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Senate

The Senate met at 12 noon and was called to order by the President pro tempore [Mr. THURMOND].

PRAYER

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

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

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

SCHEDULE

Mr. KYL. Mr. President, on behalf of the leader I would like to make the following announcement: Today there will be a period for morning business until the hour of 1 p.m. At 1 p.m., the Senate will resume consideration of Senate Joint Resolution 31, the constitutional amendment regarding the desecration of the U.S. flag.

Under the provisions of the consent agreement reached on Friday, amendments will be offered and debated today, however no rollcall votes will occur during today's session. Any votes ordered on the amendments will be stacked to begin at 2:15, Tuesday afternoon.

MORNING BUSINESS

The PRESIDENT pro tempore. Under the previous order, there will now be a period for the transaction of morning business not to extend beyond the hour of 1 p.m., with Senators permitted to speak therein for up to 10 minutes each.

The PRESIDING OFFICER (Mr. KYL). The distinguished Senator from Nevada is recognized.

THE CHEMICAL WEAPONS CONVENTION

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

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

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

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

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

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

Gas! Gas! Quick, boys!—An ecstasy of fumbling,
Fitting the clumsy helmets just in time;
But someone still was yelling out and stumbling
And flound'ring like a man in fire or lime . . .
Dim, through the misty panes and thick green light,
As under a green sea, I saw him drowning.

In all my dreams, before my helpless sight,
He plunges at me, guttering, choking, drowning.

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

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

In the words of a Kurdish refugee who survived the bombing of his village by an Iraqi aircraft, he said:

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

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The planes dropped bombs. They did not produce a big noise. A yellowish cloud was created and there was a smell of rotten parsley or onions. There were no wounds. People would breathe the smoke, then fall down, and blood would come from their mouths.

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

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

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

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

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

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

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

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

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

The Chemical Weapons Convention is unique among weapons treaties in that it will, when ratified, eliminate an entire class of weapons.

The convention bans the development, production, stockpiling, and use of chemical weapons by its signatories. It requires the destruction of all chemical weapons and production facilities.

Under the terms of the convention, the Russians would be required to destroy an estimated 40,000 metric tons of chemical weapons, including 32,000 metric tons of nerve agents.

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

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

I understand the chairman of the Foreign Relations Committee has serious concerns about the verifiability and enforceability of the convention's terms. But I believe the proper way to address these concerns would be to allow the treaty to be fully debated in committee and on the Senate floor.

If there are concerns about other nations' compliance with the treaty, the answer is not for the United States to abandon it. As a member of the convention, the United States will be better able to monitor compliance.

In 1990, the United States and the Soviet Union signed a bilateral destruction agreement calling for each side to destroy its chemical stockpiles to a maximum level of 5,000 tons. The United States has been destroying its chemicals in accordance with the agreement, but Russia has not.

If the convention comes into force, with both the United States and Russia as members, Russia would be legally bound to destroy its stockpile completely and accept challenge inspections of both private and military chemical facilities.

If the United States suspected Russia of violating the terms of the treaty, it could demand a challenge inspection. Within days, international inspectors could be at the door of suspected facilities to check for violations because all signatories of the convention are required to permit inspections of both known and undeclared chemical production facilities with little or no warning.

Of course, nations must become members of the convention to become subject to its requirements. The CWC is the first treaty that penalizes countries that do not join and rewards those that do.

Once the convention comes into force, member countries will be prohibited from exporting certain treaty-controlled chemicals to nonmember states. Because businesses that produce goods such as pharmaceuticals and fertilizers need these chemicals for production, there would be enormous pressure on nonmember governments to join to give their industries access to these chemicals.

Unfortunately, the convention is not likely to ever come into force without American leadership. The U.S. commitment to chemical weapons disarmament, as evidenced by our Nation's prominent role in drafting the convention, was fundamental to creating the spirit of cooperation that led to the treaty being signed by so many countries.

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

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

The United States is already bound by law to destroy its chemical weapons stockpile by 2004. The Convention would require all other member nations to do the same.

Any state that refuses to join the treaty will be isolated and its access to precursor chemicals will be limited. And we have explained why that is important to the pharmaceutical development of, and the simple construction of, fertilizers.

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

And while the CWC cannot prevent every potential threat of terrorist chemical attack, it can greatly reduce the threat by halting and reversing the proliferation of chemical weapons. If we eliminate chemical stockpiles, we eliminate potential terrorist Weapons.

In addition, we greatly diminish the threat of chemical weapons to U.S. troops in future military operations.

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

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

This convention clearly serves the best interests of the United States in a world in

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

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

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

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

Mr. President, I extend my appreciation to Senator BINGAMAN for bringing to the attention of the Senate last week the matters that were held up in the Foreign Relations Committee.

I also extend my appreciation to the majority leader for working to bring these matters to the Senate floor.

One of the things that was part of that agreement was that this treaty would be reported to the Senate floor no later than April 22. That is good.

I urge the chairman of the committee, however, to schedule action on this convention as soon as possible so that the Senate can vote on this quickly and do it without regard to partisanship. It is important that we bring this matter to the floor of the U.S. Senate. Chemical weapons are a scourge, and they should be eliminated.

