

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

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

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

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

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

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

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

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

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

cration in California reported in the media? The impact is far greater than the number of flag desecrations.

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

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

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

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

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

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

RECESS

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

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

FLAG DESECRATION CONSTITUTIONAL AMENDMENT

The Senate continued with the consideration of the joint resolution.

AMENDMENT NO. 3093

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

The Senator from Utah.

Mr. HATCH. Mr. President, I normally would want the distinguished

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

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

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

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

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

Mr. HATCH. I withhold.

Mr. BIDEN addressed the Chair.

The PRESIDING OFFICER. The Senator from Delaware is recognized.

Mr. BIDEN. I understand we have 1 minute.

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

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

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

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

The legislative clerk called the roll.

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

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

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

[Rollcall Vote No. 597 Leg.]

YEAS—5

Biden	Levin	Pell
Hollings	Nunn	

NAYS—93

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

Daschle	Helms	Murkowski
DeWine	Inhofe	Murray
Dodd	Inouye	Nickles
Dole	Jeffords	Pressler
Domenici	Johnston	Pryor
Dorgan	Kassebaum	Reid
Exon	Kempthorne	Robb
Faircloth	Kennedy	Rockefeller
Feingold	Kerrey	Roth
Feinstein	Kerry	Santorum
Ford	Kohl	Sarbanes
Frist	Kyl	Shelby
Glenn	Lautenberg	Simon
Gorton	Leahy	Simpson
Graham	Lieberman	Smith
Gramm	Lott	Snowe
Grams	Lugar	Specter
Grassley	Mack	Stevens
Gregg	McCain	Thomas
Harkin	McConnell	Thompson
Hatch	Mikulski	Thurmond
Hatfield	Moseley-Braun	Warner
Heflin	Moynihan	Wellstone

NOT VOTING—1

Hutchison

So, the amendment (No. 3093) was rejected.

AMENDMENT NO. 3095

The PRESIDING OFFICER. The question is on amendment 3095, offered by the Senator from South Carolina.

Under the previous order, there will be 2 minutes of debate equally divided. The Senator from South Carolina is recognized.

Mr. FORD. May we have order, Mr. President?

The PRESIDING OFFICER. The Senate will be in order.

Mr. HOLLINGS. Mr. President, let me acknowledge a misunderstanding. When I was asked on Friday about the amendment, because I had been stalking my distinguished majority leader, waiting for him to put up a joint resolution all year long, I was asked about amendments, and I told him I had two. They said you would have to be able to debate them on Monday. I said fine. They said there will probably be a time limitation. I said fine.

In no wise was any inference or reference made to relevance. As a result, I understand the distinguished minority leader is going to ask that we vote it down because, when the two leaders, majority and minority, make an agreement, they have to hold fast to their agreements—except, of course, in this case. You cannot take the position of being none whatsoever, because it is not a mistrust of the minority leader. It has been a mistake.

Similarly, if it has been a mistake with this particular Senator, because if I had been asked if it had to be relevant, we would not have a unanimous-consent agreement and would not be voting on the flag.

So we are sort of, as they say in the law, in *pari delicto*. Point 1: It does not necessarily have to be relevant.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. DASCHLE. Mr. President, I yield from my leader time, a minute.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from South Carolina is recognized.

Mr. FORD. Mr. President, the Senate is not in order.

The PRESIDING OFFICER. The Senator is correct. Those having conversa-

tions, please take them to the Cloakroom. Others, take your seat. Could I have order in the Senate, please? Will Senators please take their seats or take their conversations to the Cloakroom?

The Senator from South Carolina.

Mr. HOLLINGS. I thank the distinguished leader and Members themselves.

Mr. President, I will save the Senate time by withdrawing the one on campaign finance. That is the best evidence that I had relative to the understanding or misunderstanding about relevance.

