That is what a mortgage is, 30 years, whatever it takes in order to truly balance the budget and truly to see to it that we meet our obligations to our children, our families, and the heritage of this country.

The SPEAKER pro tem (Mr. Young of Florida). Under the Speaker’s announced policy of May 12, 1995, the gentleman from [Mr. Horn] is recognized for 60 minutes.

Ms. NORTON. Mr. Speaker, this is day 5 of my countdown to help avoid a shutdown of the Federal Government and the District of Columbia and, in addition, to help avoid a month-to-month congressional resolution that would apply to the District of Columbia—because on a month-to-month basis, Mr. Speaker, one cannot run a large, complicated, financially troubled city. There is very promising news carried in this morning’s papers across the country that there may be $100 billion more money than expected, that the program of the administration has worked and that we are seeing the fruits come in. We are told that the President has made a phone call to the Republican leadership and may be coming together with them in the next few days. In any case, Mr. Speaker, they are very close together. There is not a lot of difference here.

In particular, the Republican majority said to the President, give us a 7-year plan. Guess what? He did. Now the only way to arrive at an agreement is to get to the details, get the numbers together with them in the next few days. In any case, Mr. Speaker, they are very close together. There is not a lot of difference.

This morning the President is quoted as saying, "We ought to be able to agree on one thing: Nobody, nobody should threaten to shut down the Government right before Christmas."

I cannot believe there is a single Member who would disagree with that. We in the District are not relaxed, though, because a month-long or a 6-week-long or a 2-week-long continuing resolution will not help us run the District, which is in grave fiscal and financial distress.

Who would want to shut down the District when the appropriation that is stuck up here is 85 percent raised from District of Columbia taxpayers? It is indefensible to do anything but release that money so that the District of Columbia can begin to systematically plan and spend for its reform. That is why this body has tried to get the District to do for years. That is why with a control board in place, we must be set free to do that.

I have sponsored, with strong bipartisan support, the D.C. Fiscal Protection Act which will be marked up on Wednesday and Thursday. The gentleman from Virginia [Mr. Davis], the chair of the D.C. Subcommittee, is strongly for this act because it would simply release the District to spend its own money. It is bad enough not to have full representation in this Congress, but to shut us down with our own money is nothing that any Member would want to defend.

When the markup occurs, the bill will be brought swiftly. We believe it could be passed swiftly in the House. Do not condemn us to the waste of a month-to-month CR. The last shutdown forced us to pay our employees, in any case, for not working, because they were forced to do administrative level work by the Congress of the United States. The waste and inefficiency involved for Federal agencies is unpardonable for a city in financial distress. It simply cannot be tolerated. The waste and inefficiency involved in a month-to-month continuing resolution will set the District back in a recovery that has hardly begun.

There are responsibilities that the District must take on. This body is correct to make sure that the District takes on those responsibilities. But who can deny that there is also a responsibility for this body. Only this body can pass a continuing resolution to free up the District to spend its own money. Even if our appropriation comes through, the District must never be shut down and that has all kinds of repercussions on Wall Street. We must improve the District’s standing. The only way to do that is not even through our appropriation, not even through a 1-month CR. It is through the D.C. Fiscal Protection Act, which will be marked up on Wednesday and Thursday, which would broadcast to the markets that no matter what happens, if the D.C. appropriation has not been signed at the end of a fiscal year, the District can spend its own money. It can pay its debts. It can pay its bills. It can pay its utility bills. It can pay its salaries.
begin the systematic planning and spending that will once again make the District whole.

**SPECIAL ORDERS GRANTED**

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

(The following Member (at the request of Mr. Bose) to revise and extend his remarks and include extraneous matter:)

Mr. Poshard, for 5 minutes, today.

(The following Member (at the request of Mr. Schiff) to include extraneous matter:)

Mr. Scarborough, for 5 minutes, today.

(The following Member (at her own request) to revise and extend her remarks and to include extraneous matter:)

Ms. Norton, for 5 minutes, today.

**EXTENSION OF REMARKS**

By unanimous consent, permission to revise and extend remarks was granted to:

(The following Members (at the request of Mr. Bose) to include extraneous matter:)

Mr. Montgomery.

Mr. Frank of Massachusetts.

(The following Members (at the request of Mr. Schiff) to include extraneous matter:)

Mr. Crane.

Mr. Ganske.

(The following Member (at the request of Ms. Norton) to include extraneous matter:)

Mr. Hamilton.

**SENATE BILL REFERRED**

A bill of the Senate of the following title was taken from the Speaker's table and, under the rule, referred as follows:

S. 1431. An act to make certain technical corrections in laws relating to Native American languages, and for other purposes; to the Committee on Agriculture and Resources.

Mr. Montoya.

A bill to ease the enforcement of laws on wild horse matters. H.R. 1745. A bill to designate certain public lands in the State of Utah as wilder-

**BILLS PRESENTED TO THE PRESIDENT**

Mr. Thomas, from the Committee on House Oversight, reported that that committee did on the following date present to the President, for his approval, bills of the House of the following title:

On December 7, 1995:

H.R. 1209. An act to reform Federal securities litigation, and for other purposes.

H.R. 2204. An act to extend and reauthorize the Defense Production Act of 1950, and for other purposes.

**ADJOURNMENT**

Ms. Norton. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 1 o'clock and 18 minutes p.m.), the House adjourned until Tuesday, December 12, 1995, at 10 a.m.

**EXECUTIVE COMMUNICATIONS, ETC.**

Under clause 2 of rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

1803. A letter from the Secretary of Education, transmitting final regulations—William D. Ford Federal Direct Loan Program, pursuant to 20 U.S.C. 1232(d)(1); to the Committee on Economic and Educational Opportunities.

1804. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting notification that the Department of State intends to provide training in crisis management to Morocco under the auspices of the Antiterrorism Assistance Program (ATA), pursuant to 22 U.S.C. 2349aa-3(a)(1); to the Committee on International Relations.

1805. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting the Department's report on PLO compliance, pursuant to Public Law 104-236, section 804(b) (104 Stat. 78); to the Committee on International Relations.

1806. A letter from the Assistant Secretary for Legislative Affairs, Secretary of State, transmitting notification that the Department of State intends to provide training in crisis management to Morocco under the auspices of the Antiterrorism Assistance Program (ATA), pursuant to 22 U.S.C. 2349aa-3(a)(1); to the Committee on International Relations.

1807. A letter from the Secretary of Agriculture, transmitting the semiannual report of the inspector general for the period April 1, 1995, through September 30, 1995, pursuant to 5 U.S.C. app. (Insp. Gen. Act) section 5(b); to the Committee on Government Reform and Oversight.


1809. A letter from the Assistant Secretary for Legislative Affairs, Secretary of State, transmitting notification that the Department of State intends to provide training in crisis management to Morocco under the auspices of the Antiterrorism Assistance Program (ATA), pursuant to 22 U.S.C. 2349aa-3(a)(1); to the Committee on International Relations.

1810. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting the Department's report on PLO compliance, pursuant to Public Law 104-236, section 804(b) (104 Stat. 78); to the Committee on International Relations.

1811. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting the Department's report on PLO compliance, pursuant to Public Law 104-236, section 804(b) (104 Stat. 78); to the Committee on International Relations.

1812. A letter from the Assistant Secretary for Legislative Affairs, Secretary of State, transmitting notification that the Department of State intends to provide training in crisis management to Morocco under the auspices of the Antiterrorism Assistance Program (ATA), pursuant to 22 U.S.C. 2349aa-3(a)(1); to the Committee on International Relations.

1813. A letter from the Director, Division of the District of Columbia Retirement Board, transmitting the financial disclosure statement of a board member, pursuant to D.C. Code, section 1-732 and 1-734(a)(1)(A); to the Committee on Government Reform and Oversight.

1814. A letter from the Administrator, General Services Administration, transmitting the semiannual report on the activities of the Department's Inspector general for the period April 1, 1995, through September 30, 1995, and the management report for the same period, pursuant to 5 U.S.C. app. (Insp. Gen. Act) section 5(b); to the Committee on Government Reform and Oversight.

1815. A letter from the Chairman, National Labor Relations Board, transmitting the semiannual report of the inspector general for the period April 1, 1995, through September 30, 1995, pursuant to 5 U.S.C. app. (Insp. Gen. Act) section 5(b); to the Committee on Government Reform and Oversight.

1816. A letter from the Chairman, U.S. Merit System Protection Board, transmitting the annual report under the Federal Managers' Financial Integrity Act for fiscal year 1995, pursuant to 31 U.S.C. 3512(c)(3); to the Committee on Government Reform and Oversight.

1817. A letter from the Chairman, Federal Election Commission, transmitting proposed regulations governing corporation and labor organization activity, express advocacy and coordination with candidates (11 CFR parts 100, 102, 109, 110, and 114), pursuant to 2 U.S.C. 438(d); to the Committee on House Oversight.

1818. A letter from the Executive Director, National Forest Foundation, transmitting a copy of the Foundation's annual report for fiscal year 1995, pursuant to Public Law 101-593, section 407(b); jointly, to the Committees on Agriculture and Resources.

**REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS**

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. McCollum: Committee on the Judiciary, H.R. 2538. A bill to make clerical and technical amendments to title 18, United States Code, and other provisions of law relating to crime and criminal justice (Rept. 104-391). Referred to the Committee of the Whole House on the State of the Union.

Mr. McCollum: Committee on the Judiciary, H.R. 1535. A bill to amend title 18, United States Code, to increase the penalty for a Federal count (Rept. 104-392). Referred to the Committee of the Whole House on the State of the Union.

Mr. McCollum: Committee on the Judiciary, H.R. 2418. A bill to improve the capability to analyze deoxyribonucleic acid; with an amendment (Rept. 104-393). Referred to the Committee of the Whole House on the State of the Union.

Mr. Archer: Committee on Ways and Means, H.R. 2065. A bill to repeal the Medicare and Medicaid Community Health Center Bank (Rept. 104-394, Pt. 1). Ordered to be printed.

Mr. Young of Alaska: Committee on Resources, H.R. 2423. A bill to amend the Trinity River Basin Fish and Wildlife Management Act of 1984, to extend for 3 years the availability of moneys for the restoration of fish and wildlife in the Trinity River, and for other purposes; with an amendment (Rept. 104-395). Referred to the Committee of the Whole House on the State of the Union.

Mr. Young of Alaska: Committee on Resources, H.R. 1745. A bill to designate certain public lands in the State of Utah as wilderness, and for other purposes; with an amendment (Rept. 104-396). Referred to the Committee of the Whole House on the State of the Union.
Mr. STUMP: Committee on Veterans' Affairs. H.R. 2289. A bill to amend title 38, United States Code, to extend permanently certain housing programs, to improve the veterans employment and training system, and to make clarifying and technical amendments to further clarify the employment and reemployment rights and responsibilities of members of the uniformed services, as well as those of the employer community, and for other purposes (Rept. 104–397). Referred to the Committee of the Whole House on the State of the Union.

PUBLIC BILLS AND RESOLUTIONS
Under clause 5 of rule X and clause 4 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. CRANE (for himself, Mr. GIBBONS, and Ms. DUNN of Washington):
H.R. 2754. A bill to approve and implement the OECD Shipbuilding Trade Agreement; to the Committee on Ways and Means, and in addition to the Committee on National Security, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. FOGLIETTA (for himself, Mr. SCHUMER, Mr. MCDERMOTT, Mr. OWENS, and Mr. DELUMS):
H.R. 2755. A bill to establish a Corporate and Farm Independence Commission, and for other purposes; to the Committee on Ways and Means, and in addition to the Committees on Agriculture, Transportation and Infrastructure, Resources, and Rules, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. OBEY (for himself, Mr. HINCHNEY, Mr. OWENS, Ms. PELOSI, and Mr. OBERSTAR):
H.R. 2756. A bill to direct the Secretary of Health and Human Services to make payments to each State for the operation of a comprehensive health insurance plan ensuring health insurance coverage for individuals and families in the State, and for other purposes; to the Committee on Ways and Means, and in addition to the Committees on Commerce, and Economic and Educational Opportunities, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

MEMORIALS
Under clause 4 of rule XXII, memorials were presented and referred as follows:

183. The SPEAKER introduced a memorial of the House of Representatives of the Commonwealth of Puerto Rico, relative to requesting the Congress of the United States to exclude Puerto Rico from the scope of application of the Federal laws on coasting trade; which was referred jointly, to the Committees on Transportation and Infrastructure and Resources.

ADDITIONAL SPONSORS
Under clause 4 of rule XXII, sponsors were added to public bills and resolutions as follows:

H.R. 863: Mr. BEILENSON.
H.R. 1127: Mr. KLUG and Ms. RIVERS.
H.R. 1132: Ms. LOFGREN.
H.R. 2265: Mr. CALVERT.
H.R. 2276: Ms. ROS-LEHTINEN.
H.R. 2618: Mr. DELUMS.
H.R. 2627: Mr. FLAKE and Mr. LINDE.
H.R. 2664: Mr. CREMEANS, Mr. FRISA, Mr. DOOLEY, Mr. SISISKY, Mr. BAKER of Louisiana, Ms. WOOLSEY, Mr. MASCARA, Mr. BEERUTER, Mr. ALLARD, and Mrs. COLLINS of Illinois.
H.R. 2665: Mr. TORKILDSEN.
H. Con. Res. 63: Mr. MENDENDEZ, Mr. CUNNINGHAM, Mr. WALSH, and Mr. CALVERT.
The Senate met at 12 noon and was called to order by the President pro tempore [Mr. THURMOND].

PRAYER

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

Almighty God, You have all authority in heaven and on Earth. You are Sovereign Lord of our lives and our Nation. We submit to Your authority. We seek to serve You together here in this Senate Chamber and in the offices that work to help make our deliberations run smoothly. We commit to You all that we do and say this day. Make it a productive day. Give us positive attitudes that exude hope. In each difficult impasse, help us seek Your guidance. Draw us closer to You in whose presence we rediscover that, in spite of differences in particulars, we are here to serve You and our beloved Nation together. In our Lord’s name, Amen.

The PRESIDENT pro tempore. The distinguished Senator from Nevada is recognized.

THE CHEMICAL WEAPONS CONVENTION

Mr. REID. Mr. President, I rise today to speak about an issue that is important to the security of this Nation and certainly to the world community, and that is the proliferation of chemical weapons.

The widespread use of chemical weapons in world war provided the world with its first glimpse of these agents’ destructive powers. I am certain many of us here in the Senate have known someone who served in the First World War who returned to the United States bearing permanent scars of his exposure to terrible chemicals such as phosgene and mustard gas. If we do not know someone, we have heard of people who were dehumanized as a result of these agents.

I was with Vice President Gore recently when he talked about his uncle, his father’s brother, who returned from the First World War injured as a result of chemical weapons. The Vice President indicated how his uncle coughed and suffered from this condition until he died.

Thousands of American veterans suffered for years from illnesses, like the Vice President’s uncle, because they were exposed to gas. Thousands more never came home, having died as a result of this. Mr. President, 80 percent of the gas fatalities in World War I were caused by phosgene. This substance damages the lungs, causing a deadly accumulation of fluid quickly and it leads to death. Those who do not die from this gas may cough and cough for the rest of their lives.

There were stories in the First World War of people who suffered, but one of the most famous poems of that conflict was written about poisonous gas, entitled “Dulce Et Decorum Est.” I will not read it all, but I will read enough to get the point across.

This poem starts by describing marches and worried soldiers. The poet begins the second paragraph by saying:

Gas! Gas! Quick, boys!—An ecstasy of fumbling,
Fitting the clumsy helmets just in time;
And flound’ring like a man in fire or lime... .

If in some smothering dreams you too could pace
Behind the wagon that we flung him in,
And watch the white eyes writhing in his face,
His hanging face, like a devil’s sick of sin;
If you could hear, at every jolt, the blood
Come gurgling from the froth-corrupted lungs,
Obscene as cancer, bitter as the cud
Of vile, incurable sores on innocent tongues... .

Mr. President, that describes quite well what poisonous gas does to a human being. But it did not end in World War I. Iran and Iraq have poisonous gas. In the 1980’s, Iraq used poisonous gas weapons against its enemy Iran in the Iran-Iraq war, and launched a campaign of terror with chemical weapons against its own population, the Kurds, in their own country.

In the words of a Kurdish refugee who survived the bombing of his village by an Iraqi aircraft, he said:
The planes dropped bombs. They did not produce a big noise. A yellowish cloud was created and there was a smell of rotten parsley or onions. There were no wounds. People would sit and breathe, then their throats would close and blood would come from their mouths.

According to a 1988 Foreign Relations Committee report on the Iraqi chemical weapons attacks:

Those who were very close to the bombs died instantly. Those who did not die instantly found it difficult to breathe and began to vomit. The gas stung the eyes, skin, and lungs of the villagers exposed to it. Many suffered temporary blindness. After the bombs exploded, many villagers ran and submerged themselves in nearby streams to escape the gas. Many of them actually made it to the streams survived. Those who could not run from the growing smell, mostly the very old and the very young, died.

Since the end of the Persian Gulf War, international inspectors have destroyed over 100,000 gallons of chemical weapons, and over 500,000 gallons of precursor chemicals used to produce chemical weapons from Iraqi stockpiles. That is 10,000 50-gallon drums.

When the use of chemical weapons during wartime is both horrifying and tragic, even more terrible is the prospect of these weapons being used by terrorists to further their aims.

The attacks that occurred in the Tokyo subways in March are a chilling indicator of the potential terrorist threat chemical weapons represent. The nerve gas, sarin, was used by the terrorists in the Tokyo incident and it was a relatively low-grade composition of the gas. If the terrorists had access to a more concentrated form of the gas, their attack could have killed thousands of innocent commuters. We can only imagine the terrible consequences of an attack such as that occurring in a U.S. city.

The potential security threat to the United States and its citizens from the use of chemical weapons has been a serious concern to both the current administration and its predecessors. Negotiations of a chemical weapons treaty began during the Reagan administration, and President Bush signed the Chemical Weapons Convention, also called the CWC, in 1993.

The Clinton administration continued American support for the treaty, and on November 23, 1993, President Clinton submitted the convention to the Senate for ratification. Nevertheless, although the United States was a primary architect of the convention, and has signed it along with 159 other nations, the United States is not yet a member of the convention because the Senate has failed to act to ratify it. The convention must be ratified by 65 nations to come into force. To date, only 42 nations have ratified it.

An overwhelming majority of the Senate supports ratification of this important treaty, but the Senate has been prevented from debating and voting on ratification because the Foreign Relations Committee's failure to act on it.

I believe the Foreign Relations Committee's failure to act on this important arms control measure this year is a serious mistake.

The Chemical Weapons Convention is unique among weapons treaties in that it will, when ratified, eliminate an entire class of weapons. The convention bans the development, production, stockpiling, and use of chemical weapons by its signatories. It requires the destruction of all chemical weapons and production facilities. Under the terms of the convention, the Russians would be required to destroy an estimated 40,000 metric tons of chemical weapons, including 32,000 metric tons of nerve agents.

The convention also provides the most extensive and intrusive verification regime of any arms control treaty, for it permits the inspection of both military and commercial chemical facilities. This is an important safeguard against commercial facilities being used for military production of chemical agents, as was the case in Iraq.

To help prevent incidents such as the Tokyo nerve gas attack, the convention required the signatories to adopt laws criminalizing civilian violations of its terms. Under the convention, member countries would have to pass national level legislation criminalizing the manufacture and possession of chemicals by private groups such as the religious sect that initiated the subway attack in Japan.

I understand the chairman of the Foreign Relations Committee has serious concerns about the verifiability and enforceability of the convention's terms. But I believe the proper way to address these concerns would be to allow the treaty to be fully debated in the committee and on the Senate floor. If there are concerns about other nations' compliance with the treaty, the answer is not for the United States to abandon it. As a member of the convention, the United States will be better able to monitor compliance.

In 1994, the United States and the Soviet Union signed a bilateral declaration committing to the destruction of all chemical weapons and production facilities. This is an important aspect of chemical weapons control, as evidenced by our Nation's prominent role in drafting the convention, was fundamental to creating the spirit of cooperation that led to the treaty being signed by so many countries.

The United States’ failure to ratify the treaty calls into question our commitment to its goals and threatens to fracture international support for the treaty. If the United States, which holds some of the world's largest stockpiles of chemical weapons, does not ratify the treaty, other nations will find little motivation to do so.

The United States can no longer afford to delay giving its support to implementation of the Chemical Weapons Convention.

The United States is already bound by law to destroy its chemical weapons stockpile by year 2004. The Convention would require all other member nations to do the same. Any state that refuses to join the treaty will be isolated and its access to precursor chemicals will be limited. And we have explained why that is important to the pharmaceutical development of, and the simple construction of, fertilizers.

Universal compliance cannot be achieved immediately, but there is no doubt that the convention will slow and reverse the current pace of chemical weapons proliferation.

And while the CWC cannot prevent every potential threat of terrorist chemical attack, it can greatly reduce the threat by halting and reversing the proliferation of chemical weapons. If we eliminate chemical stockpiles, we eliminate potential terrorist weapons. In addition, we greatly diminish the threat of chemical weapons to U.S. troops in future military operations.

The Senate must not shy away from taking this important step toward the elimination of all chemical weapons. We should act now to create a more secure present for the country and a more secure future for generations to come.

This is not a partisan issue. In July, 1994, former President Bush wrote to Senator Lieberman to express his support for the convention. He stated:

This convention clearly serves the best interests of the United States in a world in
which the proliferation and use of chemical weapons is a real and growing threat. United States leadership played a critical role in the successful conclusion of the Chemical Weapons Convention. United States leadership is required once again to bring this historic agreement into force. I urge the Senate to demonstrate the U.S. commitment to abolishing chemical weapons by promptly giving its advice and consent to ratification.

And, in a bipartisan show of support for the treaty, the Senate passed by voice vote a sense-of-the-Senate resolution calling for rapid action on the convention earlier this year.

Mr. President, When I started my state senatorial term one year ago today, I recalled the horrors and widespread use of chemical weapons in World War I. They were real. They affected people. They killed people. They injured, and they damaged people. In response to those horrors the world community developed the Geneva Protocol, which banned the use of chemical weapons.

However, although the Geneva Protocol was passed in 1925, the U.S. Senate did not recommend its ratification until 1975. We must not let 50 years pass before we act on the Chemical Weapons Convention.

Mr. President, I extend my appreciation to Senator Bingaman for bringing to the attention of the Senate last week the matters that were held up in the Foreign Relations Committee. I also extend my appreciation to the majority leader for working to bring these important Senate issues to the floor.

One of the things that was part of that agreement was that this treaty would be reported to the Senate floor no later than April 22. That is good. I urge the chairman of the committee, however, to schedule action on this convention as soon as possible so that the Senate can vote on this quickly and do it without regard to partisanship. It is important that we bring this matter to the floor of the U.S. Senate. Chemical weapons are a scourge, and they should be eliminated.

I appreciate the patience of the Chair and other Members of the Senate for extending me an additional 5 minutes.

Mrs. FEINSTEIN addressed the Chair.

The PRESIDING OFFICER. The Senator from California.

Mrs. FEINSTEIN. Mr. President, I ask to speak in morning business for 20 minutes.

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

Mr. CRAIG. Mr. President, reserving 10 minutes, I recall the horrid experiences of California. Mr. President, extending me an additional 5 minutes, I ask to speak in morning business for 20 minutes. The choice should be clear to all of us.

For the purpose of those who are new to the Senate and for those who may have forgotten some of the facts brought out in the debate in the last session, allow me to summarize why this legislation is so important.

First, removing military-style semiautomatic assault weapons has the widespread support of our citizens. A Los Angeles Times national poll conducted between October 27 and October 30 of this year showed that 72 percent of the American people support maintaining the ban on assault weapons. There is bipartisan support for this legislation. Presidents Reagan, Carter, Ford, and Clinton endorsed this legislation during its debate in 1993. Republican and Democratic elected officials from around the country endorsed it, including Republican mayors Rudolph Giuliani of New York and Richard Riordan of Los Angeles. Every major law enforcement group in this Nation, both rank and file and law enforcement management, oppose the repeal. And groups representing 90 million Americans have endorsed the ban on assault weapons. These include physicians who have seen what assault weapons do to people who live daily with the militarization of our schools, clergy who counsel the victims, victims who have seen their loved ones torn apart, trauma physicians whose emergency rooms look like war zones, and military leaders who represent the majority of the American people who say “enough is enough” in this gun-happy country.

Mrs. FEINSTEIN. My home State of California knows all too well the tragedy of assault weapons. There are incidents that really led to my resolve to make this the main priority of my legislative agenda in 1993, and I want to go through them. In 1984, in California, a man by the name of James Huberty walked into a McDonald’s in San Ysidro with an Uzi. He killed 21 people including 5 children; 19 were wounded.

In 1989, an unstable drifter, with a weapon modeled after an AK-47, walked into a Stockton schoolyard and, for no reason, fired 106 rounds. Five children were killed, 29 were injured.

Then on July 1, 1993—and this did it for me—a lone gunman carrying two Intratec TEC DC-9 semiautomatic weapons, a pistol and 500 rounds of 9 millimeter ammunition walked into the Pettit & Martin law firm on the 33rd floor of 101 California Street, a Heinz-designed high rise in the middle of downtown San Francisco. He opened fire. Eight people died, six were wounded.

This is the specific action which galvanized it for me. I think the American people need to know a bit more about it and how this happens.

These were the weapons he carried. These are the 50-round clips, the 30-round clips he carried, and so on. This is the gentleman—this is Gian Luigi Ferri. He did not buy these weapons in California because California had a law. He went across the border to Nevada and bought them. He died on the stairwell of this building. He was only stopped when he was trapped in the stairwell between floors after an employee pulled the fire alarm and that locked all the doors so he could not escape.

This is what Pettit & Martin looked like. These are the shattered windows of the office, the bullet holes through the windows—indiscriminate shooting. And then we get to the victims. These are a few of the people who died that day. Specifically, Judy Sposado, who was 30 years old. She was the first victim killed by Ferri. She worked part time at a Lafayette, CA company which organizes corporate conferences. She was just visiting 101 California Street on July 1 to file a deposition. She was shot five times. She left a husband, Steve Sposado and a 9-month-old child at the time by the name of Meghan. Both Steve and Meghan came back numerous times to testify on behalf of this legislation.

This is a young attorney, Jack Ber- man, 35 years old. He was representing Judy Sposado, who lies next to him in the photo, when he was killed by Ferri. He was a young labor lawyer. He was about to celebrate his third wedding anniversary with his wife Carol just 1 month later. The two have a baby boy. This below is Mike Kerrill, whose wife and children I have had the pleasure of meeting. Mike was a vice presi- dent of the Trust Co. of the West. He was shot through the glass of his window as he sat at his desk. You can see
his cup of coffee. You can see his computer is still on. Ferri, though, shot him. Mike crawled under his desk, and Ferri returned, shot through the desk and killed him.

Mike’s wife Marilyn and two children, Kristin, 5, and Michael, 3, now reside in the dream house that Mike helped to design.

Now you know why I feel so strongly about this legislation. There is a reason why so many, from so many walks of life, have stepped forward to lend their support for this legislation. Our police officers, our children, our family members, are being gunned down by re- vengers, killers, drug dealers, gang members, carrying military-style assault weapons.

No question about it. The AK 47 is the gun of choice among gang members. They are killed on street corners, in high rise office buildings, in front of shopping malls, in fast food restaurants. In the last 15 years, in Los Angeles, 9,000 people have died as a result of gangs—9,000 people.

Here are a few facts. According to a search of newspapers throughout the country conducted by my office, in the last 7 months, since it was rumored that the House would try to repeal the assault weapons ban, there have been 76 incidents involving assault weapons in 25 States in which 37 adults were killed, 40 were wounded, 7 children were killed, and 6 were wounded; 9 police officers were killed including 1 FBI agent who was wounded.

The assault weapon is also the gun of choice if you are going to go up against a police officer. If he is carrying a six-shot .38, he does not have a chance. In both California and throughout the Nation we are seeing police officers gunned down. Here the assault weapon again gives the edge to the perpetrator. No incident better conveys the danger of being a police officer than what happened on November 13, 1994, in San Francisco.

This is James Guellf, a 38-year-old San Francisco police officer, an outstanding police officer, often the first to the scene of a crime. I attended his funeral.

He had received a call that there was a man with a gun at an intersection. He raced in this squad car to the intersection. He was armed with a six-shot service revolver. The gunman that he faced at the intersection had more ammunition than the entire compliment of 104 police officers that eventually came to the scene to try to stop him.

The only way he was stopped—because he was clad in a Kevlar vest and a Kevlar hat—was because of the angle of the bullet that was able to penetrate him and eventually kill him.

I want to read a statement written about this by the commander, Richard Cairns, the captain of police, regarding this incident:

I implore you to do all in your power to stop this legislation that will save police officers’ lives in our country. I am not a person that can be described as an ‘antigun’ fanatic. To the contrary, I am a person who believes in the right to bear arms but we do not need assault weapons that are strictly people killers.

I have seen and heard the damage these weapons can inflict, as a 20-year-old soldier in Vietnam... to seeing too many shooting victims on our streets as a San Francisco police officer. I can remember being a shooting victim of a barricaded suspect... and witnessing firsthand the carnage at 101 California and finally, holding Officer James Guellf in my arms trying to keep him alive after he was shot at Pine and Franklin Streets.

I must say that I am an outdoorsman, a hunter. I enjoy my trips to the mountains to carry on the great heritage of hunting and camping. But you will find no Uzi’s, TEC-9’s, AK-47’s, or other such weapons of war in my house.

In February 1995, a rookie police officer by the name of Christy Lynne Hamilton, a 45-year-old mother of two, just 4 days on the job—she had been voted the rookie of her class—was gunned down by a 14-year-old boy armed with an AR-15 assault weapon.

On March 28, 1995, Capt. James Lutz, a 30-year veteran of the Waukesha, WI, Police Department died in a hail of bullets from a Springfield M1—A assault rifle when he intercepted two fleeing bank robbers.

In November of that same year in Washington, DC, an angry young man armed with the same TEC-9 assault pistol took the elevator to the third floor of the Metropolitan Police Department where he.waited on the stairs and shot and killed three police officers.

On March 8, 1995, in Chicago, a rookie police officer, Daniel Doffyn, was killed by a known gang member armed with a TEC-9 assault pistol.

On April 26, 1995, in Prince Georges County, MD, officer John Novabilski was working at a local convenience store as an off-duty uniformed security guard when an assailant armed with a MAC-11 assault pistol shot him 10 times.

These and other senseless deaths are chronicled in a report entitled “Cops Under Fire,” prepared by Handgun Control, Inc. This chart, first of all, shows the number of law enforcement officers killed with assault weapons or guns sold with high-capacity magazines from January 1, 1994, to September 30, 1995. If you look at this, you will see, of all the weapons traced, 36 percent were with assault weapons or firearms with high-capacity magazines. Mr. President, 36 percent of the officers killed since January 1, 1994 have been with assault weapons. You cannot tell me this legislation will not make a difference.

The report also makes it clear, and this is very interesting, that the bad guys know how to find these weapons. A 1991 survey of 835 inmates in 4 States—these are inmates now—found that 35 percent of them reported owning a military-style or semiautomatic rifle, and 53 percent of them who were affiliated with gangs reported owning a military-style weapon. That is 53 percent of gang-oriented inmates in prisons in four States. That should tell us a lot about how these weapons are used on the streets.

Let me for a moment describe what this legislation actually did and did not do.

The law stopped the future manufacture of 19 specific kinds of military-style semiautomatic assault weapons. They looked like this. Also, the copycat versions of those weapons.

The law specifically protected 670 guns that have legitimate hunting and recreational purposes. Each one is listed. It stopped the future manufacture of large-capacity ammunition feeding devices that hold more than 10 rounds. In my view, that is the most important thing.

If you have a five-shot revolver, when the individual reloads, you have a chance to get to him and disarm him. If you are carrying 50 rounds in a semi-automatic military-style weapon, you have no chance. Someone could enter this Chamber and wipe out 50 people and you could not get to him to disarm him.

In addition, the legislation grandfathered assault weapons manufactured prior to the law’s enactment. It exempted sales for law enforcement purposes, it required a study by the Attorney General and it sunsets after 10 years.

So, as you can see, it is moderate, it is reasonably drawn and it is a fair effort. If I had my way, I would ban the possession of assault weapons anywhere in the United States of America, but there were not going to be the votes for that. This is a moderate law.

There is also evidence that the ban is working. Similar State laws, which have been in place longer, are showing signs of success. In Maryland, the ban on assault pistols and high-capacity magazines of more than 20 rounds led to a 55-percent drop in assault pistols recovered by the Baltimore Police Department.

In Connecticut, the chief of police of Bridgeport has credited the State assault weapons law with reducing assaults with firearms by 30 percent.

Nationally now, this legislation has only been in effect for 14 months, but we are beginning to see a decrease in the use of assault weapons.

In 1993, the year before the ban went into effect, just 19 specifically named assault weapons accounted for 6.2 percent of all traces. In 1994, the year in which the ban became effective, these traces for these 19 weapons fell to 6.3 percent. And since the ban became effective on September 13, 1994, through the end of last month, the share of traces represented by all assault weapons fell to 4.3 percent.

Thus, we have seen a decrease in the likelihood that criminals will obtain one of these weapons, and one of the very real reasons for that is that the price is going up because of the shortage of these weapons. So they are not as easy for a criminal to obtain.

The use of these guns to kill police officers has also been decreasing. In
1994, when the law was not in effect for most of the year, the Handgun Control study found that assault weapons accounted for 41 percent of police gun deaths where the make and model of the weapon were known.

In 1995, this proportion has fallen to 28 percent, a significant decrease.

So cop killings with these weapons are down. Criminals have not switched from killing police with assault weapons to killing them with other guns. Police deaths from guns in 1995 are running 16.5 percent below the 1994 pace.

Yet, despite the hard facts, despite the sound reasoning, despite 72 percent of the American people wanting to sustain this ban, here we are again waging the same battle. I am really amazed, and I have to ask people: What hunter needs an assault weapon to kill a duck when most States limit the number of bullets in a clip to three?

What hunter needs an assault weapon to kill a deer when most States limit the number of bullets in a clip to seven, and I think only one does it?

What target shooter needs a weapon of war to enjoy the sport?

Indeed, whoever besides drug dealers and hit men, revenge seekers and lustkillers find any utility in assault weapons intended to kill as many people as possible as quickly as possible? And how on Earth can we turn our backs on law enforcement's leadership and rank and file throughout the country?

So I urge every American to join this crusade. We must prevail. If the issue is raised in the Senate, I promise that I will exhaustively detail for the RECORD and time and again, I promise that the stories of every victim of an assault weapon shooting that we can find will be told on this floor and that the horror that these weapons are bringing to our streets are made known.

In conclusion, I ask unanimous consent that some personal statements from family members who have lost loved ones to assault weapons gunfire be printed in the RECORD.

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

Lindsay Hempel, who, as a 15-year-old Alameda County Sheriff Charles C. Plummer.

December 11, 1995

CONGRESSIONAL RECORD—SENATE S18309

Kenneth Brondell, Jr. letter to Senator Dole on the death of his sister, Christy

Mrs. FEINSTEIN. I ask unanimous consent that a list of law enforcement leaders supporting the need for this legislation be printed in the RECORD.

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

LAW ENFORCEMENT OPPOSING A REPEAL OF THE ASSAULT WEAPONS BAN

Combined Law Enforcement Association of Texas.

National Association of Police Organizations.

National Organization of Black Law Enforcement Executives.

National Sheriffs Association.

National Troopers Association.

Police Executive Research Forum.

Police Foundation.

California State Sheriff's Association.

California Police Chiefs Association.

Alameda Police Chief Burnham E. Matthews.

Alameda County Sheriff Charles C. Plummer.

Auburn Police Chief Michael A. Morello.

Bear Valley Police Chief Marcel J. Jojola.

Cathedral City Police Chief James A. Cost.

Carmel Police Chief Donald F. Fuselier.

Chino Police Chief Richard Still.
Mr. CRAIG addressed the Chair.

The PRESIDING OFFICER. The Senator from Idaho.

BALANCING THE BUDGET

Mr. CRAIG. Mr. President, for just a few moments I would like to speak about the budget and the happenings of this weekend on all the talk shows and the Presidential and Vice Presidential messages that were delivered to the American people.

I guess I can tell you, Mr. President, while I remain not surprised by the message of our President and Vice President, I can tell you that I am highly disappointed, for it is they who over the weekend threatened a Government shutdown if they could not get their way with the Federal budget. They would like to argue that it would be the fault of the Congress, but it was Congress that sent to the President this last budget, and it was the President who vetoed that budget, and then sent to the Hill a budget that was not even within the agreement that he had struck less than 2 weeks ago. As a result of that, he now proposes for the Congress to reconvene a budget conference which is at least $1 trillion dollars of difference between the White House and the Congress of the United States.

The Washington Post, which is not known for its conservatism, I thought made an important observation in an editorial on the 12th when they said the President’s latest budget proposal, his third this year—in other words, twice he has not been able to get it right—is a disappointment. Even the Washington Post says it "" is a disappointment. It returns the basic weaknesses of the one that he put forward in June that it pretends to supplant. Mr. Clinton continues to back away from the serious part of driving down the deficit. He tries to balance the budget wearing a Santa [Claus] suit, and the simple fact is that you can’t.""

Mr. President, I will tell you that the revelation over the weekend that there might be another $100 billion worth of spending, while the American people watch what you say and listen to what Congress says, they happen to fear that kind of Santa Clausism right on the eve of Christmas, because they are very fearful that the party that now clings to its past underpinnings of being spendaholics can simply not get away from it.

The budget you have sent us, Mr. President, clearly is reflective of the fact that the Democrat Party of America today cannot get away from the old habits that it had in the past, and that was, the solution to every problem was a new Government program and a huge chunk more spending of the Federal budget or, more importantly, the money of the taxpayers of this country.

So, Mr. President, the American people on the eve of Christmas are watching and saying, ""What will the Congress do? What will the President do? Can they strike a budget agreement this week? Will they develop a continuing resolution that goes on after Christmas? Will they be able to break with the past and truly begin to reduce the deficit and that the Government’s budget into balance? Will they really remember that the taxpayers of this country are being taxed more than ever in the history of our country?"

And yet, when we work the numbers a little bit, and we find an extra $100 billion between now and the year 2002, there appears to be no consideration to apply it to deficit, only to apply it to a Government program, largely because we are asking for, that you do not keep asking for more and more money, more and more spending, and more of their hard-earned money, but leave it where it is. Come to the table, balance the budget, and start thinking on the positive side of a balanced budget instead of the negative side that somehow some Government program might be cut.

What is the positive side? Well, as you know, Mr. President, there are many, many positives. A lot of us have talked about it in the last few days here about the ability of families to have more money to spend or to save, about the ability of the economy to grow and have a greater level of jobs, to see our unemployment rate continue to go down. Mr. President, I really believe that is what the American people would like to hear as a message from Santa Claus on Christmas, is that the budget is going to be there to stay within our spending limits and that what new moneys might be found could be applied to the deficit.

Mr. President, I challenge you to go dry, to take an Alcoholic’s Anonymous approach to this—in other words, cold turkey it. That is what the American people are asking for, that you do not keep asking for more and more money, and more and more spending, and more of their hard-earned money, but leave it where it is. Come to the table, balance the budget, and start thinking on the positive side of a balanced budget instead of the negative side that somehow some Government program might be cut.

What is the positive side? Well, as you know, Mr. President, there are many, many positives. A lot of us have talked about it in the last few days here about the ability of families to have more money to spend or to save, about the ability of the economy to grow and have a greater level of jobs, to see our unemployment rate continue to go down. Mr. President, I really believe that is what the American people would like to hear as a message from Santa Claus on Christmas, is that the budget is going to be there to stay within our spending limits and that what new moneys might be found could be applied to the deficit.

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Mr. DORGAN. Mr. President, I am interested in the discussion that the Senator from California just had on the subject of crime. It reminds me again of the urge to ask all Members of the Senate to consider cosponsoring a piece of legislation I introduced last week on this issue. The issue of crime is one that concerns every American, and I introduced some legislation dealing with the issue of trying to establish a computer record of all people in this country who commit felonies.

It is incredible that we have a circumstance in our country where we keep track of a couple hundred million credit cards, and if you take one of those credit cards and go to a department store and try to buy a shirt, they will run it through a magnetic imager, and in 20 seconds they discover whether the card is good or whether it has reached its limit. If they are able to do that in the private sector on credit with a couple hundred million credit cards, we ought to be able to, for a whole series of reasons, keep an updated, accurate computer list of everybody who has committed felonies in this country. That way, when judges sentence somebody, they know who they are sentencing. Did this person commit a crime in Idaho 5 years ago, Montana 2 years ago, North Dakota last year, and Kansas this year? That is the kind of criminal record history we ought to have in this country. Regrettably, we do not. We have the NCIC and the III, but 80 percent of the records needed to be in up-to-date computer records files of everybody who committed felonies are not there. It does not take Dick Tracy to figure out who is going to commit the next violent crime in our country. In almost every instance, it will be somebody who has previously committed crimes, somebody who has been in the system, and somebody who has been in prison—may be not to prison, but maybe in prison and is now out of prison and back on the street.

That is why we need it, it seems to me, for law enforcement purposes, for judges, for a whole series of reasons, an updated computer listing of everybody in this country who has committed felonies. That ought to be updated every day across the country in order that we might effectively combat crime in America.

THE BUDGET NEGOTIATIONS

Mr. DORGAN. Mr. President, I came to this chamber just for a moment about the budget negotiations, not so much to talk about what might or might not happen in the negotiations, but to suggest that this is going to be a very important week with respect to the question of whether we are able to get the Congress in this chamber to reach two goals—first, balancing the Federal budget. That is an important goal and it is one we ought to reach in the interest of our country. Second, balancing the Federal budget while we meet some of the priorities in doing so. Balancing the Federal budget without injuring the Medicaid or Medicare Program, so that someone who is elderly in this country and who is sick will not have to understand every more expensive thing for Medicare and get less as a result of our balancing the budget. We can balance the budget and do it the right way, retaining the priorities in Medicare and Medicaid and education and other priorities.

Budgeting does not mean you cannot cut spending in all of those areas. It just means you cannot cut spending sufficiently so that you injure these programs at the same time that you have decided in the budget bill to provide a very significant tax cut. That represents the question of priorities.

I want to back up just for a moment and refer to something I read yesterday in a newspaper that I thought was an interesting piece written by Jim Hoagland in the Washington Post. I commend Members of the Senate to read it; it is called “Surrender to the Money Men.”

He starts out discussing something I have discussed previously on the floor of the Senate—that the stock market in America is at a record high, corporate profits are at near records in this country, productivity of the American work force is up. We are told the American economy is the most competitive in the world, but while all of these things are happening, wages in America continue to go down, and job security in our country continues to be diminished.

We hear about downsizing and layoffs, surpassing workers, being more competitive; we hear about all of those things and then understand that it causes an enormous amount of anxiety among American workers because they feel somehow abandoned and where they are the lost part of this economic equation called “globalization” in which our economic enterprises interest in being more competitive, they decide to produce elsewhere and ship back here. A corporation, international corporation, can become more competitive, they think, by deciding to produce shoes and shirts and belts, or trousers and cars and television sets, in foreign countries where labor is very inexpensive and then ship those back to our country.

I understand why big corporations think it is in their interest to do so. It is something called profits. If you can get someone to work for 50 cents an hour and not be bothered by the issue of polluting water and polluting air and by the difficulties of the prohibition against hiring child labor, if you can get rid of those kinds of meddle-some difficulties by moving and producing offshore, you can make more profits. If you can produce offshore and sell here.

Well, the result of that kind of strategy has created another kind of deficit in this country that no one is talking about. We are talking about the budget deficit every single day. Already today, I have been to two meetings dealing with the budget deficit. I will spend much of this week, I assume, in negotiating sessions with other negotiators talking about the budget deficit.

There is not even a whisper in this Chamber or in this Congress about the other deficit, the trade deficit. We will, this year, have a merchandise trade deficit that is larger than our budget deficit.

What does the merchandise trade deficit mean? It means that jobs have left our country. It means that our country has an economy that has weakened because we measure economic progress in this country by what we consume rather than what we produce.

It seems to me that we ought to start worrying about the twin deficits in our country—the budget deficit and the trade deficit. The budget deficit, one that we create through the tax laws. The trade deficit, one that we owe to ourselves but for the fact that it is unequally distributed; it causes problems in that regard. One can make the argument that it does not require a reduced standard of living to pay the budget deficit in this country. You cannot make the similar argument about the trade deficit. Inevitably, repaying the trade deficit will mean a lower standard of living in our country, and that is why this year, we have the largest merchandise trade deficit in our history, and it is a very serious problem for our country.

I hope that at some point soon we start talking here in the Senate about the twin deficits, the budget deficit and the trade deficit. The trade deficit, as I indicated, relates to the budget deficit because there are things in the reconciliation bill here in the Congress that would make it even easier for those who want to move jobs offshore to produce elsewhere and, therefore, it meets our trade deficit or makes it easier to do so.

I have shared with my colleagues on another occasion a provision in the so-called Balanced Budget Act in the reconciliation bill. I want to do that again today. It is a small provision that deals with tax law and the product called “deferral,” deferring income tax obligations on foreign subsidiaries owned by domestic corporations that earn income overseas in the first place and then produce offshore. If you as a subsidiary and do not have to pay taxes on it until it is repatriated to our country. Well, in 1993, we passed a law that tightened up on that and said that does not make sense. This is an incentive that says let us move the factories overseas and take American corporations and move them abroad.

What we have now is a provision by the majority party that says, “By the way, we will take this little provision that is an insidious incentive to move jobs overseas and take multinational corporations and tell the multinational corporations we like this tax incentive so much, we want to increase it for
you. We want to boost this tax incentive. We want to make it more generous if you will take your jobs and move them overseas."

I am thinking I ought to have a scavenger hunt to find out who in the U.S. Senate is working on a good idea to propose that multinational corporations ought to have more of a tax incentive for moving their jobs overseas. I ask any of my colleagues in the next couple of days, if we are working through this reconciliation bill, who authored this? Who thought it was a good idea? Who believes we ought to change our Tax Code to make it more attractive for American jobs overseas? Who thinks we ought to increase the tax incentive to shut down the American plant, move it offshore?

It makes no sense to me. This will increase our trade deficit. This will not solve our fiscal policy deficit. This will weaken our country.

Mr. MURKOWSKI. I wonder if my friend from North Dakota would yield for a question?

Mr. DORGAN. I am happy to yield to the Senator.

Mr. MURKOWSKI. I was moved by the reference to the increase in trade deficit, and I ask my colleague if he would agree that nearly half of that trade deficit is the cost of imported oil?