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

Mrs. FEINSTEIN addressed the Chair.

The PRESIDING OFFICER. The Senator from California.

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

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

Mr. CRAIG. Mr. President, reserving the right to object—and certainly not on this issue—but I come to the floor to speak. I would prefer if you could allow this Senator 10, and then go back to the issue, if you would not mind. Is their objection to that?

Mrs. FEINSTEIN. Thank you.

The PRESIDING OFFICER. The Senator from California is recognized for 10 minutes.

Mrs. FEINSTEIN. I thank the Chair.

BAN ON MILITARY-STYLE WEAPONS

Mrs. FEINSTEIN. Mr. President, it would appear that the leadership of the other House is threatening to repeal the ban on military-style assault weapons. They promised to hold a vote before the end of the year.

According to information from the Speaker's staff, he is apparently hoping to sneak the repeal through the House of Representatives in the rush to finish business before the Christmas holiday. Although this may work in the House, it will not work in the Senate.

I wrote this legislation. It was incorporated into the 1994 crime bill. It was passed by both the House and the Senate after substantive and prolonged debate. It has been in place for just 14 months. It passed with bipartisan support. It is my commitment, if this comes to the floor of the Senate, to wage the mother of all filibusters, to keep the Senate in session throughout the holiday break, if necessary, if the attempts to repeal this legislation move forward.

This legislation specifically protects legitimate weapons used for hunting and recreational purposes. Congress can either side with the citizens of this country who are overwhelming in number who want assault weapons off their streets or they can side with the National Rifle Association whose selfish ''I want it my way'' persists no matter what. The choice should be clear to all of us.

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

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

My home State of California knows all too well the tragedy of assault weapons. There are incidents that really led to my resolve to make this the main priority of my legislative agenda in 1993, and I want to go through them.

In 1984, in California, a man by the name of James Huberty walked into a McDonald's in San Ysidro with an Uzi. He killed 21 people including 5 children; 19 were wounded.

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

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

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

These were the weapons he carried. These are the 50-round clips, the 30-round clips he carried, and so on.

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

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

This is a young attorney, Jack Berman, 35 years old. He was representing Judy Sposado, who lies next to him in the photo, when he was killed by Ferri. He was a young labor lawyer. He was preparing for his first trial. He was about to celebrate his third wedding anniversary with his wife Carol just 1 month later. The two have a baby boy.

This below is Mike Merrill, whose wife and children I have had the pleasure of meeting. Mike was a vice president of the Trust Co. of the West. He was shot through the glass of his window as he sat at his desk. You can see

his cup of coffee. You can see his computer is still on. Ferri, though, shot him. Mike crawled under his desk, and Ferri returned, shot through the desk and killed him.

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

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

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

Here are a few facts. According to a search of newspapers throughout the country conducted by my office, in the last 7 months, since it was rumored that the House would try to repeal the assault weapons ban, there have been 76 incidents involving assault weapons in 25 States in which 37 adults were killed, 40 were wounded, 7 children were killed, and 6 were wounded; 9 police officers were killed including 1 FBI agent, and another 3 were wounded.

The assault weapon is also the gun of choice if you are going to go up against a police officer. If he is carrying a six-shot .38, he does not have a chance.

In both California and throughout the Nation we are seeing police officers outgunned. Here the assault weapon again gives the edge to the perpetrator. No incident better conveys the danger of being a police officer than what happened on November 13, 1994, in San Francisco.

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

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

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

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

> I implore you to do all in your power to stop this attack on the legislation that will save police officers' lives in our country. I am not a person that can be described as an ''antigun'' fanatic. To the contrary, I am a person who believes in the right to bear arms but we do not need assault weapons that are strictly people killers.
>
> I have seen firsthand the damage these weapons can inflict, as a 20-year-old soldier in Vietnam . . ., to seeing too many shooting victims on our streets as a San Francisco police officer for 25 years . . ., myself being a shooting victim of a barricaded suspect . . ., and witnessing firsthand the carnage at 101 California and finally, holding Officer James Guelff in my arms trying to keep him alive after he was shot at Pine and Franklin Streets.
>
> I must say that I am an outdoorsman, a hunter, I enjoy my trips to the mountains to carry on the great heritage of hunting and camping. But you will find no Uzi's, TEC–9's, AK–47's, or other such weapons of war in my house.

In February 1995, a rookie police officer by the name of Christy Lynne Hamilton, a 45-year-old mother of two, just 4 days on the job—she had been voted the rookie of her class—was gunned down by a 17-year-old boy armed with an AR–15 assault weapon.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

In 1993, the year before the ban went into effect, just 19 specifically named assault weapons accounted for 8.2 percent of all traces. In 1994, the year in which the ban became effective, these traces for these 19 weapons fell to 6.3 percent. And since the ban became effective on September 13, 1994, through the end of last month, the share of traces represented by all assault weapons fell to 4.3 percent.

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

The use of these guns to kill police officers has also been decreasing. In

1994, when the law was not in effect for most of the year, the Handgun Control study found that assault weapons accounted for 41 percent of police gun deaths where the make and model of the weapon were known.

In 1995, this proportion has fallen to 28.6 percent, a 30-percent decrease.