Point 1: The 10 amendments to the Constitution were originally submitted as 12 amendments, the 11th being the 27th amendment, not relevant, of course, voted on separately. And if a point of order is made, then of course the flag is not relevant to balancing the budget, or balancing the budget is not relevant to the flag. I understand that. But the technical point of constitutional amendments, this has been submitted as a separate article, and on merit I dispute and appeal the ruling of the Chair.

Otherwise, what we have is a glorious opportunity to get No. 1 in the contract performed. They have not been able to get term limitations or the matter of line-item veto or deregulation, and we can go down the list. But you can get, certainly, this No. 1 in the contract by voting today for a balanced budget amendment to the Constitution, word for word, the Dole amendment—

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. HOLLINGS. I ask unanimous consent just to get 2 more minutes.

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

Mr. HOLLINGS. Word for word, the Dole amendment with the Nunn amendment to it with respect to the limitation on judicial power. Otherwise, the provision that the protection in section 13301 of the United States Code of laws is not repealed, that protection being for Social Security. Section 7 of the original Dole amendment repealed that section. We voted just 3 weeks ago, by 97 to 2, to instruct the conferees that they not use Social Security moneys. So it brings it crystal clear into view now and into a particular vote.

If you really want a balanced budget amendment to the Constitution, this is a wonderful opportunity, because we had five of us on this side of the aisle sign a letter to that effect.

I thank the Chair.

Mr. DASCHLE. Mr. President, I will just use a couple of minutes of my leader time to reiterate what the distinguished Senator from South Carolina has already informed our colleagues. There was a miscommunication last Friday, as the leader and I were negotiating the circumstances under which we would come to closure

on the flag amendment. It was our hope we could avoid votes yesterday, stack votes today, but that was contingent on relevant amendments being offered, with some understanding as to how the time would be divided.

I entered into that agreement recognizing the need for relevancy. As a result, even though I support the amendment offered by the Senator from South Carolina, I will also support the point of order. It is not relevant to this amendment. In spite of its merit, it is not an amendment I can support under these circumstances and given the agreement.

So, therefore, I hope our colleagues could support the agreement and look for another day, when we can support as well the Hollings amendment.

I yield the floor.

The PRESIDING OFFICER. The majority leader is recognized.

Mr. DOLE. Is all time yielded back?

The PRESIDING OFFICER. All time is yielded back.

Mr. DOLE. Mr. President, I raise a point of order that the pending Hollings amendment dealing with a balanced budget amendment violates the consent agreement of December 8, which states that all amendments must be relevant to the subject matter of flag desecration.

The PRESIDING OFFICER. The point of order is well taken.

Mr. HOLLINGS. I appeal, Mr. President. I appeal the ruling of the Chair. And, Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is, Shall the decision of the Chair stand as the judgment of the Senate? On this question, the yeas and nays have been ordered.

The clerk will call the roll.

The bill clerk called the roll.

The PRESIDING OFFICER (Mr. GREGG). Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 91, nays 8, as follows:

[Rollcall Vote No. 598 Leg.]

YEAS—91

Abraham	Coverdell	Grassley
Akaka	Craig	Gregg
Ashcroft	D'Amato	Harkin
Bennett	Daschle	Hatch
Bingaman	DeWine	Hatfield
Bond	Dodd	Helms
Boxer	Dole	Hutchison
Bradley	Domenici	Inhofe
Breaux	Dorgan	Inouye
Brown	Exon	Jeffords
Bryan	Faircloth	Kassebaum
Bumpers	Feingold	Kempthorne
Burns	Feinstein	Kennedy
Byrd	Ford	Kerrey
Campbell	Frist	Kerry
Chafee	Glenn	Kohl
Coats	Gorton	Kyl
Cochran	Graham	Lautenberg
Cohen	Gramm	Levin
Conrad	Grams	Lieberman

Lott	Nunn	Simpson
Lugar	Pell	Smith
Mack	Pressler	Snowe
McCain	Pryor	Stevens
McConnell	Reid	Thomas
Mikulski	Robb	Thompson
Moseley-Braun	Rockefeller	Thurmond
Moynihan	Roth	Warner
Murkowski	Santorum	Wellstone
Murray	Sarbanes	
Nickles	Shelby	

NAYS—8

Baucus	Hollings	Simon
Biden	Johnston	Specter
Heflin	Leahy	

So the ruling of the Chair was sustained as the judgment of the Senate.