Obviously, as a Senator from the State producing the most oil from the standpoint of domestic production, would it not be in our national energy security interest to try to relieve our dependence on imported oil, hence reduce the deficit balance of payment by developing some of our resources, if we can do it in a way that is compatible with the environment and ecology?

I am particularly speaking of potential relief that we might find if, indeed, there are substantial reserves of oil in the Arctic oil reserve as part of ANWR.

It would seem to me this would alleviate a concern both the Senator from North Dakota and I have inasmuch as oil does make up just about half of that trade deficit.

Mr. DORGAN. My own view about our oil import situation is that we ought to have an oil import fee. I have always felt that. I think an oil import fee solves a series of problems for us. It would stimulate more domestic production, first; reduce the trade deficit, second; and provide revenue by which you eliminate or reduce the fiscal policy deficit as well.

The Senator from Alaska has been an articulate and forceful supporter of opening ANWR. He and I share one goal, and that is I think we ought to reduce our dependence on foreign oil. I would like to move with a first step of an oil import fee which I have advocated for some long while. I have authored them, and I have offered them in the House Ways and Means committee when I served there, I think that would be a productive first step.

In any event, we must, it seems to me, begin addressing this trade deficit. The failure to do so—even if we solve the budget deficit problem—the failure to address the trade deficit problem is going to be a crippling problem for this country.

The point I made with this tax provision is—and I am thinking of suggesting we have a rule in the Senate similar to the one they have in the House—that if you propose a provision like this in the budget system, you have to disclose who it is that is offering this, who thinks it makes sense to provide a more generous circumstance in our Tax Code to say to somebody, "Move your jobs overseas. Move your plant out of here. Hire your workers in a foreign country." Who thinks that makes sense, to increase a tax subsidy to do that?

There ought to be, first of all, no subsidy. We ought to completely eliminate the insidious tax incentive that exists now to say, "By the way, you have a factory. Close it here. Move the jobs overseas to a tax haven and make the same product. Ship it back here and we will give you a tax break." It ought to be completely eliminated. This provision, stuck in the reconciliation bill, opens it wider and says, "By the way, this is a good idea, we should do more of it."

This week, if I can find the Member of the Senate who thinks this is a good idea, I would like that person to identify himself or herself, and I would like to spend a while on the floor debating that. So I invite whoever it is, give me a call, come to the floor and talk about this kind of tax policy and whether it makes sense for our country.

BUDGET NEGOTIATIONS

Mr. DORGAN. Let me, in the final minute, say a word about the budget negotiations. It is my fervent hope by the end of this week we will have reached a budget agreement. That makes sense for this country. It makes sense for the nation as a whole. It makes sense for the Senate. It just is the right thing to do.

It ought to be an agreement that balances the budget and does it the right way. There are certain priorities that makes sense for our country.

It makes sense for our country. It makes sense for this country. It makes sense for the President. It just is the right thing to do.

I know time is short and we face kind of an urgent situation with the December 15 continuing resolution, but there is not any reason, with good will on both sides to balance this budget, there is not any reason at all that we cannot find common ground.

We have not survived 200 years in a representative democracy without understanding the need to compromise. Compromise in a democratic system like ours is the essence of getting things done.

I hope by the end of this week we will be able to stand on the floor of the Senate and say we reached an agreement and we reached an agreement to balance the budget that is good for this country.
Mr. HELMS. Mr. President, the Federal Government is running on borrowed time, not to mention borrowed money. It faces its mission of the end of the close of business Friday, December 8, the Federal debt stood at $4,988,945,631,994.24. On a per-capita basis, every man, woman, and child in America owes $18,938.12 as his or her share of the Federal debt.

More than two centuries ago, the Constitutional Convention adopted the Declaration of Independence. It’s time for Congress to adopt to a Declaration of Financial Independence and meet an important obligation to the public that it has ignored for more than half a century—that is, to spend no more than it takes in—and thereby begin to pay off this massive debt.

CODEL STEVENS BOSNIA REPORT

Mr. DOLE. Mr. President, last month the distinguished senior Senator from Alaska, Senator STEVENS, led a delegation of our colleagues—Senators INOUYE, GLENN, BINGAMAN, HUTCHISON, SNOWE, and THOMAS—to Europe to carefully evaluate the plans for a possible NATO mission to the former Yugoslavia. The result of their travels to Brussels, Sarajevo, and Zagreb are contained in a report, for which I ask unanimous consent to be printed in the RECORD.

This report addresses the four central questions of the Bosnian NATO mission—how many, how long, and how much. As for cost officials admitted that it will mount to $2.0 billion—not including the costs of the no-fly zone or enforcing the naval embargo in the Adriatic. With respect to how long, that remains a question that this Chamber will have to address as no one presented the coded with an effective exit strategy for NATO forces.

In closing, Mr. President, I would like to thank the Members and staff of codel Stevens. Their fine work on a timely and important report will help further illuminate our upcoming debate on Bosnia.

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


Hon. ROBERT DOLE, Majority Leader, U.S. Senate, Washington, DC.

Dear Mr. Speaker:

I am pleased that you authorized me to inform you that the Majority Leader and the Democratic Leader have worked closely with his colleagues from other States to assure that the Senate supports a peace settlement in that region.

It is my request that the attached report be printed and made available to all Members of the Senate—our personal views reflected the wide range of positions held by our colleagues. We did seek to identify the many differing expectations and understandings that are held by the parties that will be involved in the peace settlement in Bosnia.

It is my request that the attached report be printed and made available to all Senators, to assist in their understanding of the current situation in the former Yugoslavia, and our upcoming debate and consideration of any resolution concerning U.S. participation in a peace settlement.

Cordially,

TED STEVENS.
negotiations in the United States offered the best likelihood of a serious cessation of hostilities. Without exception, leaders at NATO, in Croatia, in Bosnia and U.N. officials all cited the involvement of the United States as a catalyst for peace. At the time of the Delegation's mission, the current cease fire agreement was only a few days old; conditions in and around Sarajevo were significantly improved, according to Bosnian and U.N. officials, fighting continued elsewhere in Bosnia. While all participants agreed that the cease fire would take hold throughout the country, fighting in northwest Bosnia was especially active. For nearly six months preceding the Delegation's visit, Sarajevo had been completely isolated. The airport had been closed to all traffic, and the only road access route crossed Mt. Igman. With the ceasefire, humanitarian traffic resumed, and aid supplies continued to provide for the needs of local residents, and to maintain air access into the city.

Perhaps the most striking feature of Sarajevo, according to Bosnian and U.N. officials, was the utilization of the Olympic facilities as grave sites for thousands of Bosnians who have died as a result of incessant shelling and rocket attacks, was the utilization of the Olympic facilities as grave sites for thousands of Bosnians who have died as a result of incessant shelling and rocket attacks. The Olympic facilities were utilized to serve as a poignant reminder that peace will be difficult to achieve, and that the personal loss of people on all sides of the conflict is severe.

EXPECTATIONS FOR A POTENTIAL PEACE AGREEMENT

The Delegation explored the expectations of two of the potential participants in a Balkan peace agreement during the mission. Key factors included the probable timetable for an agreement; the timetable for any implementation or peace enforcement mission; the objectives of any peace enforcement mission; and the criteria for the duration or conclusion of a peace enforcement mission. The following description summarizes the views encountered by the delegation during the mission.

Bosnian Government: Officials of the government indicated that an agreement required the participation of the United States in the negotiation and implementation phases. From their point of view, the United States would be best positioned to negotiate an agreement beyond the involvement of the United Nations or the European members of the Contact Group (the United Kingdom, France, Germany and Russia). Very clearly, the Bosnian government anticipated that U.S. and NATO military units will serve to enforce the peace, and to protect both internal and external borders determined in the peace settlement. Further, officials also cited the tremendous refugee and displaced persons dilemma facing Bosnia. One official also suggested the possible use of United States forces to reconcile the property claims of Bosnians displaced during the war.

The Bosnian government understood that U.S. and NATO forces engaged in a potential peace enforcement mission would be heavily armed, and would operate under robust rules of engagement. In general, government leaders anticipated a presence for such a force of at least 12 months, and from that point of view, up to 18 to 24 months.

Croatian Government: Officials of the government of Croatia made clear that the enforcement of a peace agreement would have to rest outside of the U.N. framework currently in place. Their concept for the potential U.S.-NATO mission to operate to separate the warring factions, acting as a buffer to prevent further combat.

The Croatian government officials did not believe that the peace enforcement mission could be completed in twelve months. A key concern of the officials was that any forces placed on such a mission would be the key by which the Bosnian government achieves an enhanced military capability. The Croatian government officials commented that a peace settlement was likely to bring an end to the U.N. arms embargo, but that there was no need to arm the Bosnians after a cease fire is reached. They also suggested that the potential for future weapons transfers through Croatia to Bosnia government forces following a negotiated peace settlement.

The Croatian government officials commented that Croatian national interests may or may not be fully addressed in the anticipated peace agreement. The status of the region of Eastern Slavonia will be a contentious issue at the peace talks, and could precipitate further military action by Croatian forces.

United Nations: The Secretary General's Senior Representative made clear that a peace agreement will be difficult to maintain without the involvement of all parties. Much credit was given to the renewed negotiations for achieving the present tentative cease fire, and the necessity of continuing United Nations forces in any future negotiations was emphasized.

U.N. officials stated that the current peace plans will require long-term peacekeeping activities to bring a period of stability to the region. They envision an on-going United Nations role, following the potential NATO-U.S. peace enforcement mission. The experience of the peacekeeping and reconstruction of Cambodia was cited as a possible model for participation in Bosnia.

NATO: Officials at the North Atlantic Treaty Organization headquarters in Brussels reflected primarily the understanding of United States officials about the prospective peace agreement. As NATO is not a direct participant in these talks, they indicated they would await insight from the U.S.-European Contact Group before finalizing any NATO position.

NATO representatives made clear their expectation that any peace agreement would hinge on an enforcement mechanism involving NATO forces. In the discussion with the North Atlantic Council, several Ambassadors made explicit their view that the United States must participate in the peace process, and that NATO involvement would be contingent on U.S. participation. The consensus of the NATO Ambassadors was that the United States was already involved to the point of potential deployment of a NATO peace enforcement mission to Bosnia.

EXPECTATIONS FOR A NATO PEACE ENFORCEMENT FORCES

Senior officers of the United States European Command, and component units, discussed in depth the planning underway for the training, organization, and potential deployment of any NATO forces as the largest single component of a NATO force. Many of the specific details were presented at the Delegation at the Secret or Top Secret classification level. The summary provided in this report does not reflect any classified information, but explains the approach and concerns presented to the delegation by the NATO forces.

Significance of the Peace Agreement Details: All military officials made clear that exact planning for any operation will hinge on the specific determinations of the anticipated peace agreement. Those factors include the location of U.S. forces deployed to Bosnia, the composition of any U.S. military force, the interaction of U.S. military forces with the United Nations or non-governmental reconstruction organizations, the composition of any U.S. forces that would deploy to Bosnia and the conditions and timing under which U.S. military forces would withdraw from Bosnia.

U.S. military officials made difficult specific estimates on force size, mission cost and mission duration. United Nations forces now deployed to the former Yugoslavia will constitute some portion of the NATO led peace implementation force. The attached chart details current deployments.

Once the peace enforcement mission begins, forces provided to UNPROFOR by NATO member nations will revert to NATO command and control, pursuant to NATO procedures. Military forces from other nations may remain as part of a complementary United Nations effort elsewhere in the former Yugoslavia, or may be incorporated into the NATO force. In command and operational management, this approach may come to resemble relationships established during Operation Desert Storm in 1991.

All parties had differing specific expectations about the mission for the NATO peace enforcement mission. The differing views highlighted the significant challenge facing the negotiations at upcoming peace talks in the United States.

Mission expectations fall in the following categories:

Implementation of Peace Agreement: NATO and U.S. officials anticipate that an agreement will detail an outline for a peace implementation force. This could include geographic zones of responsibility and whatever functions are ultimately determined by the parties and the Contact Group.

Separation of Forces: In discussions with the Delegation, NATO officials indicated that the NATO force would provide a buffer between the armed forces of the Combatants. This concept would entail an occupation of specific areas, and a responsibility to police the military activities of the combatants. The Northwest Council of Ambassadors indicated that the NATO force would serve as a protection force, to maintain the territorial integrity of parties to the settlement reached in the ongoing negotiations.

Displaced Persons/Property: On a more complex level, there were suggestions to the delegation that the implementation force would play a role in assisting the return of displaced persons to areas determined by the peace settlement, and potentially enforce the return of property belonging to displaced persons.

U. S. EUCOM officials expressed concern about taking on any functions or responsibilities beyond their direct role as a peace implementation force—such as election monitoring, refugee resettlement or other initiatives related to nation-building.

COMPOSITION AND SIZE OF A PEACE ENFORCEMENT FORCE

The ultimate composition of the NATO peace implementation force will reflect the "proportionate contribution" of NATO members, according to officials in Brussels. Those nations with troops currently deployed will most likely sustain that presence. Other nations will nominate forces based on the plans developed by the Supreme Allied Command, Europe, and in consultation with those national military forces. The attached chart reflects anticipated force levels.
Serb, by any military, guerilla or terrorist force. Again, the peace agreement is expected to provide guidance on the role of the military peace implementation force, and how the forces respond to such situations.

PARTICIPATION OF NON-NATO FORCES

A point of sensitivity and uncertainty in discussions with U.S. military, NATO, Bosnian and Croat leaders was the participation of non-NATO units in a peace implementation force. This applied both to the potential role for Islamic nations and Russia.

NATO leaders believed that the inclusion of Russian military forces would contribute to the stability and likely success of the mission. Officials in Croatia and Bosnia believe that the Serb parties will insist on a Russian presence. U.S. military officials stated that on-going discussions with the Russian military were addressing command, control and funding issues associated with any Russian participation. U.S. officials anticipated that each participant in the NATO-led peace enforcement mission would pay their own costs. Again, this issue is expected to be addressed in the anticipated peace settlement.

CLOSING OBSERVATIONS

While reaching no conclusion about what action the Senate might take regarding the potential deployment of U.S. military forces to Bosnia as part of a NATO peace implementation force, the Delegation believes that several critical and vital issues must be resolved before the Delegation—they simply represent the unknown factors surrounding this mission.

FLAG DESECRATION

CONSTITUTIONAL AMENDMENT

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

The bill 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 States the power to prohibit the physical desecration of the flag of the United States.

The Senate resumed consideration of the joint resolution.

Mr. MURKOWSKI. Mr. President, I ask unanimous consent for 12 minutes on the floor for Mr. Thomas. Without objection, it is so ordered.

The PRESIDING OFFICER (Mr. THOMAS). Without objection, it is so ordered.

PERCENTAGE DEPLETION ALLOCATION

Mr. MURKOWSKI. I thank the Chair. I will share with my colleagues a little known fact concerning the effect of the Clinton administration's new proposed 7-year balanced budget and the effect it will have for thousands of working men and women in Western States. These men and women working specifically in the mining industry.

This is a $1 billion budget bombsheal that will cost thousands of domestic jobs. It will hit the economic balance of payments, because buried in the details of the Clinton budget alternative is a provision that would hike taxes on many mining operations on Federal land.

The administration is proposing an elimination of the percentage depletion allowance for nonfuel minerals mined on public lands where mining rights were obtained by the patent process. "The patent process" can be construed to mean patents, as well as the process of applying for a patent.

This is extraordinarily far reaching, Mr. President. According to the administration, this would save them the "savings," over 10 years, placing a $1 billion burden on our Nation's miners.

You can imagine the significance of trying to be competitive in a world market, suddenly faced with a reality of losing the depletion allowance, which in many cases allows our mining industry to be competitive internationally.

Why the White House has singled out the mining industry for punishment is anyone's guess. It appears to be the latest assault by Secretary Babbitt, the Secretary of the Interior, and the Clinton administration on the West.

The administration seems to want to paint the miners as some kind of corporate guru, the exception rather than the rule as far as the reality is concerned, because many of the operations are small mom-and-pop operations that are clearly in jeopardy by this proposal.

It would provide a war on hard-working people and their jobs. Why they are singled out as the only industry for termination, one can only speculate. Why oil, gas and coal jobs are not in jeopardy by this move by the administration to lose the depletion allowance. However, one should reflect on the fact that this may be the camel's nose that entered the tent. It is only a matter of time until this administration will again use the Tax Code to go after oil and gas and the coal industry.

Having heard my friend from North Dakota express his concern over the depletion allowance of oil and gas, I can remind the President and my colleagues, this Nation grew strong on the development of our natural resources, our oil, our coal, our gas, our timbering industry, our mining industry, our grazing industry. All these appear to be put in jeopardy. In fact, the development of resources from all public lands appears to be on the administration's blacklist.
The rationale of how they could see the tremendous decline in these high-paying blue collar jobs and the reality that they seem to think it is better to import is beyond me. That is specifically exporting our dollars and our jobs overseas.

I remind our colleagues, the hard rock mining industry provides approximately 120,000 direct and indirect jobs nationwide. This proposal of the administration could eliminate 60,000 to 70,000 jobs. It is shortsighted and, once again, the White House seems to be proving it really does not care about the men and women working in America's resource industries. When we import more minerals, again, we are exporting jobs and exporting dollars. Unfortunately, the administration seems to be putting politics before policy. It may look good in the press but it would simply destroy America's mining industry by putting a billion-dollar burden on their backs and still expect them to be competitive internationally.

THE FOREST SERVICE GRINCH STEALING CHRISTMAS IN ALASKA

Mr. MURKOWSKI. Mr. President, I have one more short statement relative to another policy of the administration. I want to speak briefly on an issue that affects my home State of Alaska. It is coming to a head during this holiday season, but unfortunately, unless there is a legislatively solution the problem will not end with Christmas but it will be a gift that will keep on giving throughout the year 1996. The gift is the policies that promote unemployment. The bearer of this unwelcome present seems to be the U.S. Forest Service. In fact, it is not too strong to say that in the small community of Wrangell, AK, a town I once lived in, the U.S. Forest Service is truly becoming the Grinch that stole Christmas and is stealing the hopes and dreams of many of the people in that community.

The Forest Service, under the Clinton administration, has canceled the contract that provided timber to the town's only year-round industry, a small sawmill. The Service has also been unresponsive in putting up a temporary fix that may help Wrangell and other southeast towns that depend on timber to have a hope of a brighter future. Hopefully, Congress will approve the fix and I pray that the President will sign it in the Interior appropriation bill later this week.

It will present a hope during the holiday season for the thousands whose future depends on some level of logging in southeastern Alaska in the Tongass. But the residents of southeastern Alaska are to dream of brighter days ahead, is for the Clinton administration to begin to think about the real pain they are causing real people in my State and to permit a rational, environmentally sound logging policy to resume in the Tongass National Forest. Logging is a renewable resource if properly managed. I remind the Forest Service that they said this set of circumstances never happen; they would be able to maintain a modest supply of timber to allow the industry to sustain itself. That has not happened.

If the Forest Service insists on stealing the Christmas of the people in Wrangell, and other towns in 1995, then in 1996 a bill that I have been working on all year with Senator STEVENS and Representative YOUNG to honor the terms of the 1990 compromise over logging in the Tongass is going to be back before this body. It is a present I intend to deliver to Alaskans before another Christmas passes.

Mr. President, I thank the Chair for the time allotted me. I wish the President a good day.

FLAG DESECRATION CONSTITUTIONAL AMENDMENT

The Senate continued with the consideration of the joint resolution. Mr. BIDEN addressed the Chair.

The PRESIDING OFFICER. If the Senator will withhold we are returning to Senate Joint Resolution 31.

Mr. BIDEN. That is what I wish to speak to, Mr. President. Mr. President, we have had some discussion this morning, we will have some more discussions this afternoon, and some discussion tomorrow as well, on a constitutional amendment to protect the flag.

Nothing symbolizes what we might call our national spirit like the flag. In times of crisis it inspires us to do more. In times of tranquility, it moves us to do better. And, at all times it unifies us in the face of our diversity and of our difference.

There are those who believe that we should not, under any circumstances, have any barrier to writing an amendment into the Constitution to protect the flag because they believe there is no way to do that without damaging an even more cherished right, our right to say whatever we want to say which we do not wish to say without the Government acting as a censor, without the Government choosing among our words, which are appropriate and which are not. I understand their view and I respect it. I believe, as strongly as I believe anything about this debate, that those against the amendment in question are no less patriotic, no more un-American, no less American, no better, no worse than those who share the view that the amendment in question is an appropriate way to protect the flag, which really means to speak to our national spirit and consensus that exists in America about what we stand for. The so-called culture norms people often speak to.

I respect their motives and I respect their views. But they are not mine. Although it is arguably not necessary to enshrine in the Constitution a way of protecting the flag, I believe that written properly, I believe stated properly, that it can be fact legitimately be placed in the Constitution without doing damage to any of the other elements of our Constitution. But I should say up front that the amendment in question, in my view, does not do that. I say this as one who has made it his business here on the floor, along with my friend from Vermont, whom I see on the floor, and others, of sometimes being out of step in the minds of many people in terms of protecting the civil liberties of persons in this country to say what they wish to say to which they do not wish them to publish, and to take actions we find reprehensible. But the Senator from Vermont, myself, and
others believe they are guaranteed under the first amendment. The first amendment does not say that you can only say things which reflect insight. The first amendment does not say you have to be bright. The first amendment says you have to be right. All the first amendment says is that you can say what you wish to say in relation to speech, and the Government cannot censor what you say no matter how, with notable exceptions, how much we do not like what is being said. But I believe that the flag stands alone, and that is a legitimate way to protect our flag as the singular and unifying symbol of a diverse people in need—I would add in urgent need sometimes—of common ground. America is the most extraordinary nation on Earth. I realize those who are here in the galleries who may be from other countries, or those who listen to this on CNN, or C-SPAN—if it is carried—will say, “Isn’t that a typical American assertion, a chauvinistic assertion?” “We are the most extraordinary nation on Earth.” We are extraordinary in the sense not that we are better as individuals, less racist, smarter, less xenial, more generous, or less venal than other people, but the genius of America is the American system, a system that takes into account our significant diversity which in other countries, or those who listen to this on CNN, or C-SPAN—if it is carried—to and in other systems creates great strife. We take that diversity, which in other countries creates strife, and we have turned it into strength. That is not very easy to do. People often fear diversity. The fact that we are black and white does not automatically generate fellowship and harmony. The fact that we are Christian, Jew, and Moslem does not send us running into one another’s embrace to herald our differences. The fact of the matter is that people fear that which is different. It is a human condition. Our diversity naturally pushes us apart, not together. But what holds us together as a nation, Mr. President, is not a common language, although I think that is necessary; not a common world view, which I do not think is necessary. What holds us together is a common commitment to a system of government, a covenant of goodwill, of tolerance, of equality, and freedom, that is enshrined in the Constitution. And the flag stands as the single most important symbol of that covenant. It is the story of all we have been and the symbol for what we wish to become. To me, the flag is much more than the sum of the stars and the stripes. It sounds corny to say, and to listen to it sometimes, but it is also idealistic. I believe that it is important even more now than for all Americans to feel like a family to all families we have our problems. We squabble with each other. We misunderstood each other. And we hurt each other in countless ways. But at the end of the day we still need to feel like a family under one roof bound together by shaped and shared values, and a shared sense of respect and tolerance. It is the flag that symbolizes those shared values and which reminds us of how the flag under which we live and work, against which we must be intolerant, and tolerance has to be maintained. It is the flag under which we as a diverse and sometimes divisive community can come together as one. And it is the flag that flies high and proud over our Nation’s Laws. But to say that the flag is worth protecting does not end our conversation. It is only, in my view, where we start, for we must ask how the flag should be protected. As we look to protect the flag, we must not lose sight of the first amendment and its guiding principles for, although the flag may stand alone, it should not and it cannot stand above our most cherished freedom of speech. Here is what I mean. At heart of the first amendment lies a very basic notion that is the Government cannot muzzle a speaker because it dislikes what he or she says, or discriminate between your speech and mine because it agrees with me but disagrees with you. That sort of viewpoint discrimination is most importantly what the first amendment forbids. As the Supreme Court has said, and I quote: Above all else, the first amendment means that government has no tolerance to restrict expression because of its message, its ideas, its subject matter, or its content. The essence of forbidden censorship is content control. Just last term, the Supreme Court forcefully reiterated its intolerance for viewpoint discrimination in the majority opinion of Rosenberger versus the University of Virginia. Justices Rehnquist, Scalia, Thomas, Kennedy, and O’Connor—Rehnquist, Scalia, and Kennedy are a conservative trinityvirus—said: In the realm of private speech or expression, government regulation may not favor one speaker over another. When the government targets particular views taken by speakers on a subject, the violation of the first amendment is all the more blatant. The Government can tell us we may not blast our opinions over a loudspeaker at 3 a.m. in the morning. It can tell us that we cannot distribute obscene pictures, or that we cannot spread libelous statements about one another. But it cannot apply different rules based upon the viewpoint of the broadcast, the obscenity, or the libel. It cannot say you cannot engage in that obscenity because of the viewpoint of the expression, you cannot broadcast something because of the viewpoint you are expressing, or you cannot say that about another person because of the viewpoint that you are expressing. It cannot apply different rules to Demo- crats and yuppies, rich and poor, black and white, or any other division in this country. It was on this point to protect the flag, while not doing violence to the core first amendment principle of viewpoint neutrality, that I wrote the Flag Protection Act of 1988. That act aimed to safeguard the physical integrity of the flag across the board by making it a Federal crime to physically defile, burn, maintain on the floor, or ground, or trample upon the American flag. It passed the Senate, was signed by the President, and it became law. The statute focused solely on the exclusivity of the conduct of the actor, regardless of any idea the actor might have been trying to convey, regardless of whether he meant to cast contempt on the flag, regardless of whether anyone was offended by his actions. The statute was written that way because, in my view and in the view of other of constitutional scholars, the Government’s interest in preserving the flag is the same regardless of the particular idea that motivated any particular person to burn or mutilate the flag. Our interest in the flag is in the flag itself as the symbol of what we know in our hearts to be precious and rare and which flies high over this place we call home, a precious and rare symbol of the Nation. The flag’s unique place in our national life means that we should preserve it against all manner of destruction. It does not say that the flag burner means to protest a war, or praise a war, or start a barbecue. It is the flag that is the treasured symbol—not the obnoxious speech nor the positive speech that accompanies the burning of the flag—that must be protected. We are here today deciding whether to add the 28th amendment to the Constitution, with a thought, I believe, that the flag is worthy of constitutional protection. Although I believe it is the need for protection, I nevertheless must oppose the constitutional amendment that is before us now. I oppose it because, in my view, it puts the flag on a collision course with the Bill of Rights. Again, the purpose of these amendments is to protect the flag as if we are going to protect a tombstone, as if we are going to protect the national eagle, as if we are going to protect it as the most precious of those symbols. It does not. The flag comes with a sledgehammer and defiles a tombstone of a war hero by saying, “I do this because I do not think this slate of granate warrants being on top of your sacred body. I do not care whether they do it when they smash it because they say, ‘this is because I protest you and the war that you fought in,’” and so on. The end result is the tombstone is destroyed. That is the story I want to get across about the flag. If it is the flag we wish to protect and not amend the first amendment, not make choices among the types of speech we can engage in, then let us protect the flag—nothing
else. As I said, I do not care whether someone takes that flag and lights the flag and burns it in this Chamber offering it up as a sacred symbol for all who died in the name of this country or grabbed it and burned it because they are part of a quasi-official position of the United States on such and such. The end result is the national symbol is burned. And when we go beyond protecting merely the symbol, we go to choosing, making choices among the types of conduct that we will allow Americans to engage in.

I oppose the amendment because it puts the flag on a collision course with the Bill of Rights. Let me expand on that. The proposed amendment gives the federal government the power to prohibit the physical desecration of the flag. And that word “desecration” is loaded. It is loaded with ambiguity. It is laden with value. And it will inevitably lead to trouble. To desecrate, like beauty, is in the eye of the beholder.

Here is what the dictionary says desecrate means:

To divert from a sacred to a profane use or purpose to treat with sacrilege; to put to unworthy use.

So to determine whether an action desecrates, we must first make a value judgment about what the message the actor is trying to convey is. We usually talk about desecration in terms of our religious values—to desecrate a cross or a crucifix, to desecrate a menorah, to desecrate a temple, to desecrate a church, to desecrate a sacrality, to desecrate a host. Although I revere the flag, I do not put the flag on the same level as the sacred symbols of our varying religions. It is a different thing. We have never decided that any of our civil actions should rise to the level of spiritual undertaking. And so when you talk about desecration in terms of our religious values, you have to understand that you are applying and allowing the application of value judgments that we will attach to the actions of the actor who is desecrating the flag.

Does he mean to profane the flag? What does that mean? Obviously, we have to determine that subjectively, whether it profanes the flag. Does her action treat the flag irreverently or contemptuously? Is the flag being put to an unworthy use?

When we make those kinds of value judgments, we are not making the act of burning the flag a crime. We are making the message behind the act the crime referred to this later. But is it in fact putting the flag to an unworthy use to put it on the side of a hot dog vendor’s stand? Maybe that is all right. In one community, they may say that is a good idea.

How about the guy who runs the pornographic theater, and on one side of the marquee he puts some Lewd and Obscene or Proflane or Pornographic title of a film being shown inside and on the other side he drapes the American flag. Is that putting it to an unworthy use?

How about the woman who buys the revealing thong bikini that is made in a flag. Is that profaning the flag? Is she to be arrested?

How about the woman who buys the $5,000 sequin dress that has a flag on it? Is that profaning the flag? Does it matter what her figure is like is to determine what is an offensive message to what users? Memorial Day. I rode in a parade recently in my home State, and it was a parade that was honoring the war dead. It was Memorial Day. We went by on Union Street in Wilmington, DE, the home of the blackester, a blackest on his front porch on a row house, and on the other side of the flag sewn perfectly so it was the exact same size was the African national symbol, black, red, and green. Is that profaning the flag? He meant it out of respect. He was a war veteran. I am not misinformed, he had been president of one of our veterans organizations. Is that profaning the flag? He meant it out of respect. He was a war veteran. I am not misinformed, he had been president of one of our veterans organizations. Is that profaning the flag? He meant it out of respect. He was a war veteran. I am not misinformed, he had been president of one of our veterans organizations. Is that profaning the flag? He meant it out of respect. He was a war veteran. If I am not mistaken, he had been president of one of our veterans organizations. Is that profaning the flag? He meant it out of respect. He was a war veteran.

Who makes those choices—the local constable, the local cop, the local censor? That is the crux of my objection to this amendment. It makes not the act but the determining the issue. And in doing so it gives the Congress and the States license to discriminate between types of speech they like and types of speech they do not like. But you do not have to take my word for it. Back in the bad old days, when I was chairman of the Judiciary Committee and subsequently as the ranking member, we held extensive hearings about the exact same amendment 5 and 6 years ago, and we heard from its authors, then members of the Bush administration, noble and honorable men, and they pulled no punches to this question. They admitted right out that the goal was to allow the Government to discriminate between bad flag burners and good flag burners.

More specifically, then Assistant Attorney General William Barr, who became Attorney General of the United States, and a fine one, in my view, in 1989 said that the message, “Would permit the legislature to focus on the kind of conduct that is really offensive.” He said that there is an “infinite number of forms of desecration and that States would have substantial discretion in fashioning flag laws.”

One year later, Acting Assistant Attorney General Michael Luttig testified that the goal of the amendment was to “punish only actors that were intending to convey contempt.”

Now, when I heard him say that, I wanted to make sure I did not misunderstand, so I asked Mr. Luttig point blank, would it be permissible under this amendment to pass laws discriminating between types of expression—not types of burning; you use the same match, same flag—but the type of expression? And when you were burning the flag. Was that the purpose? And he said, “That is correct. You could punish that desecration which you thought was intended to be disrespectful toward the flag and not that which in your judgment was not.”

If I am not mistaken, I remember the example I gave. I said, how about if there are two veterans at the war memorial—one was a black veteran, and they each go down and they have their own flag, and he kneels down before the wall, one of them, and one happens to be a woman. And she takes out the flag, very respectfully, puts it in an urn, puts a little lighter fluid on it and lights it, and says, “I am offering this flag up in anger for the wasted lives of my friends and brothers who are on this wall”—in anger—for what my country did.

And another Vietnam veteran comes down and kneels down, takes out an urn, puts a flag in it, and puts lighter fluid on it and lights it, and says, “I am offering this flag up in anger for the wasted lives of my friends and brothers who are on this wall”—in anger—for what my country did.

That will be the first time in the history of the United States of America we passed a law that was constitutional—because, by definition, a constitutional amendment will be constitutional—that said, “Government, you can choose to punish those who say things you don’t like, and let those who say things you do like go for the same exact physical act that they engage in.”

Now, ladies and gentlemen, how does that stop? Where does that stop? Do we really want the Federal Government, let alone the 50 States, to be able to make those judgments that we have never allowed before? I don’t say to you that that thing have somehow changed this year, I point to the committee report was just published by the Judiciary Committee. The majority view made it clear that viewpoint, neutrality—viewpoint—that issue I talked about earlier—is neither a goal nor an attribute of the proposed legislation.

Here is what the attending committee report to this constitutional amendment says: “The committee,” meaning the Judiciary Committee, “does wish to empower Congress and the States to prohibit contemptuous or disrespectful physical treatment of the flag. The committee does not wish to compel the Congress and the States to penalize respectful treatment of the flag.”

You all think I am kidding about this? Any of the people in this Chamber who listened, you get 1,000 catalogs in the mail, everyone from L.L. Bean to, I do not know, all these catalogs. Look at the catalogs you get for swimsuits. Look at them—not even the 50 States, to be able to make those judgments that we have never allowed before? Lest anyone say to you that that thing have somehow changed this year, I point to the committee report was just published by the Judiciary Committee. The majority view made it clear that viewpoint, neutrality—that issue I talked about earlier—is neither a goal nor an attribute of the proposed legislation.

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Now, ladies and gentlemen, how does that stop? Where does that stop? Do we really want the Federal Government, let alone the 50 States, to be able to make those judgments that we have never allowed before? Lest anyone say to you that that thing have somehow changed this year, I point to the committee report was just published by the Judiciary Committee. The majority view made it clear that viewpoint, neutrality—that issue I talked about earlier—is neither a goal nor an attribute of the proposed legislation.

Here is what the attending committee report to this constitutional amendment says: “The committee,” meaning the Judiciary Committee, “does wish to empower Congress and the States to prohibit contemptuous or disrespectful physical treatment of the flag. The committee does not wish to compel the Congress and the States to penalize respectful treatment of the flag.”
In some parts of my community, someone wearing a one-piece swimsuit with a flag on it would not be viewed as disrespectful, someone wearing a two-piece swimsuit would maybe not be, someone wearing a bikini may very well be. And you think—I know this is a funny but it is real. It is real. These are real things. You are going to empower some local cop, some local community, to make a judgment. If I show up in boxer shorts, a kind of swimsuit with a flag on it, no problem. If some young male-bondage guy shows up in a bikini with it on, well, they may say that is kind of offensive, that is too revealing.

Is that the business we want to get into? And, by the way, what is a flag? Is the flag a decal? You stick a decal on the side of a hot-dog vendor stand. Well, what is that? What happens if they take these little flags, these little decal things they hand out and put pins on—some are stickers—and burn one of those on the casket of someone desecrating the flag? Is that the business we want to get into as a nation?

Also, this year the proponents of this amendment highlighted the testimony of former Assistant Attorney General Charles Cooper. Here is what former Assistant Attorney General Charles Cooper had to say a few months ago.

[Public sentiment is not neutral.]

Parenthetically, I would note that is a profound observation.

[Public sentiment is not “neutral”; it is not indifferent to the circumstances surrounding conduct relating to the flag. If such conduct is dignified and respectful, I daresay that the American people and their elected representatives do not want to prohibit it; if such conduct is disrespectful and contemptuous of the flag, I believe that they do.]

I believe that, too. It makes my blood boil when I read the testimony of that young guy standing on the floor on the steps of the capitol in Texas saying, wouldn’t it be great if, I spit on you,” and burning a flag. They are the kind of things that—fortunately, most of us were not around—they are the kind of things that literally start fights with people who do not have a lot of self-control in circumstances like that. And I probably would fit in that category.

But what is the difference? We are going to allow—obviously, public sentiment is not neutral on anything. It is not something that we say about—I happen to be a Roman Catholic. It is not neutral on how some of the far-right folks talk about my church. I do not like the way they talk about the Pope. I do not like the kind of comments they make. I find it offensive. I happen to be a member of the largest single denomination in the United States of America because 33 percent of us are Catholic. There are more Catholics in here than any other single denomination in the Congress, if I am not mistaken.

Should we pass a law saying, “It offends me. It offends me. You can’t say those things about my church”? Is that a good idea? That is content. That is content.

So when we talk about the public is not neutral, they are not neutral on anything. Should people have a right to stand up and offend us as some do with their speeches or what about these defiling Nazi types around this country? What about these militia guys, some of whom wear swastikas? I am not labeling all militia people, but some are. The white supremacist—this makes my blood boil when I hear the boarry, the Teamsters, the Nazis about Jews, about blacks. But, guess what, folks? They are entitled to say it. It offends all of us, 95 percent of us.

So if I decide, as Mr. Cooper says, public sentiment is not neutral, it is not neutral on that, it is not neutral on the Ku Klux Klan, it is not neutral on white supremacist organizations, it is overwhelmingly opposed, so it is not neutral, we go with a majority sentiment? Are we prepared to say that you cannot put the Ku Klux Klansman’s speech out? Well, it would make me feel good. I would like to do it. But if we go for them today, who do we go for next? How about the time when people stood up 40 years ago and made speech—es about Negroes? How about speeches about the rights of blacks to participate in our society? The majority of folks in certain parts of the country, including my State, were not for that. Would they be able to pass a law in the State of Delaware that took that away? You cannot say that? “You’re a rabble-rouser, talking about that 19 percent of my population that is black having equal rights.”

Probably a significant portion of the American public is offended by some of the more militant aspects of the gay and lesbian movement who stand up and make speeches about what their rights are. The fact that it is not neutral, that we are not neutral on that subject, then we have a right to outlaw it?

I believe that this whole argument misses the argument made by those who talk about whether we are neutral on it or not, that we should be able to act on what we are not neutral about—misses the greatest constitutional point.

It misses, indeed, the genius of the first amendment. Here in America the majority, by and large, does not get to Choctaw, Cherokee, Navajo, and I say them. I happen to be choosy about the minority, or by anyone else for that matter. And the Government, more importantly, is constitutionally restrained from deciding what speech is good and what speech is bad. But that is precisely what the proponents of this amendment say it would do and should do. Let me be precise.

That is what the senatorial and congressional proponents of this amendment mean for it to do. I really do not believe the vast majority of the members of the American Legion and the vast majority of veterans groups and the vast majority of Americans know that it would do this. I do not think they thought that one through. But that is precisely what the proponents of the amendment say it would do and should do. They would have the flag emblazoned with the slogan “Government is great.”

Get that flag, put on it. “The U.S. Government is great.” Does that deface the flag? Put on the same flag, “The U.S. Government is rotten,” and what is that? Is that OK? Well, as a U.S. Senator, who has occasion to some sordid things said about him because I am part of the Government and because I am who I am, I sure would like to have the power to pass a law saying, “You can’t say bad things about me, I’m part of the Government, only good things about me. If they are bad things, you can’t say them.”

I would like all the newspaper editors in America to understand that from now on, we may have an amendment that cannot be used to defame, to bad about a U.S. Senator, notwithstanding the fact we deserve it and I deserve it.

Under this amendment, the State could send to jail the fringe artist displaying the flag on the floor of an art museum while giving it to a veteran who displays the flag on the ground at a war memorial. That, I believe, is not content neutral.

The State could, as I said, arrest the widow who burns the flag to protest the death of her husband. That took her conventional life while smiling on the widow who burns the flag in memory of her fallen husband. I believe this type of viewpoint discrimination exacts too high a constitutional price to protect the flag. As Justice Jackson so memorably put it in the flag statute case of 1943:

The very purpose of the Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of the political winds and of officials. . . 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 of opinion or force citizens to confess by word or act or faith therein.

What it boils down to is this: This amendment, as presently drafted, allows the Government to pick and choose, to make flag burning illegal only in certain situations involving only certain circumstances and only if carried out by certain people and only for the time in question, because 2 years later, 5 years later, 20 years later, 40 years later, it can change.

This discrimination is precisely and most profoundly what the first amendment forbids, and the amendment that works this kind of discrimination does not protect the flag, it censors speech. Again, that is why we have the amendment is that it fails to define the word “flag.” This would add yet another layer of difficulty in interpretation and application and open the door further to inconsistencies among the States.

One of the great things about the amendment is that it is a testable, considerable discretion to craft its own definition, and, again, the possibilities are nearly endless.
As Assistant Attorney General Barr testified, the legislature would be able to criminalize conduct dealing not only with the flag as we know it but with, and I quote, “descriptions of the flag, such as posters, murals, pictures, buttons or other representations of the flag.”

Indeed, Mr. Barr, in speaking in favor of such a sweeping definition, said that it would, and I quote again, be: “consistent with the Government’s interest in preserving the flag’s symbolic value because it recognizes that the degradation of representations of the flag damage that interest as much as the desecration of the flag itself.”

So in Maine, it might be a crime to draw a flag being fed into a shredding machine. In California, it might be a crime to wear a sequined dress in the pattern of a flag or a flag bikini or T-shirt. In Mississippi, the legislature might make it a crime to put a flag decal on the side of a hot dog vending machine.

This sort of disparity among State laws, whether it is over the meaning of “desecration” or the definition of “flag,” is especially inappropriate here where we are talking about the Nation’s flag. This is not the symbol of Mississippi or Delaware, Alabama, South Carolina, California, Maine, or Montana. It is the national symbol.

The reason it is worth preserving is because it unifies this diverse Nation, and it is the one single State that can determine what that should be, in its face, preposterous.

I understand that there is a possibility that the distinguished Senator from Alabama, Senator HEFLIN, and others, may have an amendment to amend this amendment to take out the right of the States to do this. I am not sure of that, but that is what I understand. That would be a positive step, because it is, on its face ludicrous—ludicrous—such a view of each State to determine how much they are going to protect the national symbol.

Some States in the past, and I do not say this disrespectfully, decided it should not be our national symbol and decided to have another flag. I do not want any State telling me what that symbol should be and how it should be treated. It is a national symbol.

It is a symbol of the Nation, not of the States, and an amendment which will foster a crazy quilt of laws all across the country would be the point and an important one: It will be more divisive than unifying.

Why is it any less reprehensible to burn a flag in Louisiana than it is in Montana? Why should we be able to wear a flag T-shirt in a wet T-shirt contest in Arkansas or Delaware and not in Florida or California?

Moreover, constitutional rights and principles should know no geographic boundaries. A Delawarean should not be accorded greater freedom of speech than his neighbor across the way in Pennsylvania. A Californian should not have more due process rights than her cousin up north in the State of Washington.

If we want to protect the flag, we should have one national viewpoint-neutral standard. The Constitution, after all, stands for proud and broad principles, not a patchwork of 50 different anger.

With all due respect for my good friends in Delaware, Mr. HOWELL and Mr. HEFLIN, I think this amendment does violence to the core of the first amendment principle of viewpoint neutrality. This is the price that I am unwilling to pay. But more to the point, it is a price we do not have to pay to protect the flag. We can do both: Preserve the first amendment in viewpoint neutrality, and we can protect the flag and preserve the first amendment at the same time. And that is what the amendment I now propose seeks to do.

AMENDMENT NO. 3903
(Purpose: Proposing an amendment to the Constitution authorizing Congress to protect the physical integrity of the flag of the United States)

Mr. BIDEN. Mr. President, I send the amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Delaware [Mr. BIDEN] proposes an amendment numbered 3903.

Mr. BIDEN. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

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

The amendment is as follows:

Strike all after the resolving clause and insert the following: That the following article is proposed as an amendment to the Constitution of the United States:

ARTICLE

SECTION 1. The Congress shall have power to enact the following law:

"It shall be unlawful to burn, mutilate, or trample upon any flag of the United States.

"This does not prohibit any conduct consisting of the disposal of the flag when it has become worn or soiled.

"SECTION 2. As used in this article, the term ‘flag of the United States’ means any flag of the United States adopted by Congress by law, or any part thereof, made of any substance, of any size, in a form that is commonly displayed.

"SECTION 3. The Congress shall have the power to prescribe appropriate penalties for the violation of a statute adopted pursuant to section 1.

"Mr. BIDEN. Mr. President, I shall not seek to have a vote on the amendment at this time, under the order.

Mr. BIDEN. Mr. President, I am not burn a draft card to protest the war, and you cannot sleep in Lafayette Park to protest the homelessness of America; you cannot spray paint your views on the Washington Monument; you cannot blast them from a sound truck in a residential neighborhood at 3 a.m. in the morning.

When we prohibit flag burning, we are not interfering with a person’s freedom to express his or her ideas in any number of other ways. As Justice Rehnquist put it, it was communicative nonetheless.

So let us be honest, any attempt to limit flag burning does limit symbolic conduct, but that was just as true back in 1989 when 91 Senators voted for my Flag Protection Act, which made it a Federal crime to burn, mutilate, or trample on the flag. Let us be honest about another thing. This first amendment does not give symbolic conduct, or any other kind of speech, for that matter, limitless protection. You cannot have a draft card to protest the war, and you cannot sleep in Lafayette Park to protest the homelessness of America; you cannot spray paint your views on the Washington Monument; you cannot blast them from a sound truck in a residential neighborhood at 3 a.m. in the morning.

When we prohibit flag burning, we are not interfering with a person’s freedom to express his or her ideas in any number of other ways. As Justice noted in the Eichmann case—that is the one that declared my statute unconstitutional—it may be true that other means of expression may be less effective in drawing attention to the flag, but it is the sufficient reason for immunizing flag burning. Presumably, a gigantic fireworks display or a parade of nude models in a public park might draw even more attention to a controversial message, but such expression are nonetheless subject to regulation.

We limit the manner in which folks can express themselves all the time, as long as we limit everyone the same way. We cannot say that I can firework display, and you cannot. We cannot say that one nude person could go through a park and another one cannot. We must treat all people the
same—as long as we do it the same way. But we do limit the ways in which we can express ourselves. And that, Mr. President, is precisely the point.

We cannot let someone make a speech on top of the Capitol in favor of American involvement in Bosnia but tell the person with a contrary view that he cannot go up there and make the same speech. But we can tell them both, and everyone else, that no speeches can be made from the top of the Capitol. We just cannot choose among the speakers. We can, thus, restrict the time, place, and manner by which people express themselves. The thing we cannot do is regulate the content of their expression and discriminate between the various viewpoints being expressed.