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

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

What hunter needs an assault weapon to kill a deer when most States limit the number of bullets in a clip to seven, and I think only one does 10?

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

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

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

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

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

Lindsay Hempel, who, as a 15-year-old school sophomore, saw friend, Mark Goodin, murdered:

''I was talking to my mother when a cop walked over to make sure I was ok. As he walked over I heard one of the boys say Mark had died. I asked the man and he said, 'Yes, your friend has died. I'm sorry.'

''When I heard that, my stomach dropped. I looked over to Mark and all I saw was a bright yellow bag that they covered him with. The first thing that came to my mind was that I prayed and Mark still died. But then I realized that since I was so sure that he was going to be alright, he is. He's in a place where nothing this terrible can happen.

''Later, I found out that the bullet that killed Mark went through the trunk, through an ice chest and into his back. He died instantly. The gun used was a Yugoslavian assault rifle. The cops told us that we are very lucky that the bullet didn't go through Mark and into Kevin who was sitting in the passenger seat. They were also surprised that all of us are still here today.

''I think that it is really sad that there's a chance that when your kids go out at night, or any time at all, they may never come back. You shouldn't have to even think that that is even possible, but it is.''

Margaret A. Ensley, founder of Mothers Against Violence In Schools (MAVIS):

''My son was murdered while he was trying to get an education. Something is wrong when we can no longer view schools as a sanctuary for our children. Maybe your attitudes about gun control would be different if one of your children were hurt or killed by a gun.

''Our children are afraid to go to school, movies, libraries and parks. We must give them back their childhood. We can't if everyone is armed.

''To Senator Dole and others in support of overturning this weapons ban, I say the only thing that makes me a victim of violent crime and not you, is not economics, religion, culture or beliefs. The thing that separates us is circumstance. Don't walk in my shoes before you decide to do the right thing.''

Carole Montgomery, on the death of her husband's brother, Theron:

''I am writing this letter to you to show my family's support for the Assault Weapons Ban. My husband's brother was murdered by a crazed gunman who went out and legally bought an assault weapon for the sole purpose of killing. My brother-in-law worked at NBC in New York City.

''He was trying to point this madman out to the police when he made eye contact with his murderer and was shot once in the back. He died four hours later on the operating table. Everyone in New York City has called him a hero, but it is of no solace for the people he left behind.

''We are appalled that Congress is trying to overturn this ban. Theron was murdered a few weeks before the ban went into effect. Had it been in effect, maybe my brother-in-law would still be alive.''

Carole Ann Taylor, on the death of her 17 year old son, Willie Browning Brooks IV:

''One bullet fired from that AK–47 struck my son's back, as he opened the screen door to his friend house. Willie dialed 911 for help. That call was the last living act he finished, before collapsing from the gunfire.

''Five months short of his eighteenth birthday, one bullet, fired from an AK–47, shattered my whole being. An assault weapon of mass destruction and someone with access to it ended Willie's dream of becoming an adult and a productive citizen in this America we call civilized.

''My last memory of my child, that slips within my dreams, is my son laying on a gurney, eyes half opened and lifeless.

''Why? I ask, as any mother would.

''I ask this 104th Congress, as well as Senator Bob Dole, 'Was I in error to raise my son to live in a civilized society or would military training for war have been more appropriate in sustaining his life?' If in fact this is a civilized society, the assault weapon must remain on the ban list.

''I cannot bring the son I loved so much back no matter how long I cry or pray, but I can, in his precious memory, work to save others from gunfire.

''My son Will Browning Brooks looked to me for parental protection and guidance, and as his parent as well as a citizen of the United States, I am looking to you, the 104th Congress, for protection and guidance.

''Willie's death by gunfire is not acceptable to me. Not even one death by gunfire should be acceptable to any of us. These assault weapons have no place in any town, city or state in America.''

Kenneth Brondell, Jr. letter to Senator Dole on the death of his sister, Christy Brondell Hamilton, a Los Angeles Police Officer:

''On February 22, 1994, my sister, Los Angeles Police Officer Christy Brondell Hamilton, only four days out of the Police Academy, was shot and killed. She was slain by a 17 year old boy who had first killed his father. The boy called the police to summon them to the scene with the intention of 'killing some cops.' He then used his father's Tec-9 Assault Rifle to take his own life.''

''I served in Vietnam. I am a Firefighter and the son of a retired Los Angeles Police Sergeant. I have pictures of direct ancestors who were veterans of the Civil War and World Wars I and II. My family knows what weapons are for and we have used them.

''The notion, however, that anyone who wants to own a war rifle can purchase one and thereby have the ability and even the right to determine who among us should live and who should die is incredible to me.

''Sadly we cannot stop all violence, but the assault weapons ban has made a step toward limiting the access of these tools of war from those who would threaten the safety of us all. The world will be a better place if one more police officer completes his or her watch, if one more commuter has an uneventful ride, and if one more office worker returns home at the end of the day.

''Will the Congress of the United States repeal the assault weapons ban and help turn our cities into the likes of Belfast or Beruit? Our Democratic Government works. Civilians have no need to hold the power of violent insurrection against the United States. From the Civil War to Waco, Texas, our democracy has rebuffed violent overthrow and anarchy. The tools of war only serve to harm those who the government is charged to protect.