AMENDMENT NO. 3096 WITHDRAWN

The PRESIDING OFFICER. The question is on agreeing to the Hollings amendment No. 3096.

Mr. HOLLINGS. Mr. President, I ask unanimous consent to withdraw the amendment.

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

AMENDMENT NO. 3097

The PRESIDING OFFICER. The question is on agreeing to the McConnell amendment.

The Senator from Kentucky.

Mr. MCCONNELL. Mr. President, there is 1 minute to explain the amendment. Is that correct?

The PRESIDING OFFICER. That is correct. The Senate will suspend until there is order in the Chamber.

The Senator from Kentucky.

Mr. MCCONNELL. I ask unanimous consent that Senator MIKULSKI be added as a cosponsor.

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

Mr. MCCONNELL. Mr. President, my amendment will permit us to protect the flag and the Constitution. My amendment will make flag desecration illegal in three instances:

First, when an individual desecrates a flag with the intent to incite patriotic Americans to imminent violence;

Second, when someone steals a flag belonging to the U.S. Government and desecrates it; and

Third, when someone steals a flag displayed on Federal property and desecrates it.

This amendment differs significantly from previous statutes struck down by the Supreme Court and would be upheld by the Supreme Court, according to the CRS, and a number of other constitutional scholars.

I revere the flag like every Senator, for the history it represents and the values it symbolizes. But let us not constrict freedom in the name of protecting the flag. After all, freedom is the American way of life that the flag embodies. Let us not give flag-burners—the misfits who hate America and the freedom we cherish—more attention than they deserve. Do not let those who dishonor the flag cause us to tamper with the freedom that has made America the Nation we love and the envy of the world.

I urge a vote for my amendment.

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah has a minute.

Mr. HATCH. Mr. President, the McConnell amendment would displace the flag amendment. It would kill the flag desecration constitutional amendment, the only real way the American people can protect their flag. The McConnell amendment offers a substitute statute. It offers virtually no protection for the flag. It is so narrowly drawn and related to flag desecration in such limited circumstances that it would not have changed the decision in the Johnson case. It does not protect the flag in cases that have not involved the breach of the peace or a flag stolen from the Government or a stolen flag desecrated on Federal property.

Finally, we have been down this dead end before. The Supreme Court will not buy any statute, and it will not buy this statute any more than it bought the 1989 Biden flag statute.

How can we look the American people in the eye if we adopt this ineffective substitute? So the Supreme Court will strike it down. How many times must we have the Supreme Court tell us that a statute will not work? So I hope everybody will vote "no" on the McConnell amendment.

I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk called the roll.

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

The result was announced—yeas 28, nays 71, as follows:

[Rollcall Vote No. 599 Leg.]

YEAS—28

Akaka	Dorgan	Mikulski
Bennett	Harkin	Murray
Bingaman	Jeffords	Nunn
Boxer	Kerry	Pell
Bradley	Kohl	Pryor
Bumpers	Lautenberg	Sarbanes
Chafee	Leahy	Simon
Conrad	Levin	Specter
Daschle	Lieberman	
Dodd	McConnell	

NAYS—71

Abraham	Ford	Lugar
Ashcroft	Frist	Mack
Baucus	Glenn	McCain
Biden	Gorton	Moseley-Braun
Bond	Graham	Moynihan
Breaux	Gramm	Murkowski
Brown	Grams	Nickles
Bryan	Grassley	Pressler
Burns	Gregg	Reid
Byrd	Hatch	Robb
Campbell	Hatfield	Rockefeller
Coats	Heflin	Roth
Cochran	Helms	Santorum
Cohen	Hollings	Shelby
Coverdell	Hutchison	Simpson
Craig	Inhofe	Smith
D'Amato	Inouye	Snowe
DeWine	Johnston	Stevens
Dole	Kassebaum	Thomas
Domenici	Kempthorne	Thompson
Exon	Kennedy	Thurmond
Faircloth	Kerrey	Warner
Feingold	Kyl	Wellstone
Feinstein	Lott	

So the amendment (No. 3097) was rejected.