I think that we can and that we should tell everyone they cannot burn the flag. I agree with Justices Warren, Fortas, and Black that the right to burn the flag does not sit at the heart of the first amendment. I also agree with Justice Scalia when he said, “The Government may not regulate speech based on hostility or favoritism toward the underlying message expressed.” The point of the first amendment is that we cannot choose or pick and choose among the speakers. We cannot choose the one we like or choose the one we do not like. We cannot choose which viewpoint to bring to the table. The viewpoint discrimination just last term in the Rosenburgh case. I remind my colleagues, nobody has ever accused Justice Rehnquist of being a radical or a liberal, or Justice Scalia of being a radical or a liberal, or Justice Thomas of being a liberal, and the list goes on. Flag burning may not sit at the heart of the first amendment, but the principle against viewpoint discrimination does sit at the heart of the first amendment.

This is one of those defining constitutional principles that sets America apart and, in so many ways, above other nations. Here, the Government cannot regulate speech based on the viewpoint of the speaker. Here, the Government cannot pick and choose between speech it likes and speech it does not like, and criminalize what it rejects but not what it respects. That is the bedrock first amendment principle on which my proposed amendment is based, and it is the principle—the core principle, in my view—that separates my proposal, my constitutional amendment, from the one proposed by Senators Hatch and Heflin.

Their amendment allows and, in fact, encourages viewpoint discrimination. Mine, flatly stated, prohibits it. Their amendment would send to jail a guy who burns the flag to protect the war, but not the guy who burns the flag to praise the amendment and throw them both in jail, if that is what the Congress decides to legislate. Their amendment would make it a crime to walk on the flag at a college campus sit-in, but not at the war memorial. My amendment would criminalize both, if that is what the Congress legislated. In my view, it does not matter why you burn or mutilate or trample on the flag; you should not do it. Period. I do not care whether you mean to protest the war or praise the war or start a war. You should not do it. Our interest in the flag is in the flag itself as a unifying symbol. I might add, the person riding down Constitution Avenue watching the veteran burn the flag to memorialize his colleague has no notion why he is doing it. All he knows is that the national symbol is being burned. Under their amendment, you would have to get close enough to hear what was being said in order to determine whether or not it should be allowed or not allowed. I find it no less demeaning that someone would, in order to pay respect to my deceased family, trample across our grave plots than to trample across them to show disrespect. I do not want anybody trampling where my family is buried. I do not want anybody burning the flag, whether they are doing it to praise me or condemn me. They should not do it.

Our interest is in the flag—in the flag itself—not in advancing or silencing any particular idea that the flag destroyer might have in mind. But do not take my view for it, ask a Boy Scout. If a Scout sees a flag dip to the ground, he runs to pick it up, does he not? That is how I trained my boys and my daughter. That is how I was trained as a Scout from the time I was a little kid. It does not matter why it fell; do not let it touch the ground. He does not care why the flag is on the ground, he does not care who let it fall, he does not care what somebody might have been trying to say when they let the flag fall; all he knows is that the flag is something special and it should not be on the ground. And so it should be with all of us.

If the only justification for protecting this flag, Mr. President, and if it, in fact, is the unifying symbol of a diverse nation and it serves a greater Government purpose of holding us together or reminding us how we are the same and not different, if that is not the purpose, then this exercise is pro-fane, the exercise we are undertaking is profane.

For what else is the reason? Interested in a cloth maker, we do not want them burned? Or we have a greater interest in cloth makers, so they can buy and sell more flags? What is the purpose? It either unifies or does not; it either should be soiled or not soiled. We cannot have any other rationale that I can come up with. The flag is a cherished symbol, not as a vehicle for speech; it is a cherished symbol, period. That is why it is cherished.

That is what my amendment does. The amendment authorizes Congress, and Congress alone—not the States—for, as I said earlier, I do not want any other State defining to me what my national symbol means. This is a national symbol. This is the National Government, and the National Government should have unifying rules about the national symbol. Only the National Government has the single law protecting the flag, not just the physical integrity of the flag but not others. Under this amendment, no one will be able to do the flag harm. With viewpoint neutrality as its signpost, the amendment preserves the first amendment’s cardinal value.

The amendment also ensures that the implementing legislation will be viewpoint neutral, and it makes sure that there will not be a patchwork of conflicting local flag protection laws. What would be a crime one would not also be a crime in Utah. There will not be a place in the Nation you can go and legally burn my flag, our flag. We do not have a flag T-shirt contraband in Minnesota but it is all the rage down in Florida.

Under this amendment, unlike the Hatch-Heflin provision, we know what we are getting. We are getting legislation that protects the flag while at the same time preserves our speech; at the same time, presenting prosecutions and convictions based upon viewpoint discrimination.

To be sure, my amendment impacts first amendment values, but I believe, on balance, that it stands in the proud tradition of many legal scholars from Justices Harlan to Fortas, from Black to Stevens, from Chief Justice Warren to Justice Burger, who believe that flag protection and free expression are not incompatible.

I join them in believing that the singular symbol of our Nation ought to be protected. They recognize, as Justice Holmes once said, “We live by symbols, we live by symbols that we cherish.” We must protect the flag because it is a unique and unifying symbol of our Nation, and we must protect the first amendment because it is our single greatest guarantee of freedom in this country.

The amendment that I propose today does nothing more than authorize a single law protecting the flag. It does nothing less than respect the core first amendment values of neutrality and equality. We can protect both the flag and our liberties. It stands, but, in my humble opinion, the Heflin-Hatch amendment sacrifices one for the other. I will at the appropriate time strongly urge my colleagues to reject their amendment and hopefully vote for mine, instead.

In conclusion, Mr. President, I also respect those who believe my amendment should not become part of the
Constitution. I respect them very much. What I do not think anyone can disagree with is that there is a fundamental distinction between the amendment in terms of its impact on the first amendment.

My objective here, as much as protecting the flag, is in fact to protect and guarantee the first amendment. As I say, there is no one on this floor since I have been here who has been more deeply involved in attempting to protect the flag than I have.

I authored the first statute that passed. I authored this amendment 5 years ago, but I do not take kindly to the notion that we are going to consider an amendment that may very well pass, that will, in fact, allow the Federal Government and State Governments for the first time to choose among the types of speech they wish us to be able to engage in: criminalize one, and not the other. If it is a national symbol, protect it, period.

I yield.

The PRESIDING OFFICER (Mr. Frist). The Senator from South Carolina.

Mr. THURMOND. Mr. President, the American people overwhelmingly support this proposed constitutional amendment Senate Joint Resolution 31. Poll after poll has shown that nearly 80 percent of all Americans favor legally protecting the American flag against acts of physical desecration. Forty-nine State legislatures have called upon Congress to pass and send to the States for ratification a flag-protection amendment. Three hundred and twelve Members of the other body have already voted for this amendment.

This is not a partisan issue. Ninety three Democratic Representatives, nearly half of the Democratic Members of the House, voted in favor of this amendment. The Democratic leader, Dick “Duke” Bennett and Sens. Charles E. Bennett and Dorgan.

Citizens Flag Alliance, Indianapolis, IN.

DEAR DAN, Thank you for sending the portion of the Congressional Record for October containing the “Flag Protection Act of 1995” proposed by Senator McConnell on behalf of himself and Senators Bennett and Dorgan.

The proposed statute would be struck down by the Supreme Court. The statute, therefore, does not offer a viable alternative to an amendment of the Constitution allowing the representatives of the people—if they so choose—to protect the American flag against “physical desecration.” The truth is that the only way to enact the statute they propose would be to enact the constitutional amendment first.

The Congress tried once before to find an alternative to constitutional amendment. In 1988, after the Supreme Court struck down a Texas prohibition of flag desecration in the Johnson case, Congress was persuaded to try to write a “neutral” statute protecting the flag that, it hoped, would satisfy the Court’s 5-4 majority. Congress enacted such a statute in October 1989. In June 1990, the Court’s 4-4 majority struck it down in the Eichman case. The Court made its view perfectly clear: No statute will pass muster if it singles out the flag of the United States for protection against contemptuous abuse. Such a statute, in the opinion of the five Justices, involves taking sides in favor of what is uniquely symbolized by the flag—our “aspiration to national unity.” This singling out of the flag for protection, they believe, violates the Constitution as it now stands.

Of course, Senator McConnell, speaking for Senator Bennett and Senator Dorgan, says they hope to satisfy the Court by confining protection of “[a]nyone who defaces or damages a flag” (a) to those who do so with intent to “incite or produce imminent violence or a breach of the peace” and (b) to those who steal the flag they go on to destroy or damage” from the United States or on certain federal lands. Because the First Amendment permits prohibition of “fighting words” and of theft generally, the Senators seem to believe that it also will be held to permit singling out flag abuse, within those two contexts, for particular prohibition.

This ploy won’t work. By singling out the flag for protection against abuse, the proposed statute still “takes sides” in favor of what is symbolized by the flag. Senator McConnell, in his remarks on the floor of the Senate, made clear he intended the intent behind the statute. He said he is “disgusted by those who desecrate our symbol of freedom.” “[W]e should have zero tolerance for those who deface the flag,” he proclaimed. Although he said he does not satisfy the 5-4 majority of the Court that decided Eichman, that majority would look at his remarks and at the face of the proposed statute—and it definitely would not be satisfied.

In fact, there is a Court decision even more recent than Eichman that would doom the
proposed statute, in the absence of a new constitutional amendment authorizing prohibition of physical desecration of the flag. It is a R.A.V. v. St. Paul, handed down in 1992. In that majority of the Court, Justice Scalia struck down an ordinance that singled out particular offensive sorts of expression, within the general category of “fighting words,” for punishment. This, the Court held, involved a taking of sides among sorts of messages and, so, was invalid. The fact that “fighting words” in general may be prohibited, the Court said, does not allow government to write and enforce laws that prohibit particular ideological sub-categories of “fighting words.” The statute proposed by the three Senators thus would be holding the Constitution as it is now written—not just arguably, but patently.

Senators, this Friday at 3:00 p.m., the Senate will take up the first of the two bills this Congress passed specifically to address this issue, and the one that got the least attention. It is the Flag Protection Act of 1984, which was originally sponsored by Senator William Roth of Delaware. The proposed legislation would make it a federal crime to burn, mutilate, or otherwise profane the American flag.

Mr. THURMOND. Mr. President, I believe it is time for the Senate to join with the House in heeding the will of the American people by passing this amendment and sending it to the States for ratification.

Citizens Flag Alliance, supporting Senate Joint Resolution 31, be printed in the RECORD at this point. There being no objection, the list was ordered to be printed in the RECORD, as follows:

CITIZENS FLAG ALLIANCE, INC., MEMBERS ORGANIZATIONS:
1. AMVETS (American Veterans of WWII, Korea and Vietnam).
5. Alliance of Women Veterans.
7. American GI Forum of the U.S.
9. The American Legion.
10. American Legion Auxiliary.
12. American War Mothers.
17. Bunker Hill Monument Association, Inc.
20. Congressional Medal of Honor Society of the USA.
22. Croatian Catholic Union.
23. Czech Catholic Union.
24. Czechoslovakian Christian Democracy in the U.S.A.
27. Family Research Council.
29. The Forty & Eight (La Societe des Quarante Hommes et Huit Chevaux).
30. Fox Associates, Inc.
33. Grand Lodge Fraternal Order of Police.
34. Grand Lodge of Masons of Oklahoma.

Once the Flag Protection Amendment becomes law, no one will find themselves unable to express any ideas; only one particularly odious act will have been legislatively protected. I am pleased that Chief Justice Rehnquist suggested, more like “an articulate grunt,” than the expression of a political view. The Proposed Flag Protection Amendment is a political statement. It is a law to where it was in 1899, where it was before Johnson, and where it had been for over a hundred years. The Flag Protection Amendment recognizes the role the American people, and is the people’s time-honored way of correcting erroneous constitutional interpretation of the Supreme Court. The proposed Flag Protection Amendment is no infringement of the Bill of Rights, it is, instead, a wonderful exercise in the popular sovereignty of the Bill of Rights was designed to protect. Please forgive me for going on at such length. As you can tell, I feel strongly on this issue, and believe the Flag Protection Amendment is sorely needed. Please let me know if I can provide any further assistance. With very best wishes...

RICHARD D. PARKER, Professor of Law.
RAUL BERGER, PROFESSOR OF LEGAL HISTORY, NORTHWESTERN UNIVERSITY SCHOOL OF LAW, Chicago, IL, October 23, 1995.

DEAR DAN: You have asked me for my thoughts regarding the constitutionality and the wisdom of the proposed flag desecration recently proposed by Senators McConnell, Bennett, and Dorgan, S. 1335, which appears in the Congressional Record for October 19, 1995. I must admit I was surprised that three distinguished Senators could take the position that legislation on flag desecration could survive constitutional challenge. In light of the Supreme Court’s decisive rejection of the statutory route in U.S. v. Elchman, 496 U.S. 310 (1990). You will remember similar statutory approaches were proposed by Senator Biden and others after the Johnson case, Judge Bork, Charles Cooper, and I testified before the Senate that no statute could pass Constitutional muster, and though Lawrence Tribe and others told the Senate that a flag protection statute would not be found unconstitutional, they were wrong, and we were proved right. It could not be clearer that the same thing would happen to the proposed statute once it were challenged in court.

The operation of the constitutional doctrine in Constitutional error in two ways. First, and most obvious, is the implication made in Section (2) of the “Findings” clause which suggests that the proposed Amendment is an alteration of the Bill of Rights. It is no such thing, as I and others testified before the House and Senate Subcommittee on Constitutional Amendment. The proposed Amendment does nothing to alter the guarantee of the freedom of speech in the First Amendment. If the Supreme Court should so decide, the Court has already rejected the notion that changes to the flag in the manner Senators McConnell, Bennett, and Dorgan indicate that they clearly desire. My feeling is that rather than fearing such a Constitutional Amendment they should embrace it.

It is a profound demonstration of the feeling of the American people, and is the people’s time-honored way of correcting erroneous constitutional interpretation of the Supreme Court. The proposed Flag Protection Amendment is no infringement of the Bill of Rights, it is, instead, a wonderful exercise in the popular sovereignty of the Bill of Rights was designed to protect. Please forgive me for going on at such length. As you can tell, I feel strongly on this issue, and believe the Flag Protection Amendment is sorely needed. Please let me know if I can provide any further assistance. With very best wishes...

Sincerely,

STEVEN S. PRESSER.

Senators McConnell, Bennett, and Dorgan
are wrong, and we were proved right. It could not be clearer that the same thing would happen to the proposed statute once it were challenged in court.

The operation of the constitutional doctrine in Constitutional error in two ways. First, and most obvious, is the implication made in Section (2) of the “Findings” clause which suggests that the proposed Amendment is an alteration of the Bill of Rights. It is no such thing, as I and others testified before the House and Senate Subcommittee on Constitutional Amendment. The proposed Amendment does nothing to alter the guarantee of the freedom of speech in the First Amendment. Once the Flag Protection Amendment becomes law, no one will find themselves unable to express any ideas; only one particularly odious act will have been legislatively protected. I am pleased that Chief Justice Rehnquist suggested, more like “an articulate grunt,” than the expression of a political view. The Proposed Flag Protection Amendment is a political statement. It is a law to where it was in 1899, where it was before Johnson, and where it had been for over a hundred years. The Flag Protection Amendment recognizes the role the American people, and is the people’s time-honored way of correcting erroneous constitutional interpretation of the Supreme Court. The proposed Flag Protection Amendment is no infringement of the Bill of Rights, it is, instead, a wonderful exercise in the popular sovereignty of the Bill of Rights was designed to protect. Please forgive me for going on at such length. As you can tell, I feel strongly on this issue, and believe the Flag Protection Amendment is sorely needed. Please let me know if I can provide any further assistance. With very best wishes...

RICHARD D. PARKER, Professor of Law.
RAUL BERGER, PROFESSOR OF LEGAL HISTORY, NORTHWESTERN UNIVERSITY SCHOOL OF LAW, Chicago, IL, October 23, 1995.

DEAR DAN: You have asked me for my thoughts regarding the constitutionality and the wisdom of the proposed flag desecration recently proposed by Senators McConnell, Bennett, and Dorgan, S. 1335, which appears in the Congressional Record for October 19, 1995. I must admit I was surprised that three distinguished Senators could take the position that legislation on flag desecration could survive constitutional challenge. In light of the Supreme Court’s decisive rejection of the statutory route in U.S. v. Elchman, 496 U.S. 310 (1990). You will remember similar statutory approaches were proposed by Senator Biden and others after the Johnson case, Judge Bork, Charles Cooper, and I testified before the Senate that no statute could pass Constitutional muster, and though Lawrence Tribe and others told the Senate that a flag protection statute would not be found unconstitutional, they were wrong, and we were proved right. It could not be clearer that the same thing would happen to the proposed statute once it were challenged in court.

The operation of the constitutional doctrine in Constitutional error in two ways. First, and most obvious, is the implication made in Section (2) of the “Findings” clause which suggests that the proposed Amendment is an alteration of the Bill of Rights. It is no such thing, as I and others testified before the House and Senate Subcommittee on Constitutional Amendment. The proposed Amendment does nothing to alter the guarantee of the freedom of speech in the First Amendment. Once the Flag Protection Amendment becomes law, no one will find themselves unable to express any ideas; only one particularly odious act will have been legislatively protected. I am pleased that Chief Justice Rehnquist suggested, more like “an articulate grunt,” than the expression of a political view. The Proposed Flag Protection Amendment is a political statement. It is a law to where it was in 1899, where it was before Johnson, and where it had been for over a hundred years. The Flag Protection Amendment recognizes the role the American people, and is the people’s time-honored way of correcting erroneous constitutional interpretation of the Supreme Court. The proposed Flag Protection Amendment is no infringement of the Bill of Rights, it is, instead, a wonderful exercise in the popular sovereignty of the Bill of Rights was designed to protect. Please forgive me for going on at such length. As you can tell, I feel strongly on this issue, and believe the Flag Protection Amendment is sorely needed. Please let me know if I can provide any further assistance. With very best wishes...

Sincerely,

STEVEN S. PRESSER.
Mr. SIMON. Mr. President, if the Senator from Utah desires the floor, I will yield to him.

Mr. HATCH. Will the Senator yield? I ask unanimous consent the distinguished Senator from Illinois be granted 5 minutes, and I ask further unanimous consent I be then recognized to speak to that for a few minutes. Then I ask unanimous consent the distinguished Senator from South Carolina be next recognized.

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

Mr. HATCH. Mr. President, if the distinguished Senator from Illinois be granted 5 minutes, and I ask further unanimous consent I be then recognized to speak to that for a few minutes. Then I ask unanimous consent the distinguished Senator from South Carolina be next recognized.

Mr. SIMON. Mr. President, I am proud of the flag. I remember one of the times when I was in the Armed Forces before I went overseas. When you were at a football game and they played the "Star Spangled Banner" and you could salute that flag in that uniform, you had to be cold hearted if you did not get a thrill out of it.

At my home in rural southern Illinois, you will see a flag flying. We are proud of this Government and I am proud of the flag that represents that. I am proud of the flag that represents the States.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. SIMON. Mr. President, I am proud of the flag. I remember one of the times when I was in the Armed Forces before I went overseas. When you were at a football game and they played the "Star Spangled Banner" and you could salute that flag in that uniform, you had to be cold hearted if you did not get a thrill out of it.

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The PRESIDING OFFICER. The Senator from Illinois.

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The PRESIDING OFFICER. The Senator from Illinois.

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The PRESIDING OFFICER. The Senator from Illinois.

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The PRESIDING OFFICER. The Senator from Illinois.

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At my home in rural southern Illinois, you will see a flag flying. We are proud of this Government and I am proud of the flag that represents that. I am proud of the flag that represents the States.

The PRESIDING OFFICER. The Senator from Illinois.

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At my home in rural southern Illinois, you will see a flag flying. We are proud of this Government and I am proud of the flag that represents that. I am proud of the flag that represents the States.

The PRESIDING OFFICER. The Senator from Illinois.

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At my home in rural southern Illinois, you will see a flag flying. We are proud of this Government and I am proud of the flag that represents that. I am proud of the flag that represents the States.

The PRESIDING OFFICER. The Senator from Illinois.

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The PRESIDING OFFICER. The Senator from Illinois.

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At my home in rural southern Illinois, you will see a flag flying. We are proud of this Government and I am proud of the flag that represents that. I am proud of the flag that represents the States.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. SIMON. Mr. President, I am proud of the flag. I remember one of the times when I was in the Armed Forces before I went overseas. When you were at a football game and they played the "Star Spangled Banner" and you could salute that flag in that uniform, you had to be cold hearted if you did not get a thrill out of it.

At my home in rural southern Illinois, you will see a flag flying. We are proud of this Government and I am proud of the flag that represents that. I am proud of the flag that represents the States.
The Senator from Utah [Mr. HATCH], for himself, Mr. HEFLIN, and Mrs. FEINSTEIN, proposes an amendment numbered 3994.

Mr. HATCH. Mr. President, I ask unanimous consent that the amendment be dispensed with.

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

The amendment is as follows:

Strikes all after the resolving clause and inserts the following:

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 seven 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..."

Mr. HATCH. Mr. President, all this amendment does is delete the States from the original amendment. It will become the underlying amendment that others will try to amend.

So I ask unanimous consent that the amendment be agreed to.

I withhold that.

Mr. BYRD. Mr. President, reserving the right to object.

Mr. HATCH. Let me just say this, Mr. President. I would like to spend a minute or so talking about my friend, Senator HEFLIN. Let me just ask my colleagues for their indulgence for a few moments.

I would like to express my appreciation to my colleague from Alabama, Senator HOWELL HEFLIN. This is the Hatch-Heflin amendment and Senator HEFLIN and his staff have worked very hard in its favor.

Many of us know HOWELL HEFLIN as a fine lawyer, judge, and Senator. I am not sure some of you are aware of this on the other side of the man. I know that others in the Senate served in the military. I know Senator THURMOND, for example, took part in the Normandy invasion and fought in both the European and Pacific theaters. He parachuted behind the lines in those days, and he is a hero to all of us.

HOWELL HEFLIN won the Silver Star as a Marine officer in World War II and later, in the same conflict, was wounded in the hand and leg.

The Birmingham News of October 10, 1944, has quite a story on our colleague, noting that "he is home again in Alabama to modestly and reluctantly tell the stories of a Marine first lieutenant's not-to-be-envied life in the Pacific. Nearly two years later, in a 1944 D-day story in the Washington Times, the reporter remarked, "When discussing these battles, the senator never uses the personal pronoun. It's always 'we', referring to the Marines who fought beside him. He is clearly made uncomfortable when asked to comment on his personal valor."

You can blame our two staffs, Senator HEFLIN, and I believe our colleagues and the listening audience should know this about our colleague: This is signed by James Forrestal, Secretary of the Navy, from the citation in presenting the Silver Star to him:

"For conspicuous gallantry and intrepidity as Company Officer of a Marine Platoon attached to a company of the First Battalion, Ninth Marines, Third Marine Division, during the Battle of Pea Forks, Bougainville, Solomon Islands, on November 5, 1943. When his men were subjected to intense fire from hostile mortars and automatic weapons while advancing on a strongly organized and defended position. First Lieutenant Heflin promptly and skillfully deployed his platoon and courageously led it through difficult jungle terrain under a barrage of grenades and machine gun fire from the enemy's position. Directing his troops in a vigorous, prolonged battle, he frequently exposed himself to devastating fire at close range, and the four Marines were severely wounded. Lieutenant Heflin, by his expert leadership and fearless conduct under extremely hazardous conditions were in keeping with the highest traditions of the United States Naval Service."

One of his fellow marines from Alabama in the same division, Conrad Fowler, tells a story in the February 12, 1995, Birmingham News. The young HEFLIN was among the first wave to storm Guam, the year following Bougainville. There, he was wounded as I mentioned earlier, and Mr. Fowler helped evacuate him.

Howell was a big guy and we found four of the biggest Marines we could find to carry of him, carrying the empty stretcher.

Here is the bottom line. We can say, nearly 52 years later, as he approaches the close of his public service next year, that the words used to describe Howell are attributes of his service to his country have marked the man throughout his life: "unflinching determination"; "aggressive fighting spirit"; "expert leadership"; and, "fearless conduct."

I want him to know how much I appreciate working with him in the Senate and on the Judiciary Committee, and, in particular, on this very important amendment that I think we should be in the country and would establish a debate on values all over this country that is long overdue.

Mr. HATCH. Having said that, Mr. President, on behalf of Senator HEFLIN, Senator FEINSTEIN, and myself, what we have offered here is a compromise. It deletes the States from the amendment. Only Congress will be given power to protect the flag, if this amendment is adopted.

If the amendment I have offered is adopted, the revised amendment would read as follows: Officer of an Amendment. The Congress shall have power to prohibit the physical desecration of the flag of the United States."

This means that only Congress will define the flag of the United States. Only Congress will determine what conduct is illegal. There will not be 50 or 51 different laws protecting the flag, just one. So those who are concerned about a multiplicity of flag protection laws, those who are unwilling to let State legislators handle this issue—the amendment just offered will meet those concerns. We have, frankly, gone a long way with this amendment. I did not face this concession. Restoring the state of the law prior to the Supreme Court's error in Johnson and Eichman seems perfectly appropriate to this Senator, and quite a few of my colleagues. But I am faced with the task of trying to assemble 66 votes, and I could not count on those votes with Senate Joint Resolution 31 as introduced. We have a better chance if we limit power to protect the American flag to Congress. This would, if ratified, still authorize meaningful protection for the flag.

With some reluctance, the American Legion and the Citizens Flag Alliance support this amendment. Sometimes compromise is needed in order to try to get the votes needed to pass a particular measure. We are trying to gain the necessary support for a flag protection amendment by seeking to delete the States from the amendment. I believe the flag protection amendment supporters in the other body would accept such a compromise.

I urge all of the cosponsors and other supporters of Senate Joint Resolution 31 as introduced, as this amendment. I ask the opponents of Senate Joint Resolution 31 as introduced to bend a little, as well. Let us send a revised amendment to the other body and to the States and offer the flag protection at the Federal level. I also hope that President Clinton will reconsider his opposition to a constitutional amendment protecting. We have gone more than halfway on this.

Mr. President, under the substitute I have offered, along with Senators HEFLIN and FEINSTEIN, only Congress can write a statute protecting the American flag. With reluctance, the American Legion and the Citizens Flag Alliance have endorsed this substitute.

For those of my colleagues who have been worried about letting the American people have the power to protect the flag through their State legislature, they need not worry. For those of my colleagues who do not trust State legislators to protect the American flag in a reasonable way, their concerns are over with this amendment.

In our discussion to those colleagues is this: Do you trust yourselves to write a reasonable statute protecting the American flag? If the amendment is ratified, there are ample safeguards. Here in the Senate, members of the Judiciary Committee on both sides of the aisle are going to be vigilant in writing the statute sent to the floor. The closure rule provides ample protection to
a minority of Senators who disapprove of any such statute pending on the Senate floor. The President can veto a measure he does not like, requiring a two-thirds vote. We already know how difficult it is to try to get such a vote on the floor.

Some of my colleagues are concerned about flag bathing suits. This was, in my view, an exaggerated concern at best, but I have not heard any of the congressional supporters of the amendment express any desire to cover bathing suits. Senators KENNEDY, LEAHY, SIMON, and FEINGOLD raised the question in the committee views: “Would desecration include flying the flag over a brothel?” That is on page 77 of their views. Since the amendment talks about physical desecration of the flag, this concern was, frankly, totally misplaced to begin with. But since they will have a say in writing the only statute authorized by the substitute amendment, I hope their concerns have been sufficiently addressed.

This is not the time and place to consider what a Federal statute will look like and I have not given it much consideration because it is premature to do so. But I do pledge that we will have fair and substantial concern for any proposed statute, if Congress and the States ratify the amendment.

Mr. President, we have made a major concession. With the deletion of the States from the amendment, continued opposition to the amendment means just one thing: It is simply not important enough to protect the American flag by amendment, even with one uniform Federal standard throughout the Nation. I hope that some of my colleagues who have opposed this amendment in the past will seriously reconsider their opposition. I think this is a compromise everyone can defend.

The notion that physical desecration of the American flag is a fundamental right without any limitations on the Supreme Court Justices who made a mistake. If just one Justice had come out the other way, we would not even be on the floor of the Senate debating this issue today.

And something else would also be true: The liberties of the American people, including freedom of speech, would be intact. Our liberties seemed to survive the 1 Federal statute and 48 State statutes protecting the flag remarkably well. But to listen to the overwrought, overblown, and misplaced concerns of the critics of the amendment, one would think we were living in the Dark Ages prior to 1989, when the Supreme Court effectively struck them all down. What nonsense. Indeed, the irony is, as I pointed out last Wednesday, during the time these flag protection statutes were put on the books, the parameters of freedom of speech actually expanded in this country.

We can protect the flag, preserve our liberties, and give voice to a fundamental value Americans hold dear, protection of the flag that represents them, their ideals, their principles, their history, and their future.

One final note, Mr. President. And that is, what is wrong with letting the American people make the determination here? Should three-quarters of the States ratify this amendment, what must they do to write a reasonable statute that would determine once and for all what physical desecration is all about? We can do it, and we can do it right without infringing upon scarves or swimming suits or sweaters or ties or any number of other items which can be worn with great pride and belief in the flag of the United States.

Mr. President, I ask unanimous consent—and I understand this has been agreed to by both sides—I ask unanimous consent that our amendment, the Hatch-Feinstein amendment be agreed to and that it be considered as original text for purposes of further amendment so these other amendments can be considered.

Mr. BYRD. Mr. President, reserving the right to object, and I will not object—

Mr. HATCH. I thank the Senator.

Mr. BYRD. Mr. President, under my respectful understanding that Mr. HOLLINGS has gotten unanimous consent to speak immediately following the conclusion of Mr. HATCH’s remarks.

I ask unanimous consent that at the conclusion of the remarks by Mr. HOLLINGS, I may be recognized for not to exceed 45 minutes to speak out of order.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. BYRD. I have no objection to the previous request. I have been asked by Mr. KENNEDY to request that at the conclusion of my remarks he, Mr. KENNEDY, be recognized for not to exceed 10 minutes.

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

Mr. BYRD. I thank all Senators.

Mr. HATCH. I ask that my unanimous-consent request be agreed to.

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

Mrs. FEINSTEIN addressed the Chair.

Mr. HATCH. I urge the amendment be agreed to.

The PRESIDING OFFICER. The amendment has been agreed to by unanimous consent.

Mr. HATCH. It has been agreed to.

All right. Then I move to reconsider.

Mr. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. HATCH. Mr. President, I ask unanimous consent that immediately following the remarks of Senator KENNEDY, who will follow Senator HOLLINGS and Senator BYRD, Senator FEINSTEIN be given an opportunity to speak.

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

Mr. HATCH. I thank my colleagues.

Mr. HOLLINGS addressed the Chair.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. HOLLINGS. Mr. President, I have before us this afternoon two opportunities that could be looked upon by my distinguished colleague from West Virginia as not an opportunity at all.

We have debated the balanced budget amendment to the Constitution already for a month this year. And on Friday, when we were formulating a unanimous-consent agreement, I was asked by our distinguished staff if I had amendments. I said I had two amendments. They cautioned that I would perhaps have to be prepared to debate them on Monday. I said I would be delighted. They said it could be under a time limitation. I said that would be very much agreeable to this particular Senator.

A point of order could be raised perhaps about the relevancy of my amendment, and if it were and I was ruled not to be in order, I would have to appeal that in order to get to it. A particular Senator has waited all year long. I have carried around in my pocket the amendment itself. I know the distinguished Speaker of the House has his contract. The distinguished Senator from West Virginia has the Constitution that he carries around in his pocket. There he is. And I have dutifully—in order to bring the truth to the American public—carried around an amendment to the Constitution for a balanced budget that did not repeal the formal statutory law signed by President Bush, section 13301 of the code of laws of the United States.

Under the Budget Act, it would not repeal that law but provide, of course, for a balanced budget. Specifically, Mr. President, if you look at Section 7, under Senate Joint Resolution 1, that we debated for a month, you can see that all outlays and all revenues be included of the U.S. Government. And that repeals, if you please, that section of the code, which I ask unanimous consent to be printed in the RECORD.

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

Subtitle C—Social Security

SEC. 13301. OFF-BUDGET STATUS OF OASDI TRUST FUNDS.

(a) EXCLUSION OF SOCIAL SECURITY FROM ALL BUDGETS.—Notwithstanding any other provision of law, the receipts and disbursements of the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund shall not be counted as new budget authority, outlays, receipts, or deficit or surplus for purposes of—

(1) the budget of the United States Government as submitted by the President, as security for the debt of the United States, or of any part thereof, as required by law, or for any purpose.

(b) EXCLUSION OF SOCIAL SECURITY FROM CONGRESSIONAL BUDGET.—Section 301(a) of the Congressional Budget Act of 1974 is
amended by adding at the end the following:  
“The concurrent resolution shall not include the outlays and revenue totals of the Social Security Act or the related provisions of the Internal Revenue Code of 1986 in the surplus or deficit totals required by this subsection or in any other surplus or deficit totals required by this title.”.

Mr. HOLLINGS. Now, Mr. President, I am reading, of course, from my proposed constitutional amendment—and it is important that this reading be made formally, since the title of the Federal Old Age and Survivors Insurance Trust Fund and Federal Disability Insurance Trust Fund, as and if modified to preserve the solvency of the funds used to provide Old Age, Survivors and Disability benefits, shall not be counted as receipts or outlays for the purpose of this article.”

There is no question, Mr. President, that the intent of the Congress is in that particular regard. Very recently, on November 13, by a vote of 97 to 2, we voted to instruct the conferees on the budget that Social Security trust funds not be used. So the Senators themselves have affirmed that less than a month ago.

I ask unanimous consent that rollcall vote be printed in the RECORD.

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

VOTE OF NOVEMBER 13, 1995  
[Rollcall Vote No. 572 Leg.]  
YEAS—97

Abraham  
Akaka  
Ashcroft  
Baucus  
Bennet  
Biden  
Bingaman  
Bond  
Boxer  
Bradley  
Breaux  
Brown  
Bryant  
Bumpers  
Burns  
Byrd  
Campbell  
Chafee  
Coats  
Cochran  
Cochrane  
Conrad  
Coverdell  
Craig  
D Amato  
Daschle  
DeWine  
Dodd  
Dole  
Domenici  
Dorgan  
Eaton  
Exon  
Faircloth  
Gramm  
Lugar  

NOT VOTING—2  

Mr. HOLLINGS. I ask also unanimous consent that the record of the Budget Committee vote on July 10, 1990, on the protection of Social Security be printed in the RECORD.

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

HOLLINGS MOTION TO REPORT THE SOCIAL SECURITY PRESERVATION ACT

The Committee agreed to the HOLLINGS motion to report the Social Security Preservation Act by a vote of 20 yeas to 1 nay:  

YEAS:  
Mr. Sasser, Mr. Hollings, Mr. Johnston, Mr. Riegle, Mr. Exon, Mr. Lautenberg, Mr. Bentsen, Mr. Breaux, Mr. Fowler, Mr. Conrad, Mr. Dodd, Mr. Robb, Mr. Domenici, Mr. Boshcher, Mr. Symms, Mr. Grassley, Mr. Kasten, Mr. Nickles, Mr. Bond.

NAY:  
Mr. Gramm.

Mr. HOLLINGS. I am trying to save time for my colleagues.

And I ask unanimous consent that the record vote that occurred on October 18, 1990, a vote of 98 to 2, approving that Social Security protection be printed in the RECORD.

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


YEARS (98)

Democrats (55 or 100%):  

Republicans (43 or 96%):  

NAYS (2)

Democrats (0 or 0%):  
Armstrong, Wallop.

Mr. HOLLINGS. The reason I do that is so that you shall know how Members vote—not just how they speak but how they cast their formal votes.

There has been raised, at the particular time back in February, the idea, of course, that the trust funds need not be protected further, that we could always do it by statute.

I ask unanimous consent at this particular point that the letter from the American Law Division of the Congressional Research Service dated February 6, 1995, be printed in the RECORD.

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

CONGRESSIONAL RESEARCH SERVICE,  
WASHINGTON, DC, February 6, 1995,  
To: Senator Dianne Feinstein

Attention: Mark Kades  
From: American Law Division  
Subject: Whether the Social Security Trust Funds Can Be Excluded From the Calculations Required by the Proposed Balanced Budget Act

This is to respond to your request to evaluate whether Congress could by statute or resolution provide that certain outlays or receipts would not be included within the term “total outlays and receipts” as used in the proposed Balanced Budget Amendment. Special attention was requested as to whether the Federal Old Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund would be exempted from the calculation necessary to determine compliance with the constitutional amendment proposed in H.J. Res. 1, which provides that total expenditures will not exceed total revenues.3

Section 1 of H.J. Res. 1, as placed on the Senate Calendar, provides that total outlays and total revenues do not exceed total receipts for fiscal year, unless authorized by three-fifths of the whole number of each House of Congress. The resolution states that total receipts shall include all receipts of the United States Government except those derived from borrowing, and that total outlays shall include all outlays of the United States Government except for those used for repayment of debt principal. These requirements can be waived during periods of war or national emergency.

Under the proposed language, it would appear that the receipts received by the United States which go to the Federal Old Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund would be included in the calculations of total revenues, and that payments from these funds would similarly be considered in the calculation of total outlays. This is confirmed by the House Report issued with H.J. Res. 1.4

Thus, if the proposed amendment was ratified, then Congress would appear to be without authority to exclude the Social Security Trust Funds from the calculations of total receipts and outlays under section 1 of the amendment.3

KENNETH R. THOMAS,  
Legislative Attorney,  
American Law Division.

Footnotes

1. H.J. Res. 1, 104th Congress, 1st Session. (January 27, 1995) provides the following proposed constitutional amendment.

Section 1. Total outlays for any fiscal year shall not exceed total receipts for that fiscal year, unless three-fifths of the whole number of each House of Congress shall provide by law for a specific excess of outlays over receipts by a rollcall vote.

Section 2. The limit on the debt of the United States held by the public shall not be increased, unless three-fifths of the whole number of each House shall provide by law for a specified excess of outlays over receipts by a rollcall vote.

Section 3. Prior to each fiscal year, the President shall transmit to the Congress a proposed budget for the United States Government for that fiscal year in which total outlays do not exceed total receipts.

Section 4. No bill to increase revenue shall become law unless approved by a majority of the whole number of each House by a rollcall vote.

Section 5. The Congress may waive the provisions of this article for any fiscal year in which a declaration of war is in effect. The provisions of this article may be waived for any fiscal year in which the United States is engaged in military conflict which causes an imminent threat to the national security and is so declared by a joint resolution, adopted by a majority of the whole number of each House, which becomes law.

Section 6. The Congress shall enforce and implement this article by appropriate legislation, which may rely on estimates of outlays and receipts.

Section 7. Total receipts shall include all receipts of the United States Government except those derived from borrowing. Total outlays shall include all outlays of the United States Government except for those for repayment of debt principal.

2. House Rep. 104-3, 104th Congress, 1st Session states the following:

‘‘The committee concluded that exempting Social Security from an amendment of receipts and outlays

Footnotes at end of letter.
would not be helpful to Social Security beneficiaries. Although Social Security accounts are running a surplus at this time, the situation is expected to change in the future with a Social Security deficit developing. If we exclude Social Security from balanced budget computations, Congress will not have to make adjustments elsewhere in the budget to compensate for this projected deficit. 

It should not be noted that an amendment by Representative Frank to exempt the Federal Old Age and Survivor Insurance Trust Fund and the Federal Disability Insurance Trust Fund from total receipts and total outlays was defeated in committee on a 16-18 roll call vote. Id. at 14. A similar amendment by Representative Conyers was defeated in the House, 141 Cong. Rec. H741 (daily ed. January 23, 1995), which an amendment by Representative Wise. Id at H731.

Although the Congress is given the authority to implement this article by appropriate legislation, there is no indication that the Congress would have indicated the budget where that Social Security trust funds to balance the Federal budget constitutional amendment to balance the budget. We have reviewed this proposal, and 

Mr. HOLLINGS. There are two sentences I will read again, trying to save time. “If the proposed amendment was ratified”—that is, Senate Joint Resolution 1—“then Congress would appear to be well on its way to exempting the Social Security trust funds from the calculations of total receipts and outlays under section 1 of the amendment.”

Then down at the bottom a footnote:

“Although the Congress is given the authority to implement this article by appropriate legislation, there is no indication that the Congress would have the authority to pass legislation which conflicts with the provision of this amendment.”

So that is why it is very, very important to several on this side of the aisle—because we were in a very, very heated exchange relative, of course, to the particular balanced budget amendment to the Constitution. And thereby on March 1, five of us on the Democratic side of the aisle sent a letter to the majority leader, ROBERT DOLE, the principal author of Senate Joint Resolution 1. We thought that we were not willing, and prepared to vote to pass the constitutional amendment to balance the budget where that Social Security protection not be repealed.

I ask unanimous consent that a copy of the letter dated March 1 be printed in the RECORD at this particular point. There being no objection, the letter was ordered to be printed in the RECORD, as follows:

MARCH 1, 1995.

HON. ROBERT J. DOLE, Majority Leader, U.S. Senate, Washington, DC. DEAR MR. LEADER, we have received from Senator Mitchell a proposal to address our concerns about using the Social Security trust funds to balance the Federal budget. We have reviewed this proposal, and after consultations with legal counsel, believe that this statutory approach does not adequately protect Social Security. Specifically, Constitutional experts from the Congressional Research Service advise us that the Constitutional language of the amendment will supersede any statutory constraint. We want you to know that all of us have voted for, and are prepared to vote again for a balanced budget amendment. In that spirit, we have attached a version of the balanced budget amendment by our colleagues, believe that a way further the issue of the supposed imbalance over the Social Security issue.

Mr. HOLLINGS. So, Mr. President, it is quite obvious if the true intent is to really pass an amendment to the Constitution requiring a balanced budget, it can be done here in the next dozen hours. There is no problem. It is a wonderful opportunity, because we have the amendment drawn in the proper fashion with little changes to Senate Joint Resolution 1. The one change, of course, was the Nunn amendment about the judicial power not to put balanced budget questions before the judiciary but to retain them with the congressional branches; and, second, of course, to reiterate the statutory law protecting the Federal old age and survivors insurance trust fund and federal disability insurance trust fund.

Why do I read those words out so specifically? With an intent, Mr. President. Again, referring to the balanced budget constitutional amendment report by the Committee on the Judiciary over on the House side, you will find in particular:

Since Congress possesses the legislative authority to change the Social Security program, specifically referring to “Social Security” in the Constitution could create a giant loophole for the Congress to call anything Social Security and thus evade balanced budget requirements.

This particular amendment presented for the vote of my colleagues here does not use “Social Security” expressed. On the contrary, it is the technical, formalistic law of the United States of America that passed in 1935 and up until 1969 was a trust fund and off budget.

That was our point that we were making in 1990. We were obscuring the size of the deficit. In fact, Mr. President, it would be well at this particular point, I believe, to include, if you please, a table of the various deficits.

The deficit at the end of fiscal year 1945 going all the way down, the U.S. budget in outlays and trust funds, the real deficit, the gross Federal debt and the gross interest cost under the various Presidents.

From 1945 until 1996, we have gone from outlays of $52,700,000,000 to now outlays for this fiscal year 1996 of $1,602,000,000,000. You can see how it has grown like Topsy. I remember the last balanced budget. To bring it into the perspective of the distinguished Chair, when Johnson balanced the budget back in 1968-69, the entire outlay in 1968-69 at that particular time was $178,100,000,000. We are now looking at $178,100,000,000 for guns and butter, for the war in Vietnam and for the Great Society. And paid for with what? With a surplus at that particular time of $300 million. That is—no. That $300 million was used from the trust fund. I am looking at the statute in error here. Let me look at it accurately. So $300 million was used from the trust funds. That still left a balance of $2.9 trillion. If trust funds were not used really to balance that budget, we had a surplus of $3.2 billion.

Here was an entire budget for the Social Security, Medicare, guns and butter, war in Vietnam, defense, and all, welfare and all the other programs. We are spending, instead of the $370 billion, we are spending $348 billion this year just on interest costs for nothing. There is the real problem. And that problem is obscured in large measure by the use of Social Security trust funds, exactly the opposite as contended by my colleagues in that particular House report.

For example, Mr. President, look at the Judiciary Committee report of a balanced budget constitutional amendment submitted to an earlier time over on the House side in January—on January 18 of this particular year. And here is the sentence that will blow your mind. “If we exclude Social Security from balanced budget computations, Congress will not have to make adjustments elsewhere in the budget to compensate for the projected deficit.”

If you have got that kind of logic and thought, we need custodial care for the Members around here. Social Security from the balanced budget computations, Congress will not have to make adjustments elsewhere in the budget to compensate. And that is exactly the point that we have been trying to make time and time again that we seem to try to hide behind. The truth of the matter is, we are hiding this minute behind $481 billion owed Social Security.

If the particular budget now in conference and now in negotiation between the White House and the Congress is enacted in the next 10 minutes, by the year 2002, we will owe Social Security $1,117,000,000,000. In other words, in the year 2002, they could well turn and say, “Whoopie, we have now preserved and protected Medicare.” And then when we look around at Social Security, we say, “Heavens above, we have run it into the hole with over $1,117,000,000,000.”

Who is going to raise taxes $1 trillion? Who is going to cut benefits $1 trillion?
trillion? That is why I have been trying to get attention of my colleagues that we have truth in budgeting. And that is why we have the amendment drawn at this particular time where people on both sides of the aisle—I voted for a constitutional amendment, cosponsored it with my senior colleague back in the 1980’s, voted for it several times. But when I realized the import of section 7 under the Dole Senate Joint Resolution 1 that it was going to repeal the statutory law that I helped cosponsored with Senator Moynihan and Senator Heinz. I could not go in two different directions at the same time.

As a person somewhat experienced in budgets, I was, as Governor back in 1969, to get the first AAA credit rating for our State. I participated in the balanced budget work of 1968-69. I chaired on behalf of the Congress, both Houses, the first reconciliation budget conference, the first reconciliation bill signed into law where we cut back already funds in December 1980 under President Carter. And I put in the budget freeze. I have cosponsored, with Senators Gramm and Rudman, the Gramm-Rudman-Hollings initiative. And I have been very alert, as possible, to make certain that we have truth in budgeting.

And so it is that we have now proposed this particular amendment. I could go on at length as to the debate itself before I present the amendment. I have the particular phrase of our majority whip, the distinguished Senator from Mississippi. In February, on national TV, Senator Trent Lott stated, and I quote:

Nobody—Republican, Democrat, conserv-ative, liberal, moderate—is even thinking about using Social Security to balance the budget.