''Please save innocent lives. Please spare others the grief that my family has known. Support the ban on assault weapons. One of the lives you save may be someone you love.''

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

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

LAW ENFORCEMENT OPPOSING A REPEAL OF THE ASSAULT WEAPONS BAN

Combined Law Enforcement Association of Texas.

Federal Law Enforcement Officers Association.

Fraternal Order of Police.

International Association of Chiefs of Police.

International Association of Police Officers.

National Association of Police Organizations.

National Organization of Black Law Enforcement Executives.

National Sheriffs Association.

National Troopers Association.

Police Executive Research Forum.

Police Foundation.

California State Sheriff's Association.

California Police Chiefs Association.

Alameda Police Chief Burnham E. Matthews.

Alameda County Sheriff Charles C. Plummer.

Auburn Police Chief Michael A. Morello.

Bear Valley Police Chief Marcel J. Jojola.

Campbell Police Chief James A. Cost.

Carmel Police Chief Donald P. Fuselier.

Chino Police Chief Richard Sill.

Delano Police Chief Gerald M. Gruver.
Dixon Police Chief Rick C. Fuller.
Downey Police Chief Gerald C. Caldwell.
El Monte Police Chief Wayne C. Clayton.
Exeter Police Chief John H. Kunkel.
Escondido Police Chief Michael P. Stein.
Fremont Police Chief Craig T. Steckler.
Gardena Police Chief Richard K. Propster.
Glendale Police Chief James E. Anthony.
Half Moon Bay Police Chief Dennis K. Wick.
Hawthorne Police Chief Stephen R. Port.
Huntington Beach Police Chief Ronald E. Lownberg.
Imperial County Sheriff Oren R. Fox.
Irvine Police Chief Charles S. Brobeck.
Irwindale Police Chief Julian S. Miranda.
Laguna Beach Police Chief Neil J. Purcell.
La Habra Police Chief Steve Staveley.
Lodi Police Chief Larry D. Hansen.
Lindsay Police Chief Bert H. Garzelli.
Los Angeles County Sheriff Sherman Block.
Manhattan Beach Police Chief Ted J. Mertens.
Menlo Park Police Chief Bruce C. Cumming.
Montebello Police Chief Steve Simonian.
Monterey Police Chief F.D. Sanderson.
Morgan Hill Police Chief Steven L. Schwab.
Newport Beach Police Chief Bob McDonnell.
Novato Police Chief Brian Brady.
Oakland Police Chief Joseph Samuels, Jr.
Oxnard Police Chief Harold L. Hurtt.
Palm Springs Police Chief Gene H. Kulander.
Patterson Police Chief William D. Middleton.
Petaluma Police Chief Dennis DeWitt.
Piedmont Police Chief Jim Moilan.
Pittsburg Police Chief Willis A. Casey.
Placer County Sheriff Edward N. Bonner.
Redding Chief Robert P. Blankenship.
Rialto Police Chief Dennis J. Hegwood.
Richmond Police Chief William M. Lansdowne.
Sacramento Police Chief Arturo Venegas, Jr.
San Buenaventura Police Chief Richard F. Thomas.
San Carlos Police Chief Clifford Gerst.
San Diego County Sheriff William B. Kolender.
San Luis Obispo Police Chief James M. Gardiner.
San Mateo County Sheriff Don Horsley.
San Francisco Police Chief Anthony Ribera.
City and County Police Captain Richard J. Caims.
Santa Ana Police Chief Daniel G. McCoy.
Santa Barbara Police Chief Richard A. Breza.
Santa Clara Police Chief Charles R. Arolla.
Santa Cruz County Sheriff Mark S. Tracy.
Santa Cruz Police Chief Steven R. Belcher.
Santa Paula Police Chief Walter Adair.
Seal Beach Police Chief William D. Stearns.
Sonoma Police Chief John P. Gurney.
Sonora Police Chief Michael R. Efford.
South Pasadena Police Chief Thomas E. Mahoney.
Suisun City Police Chief Ronald V. Forsythe.
Tiburon Police Chief Peter G. Herley.
Tracy Police Chief Jared L. Zwickey.
Twin Cities Police Chief Phil D. Green.
Ventura Police Chief Richard F. Thomas.
Walnut Creek Police Chief Karel A. Swanson.

Mrs. FEINSTEIN. Congress should not and must not repeal the assault weapons ban. I thank the forbearance of the Chair.

Mr. CRAIG addressed the Chair.

The PRESIDING OFFICER. The Senator from Idaho.

BALANCING THE BUDGET

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

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

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

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

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

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

And yet, when we work the numbers a little bit, and we find an extra $100 billion between now and the year 2002, there appears to be no consideration to apply it to deficit, only to apply it to a Government program, largely because we have heard nothing but whining and crying out of the White House over the last month that we are destroying all these marvelous Federal programs, when in fact none of them is being cut; only the rate of increase is being reduced to try to bring the budget into balance.

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

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

So, ho, ho, ho, Mr. President. It is not time to fool the American people with your Santa Claus tactics that somehow you can just keep on spending and keep on giving and the world will get a lot better. It will not work unless you make the tough choices, and the tough choices are to balance the budget and give the American taxpayers some consideration by a reduction in their overall tax rate.

