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 when he 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 several 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.

Mr. CHAFEE 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, no matter whether we were at our caucus 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, and I have some questions I would like to ask the Senator, 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, Congress will 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 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 protester——

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, I do 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 difficult time imagining 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 statute 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 really are not trying to deface 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, very narrowly defined 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 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 the 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 mustering 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 the 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 anybody 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, it is perfectly all right, according to the handbook.

I do not know what the law of the Senator from Utah is going to do to 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 with hopes that the police will come along and they will be dragged away in chains with handcuffs, with television all over the place.

Mr. President, 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 amendments are about 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.

Here we are trivializing the Constitution. We are adding words about desecration of the flag, as though that 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, seeking 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 that final determination with respect to protection of what is our national symbol. We therefore agreed to remove the language which would 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 key 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 his 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 change will bring more people on 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 whatever it might be, 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 doing around this place. What are some of them? 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,
>
> STEWART 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. 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 face purple with rage. He smashed his 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 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 Utah.

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah is recognized.

Mr. HATCH. Mr. President, first of all, it is not 45 in 6 years; it is 65 in 5 years. I might add that that 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 desecrated.

Some say there is no need for this amendment, that it is not constitutional. Those who say that have not

read the Constitution very carefully, particularly article V. Amending the Constitution is the mechanism provided by the Founding Fathers to enable us, among other things, to correct wrongful decisions by the Supreme Court. That is why we have article V in there, to be able to amend the Constitution.

By the way, there are 27 amendments to the Constitution, not 26 as stated by Senator CHAFEE.

I might say 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 devaluating 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 desire to don the robes 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 protesters 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 protesters. 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 burning occurred 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 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 protester 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 Gregory Johnson. 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 State 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 to respectfully take 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 do not 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 these 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 the fact 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, Chism 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 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 we 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 am sure. 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 ratify 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 where he stressed 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 State's 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 to come and seize them and drag them off 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 differently 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's message 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 dilute the freedom that this cherished emblem 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.

''Persuade them 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 that 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 listen to him, because, 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 said, ''No State shall deny 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 allows 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 at any one time? Would he 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 wrongheaded decision, 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 question, and that 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 whale 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 on a vital matter. 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 Biden 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 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 all of that as mentioned by my friend and colleague Senator CHAFEE, 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 for a Boy Scout 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 that 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 the American flag. As an original cosponsor, along with Senator HATCH, 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's 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 asset much 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 allowed 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 these flags 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 protectors 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 *Shenk* v. *United States*, 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 clear and present danger 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'Brian*, 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. 566 (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 dissidents both home and abroad who may have no interest 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 a two-thirds vote 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 in this wide ranging coalition. In addition, 46 States' legislatures have passed memorializing resolutions calling for the flag to be protected by the Congress.

In my judgement, we should heed this call 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 as we would support the country herself. In closing, 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 all that 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 congressional hearings, 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 in the end, you have 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 yield 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 statutory approach to protecting 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 want 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 permit the 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 States already, most of which have disorderly conduct crimes already on their statute 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 at 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 even those Iowans that are 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 energized segments 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.

This flag protection 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 antiauthoritarian attitude. But those critics have 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 core 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 in our society 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 our considering what the flag means to our veterans, to those 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 to explain that I, 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 Lord that they have 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 Congress to make difficult cuts in all Federal programs, even including veterans programs, it seems to me the least we can do is to 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 the least we can do is pass this amendment. And with American troops soon in harm's way, as they are with 6 million mines in Bosnia, of where 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.

Finally, I want to mention what I think is an ironic situation. Some who oppose this amendment feel that it is dangerous to amend the first amendment. I think this stems from a sincere feeling that the first amendment is sacrosanct and, in fact, it is, Mr. President. But the fact of the matter is that many of these same people who oppose this flag amendment as a constitutional amendment have sponsored another 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 cosponsored or favored 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 implication is that it should 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 those same people 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 comes to campaign contributions, that you have more than enough votes right here to pass the amendment.

This amendment, I think, is going to pass anyway, but if there is some doubt about it, there are a few Members of this body who take the position you should not amend the first amendment to protect the American flag, but it is OK to pass an amendment to limit political speech through limits on campaign spending. If you put those together, we have more than enough to pass this amendment.