Let us hope that is the truth. I think a vote on this particular constitutional amendment to balance the budget would put us back to that particular statement. We will see exactly how they vote.

AMENDMENT NO. 3095

(Purpose: To propose a balanced budget amendment to the Constitution)

Mr. HOLLINGS. Mr. President, I have another amendment. Let me send this one up under the unanimous-consent agreement and ask the clerk to report. I think I have explained it.

THE PRESIDENT. The clerk will report the amendment.

The amendment, in the name of the Senator from South Carolina [Mr. HOLLINGS], proposes an amendment numbered 3095.

Mr. HOLLINGS. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDENT. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The amendment is as follows:

After the first article add the following:

"ARTICLE —

"SECTION 1. Total outlays for any fiscal year shall not exceed total receipts for that fiscal year, unless three-fifths of the whole number of each House of Congress shall pro-

vide by law for a specific excess of outlays over receipts by a rollcall vote.

"SECTION 2. The limit on the debt of the United States held by the public shall not be increased, unless three-fifths of the whole number of each House shall provide by law for such an increase by a rollcall vote.

"SECTION 3. Prior to each fiscal year, the President shall submit to the Congress a proposed budget for the United States government for that fiscal year, in which total outlays do not exceed total receipts.

"SECTION 4. No bill to increase revenue shall become law unless approved by a majority of the whole number of each House by a rollcall vote.

"SECTION 5. The Congress may waive the provisions of this article for any fiscal year in which a declaration of war is in effect. If the Congress so waives the provisions of this article for any fiscal year in which the United States is engaged in military conflict which causes an imminent and serious military threat to national security and is so declared by a joint resolution, adopted by a majority of the whole number of each House, which becomes law.

"SECTION 6. The Congress shall enforce and implement this article by appropriate legislation, which may rely on estimates of outlays and receipts. The judicial power of the United States shall not extend to any case arising under this article except as may be specifically authorized by legislation enacted under this article.

"SECTION 7. Total receipts shall include all receipts of the United States government except those derived from borrowing. Total outlays shall include all outlays of the United States government except those for repayment of debt principal. The receipts (including attributable interest) and outlays (including attributable interest) of the Federal Old-Age and Survivors Insurance Trust Fund and Federal Disability Insurance Trust Fund (as and if modified to encompass a repeal of section 13301 of the Budget Act) shall not be counted as receipts or outlays for the purpose of this article.

"SECTION 8. This article shall take effect beginning with fiscal year 2002 or with the second fiscal year beginning after its ratification, whichever is later."

Mr. HOLLINGS. Mr. President, once again, I say, with respect to the Nunn amendment which is included in the Budget Act. We have had for 20 years, like a dog chasing its tail around, every kind of fanciful idea about how to give public money, most of it coming from Common Cause who will not listen. They have a PAC. Most PAC’s give money. Common Cause gives you a fit. They have no idea of giving up their particular power, and so they will not go along with limiting the actual expenditures. Oh, we had the opportunity back in 1988. A majority of Senators voted for that one-line constitutional amendment: “Congress is hereby empowered to regulate or control expenditures in Federal elections.”

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I voted for a constitutional amendment, cosponsored with Senator Moynihan and Senator Heinz. And I put in the budget freeze. I have cosponsored, with Senators Gramm and Rudman, the Gramm-Rudman-Hollings initiative. And I have been very alert, as possible, to make certain that we have truth in budgeting.

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everyone realizes the then distinguished Senator from New York, Senator Jim Buckley, thought otherwise. He sued the Senate and Secretary Vlade.

Under the Buckley versus Vlade decision, anyone of good mind and spirit would say this is the most flawed decision ever raised. Why do I say that? The Buckley versus Vlade decision of the U.S. Supreme Court equated money with speech.

If you thought you had the freedom of speech, you would certainly have the freedom of money. And you are exactly right, if you are rich, you have that freedom. But if you are poor, you do not have it, because they immediately went on with the limitations.

More particularly, Mr. President, you can take away your opponent’s speech if you are affluent and the opponent is not. Specifically, if your opponent has $50,000, and you have $1 million, you wait until October 10 when people finally vote, with their minds and attention on campaigns, getting ready for the election, then you fill up the airwaves, both radio and TV, the billboards, the yard signs, the newspaper advertising. And by November 1, a week ahead of the election, your family will ask, “Who is it who stayed?” Aren’t you interested? You are not even answering.”

You do not have the money to answer. You can take away the speech. It is the worst decision that you can possibly think of, particularly in light of the Buckley decision.

If you read article I, section 4 of the Constitution—and I will read just exactly this:

The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of choosing Senators.

So, if we have the power at any time by law to alter the manner, it appears to this particular Senator we certainly can take the most grievous practice we have in this land of money in politics and put a control on it. We control the time, the place, the components of a candidacy and otherwise, and you can go on down the list.

Mr. President, I rise today to address a problem with which we are all too familiar—the ever increasing cost of campaign spending. The need for limits on campaign expenditures is more urgent than ever, with the total cost of congressional campaigns skyrocketing from $446 million in 1990 to well over $590 million in 1994. For nearly a quarter of a century, Congress has tried to tackle runaway campaign spending; again and again, Congress has failed.

Let us resolve not to repeat the mistakes of past campaign finance reform efforts, which have bogged down in partisanship as Democrats and Republicans more often than not, have voted along party lines. During the 103d Congress there was a sign that we could move beyond this partisan bickering, when the Senate in a bipartisan fashion expressed its support for a limit on campaign expenditures. In May 1993, a non-binding sense-of-the-Senate resolution was agreed to which advocated the adoption of a constitutional amendment empowering Congress and the States to regulate campaign expenditures. During the 104th Congress, let’s take the next step and adopt such a constitutional amendment—a simple, straightforward, nonpartisan solution.

As Professor Ashdown has written in the New England Law Review, amending the Constitution to allow Congress to regulate campaign expenditures is “the most theoretically attractive of the approaches-to-reform since, from a broad free speech perspective, the decision in Buckley is misguided and has worsened the campaign finance atmosphere.” Adds Professor Ashdown: “If Congress could constitutionally limit the campaign expenditures of individuals, candidates, and committees, my argument along with the Court would be that most of the troubles would be eliminated.”

Right to the point, in its landmark 1976 ruling in Buckley versus Vlade, the Supreme Court mistakenly equated unlimited campaign expenditures of individuals, candidates, and committees with the right to free speech. The Buckley decision created a double bind. It upheld restrictions on campaign contributions, but struck down restrictions on how much candidates with deep pockets can spend. The Court ignored the practical reality that if my opponent has only $50,000 to spend in a race and I have $1 million, then I can effectively deprive him of his speech.

By failing to respond to my advertising, my cash-poor opponent will appear unwilling to speak up in his own defense.

Justice Thurgood Marshall zeroed in on this disparity in his dissent to Buckley. By striking down the limit on what a candidate can spend, Justice Marshall said, “It would appear to follow that the candidate with a substantial personal fortune at his disposal is off to a significant head start.

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Justice Marshall went further: He argued that by upholding the limitations on contributions but striking down limits on overall spending, the Court put an additional premium on a candidate’s personal wealth. Justice Marshall was dead right. Our urgent task is to right the injustice of Buckley versus Vlade by empowering Congress to place caps on Federal campaign spending. We are all painfully aware of the unbridled growth of campaign spending. The average cost of a winning Senate race was $1.2 million in 1980, rising to $2.1 million in 1984, and skyrocketing to $3.1 million in 1986, $3.7 million in 1988, and up to $4.1 million this past year. To raise that kind of money, the average Senator must raise over $13,200 a week, every week of his or her 6-year term. Overall spending in congressional races increased from $103 million in 1990 to more than $550 million in 1994—almost a 50-percent increase in 5 short years.

This obsession with money distracts us from the people’s business. At worst, it corrupts and degrades the entire political process. Fundraisers used to be arranged so they didn’t conflict with the Senate schedule, but nowadays, the Senate schedule is regularly shifted to accommodate fundraisers.

I have run for statewide office 16 times in South Carolina. You establish a certain campaign routine, say, shaking hands at a mid-shift in Greer, visiting a big country store outside of Belton, and so on. Over the years, they look for you and expect you to come

Probably 80 percent of campaign communications take place through the medium of television. And most of that TV airtime comes at a dear price. In South Carolina, you’re talking between $1,000 and $2,000 for 30 seconds of primetime advertising. In New York, you’re looking at $50,000 to $40,000 for the same 30 seconds.

The hard fact of life for a candidate is that if you’re not on TV, you’re not truly in the race. Wealthy challengers as well as incumbents flushed with tax dollars have an unfair advantage. Those without personal wealth are sidetracked to the time-consuming pursuit of cash.

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I have run for statewide office 16 times in South Carolina. You establish a certain campaign routine, say, shaking hands at a mid-shift in Greer, visiting a big country store outside of Belton, and so on. Over the years, they look for you and expect you to come
around. But in recent years, those infrequent visits and dropping by the country store have become a casualty of the system. There is very little time for them. We’re out chasing dollars.

During my 1986 reelection campaign, I found myself chasing money to get on TV to raise money to get on TV. It’s a vicious cycle.

After the election, I held a series of town meetings across the State. Friends asked me why I was doing these town meetings: You just got elected. You’ve got 6 years.” To which I answered, “I’m doing it because it’s my first chance to really get out and meet with the people who elected me. I didn’t get much of a chance during the campaign. I was too busy chasing bucks.” I had a similar experience in 1992.

I remember Senator Richard Russell saying: “They give you a 6-year term in this U.S. Senate. 2 years to be a student, 2 years to be a politician, and the last 2 years to be a demagog.” Regrettably, we are no longer afforded even 2 years as statesmen. We proceed straight to politics and demagoguery right after the election because of the imperatives of raising money.

My proposed constitutional amendment would change all this. It would empower Congress to impose reasonable spending limits on Federal campaigns. For instance, we could impose a limit of, say, $800,000 per Senate candidate in a small State like South Carolina—a far cry from the millions spent by my opponent and me in 1992. And bear in mind that direct expenditures account for only a portion of total spending. For instance, my 1992 opponent’s direct expenditures were supplemented by hundreds of thousands of dollars in expenditures by independent organizations and by the State and local Republican Party. When you total up spending from all sources, my challenger and I spent roughly the same amount in 1992.

And incidentally, Mr. President, let’s be done with the canard that spending limits would be a boon to incumbents, who supposedly already have name recognition and standing with the public and therefore begin with a built-in advantage over challengers. Nonsense. I hardly need to remind my Senate colleagues of the high rate of mortality among upper Chamber elections. And as to the alleged invulnerability of incumbents in the House, I would simply note that more than 50 percent of the House membership has been replaced since the 1996 elections. I can tell you from experience that any advantages of incumbency are more than counterbalanced by the obvious disadvantages of incumbency, specifically the disadvantage of defending hundreds of controversial votes in Congress.

I also agree with University of Virginia political scientist Larry Sabato, who has suggested a doctrine of sufficiency with regard to campaign spending. Professor Sabato puts it this way: “While challengers tend to be underfunded, they can compete effectively if they are capable and have sufficient money to present themselves and their messages.”

Moreover, Mr. President. I submit that once we have overall spending limits, it will matter little whether a candidate gets money from industry groups, or from PAC’s, or from individuals. It is still a reasonable—‘sufficient’—factor for Senator Sabato’s term—amount any way you cut it. Spending will be under control, and we will be able to account for every dollar going out.

On the issue of PAC’s, Mr. President, let me say that I have never believed that PAC’s per se are an evil in the current system. On the contrary, PAC’s are a very healthy instrumentality of politics. PAC’s have brought people into the political process: nurses, educators, small business people, senior citizens, unionists, you name it. They give you a 6-year term—amount any way you cut it. Spending will be under control, and we will be able to account for every dollar going out.

To a distressing degree, elections are determined not in the political marketplace but in the financial marketplace. Our elections are supposed to be contests of ideas, but too often they degenerate into megadollar derbies, paper chases through the board rooms of corporations and special interests. First, it would be corrected is not the abundance of par- ticipation but the superabundance of money. The culprit is runaway campaign spending.

The last five constitutional amendments took an average of 17 months to be adopted. There is no reason why we cannot pass this joint resolution, submit it to the States for ratification, and then apply the new spending limits to the 1996 election. Indeed, the amend-the-Constitution approach could prove more expeditious than the alternative legislative approach. Bear in mind that the various public financing bills that have been proposed would all be vulnerable to a Presidential veto. In contrast, this joint resolution, once passed by the Congress, goes directly to the States for ratification. Once ratified, it becomes the law of the land, and it is not subject to veto or Supreme Court challenge.

And, by the way, I reject the argument that if we were to pass and ratify this amendment, Democrats and Republicans would be unable to hammer out a mutually acceptable formula of campaign expenditure limits. A Demo- cratic Congress and Republican President did exactly that in 1974, and we can certainly do it again.

Mr. President, this joint resolution will address the campaign finance mess directly, decisively, and with finality. The Supreme Court has chosen to ignore the overwhelming importance of media advertising in today’s campaigns. In the Buckley decision, it pre- scribed a bogus if-you-have-the-money-you-can-talk version of free speech. In its place, I urge passage of this joint resolution, the freedom of speech in political campaigns amendment. Let us ensure equal freedom of expression for all who seek Federal office.

Mr. President, we have the Committee on the Constitutional System. I will read the first sentence by the dis- tinguished chairman at the time, Lloyd N. Cutler:

Along with Senator Nancy Kassebaum of Kansas and Mr. Douglas Dillon, I am a co-chairman of the Committee on the Constitutional System, a group of several hundred professors, former branch officials, political party officials, pro- fessors, and civic leaders, who are interested in
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The PRESIDING OFFICER (Mr. Kyl). The clerk will report.
The bill clerk read as follows:

The Senator from South Carolina [Mr. HOLLINGS] proposes an amendment numbered 3096.

Mr. HOLLINGS. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

After the first article add the following:

"—ARTICLE—

'Section 1. Congress shall have power to set reasonable limits on expenditures made in support of or in opposition to the nomination or election of any person to Federal office.'

'Section 2. Each State shall have power to set reasonable limits on expenditures made in support of or in opposition to the nomination or election of any person to State office.

'Section 3. The Government of General jurisdiction shall have power to set reasonable limits on expenditures made in support of or in opposition to the nomination or election of any person to office in that government. No State shall have power to limit the power established by this section.'

The amendment is as follows:

Mr. HOLLINGS. Mr. President, I yield the floor.

Mr. BYRD addressed the Chair.

The PRESIDING OFFICER. Under the previous order, the Senator from West Virginia is recognized.

UNITED STATES LEADERSHIP IN BOSNIA

Mr. BYRD. Mr. President, I have been recognized to speak out of order.

Mr. President, President Clinton has made a difficult and courageous decision. He accepted in leading a deployment of forces to implement the peace treaty that the parties to the Bosnia conflict have initialed and that they will soon sign. It was only through strong, persistent, and courageous leadership that these parties reached an agreement to end their atrocious, murderous, ethnic savagery at all.

What is crystal clear is that our European allies, half a century after the end of World War II, are dependent on the United States for leadership on the European Continent. This is a result of the continuous commitment of America to defend Europe against possible aggression by the Soviet empire for many years of and of the United States, being willing to provide the glue of military and economic leadership on the European Continent. This reliance on the United States is testimony, one might surmise, to a job that the United States did almost too well, too unstintingly, and under administrations of both political parties.

The argument can be made and will be made that this conflict in Bosnia is a European conflict, and that Europeans should police it without asking the United States to take the lead. That is a logical argument. I agree with it. But what is logical, unfortunately, is not reality in that sense.

The probable effect on the future of NATO—indeed, of Europe itself—of a decision by America not to lead this force can be gleaned from the history of the first half of this century, when the United States refused to take a leadership role, but there was later pushed into entering a European conflict and suffered heavy casualties in the process. I have lived through that. History is clear.

So to those who would say that this conflict is Europe's and that America need not be involved, they certainly have a point, but there is the history that I have been talking about, and there is in the history of this century a warning about the possible, even probable, results of that view in this situation that we are facing.

This vital military relationship with Europe also affects U.S. vital interests in other areas of the world, as well as in Europe. How will other nations depend on the United States, on our economic and diplomatic relationships, on the continuous commitment of America to defend Europe against possible aggression by the Soviet empire? How will America yield the floor.

The PRESIDING OFFICER. Under the previous order, the Senator from West Virginia is recognized.

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This vital military relationship with Europe also affects U.S. vital interests in other areas of the world, as well as in Europe. How will other nations depend on the United States, on our economic and diplomatic relationships, on the continuous commitment of America to defend Europe against possible aggression by the Soviet empire?

The outcome of U.S. failure to support NATO in this operation could affect U.S. interests in other parts of the world and at other times in history. The risks of not attempting to stabilize the conflict in the Balkans, resulting in the war's spreading outside the immediate theater of conflict that would be a likely consequence, are substantial and troubling. Left unchecked, the Bosnian conflict could spread to Macedonia, to other NATO allies and to Turkey and into an escalating ethnic conflict. That would be disastrous for the future with respect to the interests of NATO and certainly with respect to our own overall security interests.

I do not think I need to point out the damage to the NATO alliance that would result from such an eventuality. U.S. troops are still on watch over Iraq, which remains a threat to Kuwait and Saudi Arabia. Should Iraq move against Kuwait once again, would we be able to count on our allies to stand with us against Iraq a second time?

Whether we like it or not, as we are fond of saying, the United States is the world's sole remaining superpower. I find it ironic that some Senators who promote robust defense budgets, even at the expense of not funding needed domestic infrastructure, educational, and other needs, still shrink from endorsing a role for the United States which has been requested by the NATO alliance. Given our power, given the unbroken leading role we have played in Europe throughout the entire second half of this century, indeed, given the size of our military budget—I am not altogether supportive of that particular size inasmuch it is representative of the $7 billion increase over and above the President's budget, which I think is too much at this particular time—I oppose a stance that European powers are heavily dependent on the United States to lead NATO in implementing a peace treaty in Bosnia. It is, in fact, the case that NATO is now vigorous, and, as Secretary of Defense Perry testified before the Senate Armed Services Committee on Wednesday, December 5 of this year, more unified than ever before. Indeed, it is a major development that the French have now agreed to participate in the NATO Military Committee, reversing a standoffish position that has so often characterized France's relationship with NATO since the day of General Charles de Gaulle. It is both notable and telling that while there has been a lot of fiery rhetoric in Congress about not placing U.S. troops under the command of foreign military officers, none of our NATO allies, and none of the other nations sending troops to Bosnia, has expressed any reservation about putting their soldiers under U.S. command. Even the Russian troops who will serve under the U.S. forces at Tuzla and around Tuzla have had great difficulty, as a matter of fact, had greater difficulty in putting themselves under NATO command than under U.S. command. This is another testament, it seems to me, to U.S. leadership.

President Clinton and the United States accepted a leadership role in Bosnia only reluctantly. We all can recall the cries of outrage from across the United States a year or two ago, as media coverage of wartime atrocities in Bosnia were beamed into our living rooms. Pictures of refugees fleeing burned out homes, pictures of Nations observers chained to ammunition bunkers—all of these images led to cries for action by the United States, cries for immediate military reprisals from across the United States.

This was the reaction driven by the media, driven by the electronic eye, and perhaps it is too bad in a sense that we are to be driven and are to let ourselves be driven by that electronic eye, by that television tube.

But the President did not commit U.S. troops to such an effort, and in my opinion he would have been on dubious constitutional grounds had he done so. I know there are those who would say he is the Commander in Chief and that he has that authority. I am not going into that argument at this point but I am prepared to, and may do so before many days have passed—that is a very dubious ground of constitutionality. He
promised troops for our NATO mission on the ground in Bosnia only to help implement a peace agreement, and there was no peace agreement in sight at that time. Now, there is a peace agreement in sight, brought about in large part by the efforts of this administration, and we are faced with the decision of whether or not to support that agreement. We can be sure that those calls for U.S. military action would be heard again, should those tragic images be resurrected as a result of our unwillingness to follow through on this opportunity; that is what it is, an opportunity. That is all it is at the moment, an opportunity. We hope that it will eventually lead to peace, but it is an opportunity for peace.

In many ways, Bosnia represents the future of conflict in the world—an ugly, convoluted, and murderous small war with the ability to spread across borders and to convocate and to draw in neighboring nations and religio-ethnic groups. We are at a crossroads. We have a power prism to focus and sharpen the lines between warring factions, as there was in the cold war. We cannot intervene in all of these conflicts, of course, nor can we hope to solve all of them. And we can be averaged, shortened, or perhaps settled, as Iraq, and now, hopefully, Bosnia has been, or soon will be, by the combined efforts of the United States and other powers. No single nation can wade in and settle these conflicts as they are too deep-seated, too complex. This places a premium on coalition building and on cooperative efforts by interested parties. It is an approach that worked in Iraq, and hopefully will work in Bosnia.

The Dayton accords, to be signed in Paris on December 14, are impressive. They comprise the basis for a new start for all the people of Bosnia, covering territorial, military, civil, governmental, and electoral matters. Not every issue is finally resolved, nor every issue will be finally resolved, but additional negotiations are called for to resolve the outstanding issues. All three parties to the conflict have initiated these accords, and all three parties have pledged to abide by them. All the parties have sought this peace, and have made the many difficult decisions necessary to reach agreement on these accords. After almost 4 years of bitter conflict, this is truly an impressive achievement, and one that should not be underestimated.

The administration has done a good job in testifying before congressional committees, in laying out in detail the military plan and tasks that we would undertake to fulfill the NATO implementation plan. I have likewise participated in hearings by the Senate Appropriations Committee, of which I am a member. I have likewise participated in hearings by the Armed Forces Committee, of which I am a member.

So the administration has presented its case. It has responded to questions and, in my judgment, candidly.

We are all very cognizant of the risks of casualties, and the administration is very clear on that point, that there are risks of casualties. And we are rightly concerned about the prospects of mission creep and the resulting quagmire that could develop when unforeseen events tempt to push us into an undefined, interim and escalating involvement which none of us wants and which none of us—this Senator in particular—is willing to support. I believe that the administration is also concerned about these possibilities, and that we must reject any attempt to expand the limited military role in Bosnia beyond that which has been projected and assured as being the limit by the administration. We must guard against mission creep. We saw it happen, and then I insisted on an amendment. It was my amendment which drew the line in the sand and said, “This far, no farther. If there is a request, if there is justification for staying longer, then the home power—the pressure of Congress, and I seek authorization and appropriations.” So the power of the purse was the magic ointment that assured that such a line could be drawn and that it could be enforced.

The United States can be proud of its professional, volunteer military. These men and women are well trained, well armed, willing and ready to meet any challenge.

I have heard it said that they are the best America has ever produced. I am not one who would say that, having lived through two world wars, the war in Vietnam and the war in Korea. The United States has produced great armies, great navies, military forces manned by patriotic individuals who were well trained in past wars. So, some who fought in World War II may question the saying that today’s military is the best that America has ever produced. We can say that no better has been produced. And we can be proud of our military men and women.

These men and women are well trained, they are well armed, and they are willing and ready to meet any challenge, and they understand the risks they face better than I can ever hope to do. They are prepared to operate effectively and decisively in Bosnia.

So, I again commend the President in arranging the Dayton meetings and putting together this opportunity to bring peace to the Balkans. This was quite an achievement in reaching the Dayton accords, quite an achievement in bringing the parties together, quite an achievement in getting them to initial an agreement. It is a noble effort, it holds promise for a more enlightened 21st century than was the reality of the 20th century. American leadership, we have learned, makes a difference, and the world recognizes that American leadership makes a difference. Nevertheless, Mr. President, the American people are not anxious to risk their children to tame the excesses of other nations and ethnic groups. We do so very reluctantly and that is the way it should be. But when we contemplate an action such as the President has proposed in the Balkans, the chances of success are greatly enhanced if the execution of the operation is bipartisan and if the President has the support of the Congress in this endeavor.

I wrote to the President on October 13, urging him to seek the support of Congress before beginning this mission, and I commend him for replying in the affirmative on October 19. He promised to provide such a request “promptly after a peace agreement is reached.” And in the next 2 minutes, such a letter will be faxed, as I have just been advised.

It is a truism that when the President succeeds, America succeeds. And if he does not succeed, the Nation as a whole loses. The majority leader, Mr. Dole, has the experience and wisdom to understand this fundamental axiom of American foreign policy. And I commend our majority leader for throwing his support behind the President in the execution of this national commitment. He has done the right thing for our country, and I believe the Congress as a whole should step up to the plate and accept its share of the responsibility.

The Constitution places upon the Congress the authority to declare war. Is one to suppose that anything less than a declaration of war shifts the responsibility elsewhere? I will have more to say on this later.

We in the Senate should come down on this one way or the other. It is the responsibility of the Congress. That is where it is vested by the Constitution, and we should be willing to step up to the plate and vote one way or the other.

We have a constitutional duty to do so. We have an obligation to the people who voted to put us here to stand up for what we believe. One may wish to vote no; one may wish to vote aye. It seems to me that we have a responsibility to vote one way or the other. Ducking around the issue, hedging our bets and avoiding responsibility are not what the voters sent us here for. Our constituents deserve our considered judgment and expect us to take a stand on actions which will put their children at risk in foreign lands.

Our foreign military men and women will not have the opportunity to hedge their bets. They are being sent to battle, and they will stand at the plate. And we have a responsibility to do the same. The Constitution places that responsibility right as it should be.
the operation. I would prefer to use the word “authorizing” the operation. That is what we did in the case of the war in the Persian Gulf. Congress authorized the President of the United States, the words being these, and I quote: Joint Resolution Authorizing the Joint Resolution of Congress to Authorize the Use of United States Armed Forces in Support of Operations. So we should take a clear stand. It should have the effect of giving the President the aegis of congressional authority that there is no doubt in the minds of friend or foe. I can understand those who may wish to vote against such a measure, but vote we shall. It should have the effect, as I say, of giving the President a clear aegis of congressional authority, which will help our military forces to succeed, and thus help America to succeed.

Some have compared this upcoming vote to the vote authorizing President Bush to lead U.S. troops into combat in Operation Desert Storm against Iraq, and I just referred to that resolution. Unlike the Persian Gulf war, when an economic embargo that was only just beginning to bite into the Iraqi economy provided an alternative to war, an alternative that I favored—an alternative that I believe most of the Chiefs of Staff favored, an alternative that I seem to remember General Powell favored—that I favored at that time over risking U.S. service men and women to combat, there is no comparable current alternative in the case of Bosnia. All of the alternatives have been tried over the last 3 or 4 years and have played out whatever impact they had.

The economic embargo on Serbia did have an important influence on the behavior of President Milosevic in seeking a peaceful settlement. In the end, however, only resolute U.S. and NATO military power have created conditions in which all of the warring factions have sought peace and have sought to protect this fragile commitment with the strength of NATO presence.

This is unique. It is unique. In Bosnia, our mission is to deter further war, to ensure stability by our very presence, and to give all three parties a chance to vote against such a measure, but vote we shall. It should have the effect, as I say, of giving the President a clear aegis of congressional authority, which will help our military forces to succeed, and thus help America to succeed.

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West Virginians were playing a role even before West Virginia itself became a State. Even before it became the 35th star in the universe of stars, the people of West Virginia, the people beyond the mountains, beyond the Alleghenies played an integral part in the POW Information Center, an Army National Guard unit in Moundsville, WV, among the units that have been ordered to deploy to Bosnia. I wish them well, and I will remember their patriotism daily.

West Virginia is a great and patriotic State with a history of military service. As a percentage of her eligible population, West Virginia stands at the top—not at the bottom, but at the top—in combat casualties in U.S. military operations during the more than 200-year history of our Nation. West Virginia also has citizens whose heritage is Croat, Serb, and Bosnian Moslem—not many, but some. So the people of West Virginia, while most concerned about the fates of the U.S. soldiers who have been serving their country around the world, are not unmindful of the people of Bosnia.

In mid-November, the capital city of Charleston, WV, voted to become the sister city of Sarajevo, the capital of Bosnia. Churches, synagogues, religious institutions, and the University of Charleston have generously and selflessly volunteered to support Bosnian refugees, and I am moved by these acts of kindness. We in West Virginia may be physically isolated in our mountains. We do bemoan that fact. As a matter of fact, we look upon those mountains with immense pride. We may be isolated, but we are not unmindful of the plight of the common people of Sarajevo and the whole of Bosnia and Herzegovina.

This NATO operation in Bosnia in support of the Dayton peace agreement can be a turning point in the history of the Balkans. There are no other viable alternatives for this effort. There is no other alternative to the exercise of American leadership and resolve that has led to this last true attempt at peace.

The President is exercising leadership, and he is rightly seeking the support of the people and he is rightly seeking the support of the Congress of the United States for this mission. It is our constitutional obligation here in the Congress to consider this mission and the consequences of this mission for America and the world. It is our obligation to vote, and it is our obligation to watch over the execution of the mission.

I have been glad to see the Senate conducting the hearings and the debate that have led up to this upcoming vote. These have been lengthy hearings. They have been probing, and they have been thoughtful. There have been thoughtful questions and there have been thoughtful answers, and this could be a turning point in the history of the Senate.

I hope that we can give the troops and the President the guidance and support that I believe are necessary to see this mission through successfully.

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

Mr. BYRD, I thank the Chair.

Now, Mr. President, I read from a letter that has been sent to our Democratic leader, Mr. DASCHLE, and I understand that the Democratic leader has been forwarding this letter and that he authorizes my doing so.

The letter says in part—it is addressed to the leader:

Dear Mr. LEADER: I consider the Dayton peace agreement to be a serious commitment by the parties to settle this conflict. In light of that agreement and my approval of the final NATO plan, I would welcome a congressional expression of support for U.S. participation in a NATO-led Implementation Force in Bosnia. I believe congressional support for U.S. participation is immensely important.

Let me say that again.

I believe congressional support for U.S. participation is immensely important to the unity of our purpose and the morale of our troops.

Mr. President, I add my own feeling that congressional support is not only immensely important, but it is also vital, in my judgment, it is vital to the success of the effort.

Mr. President, I ask unanimous consent on behalf of Mr. DASCHLE that the entire letter be printed in the RECORD. There being no objection, the letter was ordered to be printed in the RECORD, as follows:

THE WHITE HOUSE,

Hon. Thomas A. Daschle,
Democratic Leader, U.S. Senate,
Washington, DC.

Dear Mr. LEADER: Just four weeks ago, the leaders of Bosnia, Croatia and Serbia came to Dayton, Ohio, in America’s heartland, to negotiate and initial a peace agreement to end the war in Bosnia. There, they made a commitment to put down their guns; to preserve a single state; to cooperate with the War Crimes Tribunal and to try to build a peace agreement in the Balkans. There, they came to Dayton, Ohio, in America’s heartland, to negotiate and initial a peace agreement to end the war in Bosnia. There, they made a commitment to put down their guns; to preserve a single state; to cooperate with the War Crimes Tribunal and to try to build a peace agreement.

All nations, and the United States, have a stake in the success of this mission. As I informed you earlier, I have authorized the participation of a small number of American troops in an American mission that will lay the groundwork for IFOR, starting this week. They will establish headquarters and set up communication systems that must be in place before NATO can send in its troops, tanks, and trucks to Bosnia.

America has a responsibility to help to turn this moment of hope into an enduring reality. As the leader of NATO—the only institution capable of implementing this peace agreement—the United States has a profound interest in participating in this mission, which will give the people of Bosnia the confidence and support they need to preserve their state and prevent the dangerous war in the heart of Europe from resuming and spreading. Since taking office, I have refused to send American troops to fight a war in Bosnia, but I believe we must help now to secure this Bosnian peace.

Sincerely,

BILL CLINTON.

Mr. BYRD. Mr. President, I thank the Senate. I thank Senators. I yield the floor.

Mr. KENNEDY. Mr. President, I strongly oppose the constitutional amendment we are debating this afternoon and will be voting on tomorrow. The first amendment is one of the great pillars of our freedom. It has never been amended in over 200 years of our history and now is no time to start.

Flag burning is a vile and contemptuous act, but it is also a form of expression protected by the first amendment. Surely we are not so insecure in our democratic system to tolerate a speech and the first amendment that we are willing to start carving loopholes now in that majestic language.

And for what reason? What is the menace? Flag burning is exceedingly rare. Published reports indicate that fewer than 10 flag burning incidents have occurred a year since the Supreme Court’s decision in Texas versus Johnson in 1989. According to the Congressional Research Service, there were reported incidents in 1988: 13 in 1991; 10 in 1992; 0 in 1993; and 3 in 1994.

Mr. President, this is hardly the kind of serious and widespread problem in
American life that warrants a loophole in the first amendment. Surely there is no clear and present danger that war-ants such a change.

Mr. President, we just heard the ex-cellent statement of the Senator from West Virginia. His statement empha-sized the importance of security. But, we otsts of peace in the Balkans are a mat-ter of great importance to the Amer-ican people. It is right that we will de-bate issues relating to national secu-rity and the well-being of our men and women under arms.

Similarly, it is essential that we dis-cuss our Nation’s domestic priorities as we address the budget and the deficit. Hopefully debate will lead to progress in an area of great importance.

We also would agree, I daresay, that the issues facing the children of this country—the strength of our edu-ca-tional system, the violence engulfing our society, the exposure to substance abuse and other health risks—are a matter of importance and deserve ex-ten-sive debate.

But, when you look at the incidents of flag desecration during the last 5 years—three in 1994, none in 1995—it is difficult to believe that we are going to take time to amend the first amend-ment to the Constitution. I think such an action fails the reality test.

I can remember listening to a speech given by Justice Bill Douglas, one of the great Supreme Court Justices. Students asked him what was the most im-portant amendment to the United States Constitution. Without hesitation, he said, “The first amendment.” That is the defining amendment for the preservation of speech and religion, so basic and funda-mental in shaping our Nation. Now, in the next 2 days, are we going to make the first alteration to the first amend-ment? I believe it is not wise to do so.

The first amendment breathes life into the very concept of our democ-racy. It protects the freedoms of all Americans—freedoms that the fundamental freedom of citizens to criticize their Government and the country itself, including the flag. As the Supreme Court explained in Texas versus Johnson, it is a “bedrock principle underlying the first amendment” that the Govern-ment may not prohibit the expression of an idea simply because society finds the idea itself offensive and disagree-able.

Of course we condemn the act of flag burning. The flag is a grand symbol that embodies all that is great and good about America. It symbolizes our patriotism, our achievements, and rever-ence our reverence for freedom and democracy.

But how do we honor the flag by dis-honoring the first amendment? Con-sider the words of James Warner, a former marine, prisoner of war for over 7 years.

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December 11, 1995

CONGRESSIONAL RECORD—SENATE

S18337

I believe that the States and the Federal Government do have the power to protect the flag from acts of desecration and dis-grace... Id. at 665 (Warren, C.J., dis-senting).

Justice Black—generally regarded as a first amendment “absolutist”—also dissented and stated:

It passes my belief that anything in the Federal Constitution bars a State from mak-ing the deliberate burning of the American Flag an offense. Id. at 619 (Black, J., dis-senting).

Justice Fortas agreed with Chief Justice Warren and Justice Black:

“The States and the Federal Government have the power to protect the flag from acts of desecration committed in public...” The flag is a special kind of per-sonality. Its use is traditionally and univer-sally subject to special rules and regula-tions... A person may “own” a flag, but ownership is subject to special burdens and freedoms of Speech and Equal Protection, in a sense; but it is property burdened with pecu-liar obligations and restrictions. Certainly... these special conditions are not unique to flag protection. “...The states and the Federal Government do have the power to protect the flag from acts of desecration committed in public...” The states and the Federal Government have the power to protect the flag from acts of desecration committed in public...” The states and the Federal Government have the power to protect the flag from acts of desecration committed in public...”

Mr. President: this is James Warner, former marine, prisoner of war for over 7 years.

“It hurts to see the flag burned, but I part company with those who want to punish the flag burners. I remember one interroga-tion [in North Vietnam] where I was shown a

photograph of Americans protesting the war by burning a flag. “There,” the officer said. “People in your country protest against your cause. That proves 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.” The officer was on his feet in an instant, his fists were up, and he stamped his right foot onto the table and screamed at me to shut up. While he was ranting, I was astonished to see pain, compounded by fear, in his eyes. I have never forgotten how I have I forgotten the satisfaction I felt at using his tool, the picture of the burning flag, against him.

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It hurts to see the flag burned, but I part company with those who want to punish the flag burners. I remember one interroga-tion [in North Vietnam] where I was shown a
the First Amendment itself—best ensures that it will be so confined. Even opponents of the new amendment agree on this point. Third, it’s vital to recognize that the proposed amendment is not in general tension with the free speech principle forbidding discrimination against specific messages in regulation of speech content. Those who desecrate the flag are doing so to communicate any number of messages. They may be saying that government is doing too much—or too little—about a particular problem. In fact, they may be burying the flag to protect the behavior of non-governmental, “patriotic” groups and to support efforts of the government to squash those groups. Laws under the proposed amendment would have to apply to all such activity, whatever the specific “point of view.” One, and only one, generalized message could be regulated: “desecration” of the flag itself. And regulation could extend no farther than a ban on one, and only one, mode of doing it: “physical” desecration. Finally, and perhaps most important, the amendment is not in general tension with the fundamental purpose of the proposed amendment. That purpose is to restore democratic authority to protect the unique status of the national flag as the preeminent symbol of our national consciousness. It is too old and too rich as the evolution of our country itself. I will never forget the emotion I felt as a child when I saw that famous photograph by photographer Joe Rosenthal—a photograph of the bloody raising of the American flag at Iwo Jima—capturing in one moment in time, the strength and the determination of this entire Nation.

The unique status of the national flag has been esteemed by constitutional scholars as diverse as Chief Justices William Rehnquist and Earl Warren, and Justices John Paul Stevens and Hugo Black. The flag flies proudly over official buildings, and many Americans fly them at their homes. I happen to be one of them.

Our history books are replete with the stories of soldiers, beginning with the Civil War, who were charged with the responsibility of leading their units into battle by carrying the flag. To them it was more than a task—it was an honor worth dying for, and many did. When one soldier would fall, another would take his place, raise the flag, and press forward. They would not fail. Their mission was too important; the honor too great; flag and country too respected to give anything short of their lives to succeed. (Mr. GRAMS assumed the chair.)

Mrs. FEINSTEIN. Mr. President, our flag is so important, because the flag is our country itself. Our history books are replete with the stories of soldiers, beginning with the Civil War, who were charged with the responsibility of leading their units into battle by carrying the flag. To them it was more than a task—it was an honor worth dying for, and many did. When one soldier would fall, another would take his place, raise the flag, and press forward. They would not fail. Their mission was too important; the honor too great; flag and country too respected to give anything short of their lives to succeed.

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I support Senate Joint Resolution 31 because it will return the Nation’s flag to the protected status I believe it deserves. The authority of the Nation to protect its central symbol of unity was considered constitutional until 5 years ago.

Today I have an opportunity to say why. I support a constitutional amendment to restore protection to our national flag. I do not so in deference to political expediency, but because I believe it is the right thing to do. And I have believed this for a long time. Today I have an opportunity to say why.

Our national flag has come to hold a unique position in our society as the most important and universally recognized symbol that unites us as a nation. No other symbol crosses the political, cultural, and ideological divides that make up this great Nation and binds us as a whole. The evolution of the American flag as the preeminent symbol of our national consciousness is as old and as rich as the evolution of our country itself.

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In the Senate Judiciary Committee’s markup of Senate Joint Resolution 31, I have proposed alternative legislation, with more specific, narrowly tailored language. Although this was not voted on in committee, Chairman HATCH offered to work with me to see if we could develop language with a more specific, narrowly tailored language. He has now proposed the substitute amendment that I believe represents a vast improvement over the original language of Senate Joint Resolution 31.

The original language would have allowed Congress, as well as each of the 50 States, to develop legislation prohibiting the desecration of the flag. In other words, each State would have been authorized to define “flag,” and Congress would have been authorized to define “desecration.”

The proposed substitute amendment offered earlier this afternoon would give Congress, and Congress alone, the authority to draft a statute to protect the flag. This will give Congress the opportunity to draft, carefully and deliberatively, precise statutory language that clearly defines the contours of prohibited conduct, something along the lines of the language I offered in committee. It should allow Congress to establish a uniform definition of “flag of the United States,” rather than allowing for 50 separate State definitions.
Because we are protecting our national symbol, it makes sense to me that Members of Congress, representing the Nation as a whole, should craft the statute protecting our flag.

Let me add that, from a first amendment perspective, a specific constitutional amendment prohibiting flag burning may be preferable to a statute. Harvard Law Prof. Frank Michelman made this point in a 1990 article, ‘‘Saving Our History: On Constitutional Iconography.’’

Although not himself an advocate of flag protective prohibitions, Professor Michelman argued that a specifically worded constitutional amendment related to flag burning would be preferable to a statute, posing fewer potential conflicts with the first amendment. An amendment pertaining exclusively to the flag would have little risk of affecting other kinds of expressive conduct. The purpose of his argument is that, when the Constitution is amended, Supreme Court review is not required.

By contrast, a statute, if challenged, could trigger, if the Supreme Court ultimately determined it to be constitutional. In other words, the Court would need to justify that the statute conformed to existing freedom-of-expression doctrine. In so doing, the Court would need to develop a rationale that could ultimately serve to justify prohibitions on other kinds of symbolic expression.

So, I believe that those who say we are making a choice between trampling on the flag and the first amendment are creating an unfair dichotomy. Protecting the flag will not prevent people from expressing their ideas through other means, in the strongest possible terms.

Furthermore, the right to free speech is not unrestricted. For example, the Government can prohibit speech that is not unrestricted. For example, the Court ultimately determined it to be a constitutional amendment pertaining exclusively to the flag.

Moreover, the right to free speech that causes imminent tangible harm, including face-to-face ‘‘fighting words’’—words that by their very utterance inflict injury or tend to incite an immediate breach of the peace—may be restricted.

The Flaming of the United States Flag: The Fundamental Right to Bear Arms

Mr. LEAHY. I thank the Chair and yield the floor.

Mr. LEAHY. Mr. President, the distinguished senior Senator, my good friend, is not on the floor at the moment. I ask unanimous consent that I might be able to proceed, and I assure my friends that if he arrives, I will yield the floor to him.

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

The Senator from Vermont is recognized.

Mr. LEAHY. I thank the Chair and my friend from Utah.

Mr. President, I find flag burning a reprehensible form of protest. We have, in this the greatest democracy on Earth, freedom of speech, and we have so many ways that we can have political debate and well-understood protests, that it seems like a slap at so many people in this country, certainly those of us who serve our country and are sworn to uphold its laws, and a particularly vile form of protest. It means an important symbol of our country and shows disrespect for the sacrifice so many have made to preserve our freedoms. I know that the veterans, the Gold Star Wives, whom the distinguished Senator from California just referred to, and others who are pressing for this amendment are doing so out of sincerity and out of a strong sense of patriotism.

I feel fortunate that we live in a country where the vast majority—I would say 99.9 percent—of our citizens share a deep respect for the flag and all that it symbolizes. It was one of the first things that my grandparents saw when they came to this country—not speaking a word of English but knowing it was a symbol of freedom.

Indeed, most of us do not need a law of the Constitution to require us to honor America. We do so willingly and spontaneously, as I do when I fly the flag at my home in Vermont. We salute the flag and we stand for ‘‘The Star Spangled Banner’’ because of the law comporting our behavior, but out of respect. These are ways of expressing our thanks to those who have left us such a rich heritage. It is that respect that comes voluntarily, that comes from a sense of our history and our debt to prior generations that inspires us to salute, not the command of law or outside imposition of any legal requirement.
I believe that we are being asked to take steps down a road that leads to a weakening of the Bill of Rights and our fundamental guarantees of freedom. No right is more precious than that of freedom, and no freedom is more important than the first amendment’s guarantee of free speech. For, as a constitutional amendment would restrict others’ free speech rights, it would set a dangerous precedent.

I have said many times on the floor—that the first amendment is the most valuable bedrock in our Constitution and in our democracy. The first amendment guarantees us the right to practice any religion we want, or no religion if we want. It gives us the right of free speech. That right is unprecedented in any other significant country on this Earth. It guarantees diversity of religion, diversity of belief, diversity of speech, and if you have protected diversity, you have a democracy.

I cannot believe that there is a Member of this Senate—certainly not myself—who was not offended, in 1989 and 1990, by the publicity-hungry flag burners. I am offended to see the American flag burned overseas. I am offended when our President and Commander in Chief and his family are subjected to mean-spirited and defamatory characterizations, and when nationally syndicated radio personalities talk about how to kill Federal law enforcement officers.

I am offended when anyone makes such a suggestion. I am offended by militant extremists who called our Senate colleague from Pennsylvania a representative of “corruption and tyranny” when he chaired a hearing exposing their ideas. I am offended by those who spew racial and ethnic hatred. I am offended that the Supreme Court of the United States required by article V of the Constitution with no fear that freedom or the flag is such a unique national symbol.

The very purpose of a Bill of Rights was to withdraw certain subjects from the reach of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts. One’s right to life, liberty, and property, to free speech, a free press, freedom of worship and assembly, and other fundamental rights may not be submitted to the people. They depend on the outcome of no elections.

The case is made difficult not because of the principles of its decision are obscure but because the flag involved is our own. Nevertheless, we apply the limitations of the Constitution with no fear that freedom to be intellectually and spiritually diverse or even contrary will disintegrate the social organization. To believe that patriotism will flourish if patriotic ceremonies are voluntary and spontaneous instead of a compulsory part of education is to underestimate the impact of the appeal of our institutions to free minds. We can have intellectual individualism and the rich cultural diversities that we owe to the value of protecting free speech.

Never in our history as a Nation have we narrowed the Bill of Rights through constitutional amendment. Our history has been one of expanding individual rights and protections.

I have deep respect for the position of William Detwiler, the national commander of the American Legion. When he testified this year before the Judiciary Committee he shared with us his concern that we, as a country, “slide down that slippery slope * * * every time we deny our heritage.” But the slippery slope that most concerns me is the proposed restriction of the Bill of Rights and the precedent such an amendment would create.

Constitutional amendment is inextricably related to defending the Constitution with no fear that freedom to differ is not limited to things that do not matter much. That would be a mere shadow of freedom. The test of its substance is the right to differ with a right that touch the heart of the existing order.

If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein. If there are any circumstances which permit an exception, they do not now occur to us.

If World War II itself was not a circumstance that permitted an exception to the first amendment to foster patriotism and national unity, I do not believe that the potential for disrespect to the Constitution is small. The government policy provides the justification required by article V of the Constitution for its amendment. There exists no compelling reason for limiting the Bill of Rights.