I yield back the balance of my time.

Mr. DORGAN. Mr. President, are we in morning business?

The PRESIDING OFFICER. The Senator is correct.

Mr. DORGAN. Mr. President, I ask unanimous consent to speak for 10 minutes.

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

KEEPING RECORDS ON CRIMINALS

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

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

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

THE BUDGET NEGOTIATIONS

Mr. DORGAN. Mr. President, I came to the floor today to talk just for a moment about the budget negotiations, not so much to talk about what might or might not happen in the negotiations, but to suggest that this is going to be a very important week with respect to the question of whether we are able to make progress in trying to reach two goals—first, balancing the Federal budget. That is an important goal and it is one we ought to reach in the interest of our country. Second, balancing the Federal budget while we meet some of the priorities in doing so. Balancing the Federal budget without injuring the Medicaid or Medicare Program, so that someone who is elderly in this country and who is sick will not understand that they have to pay more for Medicare and get less as a result of our balancing the budget. We can balance the budget and do it the right way, retaining the priorities in Medicare and Medicaid and education and agriculture and the environment. It does not mean you cannot cut spending in all of those areas. It just means you cannot cut spending sufficiently so that you injure these programs at the same time that you have decided in the budget bill to provide a very significant tax cut. That represents the question of priorities.

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

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

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

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

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

There is not even a whisper in this Chamber or in this Congress about the other deficit, the trade deficit. We will, this year, have a merchandise trade deficit that is larger than our budget deficit. What does the merchandise trade deficit mean? It means that jobs have left our country. It means that our country has an economy that has weakened because we measure economic progress in this country by what we consume rather than what we produce.

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

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

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

What we have now is a provision by the majority party that says, ''By the way, we will take this little provision that is an insidious incentive to move jobs overseas by multinational corporations and tell the multinational corporations we like this tax incentive so much, we want to increase it for

you. We want to boost this tax incentive. We want to make it more generous if you will take your jobs and move them overseas.''

I am thinking I ought to have a scavenger hunt to find out who in the U.S. Senate decided it was a good idea to propose that multinational corporations ought to have more of a tax incentive for moving their jobs overseas.

I ask any of my colleagues in the next couple of days, as we are working through this reconciliation bill, who authored this? Who thought it was a good idea? Who believes we ought to change our Tax Code to make it more attractive to move American jobs overseas? Who thinks we ought to increase the tax incentive to shut down the American plant, move it offshore?

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

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

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

Mr. MURKOWSKI. I was moved by the reference to the increase in trade deficit, and I ask my colleague if he would not agree that nearly half of that trade deficit is the cost of imported oil?

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

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

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

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

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

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

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

There ought to be, first of all, no subsidy. We ought to completely eliminate the insidious tax incentive that exists now to say, ''By the way, you have a factory. Close it here. Move the jobs overseas to a tax haven and make the same product. Ship it back here and we will give you a tax break.''

It ought to be completely eliminated. This provision, stuck in the reconciliation bill, opens it wider and says, ''By the way, this is a good idea, we should do more of it.''

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

BUDGET NEGOTIATIONS

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

It ought to be an agreement that balances the budget and does it the right way. There are certain priorities that make sense. It seems to me we ought to negotiate between now and the end of this week to reach an agreement that balances this budget and does it the right way.

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

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

I hope by the end of this week we will be able to stand on the floor of the Senate and say we reached an agreement and we reached an agreement to balance the budget that is good for this country.

RICHARD C. HALVERSON

Mr. BINGAMAN. Mr. President, one of the first people I met when I came to the Senate, and one on whose kind interest I came to rely, was Richard Halverson, the man who served as Chaplain of the Senate from 1981 until early this year.

Many of my colleagues have commented on his service to the Senate, and to all of us who work here. He considered what he called the Senate family—from the most senior cook to the least junior Senator—his flock. His approachable manner and generous ways endeared him to us all. ''I try never to be in a hurry,'' he said in an interview with the Hill last year. Everyone responded to this gentle, important courtesy in a place where schedules are demanding and often implacable.

Kipling wrote of those who ''can talk with kings and keep the common touch.'' Dr. Halverson, in the course of his ministry here, demonstrated that he was capable of this skill, and each of us appreciated that when he talked with us, as well as with kings, we were elevated by his special attention.

He will be in our thoughts and prayers for years to come.

RETIREMENT OF GEN. ROBERT L. DEZARN

Mr. FORD. Mr. President, when you've been in public life as long as I have, you see a lot of hard working, dedicated people in public service. But, every once in a while you come into contact with someone whose leadership qualities make them stand out from the rest. The head of Kentucky's National Guard, Adj. Gen. Robert L. DeZarn is that kind of leader. Over the years, he's been able to instill a sense of common purpose, and in doing so, bring out the best possible performance in everyone around him. And while we know that he will continue to contribute his talents in other ways, General DeZarn's retirement today will be a tremendous loss to those under his command and to the State as a whole.