Mr. HATCH. Mr. President, the Senate must now decide: Is this picture of the flag being desecrated freedom or an abuse of freedom? The American people know the difference. They are counting on the Senate to understand it too.

Do not talk to me about flag bathing suits or T-shirts.

This is what we are talking about. This is the unique symbol of our country.

Only Congress will be able to protect the flag. If we do not trust ourselves to protect the American flag in a responsible way, why should the American people trust us to do anything?

The Supreme Court made a mistake. The Framers gave the people and this Senate the right to correct that mistake, through the justifiably difficult amendment process.

Let the American people have the right to enact one, uniform law which protects one symbol of this great country and one symbol only—Old Glory.

Mr. DASCHLE addressed the Chair.

The PRESIDING OFFICER. The minority leader is recognized.

Mr. DASCHLE. Mr. President, I will use a couple of minutes of my leader time. I know that people have schedules to keep, but I have not had the opportunity to talk on this amendment. I will attempt to be very brief.

I think everyone understands the repercussions and all the ramifications of the vote we are about to take. This is the first time in history that we would amend the Bill of Rights; the first time in 200 years that we would limit the freedom of speech. And the question really is, why? Last year, three people were arrested or called upon to explain themselves for destroying the flag. In 1993, not one incident of flag desecration occurred.

So, Mr. President, this debate is really about protecting principle versus protecting a symbol. Both are important. Both should be protected. But do we really hold the symbol more important than the principle it represents? Is the flag more important than the freedom it stands for? The flag is important, and should be honored. But our basic freedoms, in my view, Mr. President, are clearly more important. For example, if we hold symbols to be more important than the fundamental right of freedom of speech, what about protecting a cross? What about protecting the Star of David? What about protecting a copy of the U.S. Constitution?

The irony here is that we diminish the very freedom the flag represents by protecting its symbol. Shimon Peres, the acting Prime Minister, spoke of this this morning, and he reminded us of how critical it was that we understand what a model this U.S. Constitution is for the rest of the world. He said the reason it is such a model is because it represents tolerance. That was his word, "tolerance." And in a democracy, sometimes we must find the strength to tolerate actions we abhor.

As I was growing up, whether it was with a teacher, a Cub Scout leader, or

my family, we all recognized that perhaps the biggest difference between this country and so many others is that here we teach, elsewhere they compel. It is important that, as we vote on this amendment, we understand the difference between teaching and compelling. Let us leave here with every bit as much resolve to go out and teach the young and teach all in this country the importance of protecting and respecting our flag, but let us not, for the first time in 200 years, undermine the Constitution, the Bill of Rights, and the freedom of speech by compelling people today and abrogating their freedom in the future.

I yield the floor.

Mr. DOLE addressed the Chair.

The PRESIDING OFFICER. The majority leader is recognized.

Mr. DOLE. Mr. President, during the past several days, we have heard a number of important legal arguments, but there has been very little talk about the history of the flag itself.

On June 14, 1777, the Revolutionary Continental Congress decided to create an official and distinctively American flag, passing a resolution declaring that, "The flag of the United States be 13 stripes alternate red and white, and the Union be 13 stars, white in the blue field representing a new constellation."

The colors of the flag were carefully chosen: The red for the sacrifices in blood made for the cause of national independence. The white for the purity of this cause. And the blue for vigilance, perseverance, and justice.

Our Nation was barely 30 years old when it went to war a second time against the British Empire in the war of 1812. As the British fleet attacked Fort McHenry in Baltimore Harbor, the flag waved undaunted throughout the night until the dawn's early light, inspiring Washington lawyer Francis Scott Key to write the words of the our national anthem.