I am proud that earlier this year the Vermont Legislature chose the first amendment over the temptation to take popular action. The Vermont House passed a resolution expressing respect for the flag and also recognizing the value of protecting free speech “both benign and overtly offensive.” Our Vermont attorney general has urged that we trust the Constitution and not the passions of the times. Vermont’s action is consistent with its strong tradition of independence and commitment to the Bill of Rights. Indeed, Vermont’s own Constitution is based on our commitment to freedom and our belief that it is best protected by open debate. Vermont did not join the Union until the Bill of Rights was ratified and part of the country’s fundamental charter.

Vermont sent Matthew Lyon to Congress and he cast the decisive vote for the Bill of Rights for the first time in its dark days of McCarthyism when Senator Ralph Flanders stood up for democracy and in opposition to the repressive tactics of Joseph McCarthy. Vermont’s is a great tradition that we cherish and that I intend to uphold.

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Never in our history as a Nation have we narrowed the Bill of Rights through constitutional amendment. Our history has been one of expanding individual rights and protections.

Some of our colleagues contend that because the flag is such a unique national symbol, this will be the only time that we will be called upon to limit first amendment rights. Unfortunately, no one can give that assurance. Such a guarantee of the democratic protection of antigovernment, political speech. Nowhere else in the world or through history has there been such a profound commitment to allow unrestricted criticism of those in power. The shouts of protest disturb, provoke, challenge, and offend. We must tolerate them because they also demonstrate the strength of America.

Polls and resolutions of State legislatures are being cited as reasons to support this proposed constitutional amendment. I have thought hard about the argument that this is a populist amendment and that the States should be given the opportunity to decide whether to amend our Constitution. In many settings, this would be a strong argument. But here, we are confronted with a proposed amendment to the Bill of Rights, and to that part of the first amendment intended to protect the minority from an orthodoxy of the major-
the U.S. Supreme Court ruled that the conviction in the Eichman case resulted from an unconstitutional application of the Flag Protection Act of 1989. Little has changed. Indeed, in the intervening years, following the protests sparked by Desert Storm, there have been millions of flag burnings. None was reported in 1993 and three were reported in 1994, as the drive to amend the Constitution built momentum.

In 1994, 42 Senators stood up for the Bill of Rights and voted against the constitutional amendment we are voting on again today. I urge my colleagues to join with me to preserve the Constitution and protect the very principles of freedom that the flag symbolizes. Fundamental constitutional principles are too important for partisan politics or short-term expediency. Let us not allow this matter to devolve into the bumper sticker politics of emotion that has so dominated this Congress.

One of the best statements that I have ever seen in all the years that we have debated this issue is that by James H. Warner, a former Marine flyer who had been a prisoner of the North Vietnamese for 5 1/2 years. I ask that his full statement from July 1989 be printed in the RECORD and urge my colleagues to consider it.

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

[From the Washington Post, July 11, 1995]
**WHEN THEY BURNED THE FLAG BACK HOME—THOUGHTS OF A FORMER POW**

(By James H. Warner)

In March of 1973, when we were released from a prisoner of war camp in North Vietnam, we were flown to Clark Air Force base in the Philippines. As I stepped out of the aircraft I looked up and saw the flag. I caught my breath, then, as tears filled my eyes. It was then that we truly realized that the love for our flag was more than at that moment. Although I have received the Silver Star Medal and two Purple Hearts, they were nothing compared with the grand sight of our flag. I can still recall my first view of our flag.

Because the mere sight of the flag meant so much to me when I saw it for the first time after 5 1/2 years, it hurts me to see other Americans willfully desecrate it. But I have been in a Communist prison where I looked into the pit of hell. I cannot compromise on freedom. It hurts to see the flag burned, but I part company with those who want to punish the flag burners. Let me explain myself. Early in my imprisonment, the Communists told us that we did not have to stay there. If we would only admit we were wrong if we would only apologize, we could be released early. We did not, and we would be punished. A handful accepted, most did not. In our minds, early release under those conditions would amount to a betrayal, of our comrades of our country and of our flag.

Because we would not say the words they wanted us to say, they made our lives wretched. Most of us were tortured and some of my eyes was tortured for most of the summer of 1969. I developed beriberi from malnutrition. I had long bouts of dysentery. I was infected with intestinal parasites and lived in solitary confinement. Was our cause worth all of this? Yes, it was worth all this and more.

Rose Wilder Lane in her magnificent book "The Discovery of Freedom," said there are two fundamental truths that men must know in order to be free. They must know that all men are absolutely free. They must know that all men are born free. Once men accept these two ideas, they will never accept bondage. The power of these ideas explains why it was illegal to teach slaves to read. It could prove the falseness of their doctrine. We could subvert them by teaching them about freedom through our example. We could show them the power of ideas.

I do not appreciate this power before I was a prisoner of war. 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 Americans are not afraid of freedom." "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." The officer was in a instant. His face purple with rage. He smashed his fist onto the table and screamed at me to shut up. While he was ranting I was astonished to see pain, compounded by fear, in his eyes. I have never forgotten that look, nor have I forgotten the satisfaction. I felt at using his tool, the picture of the burning flag, against him.

Aneurin Bevan, former official of the British Labor Party, was once asked by Nikita Khrushchev how democracy differed from the Soviet view. Bevan responded forcefully that if Khrushchev really wanted to know the difference, he should read the funeral oration of Pericles.

In that speech, recorded in the Second Book of Thucydides’ "History of the Peloponnesian War," Pericles contrasted democratic Athens with totalitarian Sparta. Unlike the Spartans, he said the Athenians did not fear freedom. Rather they viewed freedom as something to be strengthened and protected. As it was for Athens, so it is for America—our freedom is not to be feared, for our freedom is our strength.

We do not propose 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 it. What better way to hurt them than with the subversive idea of freedom? Spread freedom. The flag in Dallas was burned to protest the nomination of Ronald Reagan. And 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.”

Don’t be afraid of freedom, it is the best weapon we have.

Mr. LEAHY. While a prisoner of war, he was shown a photo of Americans protesting the Vietnam war by burning a flag. His reaction was that of a true American hero: He turned the use of the photo against his captors by proclaiming that the photo proved the rightness of the cause of freedom. He was proud that we in this great country “are not afraid of freedom, even if it means that people disagree with us.” He used our words and “not be afraid of freedom.”

Mr. President, we are each custodians of the Constitution as well as custodians of the American flag. The 13 stripes represent the 13 States that brought about our Constitution. There are 50 stars, one for each State. I remember well the day that the 49th star was placed on that flag. I was in Maryland assisting in raising the first flag. And also in Alaska, once a territory, now becoming a State, Rita Gravel, the wife of a former Senator, climbed up a long ladder to pin the 49th star on a flag flying in our new State.

The flag does, in fact, represent America. The 13 stripes represent the 13 States and its symbols tells me to. That love is far more compelling than any law.
I am not sure how many Members of the Senate know, it has probably been said on the floor time and time again, but 48 of our States had laws on the books that punished flag desecration when the Supreme Court rejected such laws.

The Supreme Court has indicated that, absent an expression from the national legislature, State and Federal prohibitions on flag desecration are subject to strict first amendment proceedings. I do believe we now have the opportunity to give our people the opportunity to reverse that position.

I do not take too lightly, and I do not think Alaskans take too lightly, the concept of suggesting and supporting amendments to our Constitution. That is a powerful action to suggest, and a route that has not been taken too often by the Congress.

Mr. President, we pledge allegiance to our flag and to the Nation it represents. If anyone doubts, really, what it means to a veteran to consider the flag, I think a person should take a trip to the Iwo Jima monument.

I might mention that earlier in the day my colleague and friend from Massachusetts said there just are not many flag-burning desecrations, and he cited some statistics that I think are quite wrong.

Based on information provided to me by the Congressional Research Service, the number of flags desecrated have been as follows—and keep in mind these are ones that are reported, the ones where we had a furloughed. This does not begin to cover those flag-burning desecrations, and he cited some statistics that I think are quite wrong.

In 1990, at least 20 flags in this country; in 1991, at least 10 flags; in 1992, at least 7 flags; in 1993, at least 3 flags; in 1994, at least 5 flags; for a total of 45 flags between 1990 and 1994. In 1995, there have been over 20 flags so far.

Every one of these known flag-burning cases have been covered by the media. Millions of people have been affected by them. Millions of people have seen our national symbol desecrated and held in contempt.

Millions of people are beginning to wonder, why don’t we have any values in this country? Why don’t we stand up for the things that are worthwhile? Why don’t we stand up for our national symbol? What is wrong with that?

What this amendment would do is allow the Congress of the United States to pass legislation that would protect the flag. What is so wrong about that? It would allow us to do that. We could do whatever we wanted to.

If people did not like it, they could vote against it. They could filibuster it, where you have to get 60 votes in the Senate. The President, if he does not like it, has a right to veto it, where you have to get 67 votes in the Senate. It is not like people’s rights are being taken away because we pass a constitutional amendment.

I wonder if my friend from Massachusetts believes that the Supreme Court has so far construed the first amendment in such a way as to hold that it does not protect obscenity and child pornography?

He was attempting to make the point that this amendment is somehow an unprecedented infringement on the first amendment. With all due respect, that is a joke. Last Friday, I listed 21 instances where the Supreme Court upheld laws which limit speech or conduct which some have argued was protected by the first amendment. What we are considering here is not something new.

Some of those cases involved actual speech, including obscenity and limitations on Government speaking. Here, we are talking about offensive conduct, not speech. The Supreme Court, in one of its of days—in fact two off days, when you consider both Johnson and Eichman—decided by a 5 to 4 margin, that this offensive conduct rises to the dignity of free expression.

If my friend from Massachusetts thinks it is terrible to interfere under any circumstances with speech or conduct which some might argue is some kind of expression, what about laws prohibiting child pornography? What about laws against obscenity?

Put aside whether my friend would use the same legal test for determining what is obscenity or child pornography as the Supreme Court presently uses. He may not. But I think he would admit that would not want his children or grandchildren to be buffeted by child pornography.

If, after 200-plus years of legal precedent to the contrary, the Supreme Court were to decide, by a 5 to 4 vote, that obscenity is protected by the first amendment, I wonder if some of the people who have argued against this amendment, because they claim it infringes upon the first amendment, would oppose an amendment authorizing the prohibition of the sale and distribution of obscenity or pornography?

And if my friend felt that the 5-to-4 decision was wrong, would he view such an amendment as tampering with the Bill of rights, or just overturning a mistaken judicial interpretation of it? That would be demanding on the floor of Congress that supporters of an antiobscenity amendment determine in advance whether this or that hypothetical picture, photograph, or writing would qualify as obscene under the amendment?

I doubt it. I sincerely doubt it.

I want to say a few words about Senator BIDEN’s content-neutral constitutional amendment, and then I understand my friend from Idaho is here, and also my friend from Kentucky.

A few critics of the flag amendment believe that all physical impairments of the integrity of the flag, such as by mutilation or defacement, are illegal or no such misuse of the flag should be illegal. An exception is provided for disposal of a worn or soiled flag. This all or nothing approach flies in the face of nearly a century of legislation protecting the national symbol.

A content neutral amendment would forbid an American combat veteran from taking an American flag flown in battle and having printed on it the name of his unit and location of specific battles, in honor of his unit, the service his fellow soldiers, and the memory of the lost.

Then Assistant Attorney General for Legal Counsel William S. Barr testified placing the name of a military unit on a flag was an amendment August 1, 1989, and brought a certain American flag with him:

Now let me give you an example of . . . the kind of result that we get under the amendment. In 1989, there is the actual flag carried in San Juan Hill. It was carried by the lead unit, the 13th Regiment U.S. Infantry, and they proudly emblazon the name right across the flag, as you see; 1,078 Americans died following this flag up San Juan Hill.

. . . [Under a content neutral approach], you can’t have regimental patches on the flag that’s defacement . . . (Testimony, Assistant Attorney General William P. Barr, August 1, 1989, at 68).

I wish to empower Congress to prohibit the contemptuous or disrespectful physical treatment of the flag. A constitutional amendment which would force the American people to treat the American flag as the equivalent of placing the words “Down with the Fascist Federal Government” or racist remarks on the flag is not what the popular movement for protecting the flag is all about.

I respectfully submit that such an approach ignores well-understood by tens of millions of Americans. Moreover, never in the 204 years of the first amendment has the free speech clause been construed as totally ‘content-neutral.’" Prof. Richard Parker, of Harvard Law School, who believes in “robust and wide-open” freedom of speech and that it ought to be more robust than the Supreme Court currently allows in some respects, noted as much in his testimony: . . . Everyone agrees that there must be “procedural” parameters of free speech—invoking, for example, places and times at which certain modes of expression are permitted. Practically everyone accepts some explicitly ‘substantive’ parameters of speech content as well. Indeed, despite talk of content-neutrality, the principle of constitutional law is very clear: Government sometimes may sanction you for speaking because of the way the content of what you say affects others. What is less clear is the shape of this principle. There are few bright lines to define it.
The Supreme Court understands the principle to rule out speech that threatens to cause imminent tangible harm: face-to-face fighting words, incitement to violation of law, shouting "fire!" in a crowded theater. And it does not stop there. It understands the principle, also, to rule out speech that threatens certain intangible, even diffuse, harms, just for descriptive congeniality as pollution of the moral "environment."

I think he makes some very important points. But what about political speech critical of the Government? Is there not a bright line protected there, that, at least so long as no imminent physical harm is threatened? The answer is: No. The Court has made clear, for instance, that statements criticizing official conduct of a public official may be sanctioned if they are known to be false and damage the reputation of the official. There has been no outcry against this rule. It was set forth by the Warren Court—in an opinion by Justice Brennan, the very opinion that established freedom of speech as "robust and wide-open." [New York Times v. Sullivan, 376 U.S. 254 (1964)]. It has been reaffirmed ever since. Allowing the Congress to prohibit contemptuous treatment of the American flag does not unravel the first amendment or freedom of expression.

Incidentally, I might add that, in order to be truly "content neutral," an amendment must have no exceptions, even for the disposal of a worn or soiled flag. Once such an exception is allowed, as in the amendment, the very notion of content neutrality is stripped away. The Texas versus Johnson majority itself pointedly noted:

it we were to hold that a state may forbid flag burning wherever it is likely to endanger the flag’s symbolic role, but allow it whenever burning a flag promotes that role— as where, for example, a person ceremoniously burns a dirty flag—we would be saying that when it comes to impairing the flag’s physical integrity, the flag itself may be used as a symbol . . . only in one direction . . . . [366-67]"

Of course, if Congress proposes and the States ratify a constitutional amendment with such an exception, the Supreme Court would have to uphold the exception. But the amendment would not be content neutral. The suggestion that a worn or soiled flag is no longer a flag, in an effort to escape the logical inconsistency of a so-called content neutral amendment which would permit an exception for disposing a flag, is unavailing. Obviously, a worn or soiled American flag is still a flag, recognizable as such, even if no longer fit for display.

HIDING AMENDMENT—ODD FORM

Mr. President, I draw to my colleagues attention the text of the amendment by my friend from Delaware. I say with great respect to my friend, and to my colleagues, you will search the Constitution in vain for anything that looks like this. Even if I agreed with its substance, not in 206 years have we had a statute written in a fashion a to a right to vote on it up or down.

We have always prided ourselves on distinguishing our fundamental charter from a statutory code. This amendment is a textbook case of blurring that 206-year-old distinction. Mr. President, I notice the distinguished gentleman from Idaho is here. I will be happy to yield to him.

Mr. CRAIG. Mr. President, I thank the chairman of the Judiciary Committee.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAIG. Mr. Chairman, I thank the chairman of the Judiciary Committee for yielding to me and let me thank him personally for the tremendous leadership he has shown in the area of protecting our flag and offering forth this unique constitutional amendment. He has, without doubt, led the way for us to finally bring this critical issue to the floor.

I think it is high time that we listen, that we listen to not only the debate on the floor but, more important, we listen to the American people on the issue of flag protection and this amendment.

Some of my colleagues may remember that more than a year ago, I came to this Senate with memorials from 4 State legislatures—memorials urging Congress to take action to protect the American flag from physical desecration. Those memorials were inserted in the CONGRESSIONAL RECORD for all to see.

Now the number of those memorials has reached 49, and a 1995 Gallup Poll found that almost 80 percent of the American public supports a flag protection amendment.

This is a truly historic outpouring of support. And we have an opportunity to respond to the American people by passing a very simple amendment and sending it to the States for ratification: It authorizes Congress and the States to prevent one act: the destruction or defiling of the flag. It does not mandate participation in the Pledge of Allegiance. It does not force anyone to salute the flag. It will not mandate participation in the Pledge of Allegiance. It will not stop individuals from telling the world exactly and in detail how they feel about it or how they despise it. This simply allows, it compels the States to prevent one act: the physical act of desecrating the flag.

It is a very specific and well known and widely accepted in this country. Yet, when 80 percent of Americans say they are outraged by the physical desecration of the flag and ask us to protect it, our opponents accuse them of advocating censorship and interfering with the freedom of speech. I say to the American people, do not believe them. This amendment is narrowly tailored to allow protection only of the flag and only from physical desecration. It will not force anyone to salute the flag. It will not mandate participation in the Pledge of Allegiance. It will not stop individuals from telling the world exactly and in detail how they feel about it or how they despise it. This simply allows Congress and the States to prevent one act: the physical act of desecrating the flag.

The concern has been raised that physical desecration can be defined to mean anything. That may be true in a vacuum. But it is most certainly not true in the marketplace of ideas, where all points of view have an opportunity to be heard, and that is precisely where this definition is going to be written, Mr. President.

This amendment enables the American people to weigh in on this definition, whether they support or oppose protecting the flag. There will not be one dark night, one secret session to write this definition. It is going to be fully and openly discussed in every State in the Union.

Mr. President, Congress has acted once before to protect the flag. By the narrowest of margins, the Supreme Court stopped that effort from succeeding. However, the Supreme Court's decision did not change the value at
The PRESIDING OFFICER. The Senator from Kentucky is recognized.

Mr. MCCONNELL addressed the Chair.

The PRESIDING OFFICER. The Senator from Kentucky is recognized.

Mr. MCCONNELL. Mr. President, parlimentary question. Are we operating under a unanimous-consent agreement, are we not, that anticipates that I will send to the desk an amendment in the nature of a substitute which will be voted on in the morning, along with the other amendment?

The PRESIDING OFFICER. The Senator from Kentucky is correct.

AMENDMENT NO. 3097
(Purpose: To provide a substitute)

Mr. MCCONNELL. Mr. President, I therefore send that amendment to the desk to be held in abeyance by myself, Senator BENNETT, Senator DORGAN, and Senator BUMPERS.

The PRESIDING OFFICER. Without objection, the pending amendment will be set aside.

The clerk will report.

The bill clerk read as follows:

The Senator from Kentucky (Mr. MCCONNELL), for himself, Mr. BENNETT, Mr. DORGAN, and Mr. BUMPERS, proposes an amendment numbered 3097.

Mr. MCCONNELL. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment as follows:

Strike all after resolving clause and inserting the following:

SEC. 1. SHORT TITLE.
This Act may be cited as the "Flag Protection and Preservation Act of 1995".

SEC. 2. FINDINGS AND PURPOSE.
(a) FINDINGS.—The Congress finds that—
The power of these ideas explains why it was amenable to that revolution. It stocked arms and sent men to the front. It started a war for freedom. It spread the idea of freedom when he said ‘spread freedom. The best way to hurt them is with the subversion of freedom.’ That proves that you are wrong. ‘Freedom is the very source of their strength.’ "

"Pericles contrasted democracies and totalitarianism. They burn the flag because they hate America. Americans willfully desecrate it. But I have seen it for the first time after 5½ years, it hurts me to see other Americans willfully desecrate it. But I have been in a Communist prison where I looked into the pit of hell. I cannot compromise on freedom. It hurts to see the flag burned, but I part company with those who want to punish the criminal by punishing myself."

"Early in the imprisonment the Communists told us that we did not have to stay there. If we would only admit we were wrong, they said, we could be released early. If we did not, we would be punished. A handful accepted, most did not. In our minds, early release under those conditions was betrayal of all of our comrades, of our country and of our flag. Because we would not say the words they wanted us to say, they made our lives wretched. Some were tortured, and some of my comrades died. I was tortured for most of the summer of 1969. I developed beriberi from malnutrition. I had long bouts of dysentery and infested with intestinal parasites. I spent 13 months in solitary confinement. Was our cause worth all of this? Yes, it was worth all this and more."

"One can teach these ideas, even in a Communist prison camp. Marxists believe that ideas are merely the product of material conditions. However, one can change the ideas they produce. They tried to ‘re-educate’ us. If we could slow them that we would not abandon our belief in fundamental principles, then we could prove the falseness of their doctrine. We could subvert them by teaching them ideas that are not consistent with their purpose and intent to incite or produce imminent violence or a
breach of the peace and in circumstances where the person knows it is reasonably likely to produce imminent violence or a breach of the peace.

Second, subsection (b) would punish any person who steals or knowingly converts to his or her use, or to the use of another, a United States flag belonging to the United States, essentially destroys or damages that flag. Third, subsection (c) punishes any person who, within any lands reserved for the use of the United States or under the jurisdiction of any Federal, provincial, municipal, or State government, knowingly converts to his or her use, or to the use of another, a flag of the United States belonging to another person and who intentionally destroys or damages that flag.

The bill appears intended to offer protection for the flag of the United States in circumstances under which statutory protection may still be afforded after the decisions of the Supreme Court in United States v. Eichman1 and Texas v. Johnson.2 These cases had established the principles that flag desecration or burning, in a political protest context, is expressive conduct if committed to send a message, that the Court would review with exacting scrutiny; and legislation that proposed to penalize the conduct in order to silence the message or out of disagreement with the message, violates the First Amendment speech clause.

Subsections (b) and (c) appear to present no constitutional difficulties, based on judicial precedents, either facially or as applied. These subsections are restatements of other general criminal provisions with specific focus on the flag.3 The Court has been plain that conduct may be prohibited from exercising expressive conduct or symbolic speech with or upon the converted property of others or by trespass upon the property of another.4 The subsections are directed precisely to the theft or conversion of a flag belonging to someone else, the government or a private party, and the destruction of or damage to that flag.

Almost as evident from the Supreme Court’s precedents, subsection (a) is quite likely to pass constitutional muster. The provision on its face is drawn from the “fighting words” doctrine of Chaplinsky v. New Hampshire.5 In that case the Court defined the concept that was protected by the First Amendment, among the categories being speech that inflicts injury or tends to incite immediate violence.6 While the Court over the years has modified the other aspects of Chaplinsky, this has not departed from the holding that the “fighting words” exception continues to exist. It has, of course, laid down some governing principles, which are reflected in the subsection’s language. Thus, the Court has applied to “fighting words” the principle of Brandenburg v. Ohio,7 under which speech advocating unlawful action may be punished only if it is directed to inciting or producing imminent lawless action and is likely to incite or produce such action.8

A second principle, enunciated in an opinion demonstrating the continuing vitality of the “fighting words” doctrine, is that it is improper to punish only those “fighting words” of which government disapproves. Government may not distinguish between classes of “fighting words” on an ideological basis.9

Subsection (a) reflects both these principles. It requires not only that the conduct be reasonably likely to produce imminent violence or breach of the peace and in circumstances where the person intends to bring about imminent violence or breach of the peace. Further, nothing in the subsection draws a distinction between approved or disapproved expression that is communicated by the action committed with intent to incite.

There is a question which should be noted concerning this subsection. There is no express limitation of the application of the provision to conduct occurring in interstate commerce, jurisdiction, neither is there any specific connection to flags or persons that have been in interstate commerce. Therefore, application of the provision to actions which do not have either of these, or some other Federal nexus, might well be found to be beyond the power of Congress under the decision of the Court in United States v. Eichman1

In conclusion, the judicial precedents establish that the bill, if enacted, while not reversing Johnson and Eichman, should survive constitutional attack on First Amendment grounds. Subsections (b) and (c) are more securely grounded in constitutional law, but subsection (a) is only a little less anchored in decisional law.

We hope this information is responsive to your request. If we may be of further assistance, please call.

JOHN R. LUCKEY, Legislative Attorney, American Law Division.
The American flag protects even people who burn it; it prevails over both them and their abuse. That is one of the reasons the flag and the nation it stands for are so strong.

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Congress is about to put an asterisk on the First Amendment. I am talking about the constitutional amendment to "protect" the American flag from the kind of free expression that this country was founded on.

It is more commonly called the flag-desecration amendment, and it protects nothing, not the flag, not values and certainly not free speech.

It does represent a test of will that has Congress on the spot with The American Legion, Women’s Army Corps, Navy League and every other veteran, meaning veterans and fraternal organization.

The House in June overwhelmingly passed the amendment. The Senate showdown could come any day now. Sixty-seven Senate votes are needed to send it to the states for ratification. The protect-the-flag partisans are flooding lawmakers with tens of thousands of God-and-motherhood telegrams.

If it is approved, the essence of free political speech will drift from the first time from the right to free speech that gives every citizen a constitutional right to challenge, even cast aspersions on, the icons of government.

The federal government and the 50 states will have wide latitude in determining what desecrates the flag. Given the emotions over this issue, flag-themed soda cans, bumper stickers, one shirt on your back could be targets of local harassment. Already, there’s a town in Minnesota that wants to keep car dealers from flying more than four U.S. flags on their lots.

Yes, this is a Boston Tea Party type of issue even if we don’t think of it that way. And yes, few institutions, the press included, seem terribly bothered by it all.

The principal reason for the apathy: The issue has been miscast as a patriotic cause to safeguard the flag against the scruffy likes of Gregory Lee Johnson, and never mind our revered right to free speech.

It is easy to dislike Gregory Lee Johnson. He’s the radical protester who doused the American flag with kerosene, then put a match to it in front of the Dallas City Hall during the 1984 Republican National Convention.

He was arrested and convicted and no one cared. Except the U.S. Supreme Court, which ruled in 1989 that the flag-protection law used to prosecute Johnson violated his constitutional right to free expression.

“It was enough to make any American’s blood boil,” says William M. Detweiler, immediate past national commander of the American Legion. “We cannot allow our proud flag—and our proud nation—to be ripped apart, piece by piece.

Most Americans, and among them, hate what Johnston did to the flag. From the cradle, we are taught to respect it as a symbol of our unprecedented form of democracy. We stand up as children, little leaguers, girl scouts, soldiers, proud citizens.

Beyond that, many of us have family members who died fighting for the exception free speech. As conservative legal scholar Clint Bolick of the Institute for Justice told a House subcommittee, we can lock up flag burners. As conservative legal scholar Clint Bolick of the Institute for Justice told a House subcommittee, we can lock up flag burners. As conservative legal scholar Clint Bolick of the Institute for Justice told a House subcommittee, we can lock up flag burners. As conservative legal scholar Clint Bolick of the Institute for Justice told a House subcommittee, we can lock up flag burners. As conservative legal scholar Clint Bolick of the Institute for Justice told a House subcommittee, we can lock up flag burners. As conservative legal scholar Clint Bolick of the Institute for Justice told a House subcommittee, we can lock up flag burners.

It may seem unpatriotic to stand up for a right to burn the American flag. But the proposed amendment is not about whether it is patriotic to burn a flag. It is about whether it is right to limit the liberties for which our flag flies. A true patriot would answer no. Consider: It’s futile, even counter-productive, to try to require patriotism by law.

In fact, it would inspire greater respect for our nation to refrain from punishing flag burners. As conservative legal scholar Clint Bolick of the Institute for Justice told a House subcommittee, we can lock up flag burners. As conservative legal scholar Clint Bolick of the Institute for Justice told a House subcommittee, we can lock up flag burners. As conservative legal scholar Clint Bolick of the Institute for Justice told a House subcommittee, we can lock up flag burners. As conservative legal scholar Clint Bolick of the Institute for Justice told a House subcommittee, we can lock up flag burners. As conservative legal scholar Clint Bolick of the Institute for Justice told a House subcommittee, we can lock up flag burners.

Laws to protect the flag would be unworkable.

The proposal now before the House seeks a constitutional amendment to allow Congress and the states to pass laws banning physical desecration of the flag. It would require approval by two-thirds of the House and Senate and three-fourths of the states.

It’s called the flag burning amendment because one of its supposed, unholy threats is burning the flag to be the meagerst form of desecration.
But what counts as desecration of the flag? What if someone desecrated something made up to look like a flag with some flaw, like the wrong number of stars or stripes? Does that amount to flag burning? And what if some people consider rude or unpatriotic? Does that count as desecration?

The arguments could rage on and on, enriching the historical record of American democracy. But what about banning flag desecration with an amendment making respect for the flag compulsory, diminishes the symbol of that authority. If the prostesters turn violent or if they steal a flag, or if existing laws can be used to punish them. Flag burners are not worth a constitutional amendment. A great rule of thumb about amending the U.S. Constitution is: Think twice, then think twice again. Flag burning is not an issue that merita changing the two-centuries-old blueprint for our democracy. This nation’s founding fathers understood the value of dissent and, moreover, the value of the liberty to dissent. So should we.

From the La Crosse Tribune, June 7, 1995

Editorial

The U.S. Supreme Court ruled in a Texas case in 1989 that flag burning is protected by the First Amendment as a form of speech. The court’s decision didn’t go over very well with friends of Old Glory then, and six years later that ruling still sticks in the craw of many patriots and diminishes the nation’s founding principles. So the possibility of the Balkanization of the United States, where a problem. If the amendment succeeds, a problem that really is not a problem.

These sentiments give rise to the effort to make free expression guaranteed by the First Amendment, which has been held by the courts to include exasperation with government by burning the flag. At worst, this flag protection is an opening wedge in trimming away at the basic rights of all Americans to criticize its leaders. That is what the rights of all Americans is a form of protection that the Constitution was intended by the First Amendment, which has been held by the courts to include exasperation with government by burning the flag.

At worst, this flag protection is an opening wedge in trimming away at the basic rights of all Americans to criticize its leaders. That is what the rights of all Americans is a form of protection that the Constitution was intended by the First Amendment, which has been held by the courts to include exasperation with government by burning the flag. At worst, this flag protection is an opening wedge in trimming away at the basic rights of all Americans to criticize its leaders. That is what the rights of all Americans is a form of protection that the Constitution was intended by the First Amendment, which has been held by the courts to include exasperation with government by burning the flag. At worst, this flag protection is an opening wedge in trimming away at the basic rights of all Americans to criticize its leaders. That is what the rights of all Americans is a form of protection that the Constitution was intended by the First Amendment, which has been held by the courts to include exasperation with government by burning the flag.

The trouble is, it is an attempt to solve, through the Constitutional amendment process, a problem that really is not a problem. Flag burning is not rampant. It occurs occasionally. But making respect for the flag compulsory would, in the long run, decrease real respect for the flag.

The 104th Congress should put the flag burning issue behind it and move on to the nuts-and-bolts goal it was elected to pursue: reducing the deficit and promoting economic growth. It is difficult to come out against anything the president supports. It is difficult but not impossible.

An amendment to protect the flag from desecration is before Congress and has the lobbying in its favor. But what of the flag protection amendment? That is a small consideration. The Constitution was trivialized once before. The prohibition amendment had no business being made a constitutional chapter. It was not of constitutional stature. It could not have been done by statute alone. Its repeal showed that it was a transitory matter rather than being one of transcendent, eternal concern. That is small consideration. The Constitution was trivialized once before. The prohibition amendment had no business being made a constitutional chapter. It was not of constitutional stature. It could not have been done by statute alone. Its repeal showed that it was a transitory matter rather than being one of transcendent, eternal concern.

The flag protection amendment is trivial in that flag burning is not always and everywhere a problem. It is a move from a constitutional amendment to flags that the 18th offered to teetotaling.

If someone has a political statement to make and feels strongly enough, he’ll do the burning and accept the consequences. The consequences surely will not be draconian enough that flag burning would rank next best thing to a capital offense.

Congress has more pressing thing to do than put time into this amendment. Mr. DOLE. Mr. President, was leaders’ time reserved? The PRESIDING OFFICER. The Senator is correct.
Governor Weld is now helping to lead the fight in the Republican effort to return power to the States, and I wanted to call my colleagues’ attention to an outstanding column he wrote for today’s Wall Street Journal.

Entitled “Release Us From Federal Nonsense,” Governor Weld makes the point that President Clinton and his liberal allies simply do not understand that State governments are better able than Washington, DC in providing solutions that work.

As Governor Weld wrote:

All across the country, creative Governors are aggressively dealing with problems Washington is just beginning to wake up to. So if the question is whether State governments are responsible enough to dispense welfare and Medicaid funds in our own way— we’re more than ready.

I know I speak for the Republican majority here on Capitol Hill in saying to Governor Weld that we are more than ready to continue our mission of returning power to the States and to the people.

I congratulate Governor Weld on an outstanding article, and I look forward to working with him in the future—whether that be in Boston or in Washington, DC.

TRIBUTE TO JULIAN GRAYSON

Mr. DOLE. Mr. President, one of the true pleasures of serving as a U.S. Senator is the opportunity to cross paths with the dedicated public servants employed by the Senate.

No doubt about it, one of the most dedicated I have known during my years in the Senate is Julian Grayson.

Grayson, as everyone called him, retired last Friday after serving the Senate in four different decades.

From 1950 to 1964, Grayson moonlighted from his job as a Methodist minister by waiting tables here in the Capitol. In 1964, Grayson left the Capitol to work full time in the pulpit.

But retired from the ministry in 1983, he returned to the Hill, and he remained here until last Friday.

On this last day of service, Grayson spoke with pride about waiting on seven Presidents of the United States, and he said that the Senate was “almost a second home to me.”

The high regard in which Grayson is held by all Senators could be seen when our entire Republican caucus gave him a standing ovation at our policy lunch seven weeks ago.

There are countless others who would have joined in that standing ovation had they been there, including a number of Senate food service employees who have returned to college classes because of Grayson’s urging and encouragement.

Mr. President, I know I speak for all Senators in extending our thanks to Julian Grayson, and in wishing him a happy and healthy retirement.

I yield the floor to Mr. CHAFEE, who addressed the Chair.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. CHAFEE. Mr. President, I would like to join the majority leader in that tribute to Julian Grayson. It was my privilege to know him, as it was true of all the rest of the Senators here, Democrats and Republicans who have had the tremendous help of Julian Grayson, nor merely provided us with our cauliflower lunches or at the dining room downstairs. We are going to miss him. He certainly served this Senate and everybody in this Senate with great efficiency and respect and obvious enjoyment.

FLAG DESECRATION CONSTITUTIONAL AMENDMENT

The Senate continued with the consideration of the joint resolution.

Mr. CHAFEE. Mr. President, the underlying matter before us is a proposed constitutional amendment. I see the principal sponsor of that amendment on the floor, the senior Senator from Utah. I understand him to be a very thoughtful gentleman. I would like to ask the Senator from Utah if he would be good enough to respond to them.

My first question is, as I understand the amendment that he has now finally come up with after some changes, but I understand the amendment presently before us provides that a Federal statute can pass forbidding the desecration of the flag. Am I correct in that, I would like to ask the Senator from Utah?

Mr. HATCH. If the Senator would please state that again. I am sorry.

Mr. CHAFEE. It is my understanding that the amendment that the Senator presently has—there have been some changes in it, as I understand—but the amendment that he hopes for us to vote on tomorrow will be one that will permit the enactment of a statute forbidding the desecration of the flag? Is that correct?

Mr. HATCH. That is correct. All the amendment will say, should it be enacted tomorrow, is: “The Congress shall have power to prohibit the physical desecration of the flag of the United States, which would leave it up to Congress to enact a statute later, if Congress so chooses to do.”

Mr. CHAFEE. I wonder if the Senator would be good enough to help me. What would be an example of desecration of the flag?

Mr. HATCH. Whatever Congress calls it. Whatever Congress would decide to do. I suspect that Congress would pass a fairly narrow statute.

Mr. CHAFEE. Such as burning the flag?

Mr. HATCH. I presume that Congress would delineate very carefully what type of burning of the flag would be prohibited under the statute. I suspect Congress would also try to narrowly define what really brings contempt upon the American flag. But, in any event, I think we would all be able to make that determination.

I suspect it would be very narrow. I suspect that there would not be any concern about using representations of the flag as emblems for clothing or articles of clothing, sportswear and so forth, just actions that would bring the flag into contempt.

Mr. CHAFEE. Would the Senator help me? Do we have a very serious problem here? What brings this statute to the floor, this need for a constitutional amendment?

Mr. HATCH. We know, from the Congressional Research Service, of at least 45 flags that have been desecrated between 1990 and 1994, and in this year alone there have been over 20 additional desecrations.

Now, those numbers represent only part of the problem. Because, as the Senator from Rhode Island knows, millions of people see reports on television and in other news media of every flag that is burned or desecrated. So each flag burning or desecration affects millions and millions of people across this country.

Mr. CHAFEE. In 1993, as I see it, from the Senator’s own statistics, there were three examples of a burning of the flag.

Mr. HATCH. There may have been many more, but three that the Congressional Research Service knows about. Millions of people, we believe, were informed of those three flags that were burned, and millions of people were offended by it.

Mr. CHAFEE. Now, this burning of the flag, I assume that is looked on as a very troublesome procedure.

Mr. HATCH. Only where the flag is brought into contempt, where people deliberately, or contemptuously treat it in a destructive manner.

Mr. CHAFEE. Now, let me.

Mr. HATCH. Excuse me. We certainly would make exceptions for soiled or damaged flags that do need to be destroyed.

Mr. CHAFEE. Let me take a look at the Boy Scout handbook here.

Mr. HATCH. Sure.

Mr. CHAFEE. In the Boy Scout handbook, of which there has been 35 million, it says regarding the flag: “If it is torn or worn beyond repair, destroy it in a dignified way, preferably by burning.”

We have a pretty serious problem here, I suspect, if these Boy Scouts are burning the flag. What would we do? Would we send them to jail?

Mr. HATCH. First of all, I think my good friend listened to me earlier, when I talked about actions that bring the flag into contempt, contemptuous conduct with regard to the flag. Of course, I think any statute in this area would make it very clear that the respectful disposal of a soiled or worn out flag, including by burning, would certainly be acceptable.

Mr. CHAFEE. Let us take the situation, we have got two flag burnings taking place outside of a convention hall. One we have a bearded, untidy protester that is burning a flag. The other we have a Boy Scout in uniform, and he is burning the flag, shall we say, in accordance with the handbook. He is
burning the flag in a dignified fashion. What happens? Could you help me out?

Mr. HATCH. First of all, I do not think you would find a Boy Scout burning a flag outside a convention hall, even in a dignified fashion.

Mr. CHAFEE. Suppose he chose to? He is a good Boy Scout. He is going for a Star badge. So he is burning it in a dignified fashion.

Mr. HATCH. Let us say we have a flag that is soiled or otherwise ready for destruction being burned in a dignified fashion.

Mr. CHAFEE. Let us assume the bearded protestor.

Mr. HEFLIN. Let me—

Mr. CHAFEE. No, your chance will come.

Mr. HATCH. I doubt any young person or Boy Scout would be doing that. But if they could show that was the case, that they were respectfully disposing of a worn or soiled flag by burning it, do I not think anybody is going to find any fault. Where that was the case, the law would not make a distinction between the Boy Scout and someone who has a beard or was disheveled in appearance. But I would have a difficulty in determining any circumstance in which the public burning of a flag would not be held contemptuous, unless it was literally a Boy Scout procedure whereby they are burning a soiled or otherwise worn flag.

Mr. CHAFEE. Now, we have a further problem. Up in my State, the good ladies of 100 years ago did a magnificent hooked rug. It is on display. And it has a flag on it, American flag. That was made as a rug to walk on. Now, if the good ladies of Providence, RI, should do a hooked rug now and put it down and we walked on it, what would we do? Would they go to jail?

Mr. HATCH. Well, I would certainly believe that the distinguished Senator from Rhode Island, like myself, would have a little more respect for the ability of Congress to do a good job of defining what constitutes desecration of the flag. I have no doubt that Congress would not do penalize conduct where it is clear that the flag is not being treated with contempt, such as the display of hooked rug which may include a depiction of a flag. What would constitute contempt for or desecration of the flag would be determined by whatever conduct Congress passes, in the event this amendment is ratified and becomes part of our constitution.

But let us be honest about this subject. We have all seen beautiful sweaters, we have seen beautiful ties, we have even seen sports equipment containing representations of the flag. I cannot imagine anybody in Congress prohibiting that. I think Congress would only be concerned with those instances where the flag is physically treated with contempt. Of course, we all know what that is, and that, in turn, would be determined by the courts of law in accordance with the statute we enact.

Now, if the distinguished Senator from Rhode Island is concerned about it, then he has 534 other people who he can work with to insure that whatever flag protection statute is adopted is not too broadly written, so that it results in action being taken against people who are wrongfully defacing or otherwise treat the flag with contempt.

Frankly, I have total confidence in the Congress of the United States coming up with a very narrowly prescribed, I would hope, very narrowly prescribed statute on what exactly is holding the flag in contempt, what exactly is desecration of the flag. We all know what it is. It is a little bit like obscenity. One of the Justices said, “I know what it is when I see it.” I think the Court will have to make that determination.

I suspect we in Congress will do a good job. If the distinguished Senator sits in Congress at that time, and he does not like what statute is advanced by Members of Congress, he has 534 people to which to appeal.

Let me make one last point. When Congress considers a flag protection statute under this amendment, assuming it is adopted, you will still have all of the other legal and procedural protections of the Senate, including the right to filibuster, which would require 60 votes for cloture. In addition, we will always have the President, who can veto any legislation we pass. But remember, and this is a key point, without this amendment, or something similar thereto, neither the Congress nor the American people will ever—will ever—be able to prohibit desecration of the American flag. So that is why this amendment is so important, and I think people understand that.

Mr. CHAFEE. Mr. President, to label this amendment as important is one of the great overstatements I have heard around this place.

Mr. HATCH. I do not think so.

Mr. CHAFEE. And overstatements are not rare in this Chamber, I might say. Here we are必须ing the full power of the Federal Government to go after something that has occurred 45 times in 6 years and, indeed, in 1 year there were three occasions.

Mr. HATCH. If I can comment—

Mr. CHAFEE. I will give you your opportunity.

Mr. HATCH. For a correction. Mr. CHAFEE. When time comes. Let me finish my statement.

What the Senator from Utah is proposing is to cover a situation which has rarely occurred in our country. He himself has said 45 instances of media coverage, and the truth of the matter is, the only time anyone burns a flag is when there is media coverage, except for these Boy Scouts, and he has assured me he is not going to send them all to jail if they follow the precepts of the handbook where it says burn the flag, if you do it in a dignified way, it is all right, according to the handbook.

I do not know what the law of the Senator from Utah is going to do them. But if they do it in a dignified way, it is all right.

What is going to happen, as clear as we are here today, is you pass this statute and how is somebody going to get attention? They are going to burn the flag that the Senator hopes they will come along and they will be dragged away in chains with handcuffs, with television all over the place.

Mr. President, I think this is serious business what the Senator from Utah is doing. What he is doing is adding an amendment to the Constitution that has served us for 206 years, and in the course of those 206 years, there have been 26 amendments. And, indeed, only 24 of them are still there because one passed and was subsequently repealed by another amendment, the so-called prohibition amendment. The 18th amendment was subsequently repealed.

What are those amendments about? Are they about how to sing the Star Spangled Banner, or about burning flags? The amendment to the Constitution that I alludes to is the greatest things our country stands for. They are about freedoms—the freedom to speak and the freedom to publish and the freedom to worship and the freedom from unlawful search and seizure, and the freedom from slavery and the right to vote—rights and freedoms. They are not about prohibitions. They are about rights. The right to vote, the right for women to vote, the right for those 18 years and older to vote. They are what this country is all about.

In my State, when we built the State House at the turn of the century, those who built it inscribed around the rotunda the following words in Latin. The translation is: “Rare felicity of the times when it is permitted to think as you like and to say what you think.” That all comes from the Constitution of the United States.

Now, we are trivializing the Constitution. We are adding words about desecrating the flag, which is a real problem in this country, in which 45 incidents have occurred over the past 6 years.

I just think it is a tragedy that we are spending time taking this great document, which is revered all over the world, not just in the United States, and trivializing by doing something about what is going to happen to the flag.

The second point is the one I have made about not only is this not a great problem, but the Senator from Utah has dealt with this subject for 6 years. The last vote we had on it was 5 years ago in 1990, and it has not come up since. But the Senator has been working on it, securing passage, dealing with it, and now, 24 hours before we vote, he has changed it.

I would like to ask the Senator from Utah, what prompts him, when he has been so deeply concerned with this matter, that suddenly he comes in at the last moment and changes it? I ask if there have been hearings in his committee on the language as he is now presenting it.
Mr. HATCH. The answer to the distinguished Senator is that because there has been criticism by some of our colleagues that under the amendment, as originally worded, we could have 50 different State statutes, we decided it is appropriate for Congress to be able to make the final determination with respect to protection of what is our national symbol. We therefore agreed to remove the language which would have given the State power to enact flag protection statutes, and limit this power to the Congress.

But I think the Senator from Rhode Island is neglecting a fact. The amendment itself does not forbid anything. It merely allows Congress to enact a flag protection statute. In enacting any such statute, the Senate would, of course, take into account the concerns of Senator CHAFEE and others. If my colleague does not believe that Congress can write a reasonable flag protection law, why should the American people trust us to do anything?

So, I think this issue has been considered. I think we all understand it. I think we all know what we are doing here. There is just one simple change in the amendment, and I think it is an appropriate change. I agreed to make that change, even though there are many who would prefer not to do so. So instead of both the Congress and the States having the constitutional authority to enact flag protection laws, under the revised amendment, only Congress would be able to do so.

In a very real sense, that is appropriate because we represent the whole country. We would have a uniform flag protection statute. It makes sense, and I would think the distinguished Senator from Rhode Island would be the first to admit that.

Mr. CHAFEE. I wonder if the Senator will be good enough to respond to the specific question.

Mr. HATCH. Sure.

Mr. CHAFEE. Has there been a hearing on the amendment as the Senator is now presenting it to this body?

Mr. HATCH. I think so.

Mr. CHAFEE. Or was it a hearing on the language previous to its changing it here?

Mr. HATCH. I think the hearing was on the all-embracing subject of whether or not we should protect our flag, and the issue of States’ rights came up during that hearing. It has been part of the discussion. There is nothing new here.

Frankly, I do not think you need a hearing to determine whether you should have 50 States do it or have the Congress. I think we are totally capable right here in the Senate of the United States to make that determination, and I believe that there are those who feel much more confident that this amendment is the way to go than there were those who supported having 50 States each with the power to enact a statute.