It's been said that ''a general is as good or as bad as the troops under his command make him.'' There is no doubt that Kentucky's National Guard will continue to make Kentucky and the Nation proud long after General DeZarn steps down. But, anyone who knows the Adjutant General also knows that he brought to his command an uncommon blend of courage, intelligence and compassion that will be sorely missed.

Over the past 4 years, as the Kentucky Guard was called upon to respond to natural disasters or as our Nation sought them out to help ease discord around the world, I always knew that General DeZarn was working behind the scenes to assure order, to assure total commitment, and in the end, to assure victory over adversity.

He was equally hard at work when the media's eye was not on the Guard, building upon Kentucky's resources to assure we would play an integral role in national security well into the next century. I owe him much for his assistance in making sure the C–130H's, what I often call the thoroughbreds of military aviation, stayed in Kentucky. Our Air Guard's performance at the controls of those C–130H's in Somalia, Bosnia, and Rwanda have brought them national recognition, and saved countless lives.

In addition, his development of the western Kentucky training site will make it a model of high-tech and all-terrain training for both Guard and active duty soldiers for years to come. Last year, 16,000 soldiers trained here. But, those numbers represent just the beginning in a long line of soldiers who will receive the best training this country has to offer. The skills they learn right in Kentucky will enable them to join the ranks of the best-trained military force in the world.

General DeZarn has also had a tremendous impact on the national level. The Department of Defense has been working to restructure the Nation's entire defense forces to better respond to the needs of the post-cold war era. General DeZarn has worked closely with his colleagues from other States to assure that the National Guard continues to play an integral and undiminished role in that new structure.

Mr. President, let me close by reiterating my thanks to General DeZarn for a job well done, and my appreciation for having had the honor to serve with him.

THE BAD DEBT BOXSCORE

Mr. HELMS. Mr. President, the Federal Government is running on borrowed time, not to mention borrowed money—nearly $5 trillion of it. As of the close of business Friday, December 8, the Federal debt stood at $4,988,945,631,994.24. On a per-capita basis, every man, woman, and child in America owes $18,938.12 as his or her share of the Federal debt.

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

CODEL STEVENS BOSNIA REPORT

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

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

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

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

U.S. SENATE,
Washington, DC, November 27, 1995.

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

DEAR BOB: Last month, you authorized myself and Senators Hutchison, Snowe and Thomas to travel to NATO, Bosnia and Croatia to evaluate plans for a possible NATO mission to the former Yugoslavia.

The seven Senators who participated in this mission have prepared the attached report, which addresses the four central questions that you directed we study: how soon, how many, how long and how much.

We did not seek to reach any conclusions or specific recommendations to you or the Senate—our personal views reflected the wide range of positions held by our colleagues. We did seek to identify the many differing expectations and understandings that are held by the parties that will be involved in the peace settlement in Bosnia.

It is my request that the attached report be printed and made available to all Senators, to assist in their understanding and our upcoming debate and consideration of any resolution concerning U.S. participation in a Peace Implementation Force.

Cordially,

TED STEVENS.

CODEL REPORT

INTRODUCTION

The Delegation was authorized by the Majority Leader and the Democratic Leader to travel to Europe, particularly Bosnia, to evaluate the current situation in the former Yugoslavia, the status of the peace negotiations, and potential plans by the North Atlantic Treaty Organization (NATO) and the United States European Command (EUCOM) to engage in a military mission to implement a peace settlement. The Delegation was to assess these conditions, and report their findings to the Senate.

This report does not attempt to reach any conclusion about the outcome of the ongoing peace negotiations, which resumed this month at Wright-Patterson AFB. The Delegation did not seek to reach a consensus or make specific recommendations on the military plans under consideration at EUCOM and NATO Headquarters in Belgium. The Delegation hopes their mission will contribute to planned Senate hearings and subsequent consideration of any proposals for United States participation in any peace settlement in Bosnia.

The Delegation report consists of the following sections:

(1) Listing of the Delegation
(2) Listing of Delegation activities
(3) Assessment of the situation in Bosnia
(4) Expectations for a potential peace agreement
(5) Plans/expectations for NATO peace implementation activities
(6) Closing observations

LISTING OF THE DELEGATION

Senator Ted Stevens—Committee on Appropriations (Chairman).

Senator Dan Inouye—Committee on Appropriations (Co-Chairman).

Senator John Glenn—Committee on Armed Services.

Senator Jeff Bingaman—Committee on Armed Services.

Senator Kay Bailey Hutchison—Committee on Armed Services.

Senator Olympia Snowe—Committee on Foreign Relations.

Senator Craig Thomas—Committee on Foreign Relations.

LISTING OF DELEGATION ACTIVITIES

U.S. European Command Headquarters

The Delegation met with the following senior U.S. military officials:

General George Joulwan; Supreme Allied Commander, Europe

Admiral Leighton Smith; Commander, Allied Forces South

General James Jamerson; Deputy Commander, U.S. European Command

General William Crouch; Commander, U.S. Army Europe

General Richard Hawley; Commander, U.S. Air Force Europe

Major General Edward Metz

Government of Croatia

The Delegation met with the Minister of Defense for Croatia, Gojko Susak.

United Nations officials

In Zagreb, Croatia, the Delegation met with the Senior Representative of the Secretary General of the United Nations, Mr. Yasushi Akashi, and the Deputy Commander of U.N. forces in the former Yugoslavia, Canadian Major General Barry Ashton.