So there is some inconsistency between people who are making the argument that we should not amend the first amendment in the case of the flag because of what it might do to nonverbal speech—and I do not think that nonverbal speech is protected by the first amendment—and those who are willing to change the Constitution when they overturn the Valeo case. What makes this inconsistency even more ironic, when you tend to limit campaign expenditures, that tends to benefit incumbents rather than challengers. We can support that statistically. That is a very selfish motive for changing the first amendment.

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 get the job done 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.

The legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mr. GRASSLEY). 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 letter be printed in the RECORD.

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

HARVARD LAW SCHOOL,
Cambridge, MA, December 9, 1995.

Senator ORRIN HATCH,
U.S. Senate,
Washington, DC.

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 misrepresentation of the view—as crystallized since 1989—of a majority of the Justices.

(1) The Flag Cases: Johnson and Eichman.

The 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 betrays a fundamental canon of good lawyering: that the parts can be understood 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. It says the Court noted that those factors were not present. Then, it commits an elementary error. It suggests that the principle underlying the two decisions is, therefore, inapplicable when those factors are present—as they would be under the proposed statute. Law students learn, early in their education, that a step in the step-by-step unfolding of law should not be read as if it were the final step, the complete unfolded doctrine. The trick of interpreting court decisions involves discerning the deeper general principle that is immanent in them.

The Peck Memo seems, at times, to suggest that the principled focus of Johnson and Eichman had only to do with a definition of what constitutes ''protected'' expressive conduct. It insists that the sorts of conduct reached by the proposed statute (incitement of imminent violence through destruction of a flag and destruction of a stolen flag) are not ''protected'' expression. It thereby obscures the deeper principled focus of modern free speech law—the focus, indeed, of the 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 validity of a regulation. (491 U.S. at 406–407.) By the same token, the *Eichman* Court located the ''fundamental flaw'' of the statute in the ''concern'' of the Congress that gave rise to it. (496 U.S. at 317.) The question, then, is: What kind of governmental interests is it that offends the Court's basic theory of the First Amendment?

The Memo assumes that there are but two sorts of governmental interest that might invite judicial criticism of regulations involving the flag: a direct interest in prohibiting expression and a discriminatory interest in prohibiting advocacy—through destruction of a flag—of some (but not other) particular ''points of view.'' It insists that the interest behind Subsections (b) and (c) of the proposed statute does not involve direct prohibition of expression. And it insists that the interest behind Subsection (a) does not involve prohibition of the expression—through use of a flag to incite violence—of some (but not other) particular ''points of view.'' But it thereby covers up the third kind of governmental interest that triggers that Court's constitutional condemnation, an interest that, in fact, lies behind all three provisions of the proposed statute. That is: an interest in *singling out* certain determinate ideas or certain determinate messages for governmental *protection*.

This was, as is well known, the main point of the seminal scholarship that gave rise to the *Johnson* and *Eichman* decisions. In ''Flag Desecration: A Case Study in the Roles of Categorization and Balancing in First Amendment Analysis,'' John Ely (professor and former Dean of the Stanford Law School) wrote that the flag ''represents'' a certain set of messages and that, when government ''singles out'' the flag for any sort of coercive protection, it thereby acts on an impermissible interest in ''singling out'' those messages for protection. ''[A]lthough improper [flag] use statutes do not single out certain messages for *proscription*,'' he wrote, ''they *do* single out one set of messages, namely the set of messages conveyed by the American flag, for *protection*.'' The same, he went on, ''is not true of a law that generally prohibits the interruption of speakers: such a law is neutral not only respecting the content of the interruption but also respecting the content of the *message interrupted*.'' Protective legislation singling out the flag is definitely *not* ''content-neutral'' in that very important sense. The distinction, Ely concluded, is ''critical.'' (88 Harvard Law Review at 1505–1507.)

In *Johnson*, the Supreme Court recognized this point. The flag, it stated, is inherently ''[p]regnant 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.)