Keep in mind, the reason we did it that way to begin with—and it was part of the hearings—is because before the Johnson case was decided, we had 48 States plus the Federal Government with flag protection statutes. Frankly, this was not something that was ignored or not considered. So, no, there is nothing new here. We hope this hearing is useful to the public on our flag board, thereby enabling us to pass this amendment. Congress will then have the power to pass a flag protection statute, which will hopefully put a stop to desecration of the flag, which I happen to think is a very, very important thing. I am not alone. The vast majority of Senators believe in this. They should not be denigrated, just as we do not denigrate those who disagree. We think you are patriotic, intelligent Members of the Senate, that you believe in the value of the Constitution, in your own sense, and that you are fighting against this for good principles.

Well, we are fighting for it based on our own strongly held principles. This is not a political or partisan issue, as some have suggested. Some of us feel very deeply that the flag needs to be protected by a great Nation, and I am one of them.

Mr. CHAFEE. Mr. President, I do find it interesting that at this time, particularly in this Senate, where the idea of States rights is in such complete sway and we must give the States control over Medicaid, the welfare, and all the things, it is suddenly there is a reverse of course here in connection with this amendment, the amendment having been presented, in which it was either the Federal Government or the 50 States, has now, in the last 24 hours before the vote arises, been changed to eliminate the States having the power to prohibit the physical desecration of the flag.

Mr. President, it seems to me that we have a lot of things we ought to be about. It seems to me that what are we fighting for? Is it States’ rights? Why? Well, I think we all recognize our education system in the United States needs some attention. I think we are all concerned about the recent peace agreement in Bosnia, whether we should commit our troops or whether we should not commit our troops. We are all worried about the budget, how to balance it, what to do, what programs to increase, what programs to reduce. This is a matter of major concern to Americans. I believe our health care system is deserving of all the attention we can give to it. Each of these measures—and there are others we can think of—are deserving of the hard work and attention of this body.

Now, is flag burning an offensive act? Of course, it is; we all recognize that. And rightfully Americans are upset by it. But it seems to me that if we value the freedoms that define us as Americans, we will refrain from taking an action like this to amend our Constitution.

I just want to read two letters, one from a Boy Scout in Rhode Island, who wrote me on this subject:

DEAR MR. CHAFEE: I am a Boy Scout of troop 1 East Greenwich, and I am a member of the civil air patrol. I am writing to say that I am against amending the Constitution to prohibit burning the flag as a protest. I think this because, in this country, you have the right to protest peacefully. Burning the flag may be offensive. But if everything offensive were to be outlawed, then this country would not be as free as it is today. Thank you for your consideration.

Sincerely,

STEWARD FIELDS.

I would like to read another statement, by James Warner, a decorated marine who was held by the North Vietnamese as a prisoner of war for 5½ years. He wrote about his experiences and about the extraordinary power of the idea of freedom. This is what he said:

I did not appreciate this power before I was a prisoner of war. 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 I am right. We are not afraid of freedom, even if it means that people disagree with us.”

The officer was on his feet in an instant, his face purple with rage. He smashed his foot onto the table and screamed at me to “shut up.” While he was ranting, I was astounded to see pain, compounded by fear, in his eyes. I have not forgotten that look nor the satisfaction that I felt at using his tool, the picture of the burning of the flag, against him.

Mr. President, for those various reasons, trivializing of the Constitution, taking this document that provides the great freedoms that we all live by and putting in a provision about burning the flag—that is not the way we deal with the Constitution of the United States. What is next—that you have to stand at attention when they sing the Star Spangled Banner?

Mr. President, we have plenty of work to do around this body, and there are matters that ought to take our time, and we should not be spending it like this. We are dealing with a subject that is hardly an epidemic in the United States—45 instances in 6 years. Yet, we go to all this trouble to enact a constitutional amendment for it.

Mr. President, you cannot mandate respect or pride in the flag. I think it is far better to act from motives of love and respect than out of obedience. So I urge my colleagues to reject the amendment put forth by the Senator from Rhode Island.

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah is recognized.

Mr. HATCH. Mr. President, first of all, it is not 46 in 6 years; it is 66 in 6 years. This is just the Congressional Research Service’s figure. That does not include numerous other incidents of flag desecration that may have occurred, and it does not account for the millions of people who have seen our flag flying.
Senator CHAFEE.

I might add this to those who say there is no need for the amendment and that we are not faced with many flag desecrations: First, if we fail to provide legal protection to the American flag, it is we, as Members of Congress, who would be devaluing the flag. As Justice Stevens, one of our more liberal Justices, stated in his dissent in Johnson, "Sanctioning the public desecration of the flag will tarnish its value—both for those who cherish the ideas for which it waves and for those who would get the impression of martyrdom by burning it."

One year later, in Eichman, Justice Stevens wrote that the value of the flag as a symbol of the ideas of liberty, equality, and tolerance that Americans have passionately defended throughout our history has already been damaged as a result of this Court's decision to place its stamp of approval on the act of flag burning. We can and should act to correct that damage by restoring to Congress the power to protect our flag against physical desecration.

Moreover, the problem of flag desecration remains with us. I have to say that, earlier this year for example, two American flags were burned in Honolulu as a show of sovereignty for what protestors called the Kingdom of Hawaii and as a protest against statehood. There were other flag burnings during protests in Illinois and Pennsylvania. Last year, there was a flag burning during a demonstration against proposition 187 in California. A college student who tried to prevent a second such desecration was beaten by the protestors. In another instance, an American flag was burned during a news conference outside police headquarters in Cleveland, OH, after the U.S. Supreme Court let stand an Ohio Supreme Court ruling overturning the conviction of an individual who burned an American flag during a protest against the Persian Gulf War. Another flag was burned during a demonstration against capital punishment in Nebraska. I suspect there are many others.

To compare the burning of the flag by a Boy Scout—a soiled or otherwise worn out flag—to that of the bearded protesters, Gregory Johnson, is, I think, stretching it just a wee bit. Johnson held the flag in contempt, and there is no doubt that his burning of the flag was done for publicity purposes, so that millions of Americans would see and be affected by how he treated our flag.

Perhaps the Senator from Rhode Island sees little difference between the bearded protestors burning a flag to start a riot and the Boy Scout who ceremoniously burns a flag to dispose of it, as Boy Scouts are taught to do when flags are soiled or otherwise ruined.

Without this amendment they are both treated exactly the same. I find that offensive and reprehensible that we treat the respectful action of a young Boy Scout in burning a soiled or otherwise wornout flag; the same as the conduct—and it is "action," not "speech"—of a demonstration. Without this amendment, they are both treated the same.

Do my friends who make these kinds of arguments want there to be 60 Gregory Johnsons running around defiling the flag without fear of sanction? They may, but 80 percent of Americans disagree with them, and rightfully so. They may, but 312 of our colleagues over in the House disagree with them, and rightfully so. They may, but 49 States legislatures, including that of the Senator's own home State of Rhode Island, disagree with him. And the other supporters of this amendment, Republicans and Democrats alike, disagree with him as well.

I have only taken exception with a few of my colleagues when they ask why we are taking time to consider this amendment when we have so many important things to do. We spend time around here in so many desultory ways that don't amount to a hill of beans; it is about time we spent time on something this significant.

Ask the American Legion, the Veterans of Foreign Wars, the Gold Star Wives of America, and the millions of members of organizations who have joined together in the Citizens Flag Alliance why they brought us this proposal, or why they asked us to debate it.

Mr. President, we are debating legislation that many Americans consider a high priority. There are millions of them. I hope that the opponents of this measure would not argue that this citizen-initiated effort is unworthy of the debate by this august body.

I suggest my colleagues would be candid and should get all our work, including this amendment, done. There is nothing that would stop us from doing that; all we have to do is do it.

I would also call to my colleagues' attention that it was a very short time after the Bill of Rights was passed that the 11th amendment to the Constitution was added to it.

Why? It was added to it to overturn a bad Supreme Court decision, Chisholm versus Jordan. There have been other amendments to the Constitution overturning bad Supreme Court decisions. I think you have to look long and hard to find a Supreme Court decision much worse than the Johnson and Eichman decisions. They were 5-to-4 decisions, hotly contested by those who opposed them.

By the way, some of the most liberal people on the Court disagreed with those decisions, such as Justice Stevens. In the past, some of the most liberal Justices on the Court, including Chief Justice Warren, Abe Fortas, Hugo Black, a first amendment absolutist, and Justice Stevens, just to mention four, have all stated we have a right to protect the flag.

Now, all of a sudden, because of a wrong-headed 5-to-4 decision, the law is otherwise. Unfortunately, it cannot be changed by mere statute, as some would like to do so. The fact of the matter is, why do we have any concern at all? Why would we take so much time debating this when we ought to pass it without even much of a debate?

Let the States determine whether they want to ratify this as an amendment to our Constitution. Amending the Constitution is not a simple task. That is why we only have 27 amendments to the Constitution. Not only do we have to have a two-thirds vote in both bodies of Congress, but then have to get three-quarters of the States to ratify any proposed amendment.

The reasons some of my friends do not want this amendment to be adopted are multifold. I will not denigrate their reasons or patriotism in the process, but they should not denigrate ours, either, especially since we are in the vast majority, and the vast majority of people in this country feel the way we do.

The fact of the matter is that if three-quarters of the States would vote to ratify this, then it ought to be in the Constitution. I'd bet money that three-quarters of the States would vote for this amendment so fast that it would make the head of my dear friend from Rhode Island spin in the process. The fact of the matter is this is what the American people want, and the reason they want it, is because they value the flag of the United States, and devalue those who would hold it in contempt, as they should.

Mr. CHAFEE. Mr. President, I was interested in the presentation of the Senator from Utah. I am sure I should be impressed that 47 States, or whatever it is, asked Congress to pass this amendment including the legislature in my own State; I should be impressed by that.

It comes from the same Senator who in his own amendment has eliminated the States' power to pass laws in connection with the desecration of the flag.

On one hand, the States are people who should be listened to with great caution and respect; on the other hand, he eliminates them from his amendment 24 hours before it comes up for a vote.

Now, Mr. President, since we are quoting from the Supreme Court, and I might say he quoted extensively from the decision involving Texas versus Johnson. Johnson has gained greater fame from burning the flag than he ever would if he stood at attention and saluted it.

That, seems to me, Mr. President, is the reason people burn the flag. You
make it against the law and they will be out there to a far greater extent than they are now because that will get them attention. That is what they want. These are misguided individuals. Most of all, they want the police toći stand and drag them away from the scene of their alleged offense, that is to jail because they burnt the flag. Mr. Gregory Johnson is now famous, far more famous than if the situation had just been ignored.

This is what the Supreme Court said:

The way to preserve the flag’s special role is not to punish those who feel strongly about these matters, it is to persuade them that they are wrong. You courageous self-reliant men with confidence in the power of free and fearless reasoning applied through the processes of popular government, no danger flowing from speech can be deemed clear and present unless the incidence of the evil is so imminent that it may fall before there is an opportunity for full discussion. We can imagine no more appropriate response to burning a flag than waving one’s own, no better way to counter a flag burner than by saluting the flag that burns, no surer means of preserving the dignity even of the flag that is burned, than by, as one witness here did, [referring back to the situation in Texas] according to the remains a respectful burial. We do not desecrate the flag by punishing its desecration, for in doing so we dishonor the emblem it represents.

We have not discussed here today that the whole reason this is before us is that the Supreme Court of the United States has said this is a limitation on the freedom of expression. When you pass statutes such as suggested by the Senator from Utah.

So instead of expanding our freedoms, it is a limitation of our freedom. I think it should be rejected. I certainly hope it is.

Mr. HATCH. Mr. President, my friend quoted the Johnson decision “just persuade them that they are wrong.” My goodness, I guess you could apply that to anything. The reason that Gregory Johnson got so much notoriety out of his act of desecration was not because the Texas flag desecration was effectively enforced, it was because the statute was not effectively enforced. It is because he got away with it.

Had that statute been effective in preventing his flag desecration, we would never have heard of Gregory Johnson. The reason we have heard of him is because people were outraged by the action that he committed. “Perhaps they are wrong”—I guess that is what we should do with regard to marijuana usage. Do not treat our children in such a bad way.

Persuade them they are wrong.

A reason we punish people is to persuade them they are wrong. That is one reason why we have criminal laws. Let me tell you, Gregory Johnson would have learned a lot quicker than he is wrong if he had been punished under that Texas statute, instead of getting away with it as he did.

What if we just had 45 murders in this country? Would that mean we would not want to do something about murder? The fact of the matter is, I do not think it is a question of numbers here. It is a question of what is right and what is wrong.

I do not intend to be much longer on this. I notice the distinguished Senator from Alabama wants to speak, and I want to make a point to him. In my opinion, he is one of the people I most admire in this body. I think he can speak with authority on this issue, as much if not more than any other person.

But for those who have been so critical about this, let me just ask a few questions. The equal protection clause of the 14th amendment is an extremely important part of our Constitution, as is the first amendment. Let us just assume that the year is 1900, just a few years after the Supreme Court’s infamous 8-to-1 decision in Plessy versus Ferguson, interpreting the equal protection clause as permitting separate but equal state facilities. Suppose 49 legislatures had called for a constitutional amendment to overturn that decision, which is what is the case here. Suppose 312 Members of the other body had voted for a constitutional amendment that would deny to any person equal access to the same transportation, education and other public facilities and benefits on the basis of race.

Now this amendment is before the Senate. Would my friend be arguing, in 1900, “Oh, I deplore and detest the States’ separation of races, but the Supreme Court has just told us by an overwhelming majority that the equal protection clause must allow separate but equal facilities, so there is nothing Congress can or should do about it?”

Would the Senator view the amendment as amending the equal protection clause, or just reversing a tragically erroneous interpretation of that clause?

Would my friend be arguing that, as much as he disagrees with Plessy versus Ferguson, the equal protection clause is what the Supreme Court says it is and he should vote against the amendment overturning Plessy? Of course not. The same situation is now before us. The Supreme Court has misconstrued the first amendment, after all these years, in 1989––misconstrued it.

We do not have to acquiesce in that error. It was a 5-4 decision. They were wrong. Article V gives us a right to amend the Constitution and change that which we feel needs changing. Something that has been done before. I cite the 11th amendment, among others. The question is, and I think this is a legitimate question, and in this sense certainly my colleague from Rhode Island raises a good point, this is: Is it important enough to the Senate to overturn the Supreme Court decisions in Johnson and Eichman? Is it important enough to restore to the American people the power they had for 200 years to protect the national emblem, our American flag?

A majority of this body, and hopefully a constitutional majority of this body, say yes, you are doggone right it is. And I am one of them, and so is the distinguished Senator from Alabama. So I yield the floor.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. CHAFEE. Mr. President, I can only assume the Senator from Utah was being facetious when he started suggesting that murder is no different from the burning of the flag.

I also would point out, as I am sure the Senator from Utah knows being a constitutional scholar, that the equal protection amendment expanded freedoms in the United States. It did not limit freedoms; it expanded them. Whereas this amendment is a limitation on the freedom of expression, and there is a whole of a difference right there.

So, Mr. President, it is my great hope that this constitutional amendment will be rejected.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. HEFLIN. Mr. President, first, let me thank the distinguished Senator from Utah, Senator HATCH, for his kind words that he said about me earlier. Unfortunately, I was not on the floor. I had an appointment that I had to leave, so I did not hear him. But I thank him very much.

I want to make some distinctions. One is the difference between constitutional language and implementing legislation. In the 11th amendment, there is a limitation on what can be done by the Congress if that constitutional amendment is adopted. It says the Congress has the power to enact the following law, and then sets out what that law in some specificity.

The Hatch amendment basically allows Congress to be able to enact legislation dealing with the physical desecration of the flag, and all of these matters pertaining to rugs, Boy Scouts and others. That amendment, I think, being a constitutional scholar, can be taken care of in implementing legislation.

There is a distinction between constitutional language and implementing legislation. So, by adopting very brief language which gives authority to Congress to adopt implementing legislation, it does not mean that you are going to have a situation where it would be unlawful to walk on a hooked rug or where it would be unlawful to burn a flag in a situation where it has been torn or soiled or something of that nature. That is for implementing legislation to be able to address in order to take care of that situation.

The next matter I want to address is the issue pertaining to triviality. I think we have entered a stage in our society where we look at things that are extremely important sometimes as being trivial. We look to some things and we say that they are trivial, but I think we have trivialized so many values and symbols that, basically, we no longer have anything that is sacred. I
think it is time that we have some matters, including symbols, that are sacred in this United States.

We have seen the deterioration of morals, we have seen the deterioration of respect for institutions and for traditions, and I think it is time we look at some of these concerns that are very important to this country. I think the flag is, and I think the flag ought to be sacred.

I have spoken previously and recited statements of the feelings of certain great protectors of the first amendment, such as Justice Hugo Black, Justice John Paul Stevens, and Chief Justice Earl Warren, and their feelings toward the Constitution and the right to protect the flag. I think, when you look at their writings and see how they express themselves on this, that is an answer to those who feel that this is something that will take away from the freedoms or that Congress is invading an area that it should not invade. I think we also have a right to likewise prohibit desecration of the American flag without impinging on Americans’ right to freedom of speech.

I strongly support a constitutional amendment to prevent the desecration of that flag. As an original sponsor, along with Senator Natch, I urge our colleagues to join in protecting the sanctity of this symbol of our great nation. As I have said before on the Senate floor, I feel that the Supreme Court decision in Texas versus Johnson, incorrectly places flag burning under the protection of the first amendment. In my judgement, it is our responsibility to change that decision and return the flag to the position of respect it deserves.

Few people would disagree with the argument that the American flag stands as one of the most powerful and meaningful symbols of freedom ever created. Justice Stevens calls the flag a national treasure like the Lincoln Memorial. He states that:

"Though the asset at stake in this case is intangible, given its unique value, the same interest supports a prohibition on the desecration of the American flag."

I must agree with Justice Stevens in his belief that the flag should be protected from such desecration. However, I believe that the flag also has a tangible value. I feel that the Court could have expressed an opinion that would have given protection to both values.

The flag holds a mighty grip over many people in this country. Its patriotic appeal is as unique to every person as a fingerprint. Thousands of Americans have followed the flag into battle and many, to our sorrow, have left these battles in coffins draped proudly by the American flag. Nothing quite approaches the power of the flag as it drapes those who died for it—or the power of the flag as it is handed to the widow of that fallen soldier. The meaning behind goes far beyond the cloth used to make the flag or the dyes used to color Old Glory—red, white, and blue. The flag reaches to the very heart of what it means to be an American. It would be a tragedy for us to allow the power of the flag to be undermined through desecration. Allowing the burning of that flag creates a mockery of the great respect so many patriotic Americans have for the flag.

As I have stated before, I feel on many different levels that the Supreme Court’s decision was wrong. I feel it was wrong for me personally, it was wrong for patriotism, it was wrong for this country, but perhaps most importantly, this decision was judicially wrong.

I want to emphasize that although I am a strong believer in first amendment rights, I recognize that first amendment rights are not absolute and unlimited. There have been numerous decisions of the Supreme Court that limit freedom of expression.

Some of history’s great protectors of the freedom of speech have agreed that the first amendment is not absolute. Many of these same people have agreed that the flag is a symbol of such profound importance that protecting it is permissible. I will be quoting from some of the protectors of the flag and the freedom of speech such as Supreme Court Chief Justice Earl Warren, Justice Hugo Black, Justice John Paul Stevens and Justice Oliver Wendell Holmes.

In a landmark case reflecting the Supreme Court’s long-held belief that the freedom of expression is not absolute, the Court in United States v. Stevens, 249 U.S. 47 (1919), stated that:

"The most stringent protection of free speech would not protect a man in falsely shouting fire in a theater and causing a panic."

Justice Oliver Wendell Holmes stated that:

"The question in every case is whether the words [actions] used are used in such clear circumstances and are of such a nature as to create a reasonable apprehension that they will bring about the substantive evils that the Congress has a right to prevent."

Clearly the indignation caused by the Johnson decision and the fisticuffs which have broken out in flag burning attempts show that flag burning should not be protected by the first amendment. What if the flag burning had occurred in wartime? Certainly, a clear and present danger would be present.

Justice Stevens wrote in Los Angeles City Council v. Taxpayers for Vincent, 466 U.S. 789 (1984), that:

"The first amendment does not guarantee the right to imply every conceivable method of communication at all times and in all places."

Arguments have been made that limitations on the freedom of expression refer only to bodily harm, however, the Supreme Court has recognized the need for individuals to protect their honor, integrity, and reputation when injured by libel or slander. This is seen in New York Times v. Sullivan, 376 U.S. 254 (1964), which provides standards regarding the libel of public figures and Time, Inc. v. Hill, 385 U.S. 374 (1967), which provides standards regarding libel of private individuals.

These holdings protect an individual’s honor from defamation. I see no reason why the honor of our flag should not be protected.

Arguments have also been made that limitations on free speech involve only civil suits. However, the Court has continually upheld criminal statutes involving obscene language and pornography. This is seen in New York v. Ferber, 458 U.S. 747 (1982), which upholds a New York statute regarding child pornography and Miller v. California, 413 U.S. 15 (1973), which provides much of the current legal framework for the regulation of obscenity.

The U.S. Supreme Court has even upheld criminal statutes involving draft card burning. In United States v. O’Brien, 391 U.S. 367 (1968), the Court upheld the Federal statute which prohibited the destruction or mutilation of a draft card. In reaching this decision the Court expressly stated:

"[w]e cannot accept the view that an apparently limitless variety of conduct can be labeled ‘speech’ whenever the person engaging in the conduct intends thereby to express an idea."

Certainly the people of America have a right to expect that the honor, integrity, and reputation of this Nation’s flag should be protected. If draft card burning can be prohibited, surely burning the American flag can also be prohibited. Does a draft card have more honor than the American flag? Certainly not.

In his dissent in Street v. New York, 394 U.S. 577 (1969), Chief Justice Earl Warren wrote:

"I believe that the states and the federal government do have the power to protect the flag from acts of desecration and disgrace . . . However, it is difficult for me to imagine that, had the court faced this issue, it would have concluded otherwise."

In this same case, Justice Hugo Black dissented stating:

"It passes my belief that anything in the Federal Constitution bars a state from making the deliberate burning of the American flag an offense."

I do not think that anyone can question that Hugo Black and Earl Warren were champions of the first amendment, but they recognized that the flag was something different, something special. The Supreme Court substantiated this view in Smith v. Goguen, 415 U.S. 567 (1974), when the majority of the court noted that:

"[c]ertainly nothing prevents a legislature from defining with substantial specificity what constitutes forbidden treatment of the United States flag."

Finally I would like to quote from Justice Stevens in Texas v. Johnson, when he says about the flag:

"It is a symbol of freedom, of equal opportunity, of religious tolerance and of good will for other people who share our aspirations. The symbol carries its message to disidents both home and abroad who may have a different understanding of its meaning at all in our national unity and survival."

I am a strong believer that the rights under the first amendment should be
fully protected and do not feel that an amendment changing these rights should be adopted except in very rare instances. The Founding Fathers, in drafting Article V of the Constitution, intended that if it would be extremely difficult to amend the Constitution, requiring two-thirds of both Houses of Congress and a difficult ratification process requiring the vote of three-fourths of the States. The history of this country shows that only 27 amendments to the Constitution have been adopted and only 17 after the Bill of Rights was ratified.

Some may ask Why have a constitutional amendment? Why not try legislation? To those I would say the Senate has passed statutes concerning flag desecration. As a body we have tried to oppose the protection of flag desecration, but statutory law has not worked.

We have a number of groups that have joined together to form the Citizen’s Flag Alliance. There are about 90 organizations worldwide representing this coalition. In addition, 46 States’ legislatures have passed memorizing resolutions calling for the flag to be protected by the Congress.

In my judgement, we should heed this thought and act decisively to ensure that the American flag remains protected and continues to hold the high place we have afforded it in both our hearts and history. The flag is indeed an important national asset which we must always support, we would support it in the future.

I want to share with you the eloquent words of Henry Ward Beecher’s work, “The American Flag,” which expresses this sentiment:

A thoughtful mind, when it sees a nation’s flag, sees not the flag only, but the nation itself. He reads in the flag the government, the principles, the truths, the history which belong to the nation that sets it forth.

I hope that my colleagues will consider the flag means to them, and in so doing support this amendment, which protects those ideals.

I would like to also make a statement concerning the issue pertaining to Judiciary Committee hearings on the amendment. I believe Senator Chafee asked if any hearings were held? There was an extensive hearing held on the proposed constitutional amendment.

During that hearing, as is the purpose of such proceedings, you have criticisms that are made, and you have alternatives that are offered. So, therefore, the committee had alternatives that were presented. The results of the hearing raised some legitimate issues pertaining to the question of having the States have their right to pass statutes banning flag desecration. The committee did not necessarily hear comments on the exact language of every possible constitutional word that might be considered.

But adopting only a record which shows that the hearing generally covered those questions which would apply to the particular issue of whether or not the States ought to have the right to ban flag desecration. So this issue was considered and members of the committee were informed as to the merits of allowing States to adopt implementing legislation.

Mr. President, I called the floor, Mr. GRASSLEY addressed the Chair. The PRESIDING OFFICER (Mr. HATCH). The Senator from Iowa.

MR. GRASSLEY. Thank you, Mr. President. I am glad to follow my good friend from Alabama in remarks that he made about the amendment. I want to speak about the amendment as well. So I want it very clear that in speaking today, I do so in strong support of the constitutional amendment to protect the American flag.

I also want to state that there is a pending amendment by the Senator from Kentucky, my good friend, Senator McCONNELL. And I also want to say that I rise in strong opposition to the Senator’s pending amendment to protect the American flag. I believe that Senator McCONNELL’s amendment is either unconstitutional or unnecessary. Either way, I oppose it and stand in strong support of the constitutional amendment.

I would like to remind my colleagues that I was one of only three Republicans who opposed Senator BIDEN’s statutory attempt to protect the flag when it passed this body several years ago. So I believed then, as I do now, that the only way to get American people to protect the flag is to change the Constitution.

The approach advocated by Senator McCONNELL can be interpreted in two ways. Under one interpretation, this statute provides important new protections for the American flag. If this is the correct interpretation, then the statute is unconstitutional under the Eichman decision which struck down Senator BIDEN’s statutory approach, passed by the Congress several years ago.

Under the other interpretation, this statute simply makes explicit protections for the flag which have already existed and which exist, not to protect the flag by the way, but to protect the public peace and property.

For example, the statute would criminalize the destruction of the flag if the destruction would lead to a breach of peace. Well, this probably is the case in most of the places where disorderly conduct crimes already on their statue books.

So in conclusion, I oppose the statute because it is either ineffective as a way of protecting the flag or it is unconstitutional as the Court has already expressed in the Eichman case when it struck down Senator BIDEN’s statute that I was one of only three Republicans to vote against that time.

Even though I am respectful of Senator McCONNELL’s good intentions, I still support the constitutional amendment. This amendment represents American democracy at work and American democracy at its best. I know that there is an overwhelming groundswell of support for this amendment. And I know that that is true because in my home State of Iowa, I have seen this expressed. On a daily basis I receive letters and phone calls from concerned Iowans asking that we in the Senate do what it takes to protect the flag. I think it is time then that we do the right thing, and doing the right thing is passing this constitutional amendment.

I also think this debate is timely as the first American troops are now arriving in Bosnia. I am skeptical of the mission to Bosnia, but I support, like all of my colleagues will do, the efforts of our troops there. I support the flag under which those troops will serve.

As a rule, Iowans are very politically active and aware. Any of my colleagues who have tried to run for President, because we are the first caucus State, know that to be a fact. But with this amendment, I have the definite sense that those Iowans not generally politically active have become deeply involved in the efforts to protect the flag.

In other words, this desecration amendment is part of a grassroots effort which has engulfed parts of our Nation which, for whatever reasons, chose not to participate in the political process. And I think that is a wonderful thing to have happened in our democratic system.

The protection of the flag amendment is the product of tireless efforts by the American people. I believe it would be wrong for the Senate to stand in the way of the American people on such a very important issue. Now, some may ask, ‘Why have the American people become so involved in this effort to protect the flag?’ I believe the answer lies in the rediscovery of core American values, like respect for authority. Our flag is the ultimate symbol of our great Nation and what America stands for.

For many years, starting with the so-called counterculture in the 1960’s, it seemed very fashionable to criticize our Government, to criticize our Nation as a people. That, of course, led to the lack of respect for our great country in general, and, of course, lack of respect for the flag in particular was one way of expressing an anti-authoritarian attitude. But those who had been proven wrong, and their shrill anti-Americanism has been thoroughly rejected.

With last November’s election returns—and those election returns were expressing the view of the American people—they were expressing a view of support of our American values like respect for authority and respect for our country. It seems to me that since last November, then, it is only natural that right now the American people are pushing harder than ever before to protect the American flag.

As far as I am concerned, we as a nation will never realize our full destiny as a great nation and a great people
until we instill respect and concern for America in every one of our young people. That is a very important reason to support this amendment. Passing this amendment will not do that by itself, but passing this amendment is going to express at the highest degree that we do have our basic constitutional principles that are a basis for our society, a basis for our society for 207 or 208 years.

Finally, we simply cannot discuss the flag without considering what the flag means to our society. Our great brave Americans who fought for freedom in far away places. I have to be somewhat apologetic when I speak about the sentimentalism that is legitimate for our veterans who have fought and died to protect our country, because, Mr. President, as I am sure you know, I have never served in the military.

I have an awesome responsibility when I speak about what our veterans have done for our country, not as an individual, do not fully understand, not having served in the military, exactly what that is all about. But that does not lessen my respect for what our veterans have gone through, and I praise the brave American who has sacrificed for the freedom that we all enjoy today.

On the other hand, I have seen the hand of the veteran very much in this grassroots movement to pass this constitutional amendment. So I say, if any of my colleagues in this body are undecided on this amendment, I encourage each of them to consult with the veterans and to remember all those Americans who have died protecting the American flag, protecting the principles of our great society that the American flag stands for.

Quite frankly, if we do not pass this amendment, I do not see how we can go home and look our veterans square in the eyes. With budgetary cutbacks forcing America to make difficult choices in all Federal programs, even including veterans programs, it seems to me that we at least we can do is pass this amendment out of respect for what they have done for our country.

With a President who has restored diplomatic relations with the Communist regime in Vietnam without a full accounting of our war dead and MIA’s, it seems to me that we can do is pass this amendment. And with Americans fighting in harm’s way, as they are with 6 million mines in Bosnia, of which we have only discovered 1 million of them thus far, it seems to me that the least we can do is to pass this amendment out of respect for what they have done for our country.

One constitutional amendment, or maybe more than one constitutional amendment to change the first amendment in other contexts. But I only want to speak about one of those efforts.

This irony certainly does not apply to everyone in the Senate who opposes this flag protection amendment, but there is a long list of people in past Congresses who opposed a flag amendment, and look at the list of people who have come around, favoring a constitutional amendment which amends the first amendment, the same as the flag amendment does, but in this other instance I am speaking of, it overturns the Buckley versus Valeo decision to permit limits on campaign expenditures.

In other words, I am saying to you, Mr. President, that we have Members of this body who say that the first amendment is so well written and historically has never been changed—and the Senate for whatever reason will never be changed in the future—that we should not pass an amendment that would protect the flag, thereby somewhat changing the first amendment as it relates to that aspect of free speech. But I say that is not right, we would say that it is all right to amend the first amendment when it comes to campaign expenditures and, in fact, if you overturn the Buckley case, it is a very significant limit on true political speech.

It would be a limit on verbal free speech as opposed to our amending the first amendment in the case of the flag which, at the most, can be said to be a limit on nonverbal free speech.

So, what we have here is a situation where those of us who favor this amendment and those who say it is wrong to amend the first amendment in the case of the flag, but that it is OK to amend the first amendment if you want to limit verbal free speech when it is difficult to imagine constitutional principles and precedents to be applied. That is a very selfish motive. People can be inconsistent. I am probably inconsistent on some things myself, but I think it really weakens the argument against this flag amendment. When you are in favor of amending the Constitution to limit campaign expenditures, which is the ultimate of political speech.

So, in conclusion, Mr. President, it is time that the Senate do the right thing. We tried it once before several years ago, did not pass it, and passed a statute that was declared unconstitutional by the Supreme Court. It seems to me there ought to be ample evidence that if we want to ultimately protect the flag and do it in the surest way possible, then the only right thing to do is for this Senate to pass this constitutional amendment.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will 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, let me just have printed in the RECORD a few items. I have a letter from Harvard Law School from Richard D. Parker, professor of law, with regard to the McConnell law and why it was unconstitutional and why it would become such by the Supreme Court of the United States as a statute. There is no way the statute could be held constitutional under the decisions of Johnson and Eichman.

I ask unanimous consent that the material be printed in the RECORD.

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

DEAR SENATOR HATCH: Recently, I have read two more commentaries on the constitutional validity of the proposed “Flag Protection and Free Speech Act of 1995.” One is a letter from Mr. Bruce Fein. The other is a memo from Mr. Robert Peck and two professors of law [hereinafter the Peck Memo]. Both claim that the narrow protection of the American flag afforded by the proposed statute is “content-neutral” and, hence, would be upheld by the Supreme Court under its established principles of First Amendment law.

The advice is inaccurate. The reason is that it is based on misunderstanding of the principles and precedents to be applied. Since the Fein letter is perfunctory and includes no claim not also made in the fuller Peck memo, I’ll concentrate on the latter, breaking into three categories its misconceptions of the view—as crystallized since 1989—of a majority of the Justices.

(1) The Flag Cases: Johnson and Eichman.

Peck Memo misreads these two decisions by tearing them away from the principle that undergirds them. It portrays parts
of the governing doctrine as if they constituted the whole. It mistakes the tip for the whole iceberg. Thus is betray a fundamental canon of good lawyering: that the parts are considered only in the context of the whole that makes sense of them.

The Memo observes that neither Johnson nor Eichman involved a proven breach of the peace or incitement to imminent violence through destruction of a flag and that neither involved theft of the flag that was destroyed. The flag’s verbal nature of the expression, but the government as a whole which is the symbolic of the flag. It thereby acts on an interest that, in fact, lies behind all three flags. It thereby obliterates the whole. It mistakes the tip for the focus, indeed, of the

the Flag Act of 1995, for instance, prohibits the interruption of speakers: such a law is neutral only respecting the content of the interruption but also respecting the content of the message interrupted."

The trick of interpreting court decisions involves discerning the deeper general principles that occasion them.

The Peck Memo, at times, to suggest that the principled focus of Johnson and Eichman opinions only in the context of the Supreme Court’s decision in Johnson and Eichman opinions themselves.

That is to say, it obscures the Court’s focus on what interest government is serving. In Johnson, the Court made this very clear: "It is, in short, not simply the verbal or nonverbal nature of the expression, but the governmental interest at stake that helps to determine the level of analysis to be applied."

Johnson and Eichman opinions themselves.

In fact, it would have made no difference if the Senator had not spoken. For the impermissible interest behind the proposed statute is clear on its face. It is entitled as an Act of Congress that gave rise to it. (495 U.S. at 406-407.) By the same token, the Eichman Court located the "fundamental flaw" of the statute in the "symbolism" of the American flag, for its determinate message is thus clearly discernible as a distinctive symbol of nationhood and national unity. The law is thereby struck down in R.A.V. by the Supreme Court under the foundational principle of Johnson and Eichman cases. In fact, it would have made no difference if the Senator had not spoken. For the impermissible interest behind the proposed statute is clear on its face. It is entitled as an Act of Congress that gave rise to it. (495 U.S. at 418-419; 496 U.S. at 318.)

When Senator McConnell introduced the proposed "Flag Protection and Free Speech Act of 1995" on the floor of the Senate on October 19, he affirmed that its purpose is not to ban flag-burning. Rather, he contended that the interest it is intended to serve is the interest in protecting the flag’s symbolic value intact and unadulterated. He pointed out that such conduct has been "disgusted by those who desecrate our symbol of freedom." Thus—by describing its purpose as the "primary sponsor of the proposed statute"—the Senator himself would be struck down by the Supreme Court under the constitutional protection for free speech or expressive conduct.

The third suggestion, the Court, no doubt, would treat these claims as frivolous.

Third, the Memo cites the R.A.V. opinion’s statement that it is permissible to single out the President for special protection against threats of violence “since the reasons why threats of violence are outside the First Amendment (protecting individuals from the fear of violence, from the disruption that fear engenders, and from the fact that the threatened violence will occur) have special force when applied to the person of the President.” (505 U.S. at 394.) The Memo then seems to suggest that the "reasons why" theft and destruction of stolen property and incitement to imminent violence are outside the Amendment protection . . .) is in its view greater there.” (Id.) Again, the Memo seems to suggest that the risk of theft and destruction of stolen property is greater when the property involved is a flag and that the risk of violence is less when applied to thefts of flags, destruction of stolen flags and incitement of violence through flag destruction. The third suggestion is utterly baseless, and the Memo offers no basis for it. The first two are patently ridiculous. The Court, no doubt, would treat these claims as frivolous.

Second, the Memo suggests that singling out the flag would not violate R.A.V., because of the Court’s recognition in Johnson and Eichman that the flag may be afforded protection against "generic" sorts of speech. What the Memo neglects to mention is what sorts of “special attention” the Court was referring to in those opinions. For the only “special attention” the Court was particularly involved in recognizing was that, according to the Court, justifies the “special attention” it approves. The proposed statute, by contrast, does employ government special status (under Article I). Of course, such a “neutral” alternative would not do what Senator

of the seminal scholarship that gave rise to the flag statute, it states, is inherently "pregnant with expressive content." It expresses a particular message as the "symbol of our country." (491 U.S. At 405.) It is "a symbol of nationhood and national unity," a symbol with a determinate range of meanings.

In Johnson and Eichman, the Court noted that government may "foster" and "encourage" respect for the flag. But the majority of the justices made clear that they regard use of the criminal law for special government protection of the flag—and the "determinate" message it conveys—as something utterly different. (491 U.S. At 418; 496 U.S. at 318.)

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McConnell wants to do—single out the flag for protection. The majority of the Justices will not, however, allow the Congress to do that now.

(2) The Mitchell Decision.

Reaching for its last straw, the Peck Memo cites the Mitchell decision. There, the Court upheld a statute under which a ‘sentence for aggregate assault’ was enhanced because the batterer ‘intentionally selected his victim on account of the victim’s race.’ The Memo claims that a ‘fair reading’ of Mitchell indicates that the proposed flag statute would not be struck down under R.A.V. Of all the misunderstandings of law in the Memo, this is the most startling. That Mitchell was not just that battery was not covered by the First Amendment. It was, more importantly, that race-discriminatory motivations—penalized under several civil rights statutes—does not involve expression covered by the First Amendment. The point is that the case, as the Court saw it, simply was not in any way about singling out ideas or messages, whether for prohibition or protection by government. That fully distinguishes Mitchell from any relevance to R.A.V. or to the proposed flag protection statute.

The failure of the misleading claims in the Fein Letter and the Peck Memo serves to reiterate that the proposed statute, like its predecessor in 1990, would be quickly struck down by the majority of the Justices. They only way to establish the constitutionality of this statute or of a less oddly extreme version of it is to amend the Constitution, as the farmers of Article V meant to do.

Put somewhat differently, is it not ridiculous that the American people are denied the right to protect their unique national symbol in the law? If a proposed legislature step back from all the legal talk on both sides of this issue, I ask, ‘Is there not room for a little common sense on this issue? Does the law have to be totally divorced from common sense?’

We live in a time when standards have eroded. My colleagues can see this erosion in the movies they, their children, and their grandchildren can watch. I am aware that our colleagues, Senators LIEBERMAN and NUNN, have expressed concerns about the erosion of standards in some aspects of daytime television. We all know the kind of lyrics our children can listen to.

Civility and mutual respect—preconditions for the robust expression of diverse views in society—are in decline.

Individual rights are constantly expanded, but responsibilities are shrived and scorned.

Absolutes are ridiculed. Values are deemed relative. Nothing is sacred. There are no limits. Anything goes.

It is ironic that a recent example of this trend involves the physical desecration of the American flag. In Oklahoma this year, a 17-year-old youth stopped at a convenience store and used a full-size American flag to clean oil from his car’s dipstick. A veteran saw it; the individual was arrested, but, of course, he will not be charged and prosecuted. When the veteran told the youngster he should not use the flag for that purpose, the individual was shrugged at and said that he could do whatever he wanted.

I realize, of course, that we pride ourselves on our freedom in the United States. I also understand that the I-can-do-anything-I-want attitude has a meaning for a generation, but, as a patriotic parent, I ask the young man who cared to tell me that the very same flag is unsacred to all. And that kind of thing.

I am concerned that there is some impression, at least in the media and by some other groups, that supporting the flag is some idea of just right-wing conservatives, and I have heard some Senators say, those veteran organizations, and that kind of thing.

In fact, the flag is the symbol of a constitution that allows Mr. Johnson to express his opinion. So, to destroy that symbol is again a step to destroy the idea that there is one nation on earth that allows their people to express their opinions whether they happen to be socialist opinions or neo-Nazi opinions or Republican opinions.

Mr. Powell then goes on to say something that is so very apt, whether it is to the young man who wiped his car’s dipstick with the American flag, or to the American Civil Liberties Union, or to an intemperate American Bar Association whose leader foolishly and wildly questioned the patriotism of flag amendment supporters. Indeed, Mr. Powell’s next words say something important to all of us. Here is what else he said:

Certainly, the idea of society is the banding together of individuals for the mutual protection of each individual. That includes, and that kind of thing, that we all love our country here in this country, and that is the reciprocal, willing giving up of unlimited individual freedom so that society can be cohesive and can 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, different backgrounds, society goes beyond the pale to trample with. (September 13, 1989 at 432-437).

We seek to teach our children a pride and love of country—a pride that will serve as the basis of good citizenship, and for sacrifice for our country’s interests, perhaps even the ultimate sacrifice. We hope our children will feel connected to the diverse people who are their fellow citizens. We ask our schoolchildren—we ask them, do not compel them—to pledge allegiance to the flag. But five members of the Supreme Court have somehow lost in this country, and that is the reciprocal, willing giving up of unlimited individual freedom so that society can be cohesive and can 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 goes beyond the pale to trample with.

The words of Justice John Paul Stevens, in his dissent in the Texas versus Johnson in 1989:

The idea 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 soldiers like John Basilone, the Philippines 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 430).

We must conclude that the proposed statute, whether it was a ‘symbol’ that was ‘sufficiently special to warrant . . . unique status,’ in our opinion, and from our experience, is no question as to the unique status and singular position the flag holds as the symbol of freedom, our Constitution and our Nation. As such, it must be defended and provided special protection under the law.

Sincerely,

RICHARD D. PARKER, Professor of Law.

Mr. HATCH. 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 the right to decide whether they wish to protect their beloved national symbol, Old Glory? Forty-nine State legislatures have called for a flag protection amendment. By a strong, bipartisan vote of 312-120, the other body has passed an amendment. So it comes down to each individual Senator, no doubt about it.

I would offer an amendment removing the States from the constitutional amendment. Only Congress will have the power to protect the flag. All of the concerns about conflicting or different State laws will not apply to the amendment that I, Senator HEFLIN, Senator FEINSTEIN, and others will ask you to support. We are going more than halfway to meet the concerns of critics. I think it is time for opponents of the amendment to join with us in offering protection of the American flag at the Federal level and to send the revised amendment to the other body where I am sure it will be accepted.

The words of Justice John Paul Stevens, in his dissent in the Texas versus Johnson it well:

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 soldiers like John Basilone, the Philippines Scouts who fought at Bataan, and the soldiers who scaled the bluff at
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Ask the American Legion, the Veterans of Foreign Wars, the Gold Star Wives of America, and the millions of members in the organizations in the Citizens' Flag Alliance why they brought us this proposal and why they asked us to debate it. Mr. President, we are debating legislation that the Americans consider a high priority. I hope that opponents of this measure would not argue that this citizen-initiated effort is unworthy of debate in this body.

I submit to my colleagues that we can, in fact, get all of our work done, including this amendment.

Now, let us clarify again this point: 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 miss this point and talk about how we cannot amend the Bill of Rights or infringe on free speech, 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 that an amendment which authorizes a statute banning flag burning does infringe free speech?

Some of my colleagues have said, I regret that the Supreme Court ruled the way it did. But now that it has, we cannot do anything about it. Even though it is difficult to think of flag burning as speech rather than conduct, since the Court says so, to override the Court is to override this newly minted so-called constitutional right. In my view, this concedes too much to the judiciary.

The Supreme Court is not infallible. Its Dred Scott decision is just one example of its fallibility. Let me pose a question to my colleagues.

Let us suppose that the year is 1900. A few years earlier, the Supreme Court had interpreted a very crucial part of the Constitution, the equal protection clause of the 14th amendment. In its 8-1 Plessy versus Ferguson decision, the Court had ruled that separate-but-equal is equal. The Constitution only requires separate-but-equal public transportation and public education. We all know that is not what the equal protection clause means. Suppose the other body, in 1900, had already voted 312-120 to pass a constitutional amendment that no State shall deny equal access to the same public transportation, public education, and other public benefits because of race or color.

Would any of my colleagues be arguing, oh, we cannot pass that amendment, that would be amending the sacred 14th amendment? Would they say, we wish the Court had ruled differently, but, the Court voted 8-1 that separate-but-equal is equal, so that must be what the 14th amendment means. Or, would we argue that the amendment I just mentioned amends the 14th amendment? Or would they admit it just overturns a deeply erroneous decision of the Supreme Court misconstruing the equal protection clause? And would my colleagues vote against an amendment overturning Plessy? I think we all know the answer to these questions.

We are faced with a similar situation here. The Court had misconstrued the first amendment. The question is this: Is it important enough to let the American people, through their Congress, decide if they wish to protect the American flag? Can we overturn erroneous Supreme Court decisions?

Let me be clear. I said this last week. Patriots can disagree about this amendment. Opponents of this amendment love the flag no less than the amendment's supporters. There are war heroes on both sides of this issue, including Members of the Senate. Similarly, supporters of this amendment are strong believers in the first amendment. It is simply a question of judgment on this amendment. Is it important enough to preserve the right to engage in one particular, narrow mode of expression with respect to this one object, and one object only, our flag? That is my choice.

As Justice Stevens said in his Johnson dissent, “sanctioning the public desecration of the flag will tarnish its value as a symbol of the nation’s central values regarding the protection of their flag? Or is it more important to preserve the right to engage in one particular, narrow mode of expression with respect to this one object, and one object only, our flag? That is my choice.”

The suggestion by some opponents that the flag protection amendment is a submicroscopic enhancement of its communicative value is so overblown that it is difficult to take seriously. Even one of the principal lawyers some opponents rely upon to make their case, Bruce Fein, himself a strong opponent of the amendment, has said, “The proposed amendment is a submicroscopic encroachment on free expression that would still leave the United States galaxies beyond any other nation in history in tolerating free speech and press.”

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.