In Sarajevo, Bosnia, the Delegation met with the Commander of U.N. forces in Bosnia, United Kingdom Major General Rupert Smith.

Government of Bosnia

The Delegation met with the President of Bosnia, Alija Izetbegovic, the Vice President, Ejup Ganic and Prime Minister, Haris Sladjzic.

North Atlantic Treaty Organization Headquarters

The Delegation met with the following senior NATO leaders: Field Marshal Faye Vincent, Chairman of the Military Committee, Mr. Willy Claes, Secretary General of NATO, The North Atlantic Council—Ambassadors to NATO from: Spain, Germany, the United Kingdom, Norway, Luxembourg, Portugal, Italy, Turkey, Iceland, Denmark, Greece, France, Belgium, Netherlands, Canada and the United States.

The Delegation also wishes to express its appreciation for the support and assistance of the United States Embassy to Croatia, the United States Embassy to Bosnia and the United States Mission to NATO. Ambassadors Galbraith, Menzies and Hunter all contributed significantly to the success of the mission, and their individual actions and leadership are no small part of the progress made so far towards a peace settlement in Bosnia.

ASSESSMENT OF THE CURRENT SITUATION IN BOSNIA

At each venue, the strong statement to the Delegation was that the anticipated peace

negotiations in the United States offered the best likelihood of a serious cessation of hostilities. Without exception, leaders at NATO, in Croatia, in Boania and U.N. officials all cited the involvement of the United States as a catalyst for peace.

At the time of the Delegation's mission, the current cease fire agreement was only a few days old. While conditions in and around Sarajevo were significantly improved, according to Bosnian and U.N. officials, fighting continued elsewhere in Bosnia. While all parties hoped that the cease fire would take hold throughout the country, fighting in northwest Bosnia was especially active.

For nearly six months preceding the Delegation's visit, Sarajevo had been completely strangled. The airport had been closed to all traffic, and the only road access route crossed Mt. Igman. With the ceasefire, humanitarian conditions appeared to be improving. Local officials reported that utility services were being restored, and that food stocks in the city were higher. The Delegation observed large numbers of commercial trucks assembling in a convoy to exit the city. Despite these factors, the airlift of food supplies continued, to provide for the needs of local residents, and to maintain air access into the city.

Perhaps the most striking feature of Sarajevo, amid the destruction and devastation of incessant shelling and rocket attacks, was the utilization of the Olympic facilities as gravesites for thousands of Bosnians who have died during the fighting. Their graves serve as a poignant reminder that peace will be difficult to achieve, and that the personal loss of people on all sides of the conflict is severe.

EXPECTATIONS FOR A POTENTIAL PEACE AGREEMENT

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

Bosnian Government: Officials of the government of Bosnia made clear that any price agreement required the participation of the United States in the negotiation and implementation phases. From their point of view, the United States brought credibility to an agreement beyond the involvement of the United Nations or the European members of the Contact Group (the United Kingdom, France, Germany and Russia).

Very clearly, the Bosnian government anticipated that U.S. and NATO military units will serve to enforce the peace, and to protect both the internal and external borders determined in the peace settlement. Further, officials also cited the tremendous refugee and displaced persons dilemma facing Bosnia. One official also suggested the possible use of United States forces to reconcile the property claims of Bosnians displaced during the war.

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

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

The Croatian government officials did not believe that the peace enforcement mission could be completed in twelve months. A key factor in the duration and success of the peace enforcement mission would be the extent to which the Bosnian government achieves an enhanced military capability. The Croatian defense Minister indicated that a peace settlement was likely to bring an end to the U.N. arms embargo, but that there was no need to arm the Bosnians after a peace plan is adopted. Croatia may not permit future weapons transfers through Croatia to Bosnia government forces following a negotiated peace settlement.

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

United Nations: The Secretary General's Senior Representative made clear that a peace agreement will be difficult to maintain and enforce, based on the track record of all parties. Much credit was given to the renewed negotiations for achieving the present tentative cease fire, and the necessity of continued United States involvement in any future negotiations was emphasized.

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

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

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

EXPECTATIONS FOR A NATO PEACE IMPLEMENTATION FORCE

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

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

These uncertainties made difficult specific estimates on force size, mission cost and mission duration.

United Nations forces now deployed to the former Yugoslavia will constitute some portion of the NATO led peace implementation force. The attached chart details current deployments.

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

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

Mission expectations fall in the following categories:

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

Separation of Forces: In discussions with the Delegation, NATO officials indicated that the NATO force will provide a buffer between the armed forces of the Combatants. This concept would entail an occupation of specific areas, and a responsibility to police the military activities of the combatants.

Secure Borders. Some parties indicated that the NATO force would serve as a protection force, to maintain the territorial integrity of parties to the settlement reached in the peace negotiations.

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

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

COMPOSITION AND SIZE OF A NATO PEACE IMPLEMENTATION FORCE

The ultimate composition of the NATO peace implementation force will reflect the ''proportionate contribution'' of NATO members, according to officials in Brussels. Those nations with troops currently deployed will most likely sustain that presence. Other nations will nominate forces based on the plans developed by the Supreme Allied Command, reflecting the capabilities available in those national military forces. The attached chart reflects anticipated force levels.