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 ''content-neutral.'' He affirmed that the interest it is meant to serve is the interest in protecting the particular message the flag represents. He announced that he is ''disgusted by those who desecrate our symbol of freedom.'' Thus—by describing its purpose—the primary sponsor of the proposed statute ensured that, if enacted into law, it would be struck down by the Supreme Court under the foundational principle of the *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 for ''flag protection.'' And—tellingly—it does not probit the ''waving'' of a stolen flag or the incitement of violence through the ''waving'' of a flag. Instead, it would punish only those who ''destroy or damage'' a flag. Its ''content-discrimination—as defined by the majority of the Justices—is thus doubly obvious.

(2) The R.A.V. Decision.

In 1992, in the R.A.V. decision, the Court further elaborated the requirement of ''content-neutrality'' that would lead it to strike down the proposed statute. The case had to do with a St. Paul ordinance that—like the proposed statute—''singled out'' certain ''fighting words'' for regulation on the basis of their message. Although ''fighting words'' are not protected by the First Amendment, the Court condemned this ''singling out'' of some among them. The Peck Memo strains to obscure the fatal relevance of the decision.

First, the Memo suggests that R.A.V. forbids only discrimination among particular ''points of view.'' The proposed flag statute, it claims, applies without regard to the ''points of view'' expressed through specified uses of the flag. Thus the Memo (again) hides the principle that singling out the flag—and so its determinate message—for protection against such uses (indeed, only for protecting against destructive uses) would, itself, be seen by a majority of the Justices as ''content discrimination.'' In the R.A.V. opinion, the Justices explicitly noted, in fact, that the St. Paul ordinance involved both ''viewpoint discrimination'' and ''content discrimination''—and was to be held unconstitutional on both counts. (505 U.S. At 391.)

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 certain sorts of ''special attention.'' 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'' it approved there specifically involved ''encouraging'' or ''fostering'' respect for the flag without employing the criminal law. It is the absence of a criminal sanction that, according to the Court, justifies the ''special attention'' it approves. The proposed statute, by contrast, does employ criminal law to protect the flag against destruction. The ordinance that the Court struck down in R.A.V. employed it as well. The argument made in the Memo is, therefore, a misleading fantasy.

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 possibility that the threatened violence will occur) have special force when applied to the person of the President.'' (505 U.S. at 388.) The Memo then seems to suggest that the ''reasons why'' theft and destruction of stolen property and incitement to imminent violence are outside the First Amendment have ''special force'' 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.

Fourth, the Memo cites the R.A.V. opinion's statement that it is permissible to single out one industry for regulation of price advertising ''because the risk of fraud (one of the characteristics of commercial speech that justifies depriving it of full First Amendment protection . . .) is in its view greater there.'' (Id.) Again, the Memo seems to suggest an analogy. It 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 greater when a flag is destroyed to incite it than when other means of incitement are employed. And, again, both claims are plainly frivolous.

Finally, two other aspects of the R.A.V. opinion deserve mention. (They are not mentioned in the Peck Memo.) In condemning St. Paul's singling out of certain messages, the Court stated, first of all, that there was a ''realistic possibility that official suppression of ideas [was] afoot.'' (505 U.S. at 390.) To support its suspicion, the Court twice cited statements made by officials of the city. (Id. at 394–395.) Were the Court to be presented with the proposed flag protection statute, it would not have to look beyond Senator McConnell's insistence on ''zero tolerance for those who deface the flag'' to support a similar—and similarly devastating—suspicion.

Secondly, the R.A.V. Court emphasized that St. Paul had available a ''neutral'' alternative: It could simply enact a ''general'' ordinance forbidding all ''fighting words,'' whatever their message. By the same token, the Congress has available the ''neutral'' alternative of relying on a ''general'' statute prohibiting all thefts and destruction of all sorts of government property, all thefts and destruction of all sorts of property on government lands, and all sorts of incitement to imminent violence (that may be reached by it under Article I). Of course, such a ''neutral'' alternative would not do what Senator

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.

(3) 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 aggravated battery was enhanced'' because the batterer ''intentionally selected his victim on account of the victims'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 wildest. For the basis of *Mitchell* was not just that battery is not covered by the First Amendment. It was, more importantly, that race-discriminatory motivation—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 reinforce one conclusion: 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 narrow one—the only way to single out the flag for protection—is to amend the Constitution, as the farmers of Article V meant us to do.

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 of 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 312–120 vote, the other body has passed an amendment. So it comes down to each individual Senator, no doubt about it.