I should add that the American people have a variety of rights under the Constitution. Indeed, if it was not for the right of the people to amend the Constitution, set out in article 5, we would not even have a Bill of Rights in the first place. The amendment process is a difficult one, but it is there. The Framers of the Constitution gave Congress a role in that process. They did not expect us to surrender our judgment on constitutional issues just because the Supreme Court rules a particular way. The Framers did not expect the Constitution to be routinely amended, and it has not been. But the amendment process is there as a check on the Supreme Court in an important enough cause. This is one of those causes.

I know we will debate a few amendments today. I know my friend from Kentucky will offer a statute as a complete substitute for the flag protection amendment. The McConnell amendment is a killer amendment. It will completely displace the flag protection amendment. 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.

I know my friend from Kentucky re- verses the flag. I know he would like to do something to protect it in law. But I say with great respect, his amendment is a snare and a delusion. We have been down this statutory road before and it is an absurd invitation. Let us return to the McConnell amendment. The American people, through their Congress, can, in fact, get all of our work done, including this amendment.

The Supreme Court has told us twice that a statute singling out the flag for special protection is based on the communicative value of the flag and, therefore, in its misguided view, violates the first amendment. Is it more important to preserve the right to engage in one particular, narrow mode of expression with respect to this one object, and one object only, our flag? That is my choice.
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 the Federal Government. Finally, the flag was not desecrated on Federal property. So the McConnell statute, which my friend from Kentucky will offer to replace completely the flag protection amendment, would not have reached Johnson.

What, then, is the utility of the McConnell statute, as a practical matter, other than to kill the flag protection amendment?

I urge my colleagues to support the substitute flag protection amendment that we will offer and to reject the other amendments to be offered today.

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Thomas, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the PRESIDING OFFICER laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

REPORT ON BOSNIAN SERB SANCTIONS—MESSAGE FROM THE PRESIDENT RECEIVED DURING THE ADJOURNMENT OF THE SENATE—PM 101

Under the authority for the order of the Senate of January 4, 1993, the Secretary of the Senate on December 8, 1995, received a message from the President of the United States, together with an accompanying report; which was referred to the Committee on Banking, Housing, and Urban Affairs.

To the Congress of the United States:

On May 30, 1992, in Executive Order No. 12308, the President declared a national emergency to deal with the threat to the national security, foreign policy, and economy of the United States arising from actions and policies of the Governments of Serbia and Montenegro, acting under the name of the Socialist Federal Republic of Yugoslavia or the Federal Republic of Yugoslavia, in their involvement in and support for groups attempting to seize territory in Croatia and the Republic of Bosnia and Herzegovina by force and violent utilizing, in part, the forces of the so-called Yugoslav National Army (57 FR 23299, June 2, 1992). I expanded the national emergency in Executive Order No. 12394 of October 25, 1994, to address the actions and policies of the Bosnian Serb forces and the authorities in the territory of the Republic of Bosnia and Herzegovina that they control.

The President committed pursuant to 50 U.S.C. 1614(c) and 1703(c) and covers the period from May 30, 1995, to November 29, 1995. It discusses Administration actions and expenses directly related to the exercise of powers and authorities conferred by the declaration of a national emergency in Executive Order No. 12308 and Executive Order No. 12394 and to expanded sanctions against the Federal Republic of Yugoslavia (Serbia and Montenegro) (the “FRY (S&M)”) and the Bosnian Serbs contained in Executive Order No. 12810 of June 5, 1992 (57 FR 24347, June 9, 1992), Executive Order No. 12381 of January 15, 1993 (58 FR 5253, January 21, 1993), Executive Order No. 12846 of April 25, 1993 (58 FR 25771, April 27, 1993), and Executive Order No. 12934 of October 25, 1994 (59 FR 54117, October 27, 1994).

1. Executive Order No. 12808 blocked all property and interests in property of the Governments of Serbia and Montenegro, or held in the name of the former Government of the Socialist Federal Republic of Yugoslavia or the Government of the Federal Republic of Yugoslavia, then or thereafter located in the United States or within the possession or control of United States persons, including their overseas branches.

Subsequently, Executive Order No. 12810 expanded U.S. actions to implement in the United States the United Nations sanctions against the FRY (S&M) adopted in United Nations Security Council (UNSC) Resolution 757 of May 30, 1992. In addition to reaffirming the blocking of FRY (S&M) Government property, this order prohibited transactions with respect to the FRY (S&M) involving imports, exports, dealing in FRY (S&M)-origin property, air and sea transportation, contract performance, funds transfers, activity promoting importation or exportation or dealings in property, and official and commercial, scientific, technical, or other cultural representation of, or sponsorship by, the FRY (S&M) in the United States.

Executive Order No. 12810 exempted from the restrictions (1) transactions through the FRY (S&M), and (2) activities related to the United Nations Protection Force (UNPROFOR), the Conference on Yugoslavia, or the European Community Mission.

On January 15, 1993, President Bush issued Executive Order No. 12831 to implement new sanctions contained in UNSC Resolution 787 of November 16, 1992. The order revoked the exemption for transactions through the FRY (S&M) contained in Executive Order No. 12810, prohibited transactions within the United States or by a United States person relating to FRY (S&M) vessels and vessels in which a majority or controlling interest is held by a person or entity in, or operating from, the FRY (S&M), and stated that all such vessels shall be considered as vessels of the FRY (S&M), regardless of the flag under which they sail.

On April 25, 1993, I issued Executive Order No. 12846 to implement in the United States the sanctions adopted in UNSC Resolution 820 of April 17, 1993. That resolution called on the Bosnian Serbs to accept the Vance-Owen peace plan for the Republic of Bosnia and Herzegovina, and if so by April 26, 1993, called on member states to take additional measures to tighten the embargo against the FRY (S&M) and Serbian-controlled areas of the Republic of Bosnia and Herzegovina and the United Nations Protected Areas in Croatia. Effective April 26, 1993, the order blocked all property and interests in property of commercial, industrial, or public utility undertakings or entities organized or located in the FRY (S&M), including properties and interests in property of entities (wherever organized or located) owned or controlled by such undertakings or entities, that are or thereafter come within the possession or control of United States persons.

On October 25, 1993, in a view of UNSC Resolution 942 of September 23, 1994, I issued Executive Order No. 12934 in order to take additional steps with respect to the crisis in the former Yugoslavia (59 FR 54117, October 27, 1994). Executive Order No. 12934 expands the scope of the national emergency declared in Executive Order No. 12808 to address the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States posed by the actions and policies of the Bosnian and Herzegovina and the authorities in the territory in the Republic of Bosnia and Herzegovina that they control, including their refusal to accept the proposed territorial settlement of the conflict in the Republic of Bosnia and Herzegovina.

The Executive order blocks all property and interests in property that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of United States persons (including their overseas branches) of: (1) the Bosnian and Hercegovina military and paramilitary forces and the authorities in areas of the Republic of Bosnia and Herzegovina under the control of those forces; (2) any entity, including any commercial, industrial, or public utility undertaking, organized or located in those areas of the Republic of Bosnia and Herzegovina under the control of Bosnian Serb forces; (3) any property, wherever organized or located, which is owned or controlled directly or indirectly by any person in, or resident in, the Republic of Bosnia and Herzegovina under the control of Bosnian Serb forces; and (4) any person acting for or on behalf of...
any person within the scope of the above definitions.

The Executive order also prohibits the provision or exportation of services to those areas of the Republic of Bosnia and Herzegovina under the control of Bosnia and Herzegovina, in the riverine ports of those areas of the Republic of Bosnia and Herzegovina under the control of Bosnian Serb forces. Finally, any transaction by any United States person that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate any of the prohibitions set forth in the order is prohibited. Executive order No. 12934 became effective at 11:59 p.m., e.d.t., on October 25, 1994.

2. The declaration of the national emergency on May 30, 1992, was made pursuant to the authority vested in the President by the Constitution and laws of the United States, including the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.), and section 301 of title 3 of the United States Code. The emergency declaration was reported to the Congress on May 30, 1992, pursuant to section 204(b) of the International Emergency Economic Powers Act (50 U.S.C. 1703(b)) and the expansion of that national emergency under the same authorities was reported to the Congress on October 25, 1994. The additional sanctions set forth in related Executive orders were imposed pursuant to the authority vested in the President by the Constitution and laws of the United States, including the statutes cited above, section 1114 of the Federal Republic of Yugoslavia (Serbia and Montenegro) Sanctions Regulations, 31 C.F.R. Part 585 (the “Regulations”), were amended to implement Executive Order No. 12934 (60 FR 34144, June 30, 1995). The name of the Regulations was changed to reflect the expansion of the national emergency to the Bosnian Serbs, and now reads “Federal Republic of Yugoslavia (Serbia and Montenegro) and Bosnian Serb-Controlled Areas of the Republic of Bosnia and Herzegovina Sanctions Regulations.” A copy of the amended Regulations is attached.

3. Effective June 30, 1995, the Federal Republic of Yugoslavia (Serbia and Montenegro) Sanctions Regulations, 31 C.F.R. Part 585 (the “Regulations”), were amended to implement Executive Order No. 12934 (60 FR 34144, June 30, 1995). The name of the Regulations was changed to reflect the expansion of the national emergency to the Bosnian Serbs, and now reads “Federal Republic of Yugoslavia (Serbia & Montenegro) and Bosnian Serb-Controlled Areas of the Republic of Bosnia and Herzegovina Sanctions Regulations.” A copy of the amended Regulations is attached.

Treasury’s blocking authority as applied to these vessels was upheld. In IPT Company, Inc. v. United States Department of the Treasury, No. 92 Civ 5542 (S.D.N.Y. 1994), the district court also upheld the blocking authority as applied to the property of a Yugoslav subsidiary and a U.S. entity. The case was subsequently settled.

4. Over the past 6 months, the Departments of State and Treasury have worked closely with European Union (the “EU”) member states and other countries to fully implement the U.N. sanctions against the FRY (S&M). This has included continued deployment of Organization for Security and Cooperation in Europe (OSCE) sanctions assistance missions (SAMs) to Albania, Bulgaria, Croatia, the Former Yugoslav Republic of Macedonia, Hungary, Romania, and Ukraine to assist in monitoring land and Danube River traffic; support for the International Conference on the Former Yugoslavia (ICFY) monitoring missions along the Serbia-Montenegro-Bosnia border; bilateral contacts between the United States and other countries for the purpose of tightening financial and trade restrictions on the former Yugoslavia; and FRY (S&M) bilateral meetings by financial sanctions enforcement authorities from various countries to coordinate enforcement efforts and to exchange technical information.

5. In accordance with licensing policy and the Regulations, the Office of Foreign Assets Control (OFAC) has exercised its authority to license certain specific transactions with respect to the FRY (S&M), which are consistent with U.S. foreign policy and the Security Council sanctions. During the reporting period, FAC has issued 90 specific licenses regarding transactions pertaining to the FRY (S&M) or assets to owners or controls, bringing the total specific licenses issued to 1,020. Specific licenses have been issued: (1) for payment of crews wages, vessel maintenance, and emergency supplies; (2) for the exportation of food, medicine, and supplies intended for humanitarian purposes in the FRY (S&M); (3) for the removal of the status of the unallocated debt of the former Yugoslavia by authorizing non-blocked U.S. credit available for sale in the United States; and (4) for the exportation of food, medicine, and supplies intended for humanitarian purposes in the FRY (S&M). Most recently, the Administration has addressed the status of the unallocated debt of the former Yugoslavia by authorizing non-blocked U.S. credit available for sale in the United States; and (4) for the exportation of food, medicine, and supplies intended for humanitarian purposes in the FRY (S&M).

During the past 6 months, FAC has continued to oversee the liquidation of tangible assets of the 15 U.S. subsidiaries of entities organized in the FRY (S&M). Subsequent to the issuance of Executive Order No. 12946, all operating licenses issued for these U.S.-located Serbian or Montenegrin subsidiaries or joint ventures were revoked, and the net proceeds of the liquidation of their assets placed in blocked accounts. In order to reduce the drain on blocked assets caused by continuing to rent commercial space, FAC arranged to have the blocked personality, files, and records of the two Serbian banking institutions in New York moved to se- curity Council sanctions. Additionally, the debt of the FRY (S&M) for which Slovenia is still the sole liability for a portion of the face value of the $4.2 billion unallocated debt of the FRY (S&M) for which Slovenia is still the sole liability for a portion of the face value of the $4.2 billion unallocated debt of the FRY (S&M) debt and pave the way for its entry into international capital markets.

Following the sale of the M/V Kapetan Martinovic in January 1995, five Yugoslav-owned vessels remain blocked in the United States. Approval of the UNSC’s Serbian Sanctions Committee was sought and obtained for the sale of the M/V Kapetan Martinovic (and the M/V Bor, which was sold in June 1994). During the FAC-licensed sales of the M/V Kapetan Martinovic and the M/V Bor, those vessels were removed from the list of blocked FRY (S&M) entities and merchant vessels maintained by FAC. As of October 12, 1995, five additional vessels have been removed from the list of blocked FRY (S&M) entities and merchant vessels maintained by FAC as a result of sales conditions that effectively extinguished any FRY (S&M) interest: the M/V Blue Star, M/V Budva, M/V Kotor, M/V Hanjan, and M/V Sumadija. The new owners of several other formerly Yugoslav-owned vessels, which have been sold in other countries, have petitioned...
FAC to remove those vessels from the list.

During the past 6 months, U.S. financial institutions have continued to block funds transfers in which there is a possible interest of the Government of the Republic of Croatia or an entity undertaking located in or controlled from the FRY (S&M), and to stop prohibited transfers to persons in the FRY (S&M). The value of transfers blocked has amounted to $375.5 million since the issuance of related Executive Order No. 12868, including some $13.9 million during the past 6 months.

To ensure compliance with the terms of the licenses that have been issued under the program, stringent reporting requirements are imposed. More than 318 submissions have been reviewed by FAC since the last report, and more than 130 compliance cases are currently open.

6. Since the issuance of Executive Order No. 12868, FAC has worked closely with the U.S. Customs Service to ensure that both prohibited imports and exports (including those in which the Government of the FRY (S&M) or Bosnian Serb authorities have an interest) are identified and interdicted, and that permits and exports go to their intended destination without undue delay. Violations and suspected violations of the embargo are being investigated and appropriate enforcement actions are being taken. Numerous investigations carried out during the prior reporting period are continuing. Since the last report, FAC has collected 10 civil penalties totaling more than $27,000. Of these, five were paid by U.S. financial institutions for violative funds transfers involving the Government of the FRY (S&M), persons in the FRY (S&M), or entities located or organized in or controlled from the FRY (S&M). One U.S. company and one air carrier have also paid penalties related to unlicensed payments to the Government of the FRY (S&M) or other violations of the Regulations. Two companies and one law firm have also remitted penalties for their failure to follow the conditions of FAC licenses.

7. The expenses incurred by the Federal Government in the 6-month period from May 30, 1995, through November 29, 1995, that are directly attributable to the declaration of a national emergency with respect to the FRY (S&M) and the Bosnian Serb forces and authorities are estimated at about $3.5 million, most of which represent wage and salary costs for Federal personnel. Personnel costs were largely centered in the Department of the Treasury (particularly in FAC and its Chief Counsel’s Office, and the U.S. Customs Service), the Department of State, the National Security Council, the U.S. Coast Guard, and the Department of Commerce.

8. The actions and policies of the Government of the FRY (S&M), in its involvement in and support for groups attempting to seize and hold territory in the Republics of Croatia and Bosnia and Herzegovina by force and violence, and the actions and policies of the Bosnian Serb forces and the authorities in the areas of Bosnia and Herzegovina under their control, continue to pose an unusual and extraordinary threat to the national security and the foreign policy and economy of the United States. The United States remains committed to a multilateral resolution of the conflict through implementation of the United Nations Security Council resolutions.

I shall use the powers at my disposal to apply economic sanctions against the FRY (S&M) and the Bosnian Serb forces, civil authorities, and entities, as long as these measures are appropriate, and will continue to report periodically to Congress on significant developments pursuant to 50 U.S.C. 1703(c).

WILLIAM J. CLINTON.

REPORT ORDERING THE SELECTED RESERVE OF THE ARMED FORCES TO ACTIVE DUTY, MESSAGE FROM THE PRESIDENT RECEIVED DURING THE ADJOURNMENT OF THE SENATE—PM-102

Under the authority of the order of the Senate of January 4, 1995, the Secretary of the Senate on December 8, 1995, received a message from the President of the United States, together with an accompanying report, which was referred to the Committee on Armed Services.

To The Congress of the United States:

I have today submitted to section 12304 of title 10, United States Code, authorized the Secretary of Defense, and the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Department of the Navy, to order to active duty, and any individual members not assigned to a unit organized to serve as a unit, of the Selected Reserve to perform such missions the Secretary of Defense may determine necessary. The deployment of United States forces to conduct operational missions in and around former Yugoslavia necessitates this action.

A copy of the Executive order implementing this action is attached.

WILLIAM J. CLINTON.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC-1670. A communication from the Director of the Office of Management and Budget, the Executive Office of the President, transmitting, pursuant to law, the report on appropriations legislation within five days of enactment; to the Committee on the Budget.

EC-1672. A communication from the Director of the Office of Management and Budget, the Executive Office of the President, transmitting, pursuant to law, the report on appropriations legislation within five days of enactment; to the Committee on the Budget.

EC-1673. A communication from the Director of the Office of Management and Budget, the Executive Office of the President, transmitting, pursuant to law, the report on appropriations legislation within five days of enactment; to the Committee on the Budget.

EC-1674. A communication from the Administrator of the Federal Aviation Administration, transmitting, pursuant to law, the report on the Traffic Division Avoidance System for the period July 1 through September 30, 1995; to the Committee on Commerce, Science, and Transportation.

EC-1675. A communication from the Secretary of Transportation, transmitting, pursuant to law, the recommendations of the National Academy of Sciences and other qualified organizations relative to environmental and operational safety of tank vessels; to the Committee on Commerce, Science, and Transportation.

EC-1676. A communication from the Deputy Associate Director for Compliance, Royalty Management Program, Minerals Management Service, Department of the Interior, transmitting, pursuant to law, notice of the intention to make refunds of offshore lease revenues where a refund or recoupment is appropriate; to the Committee on Energy and Natural Resources.

EC-1677. A communication from the Deputy Associate Director for Compliance, Royalty Management Program, Minerals Management Service, Department of the Interior, transmitting, pursuant to law, notice of the intention to make refunds of offshore lease revenues where a refund or recoupment is appropriate; to the Committee on Energy and Natural Resources.

EC-1678. A communication from the Deputy Associate Director for Compliance, Royalty Management Program, Minerals Management Service, Department of the Interior, transmitting, pursuant to law, notice of the intention to make refunds of offshore lease revenues where a refund or recoupment is appropriate; to the Committee on Energy and Natural Resources.

EC-1679. A communication from the Deputy Associate Director for Compliance, Royalty Management Program, Minerals Management Service, Department of the Interior, transmitting, pursuant to law, notice of the intention to make refunds of offshore lease revenues where a refund or recoupment is appropriate; to the Committee on Energy and Natural Resources.

EC-1680. A communication from the Administrator of the Department of Health and Human Services, transmitting, pursuant to law, a report relative to the Rural Health Care Transition Grant Program; to the Committee on Finance.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. GRAHAM:

S. 1662. A bill to amend the Agricultural Act of 1949; specifying that tomatoes are subject to packing standards contained in marketing orders issued by the
Secretary of Agriculture, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

S. 1465 would extend the Trade Act of 1974 to clarify the definitions of domestic industry and like articles in certain investigations involving perishable agricultural products, and for other purposes; to the Committee on Finance.

By Mr. DOMENICI (for himself and Mr. BINGAMAN): S. 1466. A bill for the relief of certain former employees of the United States whose firefighting functions were transferred from the Department of Energy to Los Alamos County, New Mexico; to the Committee on Governmental Affairs.

By Mr. HELMS (for himself, Mr. DODD, and Mr. KERRY): S. 1465. A bill to amend, and add, two programs to the Committee on Foreign Relations.

By Mr. McCAIN (for himself, Mr. BIDEN, and Mr. MACK): S. 1466. A bill to amend title II of the Social Security Act to provide for increases in the amounts of allowable earnings under the social security earnings limit for individuals who have attained retirement age, and for other purposes; to the Committee on Finance.

By Mr. BURNS (for himself and Mr. BAUCUS): S. 1467. A bill to authorize the construction of the Fort Peck Rural County Water District System, to authorize assistance to the Fort Peck Rural County Water District, Inc., a nonprofit corporation, for the planning, design, and construction of the water supply system, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. HELMS (for himself, Mr. THOMAS, and Mr. MACK): S.J. Res. 43. A joint resolution expressing the sense of Congress regarding Wei Jingsheng; Gedhun Choekyi Nyima, the next Panchen Lama of Tibet; and the human rights practices of the Government of the People's Republic of China; to the Committee on Foreign Relations.

STATMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. DOMENICI (for himself and Mr. BINGAMAN): S. 1464. A bill for the relief of certain former employees of the United States whose firefighting functions were transferred from the Department of Energy to Los Alamos County, NM; to the Committee on Governmental Affairs.

LOS ALAMOS FIREFIGHTERS LEGISLATION

Mr. DOMENICI. Mr. President, I introduce legislation that will enable the Federal Government to fulfill an outstanding obligation to a small, dedicated fire department that has served the Los Alamos community for many years in the national interest. In 1989, firefighting responsibilities in Los Alamos, NM, were transferred from the Department of Energy to Los Alamos County. The transfer was part of a larger effort to divest the Federal Government of functions normally performed by State and local governments that the Federal Government has performed in Los Alamos since the Manhattan Engineering District assumed control of all activities at Los Alamos during World War II.

The transfer affected 43 firefighters who, after years of Federal service that for many of them began in Vietnam, became Los Alamos County employees. At the time, the firefighters were told by the Department of Energy that they would be transferred "as whole," meaning they would lose no benefits. Unfortunately, that did not happen largely due to the change of direction at the Department of Energy and Los Alamos County.

Each firefighter received a severance payment, in accordance with normal practice, that included reimbursement for service time in the Federal retirement system. However, that payment was significantly less than the amount required to purchase service time in the retirement program available to Los Alamos County employees equivalent to their time of Federal service.

The result is straightforward; these firefighters, who continue to perform exactly the same work today as when they were Department of Energy employees, have not made a full contribution to the Federal retirement system. However, that payment was significantly less than the amount required to purchase service time in the retirement program available to Los Alamos County employees equivalent to their time of Federal service.

The legislation I am introducing today would remedy this unfairness. It would direct the Federal Government to pay the firefighters in their retirement program a sum that when combined with the severance payment made to the firefighters upon their transfer would provide the firefighters with a service credit in the State program equivalent to their Federal time of service. The result would be that the firefighters retirement would not be impacted by the change from Federal to county status.

Mr. President, there is some urgency to this matter. In fact, a number of these firefighters are approaching retirement age. Without the benefits of this legislation, they will be entitled to almost no retirement benefits when they reach the mandatory retirement age for firefighters.

I hope my colleagues will give prompt and considered attention to this matter.

Mr. BINGAMAN. Mr. President, I am pleased to join with my friend and colleague, the Senator from New Mexico, Senator DOMENICI, in introducing legislation today that will fairly compensate a group of dedicated former Federal employees for the loss of retirement benefits that they experienced as a result of the transfer of their duties from the Department of Energy to the County of Los Alamos, NM.

Mr. President, in 1989, the responsibility for the Los Alamos Fire Department, which jointly serves the Los Alamos National Laboratory and Los Alamos County municipality, was transferred from the Department of Energy to the county. As a result of the transfer, some of these firefighters lost more than $20,000 in retirement funds that they had accrued with the Federal Government.

Now, as a result of the transfer, these individuals, who have served an average of 15 years with the Department of Energy, no longer have retirement benefits. Clearly, this is a situation that must be remedied as soon as possible.

Mr. President, with the support of Senator DOMENICI I am sure that we will finally be able to provide these firefighters with the compensation for lost retirement benefits they have incurred as a result of the transfer of their responsibilities from the Federal Government to the State of New Mexico and I look forward to working for the prompt consideration and passage of this legislation.

By Mr. BURNS (for himself and Mr. BAUCUS): S. 1154. A bill to authorize the construction of the Fort Peck Rural County Water Supply System for the planning, design, and construction of the water supply system, and for other purposes; to the Committee on Energy and Natural Resources.

The Fort Peck Rural County Water Supply System Act of 1995

Mr. BURNS. Mr. President, in July, I introduced S. 1154, a bill to authorize construction of the Fort Peck Rural County Water Supply System in Valley County, MT. Since the introduction of this bill, my staff has been meeting with the Senate Energy Committee staff concerning the bill and its provisions. In addition, I have had discussions with the other members of the Montana delegation about this urgent situation under which hundreds of people must haul their water supplies for miles because of the contamination of the ground water. Based on all of these discussions, the legislation has been re-drafted and reintroduced today to reflect the comments of the Energy Committee staff. I want to thank Chairman MURkowski and his staff for their help in streamlining this bill. I am pleased to be joined in the sponsorship of this bill by my colleague, Senator BAUCUS. I appreciated his assistance with this measure. An identical bill will also be introduced in the House of Representatives by Representative PAT WILLIAMS. The Montana delegation is unified in our efforts to obtain congressional authorization for this rural water system to help this depressed area of our State. We look forward to working with Senator MURkowski to move this bill to hearings and a markup.

Mr. President, I ask unanimous consent that the text of this bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:
Mr. BAUCUS. Mr. President, today, I am pleased to join Senator BURNS in introducing legislation to ensure that the over 500 people who live near Fort Peck Reservoir have a safe, dependable domestic water supply. Currently those who live adjacent to one of the largest bodies of waterveloped by the Federal Government in the West, the Fort Peck Reservoir, are forced to travel many miles several times a week to fill tanks and barrels for their domestic water use.

This bill will authorize the development of a rural municipal water system for the residents of the Fort Peck Rural Water District in northeastern Montana. The project will tap into Fort Peck Reservoir to construct a safe and reliable drinking system for both municipal and agricultural purposes. It will also enable this scenic area of Montana to attract economic development which has been stifled due to the lack of water.

I propose that this project be a partnership between the Federal Government, the State of Montana, and local interests. The State and local groups will contribute 20 percent of the cost of the project's completion. A needs assessment and feasibility study conducted by the Bureau of Reclamation (BOR) has completed a needs assessment and feasibility study that estimates the total Federal expenditure will be less than $6 million.

If we can afford to spend millions of dollars developing domestic water supplies in other nations around the world, we can and should be able to do the same for Montanans.

I urge the committee to take prompt action on this critical measure and will work toward expeditious passage through the full Senate.

ADDITIONAL COSPONSORS

At the request of Mr. DASCHLE, the names of the Senator from Michigan [Mr. LEVIN] were added as cosponsors of S. 413, a bill to amend the Fair Labor Standards Act of 1938 to increase the minimum wage rate under such Act, and for other purposes.

Mr. SIMON, the names of the Senator from North Dakota [Mr. DORGAN] and the Senator from New Mexico [Mr. BINGAMAN] were added as cosponsors of S. 704, a bill to establish the Gambling Impact Study Commission.

At the request of Mrs. KASSEBAUM, the names of the Senator from Mississippi [Mr. COCHRAN] and the Senator from South Carolina [Mr. HOLLINGS] were added as cosponsors of S. 1028, a bill to provide increased access to health care benefits to provide inpatient and outpatient health care benefits, to provide increased security of health care benefits, to increase the purchasing power of individuals and small employers, and for other purposes.

At the request of Ms. SNOWE, the name of the Senator from Wisconsin [Mr. KOHL] was added as a cosponsor of S. 1200, a bill to establish and implement efforts to eliminate restrictions on the enclosed properties of Cyprus.

At the request of Mr. GRASSLEY, the names of the Senator from Maine [Mr. COHEN] was added as a cosponsor of S. 1224, a bill to amend subchapter IV of chapter 5 of title 5, United States Code, to provide increased portability of health care benefits, to provide increased security of health care benefits, to increase the purchasing power of individuals and small employers, and for other purposes.

At the request of Mr. D'AMATO, the names of the Senator from Illinois [Ms. MUSELLI-BRAUN] and the Senator from Washington [Mrs. MURRAY] were added as cosponsors of S. 1228, a bill to impose sanctions on foreign persons exporting petroleum products, natural gas, or related technology to Iran.

At the request of Mr. HATCH, the name of the Senator from Nebraska [Mr. EXON] was added as a cosponsor of S. 1296, a bill to amend the Employee Retirement Income Security Act of 1974 to clarify the treatment of a qualified football coaches plan.

At the request of Mr. SNOWE, the name of the Senator from New Hampshire [Mr. SMITH] was added as a cosponsor of Senate Concurrent Resolution 11, a concurrent resolution supporting a resolution to the long-standing dispute regarding Cyprus.

AMENDMENTS SUBMITTED

THE AMERICAN FLAG CONSTITUTIONAL AMENDMENT OF 1995

BIDEN AMENDMENT NO. 3093

Mr. BIDEN proposed an amendment to the joint resolution (S.J. Res. 31) proposing an amendment to the Constitution of the United States to establish and implement efforts to eliminate restrictions on the enclosed properties of Cyprus.

At the request of Mr. BIDEN, the names of the Senator from Michigan [Mr. LEVIN] were added as cosponsors of S. 413, a bill to amend the Fair Labor Standards Act of 1938 to increase the minimum wage rate under such Act, and for other purposes.

At the request of Mr. BIDEN, the names of the Senator from New Mexico [Mr. BINGAMAN] were added as cosponsors of S. 704, a bill to establish the Gambling Impact Study Commission.

At the request of Mrs. KASSEBAUM, the names of the Senator from Mississippi [Mr. COCHRAN] and the Senator from South Carolina [Mr. HOLLINGS] were added as cosponsors of S. 1028, a bill to provide increased access to health care benefits to provide inpatient and outpatient health care benefits, to provide increased security of health care benefits, to increase the purchasing power of individuals and small employers, and for other purposes.

"SECTION 1. The Congress shall have power to enact the following law:

"'(a) It shall be unlawful to burn, mutilate, or trample upon any flag of the United States."

"(b) This law does not prohibit any conduct consisting of the disposal of the flag when it has become worn or soiled."

"SECTION 2. As used in this article, the term ‘flag of the United States’ means any
flag of the United States adopted by Con-
gress by law, or any part thereof, made of
any substance, of any size, in a form that is
commonly displayed.

"SECTION 3. The Congress shall have the
power to prescribe appropriate penalties for
the violation of a statute adopted pursuant
to section 1."

HATCH (AND OTHERS)
AMENDMENT NO. 3094

Mr. HATCH (for himself, Mr. HEFLIN,
and Mrs. FEINSTEIN) proposed an
amendment to the joint resolution
(S.J. Res. 31) supra; as follows:

Strike all after the resolving clause and in-
sert the following: That the following article
is proposed as an amendment to the Con-
stitution of the United States, which shall be
valid to all intents and purposes as part of
the Constitution if ratified by the legisla-
tures of three-fourths of the several States
within seven years after its submission to
the States for ratification:

"ARTICLE

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

HOLLINGS AMENDMENTS NOS.
3095-3096

Mr. HOLLINGS proposed two amend-
ments to the joint resolution (S.J. Res. 31)
supra; as follows:

AMENDMENT NO. 3095
After the first article add the following:

"ARTICLE

"SECTION 1. Total outlays for any fiscal
year shall not exceed total receipts for that
fiscal year, unless three-fifths of the whole
number of each House of Congress shall pro-
vide by law for a specific excess of outlays
over receipts by a rollcall vote.

"SECTION 2. The limit on the debt of
the United States held by the public shall not be
increased, unless three-fifths of the whole
number of each House shall provide by law
for such an increase by a rollcall vote.

"SECTION 3. Each fiscal year, the Presi-
dent shall transmit to the Congress a pro-
budget for the United States govern-
ment for that fiscal year, in which total
outlays do not exceed total receipts.

"SECTION 4. No bill to increase revenue
shall become law unless approved by a ma-
jority of the whole number of each House
by a rollcall vote.

"SECTION 5. The Congress may waive the
provisions of this article for any fiscal year
in which a declaration of war is in effect. The
provisions of this article may be waived
for any fiscal year in which the United
States is engaged in military conflict which
causes an imminent and serious military
threat to the United States and is declared
by a joint resolution, adopted by a majority
of the whole number of each House, which
becomes law.

"SECTION 6. The Congress shall enforce and
implement this article by appropriate legis-
lation, which may rely on estimates of out-
lays and receipts. The judicial power of
the United States shall not extend to any case
or controversy arising under this article except
as may be specifically authorized by legisla-
tion adopted pursuant to this section.

"SECTION 7. All receipts shall include all
receipts of the United States government ex-
cept those derived from borrowing. Total
outlays shall include all outlays of the United
States government except for repayment of debt principal. The receipts
(including attributable interest) and outlays
of the Federal Old-Age and Survivors Insur-
ance Trust Fund and Federal Disability In-
surance Trust Fund (as and if modified to
preserve the solvency of the funds) used to
provide retirement, survivor, and disabilities
benefits shall not be counted as receipts or
outlays for the purpose of this article.

"SECTION 8. This article shall take effect
beginning with the fiscal year 2001, and with
the second fiscal year beginning after its ratifi-
cation, whichever is later."

AMENDMENT NO. 3096
After the first article add the following:

"ARTICLE

"SECTION 1. Congress shall have power to
set reasonable limits on expenditures made
in support of or in opposition to the nomina-
tion or election of any person to Federal of-
fice.

"SECTION 2. Each State shall have power to
set reasonable limits on expenditures made in
support of or in opposition to the nomina-
tion or election of any person to State office.

"SECTION 3. Each local government of gen-
eral jurisdiction shall have power to set rea-
sonable limits on expenditures made in support
of or in opposition to the nomination
or election of any person to office in that
government. No State shall have power to
limit the power established by this section.

"SECTION 4. Congress shall have power to
implement and enforce this article by appro-
priate legislation.

HOLT AMENDMENTS NOS. 3097
AMENDMENT NO. 3097
MR. MCCONNELL (for himself, Mr.
BENNETT, Mr. D ORGAN, and Mr. B UMP-
ERS) proposed an amendment to the joint
resolution (S.J. Res. 31) supra; as
follows:

strike all after the resolving clause and in-
sert the following:

SECTION 1. SHORT TITLE.
This Act may be cited as the "Flag Protec-
tion and Free Speech Act of 1995".

SEC. 2. FINDINGS AND PURPOSE.
(a) FINDINGS.—The Congress finds that—
(1) the flag of the United States is a unique
symbol of national unity and represents the
values of liberty, nationalism, and the equal-
ity that make this Nation an example of freedom
unmatched throughout the world.
(2) the Bill of Rights is a guarantee of the
freedoms that should be amended in a manner
that could be interpreted to re-
strict freedom, a course that is regularly re-
sorted to by authoritarian governments
which fear freedom and not by free and
democratic nations;
(3) abuse of the flag of the United States
causes an imminent and serious military
threat to national security and is so declared
overwhelming majority of the American peo-
ple and may amount to fighting words or a
manner that could be interpreted to re-
state the historical role of this institution, and its
presentation
∑
SENATE HOMEPAGE RATED TOP 5
PERCENT
[45x266]Mr. MCCONNELL (for himself, Mr.
BENNETT, Mr. D ORGAN, and Mr. B UMP-
ERS) proposed an amendment to the joint
resolution (S.J. Res. 31) supra; as
follows:

strike all after the resolving clause and in-
sert the following:

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freedoms that should be amended in a manner
that could be interpreted to re-
strict freedom, a course that is regularly re-
sorted to by authoritarian governments
which fear freedom and not by free and
democratic nations;
(3) abuse of the flag of the United States
causes an imminent and serious military
threat to national security and is so declared
overwhelming majority of the American peo-
ple and may amount to fighting words or a
direct threat to the physical and emotional
well-being of individuals at whom the threat
is targeted; and
(4) destruction of the flag of the United
States can be intended to incite a violent re-
sponse rather than simply a political state-
ment and such conduct is outside the protec-
tions afforded by the first amendment to the
United States Constitution.
(b) PURPOSE.—It is the purpose of this Act
to provide the maximum protection against
the use of the flag of the United States to
promote violence while respecting the lib-
erties that it symbolizes.

SEC. 3. PROTECTION OF THE FLAG OF THE
UNITED STATES AGAINST USE FOR
PROMOTING VIOLENCE.
(a) IN GENERAL.—Section 7002 of title 18,
United States Code, is amended to read as follows:

"700. Incitement; damage or destruction of
property involving the flag of the United States

"(a) ACTIONS PROMOTING VIOLENCE.—Any
person who destroys or damages a flag of the
United States with the primary purpose and
intent to incite or produce imminent vio-
lence or a breach of the peace, and in cir-
cumstances when the person knows that rea-
sonably likely to produce imminent violence
or a breach of the peace, shall be fined not
more than $100,000 or imprisoned not more
than 1 year, or both.

"(b) DAMAGING A FLAG BELONGING TO THE
UNITED STATES.—Any person who steals or
knowingly converts to his or her use, or to
the use of another, a flag of the United
States belonging to the United States and
intentionally destroys or damages that flag
shall be fined not more than $250,000 or im-
prisoned not more than 2 years, or both.

"(c) DAMAGING A FLAG OF ANOTHER ON FED-
ERAL LAND.—Any person who, within any
lands reserved for the use of the United
States, or under the exclusive or concurrent
jurisdiction of the United States, steals or
knowingly converts to his or her use, or to
the use of another, a flag of the United
States belonging to a third person and
intentionally destroys or damages that flag
shall be fined not more than $250,000 or im-
prisoned not more than 2 years, or both.

"(d) CONSTRUCTION.—This section shall
be construed to indicate an intent on the
part of Congress to deprive any State, or the
Commonwealth of Puerto Rico of jur-
sidiction over any offense over which it
would have jurisdiction in the absence of
this section.

SEC. 4. CRIMINAL AND JUDICIAL PROCE-
DURE.—(A) IN GENERAL.—The term "flag
of the United States" means any flag of the
United States, or any part thereof, made of
any substance, in any size, in a form that is
could be taken to be a flag by the
reasonable observer.

"(b) JURISDICTION.—The table of
sections for chapter 33 of title 18, United
States Code, is amended by striking the item
relating to section 700 and inserting the fol-
lowing new item.

"700. Incitement; damage or destruction of
property involving the flag of the United States."

ADDITIONAL STATEMENTS
SENATE HOMEPAGE RATED TOP 5
PERCENT
• Mr. WARNER. Mr. President, in Oc-
tober of this year I announced the Sen-
ate’s presence on the World Wide Web. Today
I am pleased to announce the Senate’s Home-
page on the World Wide Web has been rated among the top 5
percent of all Web sites on the Internet
by an independent group. This group,
Point Survey, called the Senate’s Web
presentation "the best place to learn about how the Senate really works"
and call it "a valuable site.

The Senate Homepage is proving to
be a tool that allows citizens to better
understand the constitutional and his-
torical role of this institution, and its
underlying responsibilities within our
society.

Again I would like to acknowledge
the hard work of Howard O. Greene, Senate
S18365
Paul D. Stock, director of Information Systems and Technology, Committee
on Rules and Administration, in making this effort a success.

**PRESIDENT ROBINSON'S ADDRESS ON HUMAN RIGHTS**

- **Mr. KENNEDY.** Mr. President, yesterday was International Human Rights Day, a day to mark how far the world has come toward respect for human rights, and also a day to reflect on where we have to go.

In October, President Mary Robinson of Ireland gave an address at Yale Law School in which she discussed the often inadequate response to extreme human rights crises around the world. She spoke of the universal acceptance of the key principles of the international human rights movement and the value of activities by the United Nations and regional organizations which set human rights standards. She recently returned from Rwanda and Zaire, where she poignantly described the gross human rights violations there and the failure of the world to make an adequate response. At the end of her address, she notes that these basic principles by which human rights are also at stake in Bosnia.

When President Clinton visited Ireland 10 days ago, he invited President Robinson to the United States for a state visit in June 1996. I look forward to the task that she will address at Yale be printed in the Record.

**The Need to Honor Development Human Rights Commitments**

**SPEECH BY PRESIDENT MARY ROBINSON**

It is an enormous pleasure to be here this evening. I recall when I was studying law at a place just outside Boston in the late 1960s, this institution was referred to as “that other place in New Haven.” The compliment implied to me that other places naturally whetted my interest, but this is the first opportunity I have had to visit. I am greatly honored to be here as the 1996 Sherrill Lecturer.

The title of my address this evening—the need to honor developing human rights commitments—was a carefully chosen name to provide me with an opportunity to comment on the state of our commitment at the end of the century.

I use the term “honor” as opposed to “compliance” or “conformity” because the lives and integrity of human beings are at stake and because it calls on our notions of dignity and obligation to humanity. The word “commitment” has been chosen because it goes further than both legal or moral obligations—while encompassing both. It also connotes the idea of being “committed” to a great cause at a higher level of obligation, as well as a preparedness to take steps to promote and further that cause, without interrupting the legal necessity or obligation to do so. In the area of human rights one can find no greater elucidation of the meaning of “commitment” than in the Preamble to the Universal Declaration of Human Rights. Lastly, I am conscious that our human rights commitments are dynamic and not static. They are constantly evolving and developing, and of this millennium, of this millennium of honouring of human rights commitments, to the best of our abilities and resources, is a first order principle of national and international life.

Yet we are all aware that major problems persist. Torture, inhuman prison conditions, unfair trials, have not been eradicated although we take a certain pride in the institutions and procedures that we have set up to deal with them. Ethnic cleansing and the daily spectacle of civilian casualties in Sarajevo remind us that the evils of the past cast a long shadow. In a real sense the World Conference on Women’s Rights in Beijing, which was held a week ago, was about our commitments to women, particularly in the areas of protection against violence and sexual abuse. We do not have cause for satisfaction. The essential theme of my remarks, having returned a few days ago from Rwanda, is that we should reflect even more on our political commitment to invest our human rights mission with the resources that match the strength of our beliefs, and that our failure to do so—when confronted with situations such as that in Rwanda which cry out for a more committed, more integrated and more resourceful response—compromises our achievements and our potential to situations where gross violations are taking place and diminishes our capacity to transmit these values meaningfully to succeeding generations. Fundamental to this is the recognition that a low level of response is an affront to the principle of universality of human rights.

As you will have gathered, I have chosen this title with great anxiety—the anxiety, firstly, of a lawyer confronted by the contradictions between promise and performance. The Head of State returning from a visit to Rwanda and Zaire, who has been exposed in the literal sense of that term, and for the second time, to the terrible aftermath of ethnic cleansing and genocide and its accompanying social, political and economic disintegration. A witness also to the continued inability of the international community to rouse itself sufficiently to bring greater hope and promise to that land of despair and tragedy. The anxiety, lastly, of a witness left speechless and fumbling for the correct and appropriate response in the face of our own inadequacies as a community of human beings when faced, eyeball to eyeball, with the human disaster on such an overwhelming scale.

The contradiction, witnessed painfully in Rwanda, between, our lofty human rights ideals and the gross reality of the lack of justice on the other hand, provokes a natural and human response. I hear the words “Never again”—the call that became the leitmotif for the development of human rights this century—and am deeply dismayed and angered at the human capacity for self-delusion.

But this despair should not lead us to be distracted from the real advances that have been made, at both the regional and the universal level, in the protection and promotion of human rights. I am glad to report that the concept of human rights now occupies a permanent position on the world stage.

In a very brief review of three key ideas which underpin the entire international human rights movement have come to be accepted universally. They are all connected, but it can be called the principle of universality.

First, that countries can no longer say that they treat their inhabitants is solely a matter of internal concerns. Second, that human rights have been elevated to the status of fundamental principles by the European and American Courts of human rights. Lastly, that our legal systems, whether national or international, should reflect the international standards of human rights.

I believe that the role human rights law has played and continues to play, in shaping the legislative agendas of the new democracies in Eastern Europe, in the case of South Africa, cannot be underestimated. The authoritative interpretation of these standards by the European and American Courts of human rights adds a further important dimension to the effectiveness of this process.
My second observation is central to the theme of developing human rights commitments. Standard-setting, regionally and universally, is a continuous on-going process. The Universal Declaration of Human Rights and the Convention on the Rights of the Child are examples of the developing nature of the law. But regard must also be had to the numerous and increasing non-treaty standards embodied in instruments such as the Standard Minimum Rules for the Treatment of Prisoners, the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment or the Declaration on the Elimination of Violence against Women.

However it seems clear that it is in responding to the most severe and pressing human rights problems that much progress needs to be made. Can there be any doubt that the credibility of the international community’s attachment to the cause of human rights is intimately bound up with its ability to respond effectively to situations where human rights are being grossly violated? The Secretary-General of the United Nations recognized this in his 1992 report on the work of the UN human rights field operation. The abuses I have observed may well have responded adequately to “normal situations” it had not been able to act effectively in the area of massive human rights violations.

We seem to have created for ourselves the following paradox. The human rights developments that have taken place since the end of the Second World War have led to legislation of international courts of human rights to enforce state obligations, to important standard-setting activities by the UN and regional organizations, to the creation of teams of special rapporteurs to examine disappearances, torture, political executions and other violations. And yet at the same time we have created a High Commissioner for Human Rights to be the focal point for human rights action in the UN system. All these positive advancements are in a sense, directly related to the political commitments made following upon gross violations of human rights earlier this century.

Yet the institutions we have created appear to be stricken with inertia and paralysis when confronted with the reoccurrence of the very evils that have led to their foundation. It is difficult to speak of the situation in Rwanda today with any optimism. I cannot stop wondering whether we may be unable to foresee or forestall outbreaks of violence on a massive scale. And there will always be countries in the world where repression is more repressive. But doesn’t honouring the commitment require us to respond to this unacceptable paradox and to the deep international concern about gross violations? Does it not require us to assume collective responsibility and to develop institutions and processes to anticipate, deter, prevent and terminate gross human rights violations?

It is in our response to these questions that future generations will determine whether our great treaties were merely splendid and creative ideas about addressing them, are with us today. It is in our ability to implement it. Lack of financial resources means that there has been inadequacy in the logistics, in the planning, in the administrative and operational professionalism. Those who know about human rights, who have creative ideas about addressing them, are without a budget for such projects. I am told that while the MOIR spokesmen that are in the refugee camps in a week, is more than the human rights budget for a year. The development of a human rights culture is a complex operation, especially in post human rights disaster situations. The UN took an important step by creating the human rights field operation. But it needs to go further to build up a corps of professionals. The peace-building operations in Namibia, El Salvador,
Cambodia and Haiti and the deployment of trained human rights monitors there have shown this to be the case. Can we justify the lack of commitment to play an active and proper role in helping to reconstruct and redevelop Rwanda?