The most tragic chapter in our Nation's history began when the American flag was lowered at Fort Sumter, after a 33-hour bombardment. The Civil War that ensued gave us Barbara Frietchie, whom the poet John Greenleaf Whittier tells us stood face-to-face, eyeball-to-eyeball, with Stonewall Jackson: "Shoot if you must, this old gray head, but spare your country's flag, she said."

Eighty years ago, in 1915, as Europe stood ravaged by World War I, President Woodrow Wilson established June 14 as National Flag Day. The purpose of Flag Day, President Wilson wrote, was to help us "direct our minds with a special desire of renewal to the ideals and principles of which we have sought to make our great Government the embodiment."

One of our most enduring national images comes from the Second World War—the famous picture of six American brave soldiers raising Old Glory at the top of Iwo Jima's Mount Suribachi. Nearly 6,000 Americans gave their lives during their deadly ascent up that hill.

And just 25 years after Iwo Jima, the flag made history again, as it was planted on the Moon by America's astronauts, some 239,000 miles away.

So, the flag itself has a unique and rich history, a history of great sacrifice and great triumph, and one that is the birthright of every American.

Mr. President, there is another point I want to emphasize today: Contrary to what some of my colleagues have said, this debate is not about amending the bill of rights or carving out an exception to the first amendment. It is about correcting a misguided Supreme Court decision that itself amended the bill of rights by overturning 48 State statutes and a Federal law banning the act of flag desecration. Many of these statutes had been on the books for decades, without in any way diminishing our precious first amendment freedoms.

And if we learned anything in 1989, when we first began this debate, it is that we cannot overrule a Supreme Court decision on a constitutional matter simply by passing a statute. Fixing the Supreme Court's red-white-and-blue blunder requires a constitutional amendment. This is the only serious and honest way to correct the Texas versus Johnson decision.

I respect the efforts of my distinguished colleague from Kentucky, Senator MCCONNELL, who has proposed a flag-desecration statute. But as I said back in 1989, the statutory quick-fix just will not work. It failed in 1989, and it will fail again today.

Of course, amending the Constitution should not be taken lightly. This is serious business. That is why the framers intentionally made the amendment process a difficult one, requiring the assent of two-thirds of Congress and three-fourths of the State legislatures. But once these legislative hurdles have been cleared, the American people have spoken. In fact, amending the Constitution is as American as the Constitution itself.

Mr. President, I will conclude today by telling the story of a man named Stephan Ross, who testified earlier this year before the Senate Judiciary Committee.

In 1940, at the age of nine, the Nazis seized Ross from his home in Krasnik, Poland. For the next 5 years, he was held in 10 different Nazi death camps and barely survived.

The U.S. Army eventually liberated Ross from Dachau. As Ross traveled to Munich for medical care, an American tank commander jumped off his vehicle to lend his help to Ross and to the other victims of Nazi brutality. As Ross recounts: "He gave me his own food. He touched my withered body with his hands and heart. His love instilled in me a will to live, and I fell to his feet and shed my first tears in 5 years."

The American soldier then gave Ross what he thought was a handkerchief, but he soon realized it was a small American flag, the first I had ever seen.

Stephan Ross still keeps that same cherished flag at his home in Boston, where he works as a psychologist. Ross says:

It became my flag of redemption and freedom. . . . It represents the hope, freedom, and life that the American soldiers returned to me when they found me, nursed me to health, and restored my faith in mankind. . . . Even now, 50 years later, I am overcome with tears and gratitude whenever I see our glorious American Flag, because I know what it represents not only to me, but to millions around the world. . . . Protest if you wish. Speak loudly, even curse our country and our flag, but please, in the name of all those who died for our freedoms, don't physically harm what is so sacred to me and to countless others.

And, I might add, to those who are now heading for Bosnia.

Stephan Ross is right: We must protect that which is sacred to us as citizens of this great country. Our flag is sacred because it stands alone as the unique symbol of the principles and ideals that President Woodrow Wilson knew bound us together as one nation, one people.