I will 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 decision, put 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 Booker T. Washington, 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 439].

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 my colleagues 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 shirked 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, he replied 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 legitimate appeal, up to a point, to many Americans, including me. But we all know that freedom has its limits. We all know that there is a difference between liberty and license. I might add that the veteran who witnessed the use of the flag to wipe a car's dipstick, upon learning that the individual would not be charged, said, ''you go into battle behind the American flag. There has got to be a way to protect this symbol.''

This Oklahoma episode reminds me of the commonsense testimony of R. Jack Powell, executive director of the Paralyzed Veterans of America, before the Senate Judiciary Committee in 1989:

The members of Paralyzed Veterans of America, all of whom have incurred catastrophic spinal cord injury or dysfunction, have shared the ultimate experience of citizenship under the flag: serving in defense of our Nation. The flag, for us, embodies that service and that sacrifice as a symbol of all the freedoms we cherish, including the First Amendment right of free speech and expression.

Curiously, the Supreme Court in rendering its decision [in Texas v. Johnson] could not clearly ascertain how to determine whether the flag was a 'symbol' that was 'sufficiently special to warrant . . . unique status.' In our opinion and from our experience, there 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.

I am concerned that there is some impression, at least in the media and by some others that are around, that the idea of 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, also, an idea that we 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 deem that those who want to talk about freedom ought to recognize the right of a society to say that there is a symbol, one symbol, which in standing for this great freedom for everyone of different opinions, different persuasions, different religions, and different backgrounds, society puts beyond the pale to trample with. [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 in 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, we do not compel them—to pledge allegiance to the flag. But five members of the Supreme Court dictate that we must tell them that the very same flag is unworthy of legal protection when it is treated in the most vile, disrespectful, and contemptuous manner.

We also have a very diverse country. We all know the flag is the one overriding symbol that unites a diverse people in a way nothing else can, or ever will. We have no king, we threw him out over 200 years ago. We have no State religion. We have the American flag.

I have to take exception when a few of my colleagues ask why we are taking time to consider this amendment.

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 these 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 suggest 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 which says 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? Of course not. Would they 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, by overturning 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 give the American people the right to express their traditional 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 our choice.

As Justice Stevens said in his Johnson dissent, ''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.] I urge my colleagues to view the constitutional amendment in the same way.

The suggestion by some opponent that restoring Congress' power to protect the American flag from physical desecration tears at the fabric of our liberties 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 reveres 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 absolute dead end.

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. Even if one can punish a flag desecrator under a general breach of the peace statute, the McConnell amendment is not a general, Federal breach of the peace statute. It singles out flag desecration involved in a breach of the peace. Johnson and Eichman have told us we cannot do that, we cannot single the flag out in that way. The same goes for protecting only one item of stolen Federal property, a Federal Government-owned flag, in a special way, or protecting a stolen flag desecration on Federal property in a special way. We all know why we would pass such a statute. Do any of my colleagues really believe we are going to fool the Supreme Court? Many of my colleagues, in good faith, voted for the Biden statute and the Court would not buy it. They took less than 30 days after oral argument and less than eight pages and threw the statute out. They will do the same to the McConnell statute. The American people know better and they want to see us take action that can really protect the flag.

Even if the McConnell statute is constitutional—and it is not, with all respect—it is totally inadequate. Far from every flag desecration is intended to create a breach of the peace or occurs in a circumstances in which it constitutes fighting words. And, of course, many desecrated flags are neither stolen from the Federal Government nor stolen from someone else and desecrated on Federal property. Indeed, most of the desecrations that have occurred in recent years do not fit within the McConnell statute.

Just as an illustration of its inadequacy, if the McConnell statute had been on the books in 1989, the Johnson case would have come out exactly the same way. Why? The Supreme Court said that the facts in Johnson do not support Johnson's arrest under either the breach of the peace doctrine or the fighting words doctrine. Morever, 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, 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 Banking, Housing, and Urban Affairs.

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* 23299, June 2, 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 5, 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 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 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 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 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 commercial, industrial, or public utility undertakings or entities organized or located in the FRY (S&M), including property 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, 1994, in 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 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 their overseas branches) of: (1) the Bosnian Serb 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 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 acting for or on behalf of