Tragically the same questions arise when we consider the two million refugees, many of whom had participated in acts of genocide, living outside Rwanda’s borders in camps in Zaïre and Tanzania, of whom some 750,000 are Rwandan Hutu, the refugees mainly to events in 1994. Refugees are afraid to return, many of them fearing accused of having participated in genocide by those who have recently occupied their properties. The apprehension of reprisal killings, the massacre in Kigali in which thousands of internally displaced persons were killed, the mass arrests, inhuman prison conditions, and a lack of an effective judicial system and the control exercised by camp leaders through intimidation and hate propaganda—are all factors which have effectively impeded the process of voluntary repatriation.

An added and poisonous complication is that provincial civil war and population fluctuation are some 20,000 Hutu soldiers and 50,000 militia who are believed to have regrouped and rebuilt their military infrastructure. They have been accused by NGOs of diverting humanitarian aid and effectively holding the refugees hostage. Calls have been made, in an effort to break in logjam, to remove offensive weapons from the camps and to prosecute those responsible for incitement to violence and hatred.

The refugee situation is intimately bound up with developments inside Rwanda. The policy of voluntary repatriation can only be implemented when conditions inside Rwanda have sufficiently improved. In a climate where detention, on the basis of finger-pointing only, is perceived as the equivalent of a death sentence, deadlock is inevitable. We should understand therefore that assistance given in the past to rebuild its military infrastructure and restore justice and the rule of law is a humanitarian investment which will contribute to break the refugee deadlock, rescue millions from the shadow of the machete and the horrors of genocide. In doing so, to lessen regional tensions and lay the basis for the future.

Should we not listen carefully to those members of the NGO community on the ground who have been telling us, patiently but persistently for many months now, that if more assistance is not given by the international community to managing the refugee crisis by taking appropriate measures, both inside Rwanda and beyond Rwanda’s frontiers, a further human disaster will ensue?

I have mentioned earlier that the Vienna Declaration has re-affirmed the vital principle of universality. At the World Conference we had an extraordinary opportunity to evaluate the legal and political structures underpinning our human rights commitments. Rwanda has put to the test our capacity to honour those commitments with the structures and processes we have developed. I fear that we are floundering. Universality has been, we are told, unblinking in its view with no dead angles. But in failing to honour our commitments are we not damaging the very principle of universality? Are we not permitting the armed forces to have their way? And if we so permit, what is the value and worth the principle afterwards? And how will we be judged by succeeding generations if we stand idly by?

In his address on the occasion of the opening of the new Human Rights Building in Strasbourg, Mr. President, he referred to the war that was raging in Bosnia. He made the point—uncomfortably on such a festive occasion—that while we were all watching helplessly, waiting to see who would win, we had completely forgotten that what was happening just a few hundred miles away from the peaceful plains of Alsace was not just a war between the Serbs and others, it was a war for our own future—it was a war that was being waged against us all, against human rights and against the coexistence of peoples of different nationalities and religious beliefs. It was a war against meaningful human coexistence based on the universality of human rights. As he put it, it was an attack of the darkest past on a decent future, an attack of evil on the moral order.

As usual his perception is unerring. What happened in Bosnia was a conscious assault on the universal human rights ideal. Rwanda is another site of conflict, yet another tribal war. We cannot distance ourselves from what is happening in the prisons in Rwanda or in the refugee camps. We have all heard of the extraordinary sacrifice of a million people followed by the fastest refugee exodus in recent history. What is happening today in Rwanda is our problem because it interrelates with the conditions of our strongest-held convictions. Our capacity to react to this human tragedy is a significant challenge to our commitments to human rights at the end of the 20th century. It is not too late to honour them.

SECRETARY JESSE BROWN

Mr. ROBB. Mr. President, I rise today to express my admiration and respect for Secretary Jesse Brown and my appreciation for his achievements on behalf of our Nation’s veterans.

In choosing Jesse Brown as Secretary of Veterans Affairs, President Clinton made an inspired choice from the standpoint of America’s veterans. A combat-wounded Marine veteran of Vietnam, a former executive director of the Disabled American Veterans, a former executive director of the Disabled American Veterans, Jesse Brown is a strong and aggressive advocate for the men and women who have served our country. During his tenure in the Cabinet, Jesse Brown has compiled a truly outstanding record of success. To cite just a few accomplishments, Jesse Brown has:

- Expanded the list of Vietnam veterans’ diseases for which service-connected compensation is paid based on exposure to agent orange;
- Expanded and improved health care services for combat veterans suffering from post-traumatic stress disorder;
- Created a presumption of service-connection for ex-prisoners of war who contracted wet beri-beri and later suffered ischemic heart disease;
- Established a host of new clinics offering veterans more convenient access to VA health care services; and
- Expanded and improved services for women veterans, which include mammography quality controls and counseling and medical programs for women veterans suffering the after-effects of service-related sexual trauma;
- Successfully fought for a law allowing the VA to pay compensation benefits to chronically disabled Persian Gulf veterans with undiagnosed illnesses;
- Established environmental research centers focused on the environmental exposures of Persian Gulf veterans and launched extensive epidemiological and other research efforts aimed at identifying the causes of illnesses from which these veterans and their families are suffering;
- Made programs for homeless veterans a priority—more than doubling the budget for specialized programs for homeless veterans, conducting the first National Summit on Homelessness Among Veterans, and carrying out a new program of grants to assist public and non-profit groups to develop new programs assisting homeless veterans;
- Established a presumption of service-connection for veterans who experienced full-body exposure to mustard gas or Lewisite as part of our military’s testing of these substances;
- Conducted an outreach campaign through which 602,000 veterans’ home loans were refinanced at lower interest rates, saving these veterans an average of $1,500 per year; and
- Wrote to 44,000 Persian Gulf veterans and 47,000 Vietnam veterans notifying them of their potential entitlement to benefits and encouraging them to file claims.

In addition to these efforts, Mr. President, Secretary Brown is working to improve the VA’s benefits and health care systems, restructuring both its headquarters and field operations to enhance efficiency.

There’s no question Jesse Brown is an untiring and outspoken advocate—both within the administration and on Capitol Hill—for adequate funding for VA medical programs and benefits processing. But characteristically, Secretary Brown supports a balanced budget, Mr. President, I admire those who make us think hard about prioritizing scarce Federal dollars, who help us understand the consequences of the policy decisions we make, and who force us to defend our actions.

Recently, Secretary Brown has been harshly criticized for speaking out on behalf of adequate budgets for the Veterans Administration. But characteristically, Secretary Brown’s support as a politician who has done—ignores Jesse Brown’s nearly 3 decades of steadfast commitment to our Nation’s veterans and their families and his strong personal beliefs in our country’s responsibilities to them. Secretary Brown calls to recognize his own personal experiences as a combat veteran in Vietnam.

Jesse Brown reminds us all, even in these tight budget times, our Nation has an obligation to its warriors and their survivors that we simply cannot ignore.

And that is why, Mr. President, that I am proud to call Jesse Brown my
friend—and why I appreciate his strong support for the veterans of our Na-
tion.

PAST POLITENESS

Mr. SIMON. Mr. President, Colbert King, a member of the editorial page staff of the Washington Post, recently wrote an op-ed piece about a group of young people who are meeting to establish greater understanding.

It is a small thing to many people, but it is precisely what needs to happen in our country.

I remember many years ago speaking at the Hillel Foundation at the University of Illinois. This is the Jewish student organization there.

It was an anniversary of some sort, and I suggested, among other things, that since at the University of Illinois there were people of both Jewish and Arab backgrounds that a few students get together regularly might really contribute something. One of the students present said that would be meaningless but, interestingly, a few of the students got together and, for at least a short period of time, held some regular meetings between American Jews, Israeli students, and Arabic students from Arab countries. These were simply informal discussions long before President Sadat made his dramatic visit to the Knesset in Israel.

I wish I could report to you that something dramatic came out of these student meetings. I do not know that anything came out of them, other than one extremely important thing—great-er understanding.

We are in a world that needs that, and I would like more people to read the op-ed by Colbert King, which I ask to be printed in the RECORD.

The op-ed follows:

[From the Washington Post, Dec. 2, 1995]

PAST POLITENESS AND INTO HONESTY

(By Colbert I. King)

While couples and families have been living out the year clinging their teeth by day and hyperventilating at home by night over one racially tinged issue or another, a small group of young people have quietly made sure they don’t end up leading the same kind of lives. Seventeen area high school students—nine African American and eight Jewish—have been meeting since January to build a future in which their generation will live without alienation and bitterness. What they have achieved in 12 months should put us to shame.

How they’ll get all that money anyway?

Mimi: “How come blacks are such great dancers?”

You get the picture: mistrust, misconceptions, misunderstanding. These youngsters stand out, however, because they chose not to remain smug and comfortable with their hangups. They began meeting several times a month to get to know one another, to talk about their own experience, to learn more about their own. They didn’t do it through touchy-feely gab sessions. They got into each other’s lives. They went to their sister’s bar mitz-
vah; it was Tiba’s first time in a synagogue. Mimi went to Tiba’s church on Palm Sun-
day—her first time in a black church. Every-
one was a witness in each other’s world.

They called on Capitol Hill and heard D.C. Del. Eleanor Holmes Norton and other black and Jewish members of Congress discuss how they legislated on legislation. They met with a range of local speakers—as a sign they were long-suffering and up for just about anything the evening spit of an evening with me. But they also got out of Washington and into communities that would give them a deeper understanding of African American and Jewish cultures and collaborative history.

Before their trip, however, they made a Shabbat dinner together. As youngsters of the ‘90s, they did it their way: a soul food Shabbat—fully equipped with fried chicken, biscuits, greens, sweet potatoes, and challah, backed by lit candles, recitation of the Motzi and prayer over the wine. What can I say? They acted out through words and gestures (no other word for it) president, Karen

Kalish, hoped to achieve when she started the D.C. program. The idea came from United Negro College Fund president and former U.S. representative William Gray III; who started Operation Understanding in Philadelphia with George Ross of the American Jewish Committee. The Class of 1995 is the new generation of bridge builders they had in mind.

As the program ended, Jessica, who is Jew-
ish, began singing “Lift Every Voice and Sing.” She was joined by the group—as the eyes of many African American parents and guests began to glisten. Then Bridgette, an African American, began “Oseh Shalom”—and Jewish eyes were full. Those tears tell us a lot about our times.

Schmalzty? Perhaps. But maybe if a few more Operation Understandings had been at work around the globe long ago, President Clinton wouldn’t have had to visit Belfast this week, and 20,000 American troops would be gearing up for a mission in Iraq. We’re leaving our youth a pretty scratchy world. But rest assured, as far as Operation Under- standing’s graduates are concerned, America is going to be okay in their hands.

RETIREMENT OF JULIAN GRAYSON

Mr. BINGAMAN. Mr. President, Julian Grayson has retired from service to the Senate. He worked here longer than most of us ever will, and, unlike many of us, he is universally admired and appreciated.

Mr. Grayson was a waiter for the Senate restaurants, and worked on the caucus lunches as well as in the Sena-
tors’ private dining room. He started here in 1950, but left in 1964 to devote his full time to the Methodist min-
istry. After a successful career in that calling, he returned to the Senate in 1983 at age 67.

He is a man of great dignity and spir-
it, and all of us who are fortunate enough to know him know that he is a man of many parts. I will miss our frequent conversations, and hope that he will, too.

SENATE QUARTERLY MAIL COSTS

Mr. WARNER. Mr. President, in ac-
cordance with section 218 of Public Law
101–520 as amended by Public Law
103–283, I am submitting the frank mail allocations made to each Senator from the appropriation for official mail ex-
penses and a summary tabulation of Senator mass mail costs for the fourth quarter of fiscal year 1995 to be printed in the RECORD. The fourth quarter of fiscal year 1995 covers the period of July 1, 1995, through September 30, 1995. The official mail allocations are available for Frank mail costs, as stipu-
lated in Public Law 103–283, the Legis-
lative Branch Appropriations Act for fiscal year 1995.

The material follows:

December 11, 1995
CONGRESSIONAL RECORD — SENATE S18369

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If anything, these young people now have a stronger sense of themselves and their own history. They cherish both their similarities and differences. It’s America’s cultural and political diversity that makes us who we are. And no one’s going to tell them who can be their friend. These are strong kids. They even think they can change the world.

What Operation Understanding’s kine-
tic (no other word for it) president, Karen
Kalish, hoped to achieve when she started the D.C. program. The idea came from United Negro College Fund president and former U.S. representative William Gray III; who started Operation Understanding in Philadelphia with George Ross of the American Jewish Committee. The Class of 1995 is the new generation of bridge builders they had in mind.

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## TOMMY WYCHE: FATHER OF SOUTH CAROLINA’S MOUNTAIN BRIDGE WILDERNESS

Mr. HOLLINGS. Mr. President, I rise today to salute a native South Carolinian and the ‘Father of South Carolina’s Mountain Bridge Wilderness.’ C. Thomas Wyche. On December 7, 1995, here in Washington, Tommy Wyche was recognized for his outstanding contributions to environmental conservation when he was awarded one of the Nation’s top environmental awards, The Alexander Calder Conservation Award.

Local just 30 miles up road from Toms‘ hometown of Greenville, the rolling red clay hills of the South Carolina piedmont suddenly springs into the foothills of the Great Smoky Mountains. The area, known as South Carolina’s Blue Ridge Escarpment, is one of unusual natural beauty. Typified by high cliffs, steep terrain, rushing rivers and dense forests, it is relatively pristine despite being located within 30 miles of one of the Nation’s fastest growing communities. It is for preserving this natural wonderland that Tommy Wyche was recognized.

Mr. President, the Mountain Bridge is just one of Tommy’s many conservation successes. Over the last quarter century, he has almost singlehandedly led the fight to ensure that the mountains of South Carolina are preserved for the benefit of future generations. He spearheaded efforts to designate the Chattooga River as a wild and scenic river, and drafted the South Carolina Heritage Trust Act, the first in the United States. In addition, he has produced books celebrating the area, a guidebook and a photographic journal, both of which have played an important part in educating the public on the area’s natural treasures.

Tommy’s crowning achievement, and the basis for the Calder Award, is his work to preserve 40,000 acres along the South Carolina-North Carolina border—the Mountain Bridge Wilderness Area. Tommy began efforts to preserve the area in the early 1970’s. As I mentioned earlier, this is an area of rough terrain which contains a number of waterfalls, including Tryon Falls, a 400 foot waterfall—one of the highest east of the Mississippi—and a monolith known as Table Rock. A recent biological assessment of just a portion of the wilderness area produced a number of astonishing finds, enormous trees, trophy-size native brook trout, and a stunning variety of birds, reptiles, amphibians and insects, many of them rare or endangered and two new to science. The scientist concluded the area was “the most significant wilderness remaining in South Carolina.”

Today the Mountain Bridge is almost complete, although Tommy has recently been working on one last acquisition. Although Tommy and the Natureland Trust are closing in on their goal, I am sure he is looking for other mountains, not to climb, but to preserve—other missions, like the Mountain Bridge, which will ensure future generations enjoy the natural beauty of South Carolina.

Mr. President, for a quarter century Tommy Wyche has worked tirelessly and unselfishly to coordinate efforts to preserve this piece of South Carolina’s wilderness. I encourage others to follow his lead. Given the severity of the current budget deficit, the Federal Government has limited resources dedicated to preserving wild areas. I encourage others to use Tommy Wyche as a model for cooperative conservation. I commend him for a job well done, congratulate him for the Calder Award and encourage him to continue his good works.

## ERNEST BOYER

Mr. BINGAMAN. Mr. President, it was with great sadness that I learned of the death of Ernest Boyer who was President of the Carnegie Foundation for the Advancement of Teaching.

Ernie Boyer was a friend to many of us in the Senate, and to thousands who will never know his name but who will feel his influence for years to come. His contributions to education are well known, “Ready to Learn and The Basic School,” his excellent primers on the state of American education, both make the strong case that we can’t start too soon in preparing our children—through education—for the world they will face.

It was my good fortune. Mr. President, to have Ernie Boyer as a sounding board, an ally, and a friend. We have lost a remarkable man with his death, and I hope that others of us will be able in some small measure to carry on with his ideas.

Ralph Waldo Emerson wrote about ‘sensible men and conscientious men all over the world [who] were of one religion of well-doing and daring.’ I believe, Mr. President, that Ernest Boyer’s well-doing and daring sprang from his sensible approach and his conscientious attitude. He was very fine, and I will miss his counsel and friendship.
AUTHORIZING APPOINTMENT OF COMMITTEE ON PART OF THE SENATE

Mr. HATCH. Mr. President, I ask unanimous consent that the President of the Senate be authorized to appoint a committee on the part of the Senate to join with a like committee on the part of the House of Representatives to escort His Excellency, Shimon Peres, Prime Minister of Israel, into the House Chamber for a joint meeting tomorrow.

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

ORDERS FOR TUESDAY, DECEMBER 12, 1995

Mr. HATCH. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until the hour of 9 a.m. on Tuesday, December 12; that following the prayer, the Journal of proceedings be deemed approved to date, no resolutions come over under the rule, the call of the calendar be dispensed with, the morning hour be deemed to have expired, the time for the two leaders be reserved for their use later in the day, and the Senate immediately resume consideration of Senate Joint Resolution 31, a joint resolution regarding a constitutional amendment on flag desecration.

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

Mr. HATCH. Under the previous order, there will be a period for closing debate on Senate Joint Resolution 31, the Senate recess until the hour of 2:15 p.m.

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

UNANIMOUS-CONSSENT AGREEMENT—ORDER OF VOTES ON SENATE JOINT RESOLUTION 31

Mr. HATCH. Mr. President, when the Senate reconvenes at 2:15 p.m., there will be 2 minutes of debate, followed by up to five consecutive rollcall votes relating to Senate Joint Resolution 31.

I ask unanimous consent that those votes occur in the order in which they were offered.

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

PROGRAM

Mr. HATCH. Mr. President, for the information of all Senators, at 10:40 a.m. tomorrow, the Senate will proceed to the House Chamber to hear an address by Israeli prime minister Shimon Peres to a joint meeting of Congress. When the Senate reconvenes following party conferences at 2:15, under a previous order, the Senate will begin a series of votes on amendments and passage of Senate Joint Resolution 31. Each vote will be preceded by 2 minutes of debate, equally divided. Therefore, the first vote will occur at 2:17 p.m. and will be 15 minutes in length. Each subsequent vote will be 10 minutes each.

Following disposition of Senate Joint Resolution 31, it will be the majority leader’s intention to turn to the consideration of Bosnia legislation. Senators are urged to debate the Bosnia legislation on Tuesday into the evening, if necessary.

It is the hope of the majority leader to pass the Bosnia legislation before Wednesday, December 13, at noon. Therefore, further votes are possible on Tuesday.

ADJOURNMENT UNTIL 9 A.M. TOMORROW

Mr. HATCH. Mr. President, if there is no further business to come before the Senate, I now ask that the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 6:31, adjourned until Tuesday, December 12, 1995, at 9 a.m.

NOMINATIONS

Executive nominations received by the Senate December 11, 1995:

DEPARTMENT OF STATE

PRINCETON NATAN LYMAN, OF MARYLAND, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF CAREER MINISTER, TO BE AN ASSISTANT SECRETARY OF STATE, VICE DOUGLAS JOSEPH BENNET, JR., RESIGNED.

ALFRED C. DECOITIS, OF NEW JERSEY, TO BE A REPRESENTATIVE OF THE UNITED STATES OF AMERICA TO THE FIFTIETH SESSION OF THE GENERAL ASSEMBLY OF THE UNITED NATIONS.

JOSEPH LANE KIRKLAND, OF THE DISTRICT OF COLUMBIA, TO BE AN ALTERNATE REPRESENTATIVE OF THE UNITED STATES OF AMERICA TO THE FIFTIETH SESSION OF THE GENERAL ASSEMBLY OF THE UNITED NATIONS.

TOM LANTOS, OF CALIFORNIA, TO BE AN ALTERNATE REPRESENTATIVE OF THE UNITED STATES OF AMERICA TO THE FIFTIETH SESSION OF THE GENERAL ASSEMBLY OF THE UNITED NATIONS.

JEANNE MOUTOUSAMY-ASH, OF NEW YORK, TO BE AN ALTERNATE REPRESENTATIVE OF THE UNITED STATES OF AMERICA TO THE FIFTIETH SESSION OF THE GENERAL ASSEMBLY OF THE UNITED NATIONS.

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IN THE NAVY

The following-named officers in the line of the navy for permanent promotion, pursuant to Title 39, United States Code, Section 624, subject to qualifications therefore as provided by law;

UNRESTRICTED LINE OFFICERS

To be lieutenant commander

JEFFREY L. BENNET, 00-0-0000
AARON C. FLANNERY, 00-0-0000
JAMES F. NIGGS, 00-0-0000
JOHN D. KLAS, 00-0-0000
MARK D. LANE, 00-0-0000
STEVEN A. SWITTEL, 00-0-0000

December 11, 1995

CONGRESSIONAL RECORD — SENATE S18371
The Shipbuilding Trade Agreement Act

HON. PHILIP M. CRANE
OF ILLINOIS
IN THE HOUSE OF REPRESENTATIVES
Monday, December 11, 1995

Mr. CRANE. Mr. Speaker, today, I am pleased to introduce, together with my colleagues Mr. GIBBONS and Ms. DUNN, the Shipbuilding Trade Agreement Act. This bill implements the Shipbuilding Agreement signed December 21, 1994, by key shipbuilding nations after 5 years of negotiation under the auspices of the Organization for Economic Cooperation and Development. I congratulate the administration for negotiating this historic agreement which applies to the construction and repair of self-propelled seagoing vessels of 100 gross tons and above and covers approximately 80 percent of the ships engaged in global shipping.

The agreement is scheduled to enter into force 30 days after all signatories deposit instruments of ratification, acceptance, or approval. In the interim, the signatories are in the process of formal ratification. In the United States, legislation must be enacted by Congress to bring U.S. law into compliance with the agreement.

I believe that it is important to implement this agreement as soon as possible because it should help achieve an international environment that gives the U.S. shipbuilding industry the best chance to compete in world markets that are not distorted through subsidization. The agreement will open up trade in shipbuilding by eliminating distortive government subsidies granted either directly to shipbuilders or indirectly through ship operators. In addition, the agreement contains an injurious pricing discipline in Government financing for exports and domestic ship sales as well as a dispute settlement mechanism. I believe that the hearing held by the Trade Subcommittee in July highlighted the benefits that implementation of this agreement will bring.

The bill uses the antidumping remedies of Title VII of the Tariff Act of 1930, as amended, as the model for the provisions applicable to shipbuilding, revised only where necessary to take into account differences between the agreement and the WTO and differences due to the unique nature of vessels. However, although we applied Title VII without change wherever possible, we will review the entire antidumping scheme as it applies to merchandise in general and shipbuilding in particular at some later time.

The Trade Subcommittee will mark up this legislation on Wednesday, December 13. I hope that after that point, the full Committee on Ways and Means will take up the bill as quickly as possible. Unfortunately, the press of other business has prevented us from considering an implementing bill sooner. However, my commitment to this legislation is solid. I am confident that our trading partners do not doubt our resolve and understand that we will do our best to consider the legislation promptly so that we may implement the agreement as soon in 1996 as possible.

The Proposed Sale of Army Tactical Missile System to Turkey

HON. LEE H. HAMILTON
OF INDIANA
IN THE HOUSE OF REPRESENTATIVES
Monday, December 11, 1995

Mr. HAMILTON. Mr. Speaker, on December 1, 1995, the Clinton administration notified the Congress of its proposal to sell 120 Army Tactical Missile Systems (ATACMS), valued at $132 million, to the Government of Turkey. The Congress has 15 days to review this proposed sale to Turkey, a NATO ally.

Because of my concern expressed in the Congress about human rights in Turkey, I asked the Department of State to write to me with respect to this weapons system, and whether any human rights issues are raised by this proposed sale. The text of the letter from the Department of State follows:

U.S. DEPARTMENT OF STATE,

Hon. Lee Hamilton,
House of Representatives.

Dear Mr. Hamilton,

I am pleased to respond to your request for further information regarding the Administration’s intention to transfer 120 Army Tactical Missile System (ATACMS) missiles to Turkey.

We believe this defensive system is appropriate to the threats faced by Turkey. In particular, with a range of 165 kilometers, ATACMS is designed and tested to be effective against high value targets deep behind the battlefield, including deployed ballistic missile launch sites, surface-to-air missiles and command and control units.

The missile can be launched from the Multiple Launch Rocket System, of which the Turks already possess twelve. This capability makes an ideal system for meeting Turkish defense needs. Moreover, the transfer meets NATO defense requirements and it supported by the Commanders-in-Chief of the European Command and Central Command and offers protection against Iran, Iraq, and Syria, all of which have missiles capable of striking Turkey.

We are aware of your concern that arms transfers be used for the uses intended by the U.S. government as stipulated in the Arms Export Control Act and other relevant statutes. We share your concern and wish to emphasize that this is not a weapon likely to be used in the commission of human rights abuses.

First, the high cost of the system, $750,000 per missile, make it highly impractical as a counter-insurgency or anti-personnel weapon. Second, it is designed and optimized as an anti-materiel weapon; the munitions it carries are designed to pierce electronic equipment and other lightly shielded material. Third, in view of the characteristics of the missile, the United States has the ability to monitor the use of the system. Fourth, the distinctive debris and damage pattern it produces make it possible to obtain physical evidence that it has been used.

The use of this system against insurgents does not make financial or military sense and its use could be confirmed by observation and physical evidence. You should also know that, unlike some other sub-munitions weapons it has a very low “dud” rate (4 percent or less). Therefore, if it is used in wartime, the risk to civilians from unexploded munitions will be very low.

We need to ensure the Turks do not question our security relationship with them. While we have in fact been exceptionally thoughtful in our transfers, it is important now to demonstrate we are a reliable ally and Turkey’s legitimate defense needs will be met.

Our Embassy in Ankara has commented that it is particularly important to go forward with the ATACMS sale now to reassure Ankara about the reliability of our security relationship.

I hope we have been responsive to your concerns. Please do not hesitate to contact me if we can be of further assistance.

Sincerely,

Wendy R. Sherman,
Assistant Secretary, Legislative Affairs.

George Leslie McCullen
HON. G.V. (SONNY) MONTGOMERY
OF MISSISSIPPI
IN THE HOUSE OF REPRESENTATIVES
Monday, December 11, 1995

Mr. MONTGOMERY. Mr. Speaker, on Saturday, November 11, 1995, George Leslie McCullen was laid to rest. George was an extraordinarily good and honorable man, a valued friend, and a strong ally.

There is a sweet irony that George was buried on Veterans’ Day, the day our Nation sets aside to say “thank you” to those who have served in our Armed Forces. As a veteran of the Korean conflict, George earned our thanks. His service to country did not end, however, when George completed military service. Until his recent retirement, George was employed by the Virginia Department of Education, veterans education. In this capacity, he and his staff were responsible for ensuring that only education programs of the finest quality were approved for veterans using their GI bill benefits. Veteran students receive a superior education in the State of Virginia because of George McCullen’s dedication to excellence and commitment to learning.

I noted earlier that George was a strong ally. I first met him during the early days of the battle for the new GI bill. At that time, George was legislative director for the National Association of State Approving Agencies [NASAA], a position he held from 1983 to 1990. Although George worked in Richmond, he never hesitated to make the drive to Washington to participate in one of our many strategy sessions. His suggestions for action were always excellent, and his dedication was a major factor in our ultimate success in the implementation of the new GI bill on July 1, 1985. George
was determined that the fine young men and women who serve in our All Volunteer Forces should have the opportunity to earn educational assistance benefits, and his unwavering support and assistance were critical to our success.

After enactment of the GI bill, George continued to share his good advice and wise counsel with me and my staff. He was instrumental in the passage of legislation making the GI bill permanent, measures improving other veterans’ education programs, and legislation that protected SSA funding and established a superb training curriculum for SAA McCullen left behind an enviable legacy. His was a life of good works, and I feel honored to have known him. I want to extend my deepest sympathy to George’s wife, children, and grandchildren.

IN DEFENSE OF DIRECT LENDING

HON. BARNY FRANK
OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Monday, December 11, 1995

Mr. FRANK of Massachusetts. Mr. Speaker, receiving Federal financial aid is a hurdle higher education with one of the most thoughtful students of that subject, Father Bartley MacPhaidin, C.S.C., who’s president of Stonehill College in Easton, MA. I have long found Father MacPhaidin to be an important source of information on educational lending. I was particularly struck in our conversation by his forceful advocacy of the direct lending program, and of the benefits it provides for the students, whose financial well-being has always been very high on the list of Father MacPhaidin’s concerns. He was so cogent and persuasive on the subject that I asked him to share with me in writing some of his thoughts because I believe that providing the best method by which young Americans can receive a college education is a very high priority for us and I think all of our colleagues will benefit from reading Father MacPhaidin’s knowledgeable and thoughtful discussion of the benefits of this program as he and his college have experienced them.

IN DEFENSE OF DIRECT LENDING

Stonehill College was one of the 104 colleges chosen to participate in the first year of the new direct lending program for student loans. Today another 1500 institutions are in the program across the country. Based on Stonehill’s experience of direct lending, the proposal in Congress radically to curtail this program was ill advised.

One week, the funds were in the student’s account and he received a check to pay his rent. In the old program, the student would have gone to his bank, obtained a form, completed the form, and sent it back to the bank. The bank would send it to the college for certification. The college would send the certified form to the guaranty agency, the guaranty agency would then certify and notify the bank. The bank would then, finally, cut the check and mail it to the college. The college would notify the student, the student would come to the relative’s office to sign the check which would then be deposited to his account.

Of course, he would probably have been excused for non-payment of rent before this cumbersome process was completed.

There is controversy over whether Direct Lending helps students manage their debt better, enables them to borrow only as much as they need when they need it. In the past, the cumbersome bank/guaranty agency process has meant that students borrowed the maximum each time to be sure they had the money they needed when they needed it.

The bank/guaranty agency loop has also meant alumni may have confusion in the repayment process. She would call an alumna who called recently to resolve a potential default status. She had borrowed each of her four years at Stonehill from the same bank. But before that bank had to deal with three different servicing companies. She was finding it nearly impossible to figure out which bank held her loans and how she could obtain deferment or forbearance to attend graduate school.

All Direct Lending loans are “bundled” and handled by the same servicer. While Stonehill’s current student loan default rate is 2.5%, the new simpler system will prevent many defaults, here and nationwide. There is controversy over whether Direct Lending is a savings or a cost to the taxpayer, the difference arising in large part from the use of different accounting principles. The banking lobby is strong and speaks in deafening tones. The only way to truly compare costs is to let the two systems operate side by side for at least ten years, allowing each school to choose the program which works best for it.

Then, using agreed accounting procedures, the true costs to taxpayers for each program can be assessed. Default rates can be compared, and a rational decision made to keep one or both programs. Stonehill urges the Congress to permit such an experiment to take place. The House and Senate Direct Lending is a savings or a cost to the taxpayer, the difference arising in large part from the use of different accounting principles. The banking lobby is strong and speaks in deafening tones. The only way to truly compare costs is to let the two systems operate side by side for at least ten years, allowing each school to choose the program which works best for it.

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MINISTRY SECURITY ACT OF 1995

SPEECH OF

HON. GREG GANJSE
OF IOWA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, December 6, 1995

The House in Committee of the Whole House on the State of the Union had under consideration a bill to amend the Merchant Marine Act, 1936 to revitalize the United States-flag merchant marine, and for other purposes:

Mr. GANSEK, Mr. Chairman, am opposed to H.R. 1350, the Maritime Security Act of 1995. I am disappointed that the House approved this legislation which will literally give away over $100 million a year to the domestic ship building industry. This measure is corporate welfare at its worst. As we move towards a balanced budget by 2002, we should not undertake this wasteful initiative.

The Maritime Security Act of 1995 is an attempt to lengthen the phase-out of subsidies for U.S. Shipbuilding industry. The Merchant Marine Act of 1936 created the Operating Differential Subsidy [ODS] Program. This program provided payments to carriers on specified trade routes to offset the higher operating costs under the U.S. flag and was intended to maintain a U.S. merchant fleet. Unfortunately, rather than stimulate a vibrant domestic fleet, subsidies have resulted in an aging fleet of uncertain quality and reliability. Time has proven that this program was ill advised. Wisely, these contracts were set to expire over the next 3 years.

Unfortunately, instead of allowing the free market to reinvigorate and revitalize this factor of our economy, supporters of the U.S. shipping industry have developed a new program which will effectively extend the subsidies until the year 2005 at a potential cost of over $1.2 billion. Adoption of this legislation will force the taxpayers to pay each U.S. ship more than $2 million each year.

Perhaps even more amazing, the Maritime Security Act would remove the requirement that obligates U.S. shipping companies to make the vessels available to the Government in time of national emergency. Incredibly, the bill allows these companies to substitute similar size foreign-registered, foreign-owned ships. The result, Mr. Chairman, is that U.S. taxpayers get virtually nothing for their tax dollar. Because of continued subsidies, the domestic shipping industry will remain inefficient and uncompetitive. Companies like Cargill or Con Agra shipping products like Iowa corn and grain will continue to face unlevel competition from rates higher than the world average.

At this point, Mr. Chairman, I would like to submit for the RECORD a letter I received from Citizens Against Government Waste that summarizes the serious flaws in this legislation and makes the case why it should be defeated.
the General Accounting Office, during Operation Desert Shield only 15 percent of the 206 ships chartered by the Military Sealift Command were privately owned U.S.-flag vessels. Since the 1930s, under the protectionist Jones Act, nearly $10 billion has been spent on operating subsidies for the merchant marine industry. In addition, a handful of U.S.-flag vessel operators have annually reaped $500 million in cargo preference subsidies. Members of Congress have supported these subsidies under the illusion that they ultimately help maintain a healthy U.S.-flag fleet. Instead, the industry is hopelessly dependent on taxpayer subsidies. Strengthening our national defense is a goal that CCAGW strongly supports, but it is not an excuse to extend maritime subsidies that waste scarce tax dollars. We urge you to vote against H.R. 1350 and prevent the enactment of a new wasteful maritime subsidy. This vote will be among those considered for our 1995 Congressional Ratings.

Sincerely,

TOM SCHATZ,
President.
SENATE COMMITTEE MEETINGS
Title IV of Senate Resolution 4, agreed to by the Senate on February 4, 1977, calls for establishment of a system for a computerized schedule of all meetings and hearings of Senate committees, subcommittees, joint committees, and committees of conference. This title requires all such committees to notify the Office of the Senate Daily Digest—designated by the Rules Committee—of the time, place, and purpose of the meetings, when scheduled, and any cancellations or changes in the meetings as they occur.

As an additional procedure along with the computerization of this information, the Office of the Senate Daily Digest will prepare this information for printing in the Extensions of Remarks section of the CONGRESSIONAL RECORD on Monday and Wednesday of each week.

Meetings scheduled for Tuesday, December 12, 1995, may be found in the Daily Digest of today’s RECORD.

MEETINGS SCHEDULED

DECEMBER 13
9:30 a.m.  Environment and Public Works
To hold hearings on proposed legislation authorizing funds for the Clean Water Act, focusing on municipal issues.  SD–406

10:00 a.m.  Labor and Human Resources
Business meeting, to mark up proposed legislation to authorize funds for the Older Americans Act, and to consider pending nominations.  SD–430

10:00 a.m.  Armed Services
To hold hearings on the nomination of H. Martin Lancaster, of North Carolina, to be an Assistant Secretary of the Army, Department of Defense.  SR–222

10:30 a.m.  Special Committee To Investigate Whitewater Development Corporation and Related Matters
To resume hearings to examine certain issues relative to the Whitewater Development Corporation.  SH–216

2:00 p.m.  Select on Intelligence
To hold closed hearings on intelligence matters.  SH–219

2:30 p.m.  Energy and Natural Resources
Forests and Public Land Management Subcommittee
To hold hearings on S. 901, to authorize the Secretary of the Interior to participate in the design, planning, and construction of certain water reclamation and reuse projects and desalination research and development projects, S. 1013, to acquire land for exchange for privately held land for use as wildlife and wetland protection areas, in connection with the Garrison Diversion Unit Project. S. 1154, to authorize the construction of the Fort Peck Rural Water Supply System, S. 1169, to amend the Reclamation Wastewater and Groundwater Study and Facilities Act to authorize construction of facilities for the reclamation and reuse of wastewater at McCall, Idaho, and S. 1186, to provide for the transfer of operation and maintenance of the Flathead irrigation and power project.  SD–366

DECEMBER 14
9:30 a.m.  Energy and Natural Resources
To hold hearings on S. 1271, to amend the Nuclear Waste Policy Act of 1982.  SD–366

Governmental Affairs
To hold hearings to examine Federal Government financial management.  SD–342

CANCELLATIONS

DECEMBER 12
10:00 a.m.  Armed Services
To hold hearings on the nomination of H. Martin Lancaster, of North Carolina, to be an Assistant Secretary of the Army.  SR–222
Chamber Action

Routine Proceedings, pages S18305-S18371

Measures Introduced: Six bills and one resolution were introduced, as follows: S. 1462–1467, and S.J. Res. 43. Pages S18362–63

Flag Desecration: Senate resumed consideration of S.J. Res. 31, proposing an amendment to the Constitution of the United States authorizing the Congress and the States to prohibit the physical desecration of the flag of the United States, taking action on amendments proposed thereto, as follows:
Pages S18315–33, S18336–60

Adopted:
Hatch/Heflin/Feinstein Amendment No. 3094, in the nature of a substitute. Pages S18324–26

Pending:
Biden Amendment No. 3093, in the nature of a substitute. Pages S18320–24
Hollings Amendment No. 3095, to propose a balanced budget amendment to the Constitution of the United States. Pages S18326–29
Hollings Amendment No. 3096, to propose a balanced budget amendment to the Constitution of the United States. Pages S18329–33
McConnell Amendment No. 3097, in the nature of a substitute. Pages S18344–60

Senate will continue consideration of the resolution on Tuesday, December 12, 1995, with votes to occur thereon.

Messages From the President: Senate received the following messages from the President of the United States:

Transmitting the report on the Bosnian Serb Sanctions; referred to the Committee on Banking, Housing, and Urban Affairs. (PM–101). Pages S18360–62

Transmitting the report on ordering the selected reserve of the armed forces to active duty; referred to the Committee on Armed Services. (PM–102).

Page S18362

Nominations Received: Senate received the following nominations:

Princeton Nathan Lyman, of Maryland, to be an Assistant Secretary of State.

Alfred C. DeCotiis, of New Jersey, to be a Representative of the United States of America to the Fiftieth Session of the General Assembly of the United Nations.

Joseph Lane Kirkland, of the District of Columbia, to be an Alternate Representative of the United States of America to the Fiftieth Session of the General Assembly of the United Nations.

Tom Lantos, of California, to be an Alternate Representative of the United States of America to the Fiftieth Session of the General Assembly of the United Nations.

Jeanne Moutoussamy-Ashe, of New York, to be an Alternate Representative of the United States of America to the Fiftieth Session of the General Assembly of the United Nations.

Toby Roth, of Wisconsin, to be an Alternate Representative of the United States of America to the Fiftieth Session of the General Assembly of the United Nations.

A routine list in the Navy. Page S18371

Communications: Pages S18360–62

Statements on Introduced Bills: Pages S18363–64

Additional Cosponsors: Page S18364

Amendments Submitted: Pages S18364–65

Additional Statements: Pages S18365–70

Adjournment: Senate convened at 12 noon, and adjourned at 6:31 p.m., until 9 a.m., on Tuesday, December 12, 1995. (For Senate’s program, see the remarks of the Acting Majority Leader in today's Record on page S18371.)

Committee Meetings

(WHITENESS not listed did not meet)

WHITENESS

Special Committee to Investigate the Whitewater Development Corporation and Related Matters: Committee resumed hearings to examine certain issues relative to the Whitewater Development Corporation, receiving testimony from Margaret A. Williams, Assistant to
the President and Chief of Staff to the First Lady; Diane Blair, University of Arkansas, Fayetteville; and Robert Barnett and Ingram Barlow, both of Williams and Connolly, Washington, D.C.

Hearings continue on Wednesday, December 13.

### House of Representatives

**Chamber Action**

**Bills Introduced:** 3 public bills, H.R. 2754–2756 were introduced.  
Page H14253

**Reports Filed:** Reports were filed as follows:  
H.R. 2538, to make clerical and technical amendments to title 18, United States Code, and other provisions of law relating to crime and criminal justice (H. Rept. 104–391);  
H.R. 1533, to amend title 18, United States Code, to increase the penalty for escaping from a Federal prison (H. Rept. 104–392);  
H.R. 2418, to improve the capability to analyze deoxyribonucleic acid, amended (H. Rept. 104–393);  
H.R. 2685, to repeal the Medicare and Medicaid Coverage Data Bank (H. Rept. 104–394, Part 1);  
H.R. 2243, to amend the Trinity River Basin Fish and Wildlife Management Act of 1984, to extend for three years the availability of moneys for the restoration of fish and wildlife in the Trinity River, amended (H. Rept. 104–395);  
H.R. 1745, to designate certain public lands in the State of Utah as wilderness, amended (H. Rept. 104–396); and  
H.R. 2289, to amend title 38, United States Code, to extend permanently certain housing programs, to improve the veterans employment and training system, and to make clarifying and technical amendments to further clarify the employment and reemployment rights and responsibilities of members of the uniformed services, as well as those of the employer community (H. Rept. 104–397).  
Pages H14252–53

**Speaker Pro Tempore:** Read a letter from the Speaker wherein he designated Representative Young of Florida to act as Speaker pro tempore for today.  
Page H14241

**Presidential Messages:** Read the following messages from the President:  
Coast Guard: Message wherein he notifies Congress that as authorized, with respect to the Coast Guard, the Secretary of Defense and the Secretary of Transportation to order to active duty any units, and any individual members not assigned to a unit organized to serve as a unit, of the Selected Reserve to perform such missions the Secretary of Defense may determine necessary due to the deployment of United States forces to conduct operational missions in and around the former Yugoslavia—referred to the Committee on National Security and ordered printed (H. Doc. 104–144); and  
Bosnia emergency: Message wherein he discusses Administration actions related to the exercise of powers conferred by the declaration of a national emergency to deal with the threat to the national security, foreign policy, and economy of the United States arising from actions and policies of the Governments of Serbia and Montenegro—referred to the Committee on International Relations and ordered printed (H. Doc. 104–145).  
Pages H14242–44

**Referral:** One Senate-passed measure was referred to the appropriate House committee.  
Page H14252

**Senate Messages:** Messages received from the Senate today and appear on page H14241.

**Quorum Calls—Votes:** No quorum calls or votes developed during proceedings of the House today.

**Adjournment:** Met at noon and adjourned at 1:18 p.m.

### Committee Meetings

No Committee meetings were held.

### NEW PUBLIC LAWS

(For last listing of Public Laws, see DAILY DIGEST, p. D1411)


H.R. 2525, to modify the operation of the antitrust laws, and of State laws similar to antitrust laws, with respect to charitable gift annuities. Signed December 8, 1995. (P.L. 104–63)
COMMITTEE MEETINGS FOR TUESDAY,
DECEMBER 12, 1995

(Committee meetings are open unless otherwise indicated)

Senate

Committee on Banking, Housing, and Urban Affairs, business meeting, to mark up S. 1228, to impose sanctions on foreign persons exporting petroleum products, natural gas, or related technology to Iran, 10 a.m., SD-538.

Committee on Energy and Natural Resources, Subcommittee on Parks, Historic Preservation and Recreation, to hold hearings on S. 873, to establish the South Carolina National Heritage Corridor, S. 944, to provide for the establishment of the Ohio River Corridor Study Commission, S. 945, to amend the Illinois and Michigan Canal National Heritage Corridor Act of 1984 to modify the boundaries of the corridor, S. 1020, to establish the Augusta Canal National Heritage Area in the State of Georgia, S. 1110, to establish guidelines for the designation of National Heritage Areas, S. 1127, to establish the Vancouver National Historic Reserve, and S. 1190, to establish the Ohio and Erie Canal National Heritage Corridor in the State of Ohio, 9:30 a.m., SD-366.

Committee on Environment and Public Works, to hold hearings on provisions of S. 776, to reauthorize the Atlantic Striped Bass Conservation Act and the Anadromous Fish Conservation Act, 2:30 p.m., SD-406.

Committee on Finance, to hold hearings on pending nominations, 3 p.m., SD-215.

Committee on Foreign Relations, to consider pending calendar business, 2 p.m., SD-419.

Committee on Small Business, to hold hearings on proposals to strengthen the Small Business Investment Company program, 9:30 a.m., SR-428A.

Committee on Foreign Affairs, business meeting, to mark up S. 814, to provide for the reorganization of the Bureau of Indian Affairs, and S. 1159, to establish an American Indian Policy Information Center, 9:30 a.m., SR-485.

NOTICE

For a Listing of Senate Committee Meetings Scheduled ahead, see page E2336 in today's Record.

House

Committee on House Oversight, to continue hearings on Campaign Finance Reform: The Role of Political Parties, 10 a.m., 1310 Longworth.

Committee on International Relations, Subcommittee on Africa and the Subcommittee on International Operations, joint hearing on Recent Developments in Nigeria, 1 p.m., 2154 Rayburn.

Committee on Resources, Subcommittee on Fisheries, Wildlife and Oceans, hearing on H.R. 2655, Atlantic Striped Bass Preservation Act of 1995, 10 a.m., 1324 Longworth.

Committee on Standards of Official Conduct, executive, to consider pending business, 1:30 p.m., HT-2M Capitol.

Joint Meetings

Conferees, on S. 652, to provide for a pro-competitive, de-regulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition, 2 p.m., S-5, Capitol.
Next Meeting of the SENATE  
9 a.m., Tuesday, December 12

Senate Chamber

Program for Tuesday: Senate will resume consideration of S. J. Res. 31, Flag Desecration Constitutional Amendment.
(Senate and House will hold a joint meeting to receive an address by Shimon Peres, Prime Minister of Israel, at 11 a.m., following which Senate will recess until 2:15 p.m. for respective party conferences.)

Next Meeting of the HOUSE OF REPRESENTATIVES  
10 a.m., Tuesday, December 12

House Chamber

Program for Tuesday: Joint meeting to receive His Excellency, Shimon Peres, Acting Prime Minister of Israel; Call of the Corrections Calendar; Consideration of eight Suspensions; and H.R. 2621, Concerning Disinvestment of Federal Trust Funds.

Extensions of Remarks, as inserted in this issue

HOUS E

Crane, Philip M., Ill., E2333
Frank, Barney, Mass., E2334
Ganske, Greg, Iowa, E2334
Montgomery, G.V. (Sonny), Miss., E2333
Hamilton, Lee H., Ind., E2333

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