Throughout our country's history, thousands of brave Americans have followed the flag into battle to defend these principles and ideals. Twenty thousand Americans will serve under our flag in Bosnia. As a testament to the great sacrifices made by our fighting men and women, the flag—America's national symbol—should receive the constitutional protection it so richly deserves.

The PRESIDING OFFICER. The question is on the engrossment of the amendment and third reading of the joint resolution.

The amendment was ordered to be engrossed and the joint resolution to be read a third time.

The joint resolution was read a third time.

The PRESIDING OFFICER. The joint resolution having been read the third time, the question is, Shall the joint resolution pass?

Mr. HATCH. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays are ordered, and the clerk will call the roll.

The bill clerk called the roll.

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

The yeas and nays resulted—yeas 63, nays 36, as follows:

[Rollcall Vote No. 600 Leg.]

YEAS—63

Abraham	Coverdell	Gramm
Ashcroft	Craig	Grams
Baucus	D'Amato	Grassley
Bond	DeWine	Gregg
Breaux	Dole	Hatch
Brown	Domenici	Hatfield
Bryan	Exon	Heflin
Burns	Faircloth	Helms
Byrd	Feinstein	Hollings
Campbell	Ford	Hutchison
Coats	Frist	Inhofe
Cochran	Gorton	Johnston
Cohen	Graham	Kassebaum

Kempthorne	Nunn	Smith
Kyl	Pressler	Snowe
Lott	Reid	Specter
Lugar	Rockefeller	Stevens
Mack	Roth	Thomas
McCain	Santorum	Thompson
Murkowski	Shelby	Thurmond
Nickles	Simpson	Warner

NAYS—36

Akaka	Feingold	Lieberman
Bennett	Glenn	McConnell
Biden	Harkin	Mikulski
Bingaman	Inouye	Moseley-Braun
Boxer	Jeffords	Moynihan
Bradley	Kennedy	Murray
Bumpers	Kerrey	Pell
Chafee	Kerry	Pryor
Conrad	Kohl	Robb
Daschle	Lautenberg	Sarbanes
Dodd	Leahy	Simon
Dorgan	Levin	Wellstone

The PRESIDING OFFICER. On this vote, the yeas are 63, the nays are 36. Two-thirds of the Senators voting not having voted in the affirmative, the joint resolution is rejected.

Mr. CHAFEE. Mr. President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

Mr. MCCAIN addressed the Chair.

The PRESIDING OFFICER. The Senator will wait until we get order.

UNANIMOUS-CONSENT REQUEST

Mr. MCCAIN. Mr. President, I ask unanimous consent the Foreign Relations Committee be discharged of further consideration of H.R. 2606 with reference to the use of funds for troops in Bosnia and the Senate then turn to its immediate consideration.

The PRESIDING OFFICER. Is there objection?

Mr. MCCAIN. President, I would like to make known the wishes of the majority leader.

Mr. NUNN. Reserving the right to object.

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah.

FLAG DESECRATION
CONSTITUTIONAL AMENDMENT

Mr. HATCH. Mr. President, while they are resolving this difficulty, let me say a few words about the flag amendment. I ask unanimous consent I be given a few minutes to say a few words about the flag amendment.

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

The Senator will suspend until we get the attention of the Senate. I ask that conversations be removed to the Cloakroom.

The Senator from Utah.

Mr. HATCH. Mr. President, I am, of course, disappointed by the outcome. But I predicted at the beginning unless we got three more Democrats, we were not going to be able to prevail, and we could not do that.

I respect the decision of the Senate. I congratulate those on the other side of the issue.

In particular, I congratulate the most important leader of the opposition. Of course, that is President Clinton. President Clinton won this battle. The American people, in my opinion, lost. The President's strong, uncompromising opposition to any amendment protecting the flag whatsoever, expressed on June 6, in testimony before the Constitutional Subcommittee, was too much for the Citizens Flag Alliance and those of us here to overcome.

Had the President supported this amendment, I have no doubt, we would have prevailed. I do not think there is any question about it. So I congratulate the President on this victory.

I assure my colleagues, this amendment is not going to go away. It is a simple amendment. It is a constitutional amendment. It is written in good constitutional form. Frankly, it is not going to go away. The American people are not going to allow it. We will debate it in the next Congress. I hope we have some changes that will enable us to pass it at that time.

I want to particularly thank Senator HEFLIN and Senator FEINSTEIN for their efforts.

I also thank chief counsel Winston Lett, counsel Jim Whiddon, and a former Heflin staffer who worked very hard on this, Gregg Butrus, now at the Notre Dame Law School. I also want to express appreciation to Senator FEINSTEIN and her counsel, Jamie Grodsky.

On my staff, I want to thank John Yoo, Steven Schlesinger, Jasen Adams, and Mark Disler. These people worked long and hard, very sincerely, on this amendment.

This has been not only an important debate but an interesting debate. I think both sides have had a full and fair opportunity to explain their side. I am sorry we lost. On the other hand, we have done the best we can under the circumstances.

Unless there is a change in the U.S. Senate, I do not believe we are going to be able to pass this amendment with the current Senate, so we are hoping in the next Congress we will have enough votes to pass it. Be that as it may, it is going to come up again, whether we do or do not, and we are going to keep bringing it up until we pass it and protect the Nation's national symbol.

I have to say, anybody who really argues this is a denigration of the first amendment just plain does not understand constitutional law, does not understand the more than 21 cases where we have limited the first amendment, and does not understand that this is, full and simple and very plain, to prevent conduct that is offensive to the flag, offensive to the country, and offensive to almost every citizen, and, frankly, the way they have spoken, to every Senator in the U.S. Senate.

I thank the Chair.

The PRESIDING OFFICER. The Senator from Utah.

Mr. BENNETT. Mr. President, I want to take occasion to pay tribute to my senior colleague, Senator HATCH, for

his leadership on this debate on the flag amendment. My one regret in this whole debate has been that some people in the State of Utah have characterized this as an issue that has divided Senator HATCH and me and tried to force us into picking sides.

I did, indeed, vote against the amendment. It was a close vote. These votes are always close matters. My reasoning is that the Constitution of the United States is our basic law and, as such, should be held inviolate from legislative activities.

I realize this was enabling legislation, but I have the fear that, if we start the precedent of amending the Constitution every time there is a Supreme Court decision with which we disagree, we run the risk of seeing the Constitution turned into something other than basic law.

Coming out of a political science background and a lifetime of studying the Constitution, that is where I came down on this particular issue. But I want to make it very clear that I am not backing down from my admiration for and respect for my senior colleague and his scholarship and his leadership.

I hope the people of Utah will understand that this has been an intellectual disagreement between us, and not an emotional disagreement between us. We spent many hours with each other—each trying to understand the other's point of view. I am sure Senator HATCH understands and respects my point of view, as I certainly understand and respect his.

So I hope the people of Utah will understand that this is not something that has driven a wedge between their two Senators.

While I am on the floor, I would like to read into the RECORD just one letter that I have received that I think is illustrative of the way this debate has gone in the State of Utah. The proponents of the amendment have been mounting an advertising campaign in Utah putting up television ads urging the people of our State to contact, write, fax, or phone Senator BENNETT and urge that he vote in favor of this amendment. That, of course, is their appropriate constitutional right. I received this letter in response to that campaign. I would like to read it into the RECORD. It is addressed to the Office of Senator BENNETT regarding the flag burning amendment.

DEAR SENATOR BENNETT: I read the article in this morning's Salt Lake Tribune indicating that your position on the flag burning amendment differs from that of Senator HATCH. I also saw the commercial obviously put on by supporters of the amendment urging that I write you about this issue. I commend you for your independent and thoughtful position as indicated in the Tribune article.

I am a West Point graduate and served with the 3rd Armored Division in Germany and the 5th Special Forces group in Vietnam. I am not in favor of flag burning. But I really don't think we need a constitutional amendment about flag burning. I am strongly convinced that the constitutional provisions