The United States, France and the United Kingdom each anticipate providing roughly a division sized combat force. Each nation will tailor that force to reflect the specific geographic and ethnic characteristics of the region in which they will operate. Other nation's will contribute units ranging from company to battalion size, based on mission requirements.

For the United States, the call-up of approximately 1,500 to 2,000 reserve component personnel is likely. These units will participate primarily in combat support, service support, medical, civil affairs and military police functions. The reserve components have been heavily taxed over the past three years supporting U.N. and humanitarian relief missions in Rwanda, Somalia, Haiti and now Bosnia. Air Force Reserve and Air National Guard units are an essential element of the on-going airlift to support the Bosnian people.

COST ESTIMATES

Officials at the U.S. European Command were unable to provide any specific estimate on the cost of U.S. operations. Discussions with senior officials at the Department of Defense indicate that the likely incremental cost for fiscal year 1996 of the ground force component of a NATO peace implementation force will total approximately $1.5 to $2.0 billion. This amount does not address the costs of the on-going ''no fly'' enforcement mission or the naval embargo in the Adriatic Sea.

More detailed estimates are expected upon completion of the peace agreement, and the finalization of NATO operational plans.

TIMETABLE FOR POTENTIAL DEPLOYMENT

Officials at the U.S. European Command estimated that NATO force would be tasked to deploy to Bosnia and Croatia within 96 hours of the formal adoption of a peace settlement. What will constitute the ''formal adoption'' of an agreement is not yet known. NATO leaders concurred with this estimate.

NATO leaders had not yet defined what mechanism would trigger the Alliance's participation in the mission, and the timetable for consideration by the North Atlantic Council of a request for NATO involvement. NATO officials anticipated that the military mission would be predicated on a United Nations Security Council resolution, authorizing such a mission pursuant to Chapter 7 of the U.N. Charter.

NATO officials did not articulate the mechanism by which individual nations would determine and affirm their participation in the mission.

COMMAND AND CONTROL/RULES OF ENGAGEMENT

Central to the role of U.S. military forces in a deployment to Bosnia will be the command relationships and the rules of engagement that would govern their participation. In every discussion, the Delegation found that all parties believed the utilization of NATO would obviate the problems encountered by the United Nations command structure. The flawed ''dual-key'' control by the United Nations of military force limited the usefulness of that force, and caused all the combattant parties to doubt and mistrust the commitment of the United Nations to securing peace in Bosnia.

U.S. military officials stated categorically that U.S. forces would serve under the command of U.S. military officers through the NATO chain of command. They affirmed that the rules of engagement will provide wide latitude to respond with disproportionate force to any attack or threat to U.S. or NATO personnel.

Less clear is how those rules of engagement will deal with threats to local populations, whether Bosnian Muslim, Croat or Serb, by any military, guerilla or terrorist force. Again, the peace agreement is expected to provide guidance on the role of the military peace implementation force, and how they might respond to such situations.

PARTICIPATION OF NON-NATO FORCES

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

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

CLOSING OBSERVATIONS

While reaching no conclusion about what action the Senate might take regarding the potential deployment of U.S. military forces to Bosnia as part of a NATO peace implementation force, the Delegation believes that several critical and vital issues must be resolved before a full and complete understanding of the mission can be reached.

From the perspective of the use of U.S. military units, the following issues must be addressed:

(1) The end state or ''exit strategy'' for U.S. forces.

(2) Funding for U.S. operational costs.

(3) Funding for non-NATO participants.

(4) Demarcation of U.S. and allied zones of deployment.

(5) Composition of U.S. and allied military forces.

(6) Logistics support for U.S. and allied military forces.

(7) Transit/air access in Bosnia.

(8) Air defense responsibilities.

(9) Transition for current U.N. mission to NATO control.

(10) Rules of engagement.

(11) Transition to civilian aid/recovery program.

(12) Specific tasks U.S. forces will perform.

These outstanding issues are not intended to negatively reflect the discussions and meeting by the Delegation—they simply represent the unknown factors surrounding this mission.

FLAG DESECRATION CONSTITUTIONAL AMENDMENT

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

The bill clerk read as follows:

A joint resolution (S.J. Res. 31) proposing an amendment to the Constitution of the United States to grant Congress and States the power to prohibit the physical desecration of the flag of the United States.

The Senate resumed consideration of the joint resolution.

Mr. MURKOWSKI. Mr. President, I ask unanimous consent for 12 minutes in morning business.

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

PERCENTAGE DEPLETION ALLOCATION

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

This is a $1 billion budget bombshell that will cost thousands of domestic jobs, and it will increase our domestic balance of payments, because buried in the details of the Clinton budget alternative is a provision that would hike taxes on many mining operations on Federal land.

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

This is extraordinarily far reaching, Mr. President. According to the administration, this would save—they use the word ''save''—$954 million over 10 years, placing a $1 billion burden on our Nation's miners.

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

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

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

It would provide a war on hard-working people and their jobs. Why they are singled out as the only industry for termination, one can only speculate.

Oil, gas and coal jobs are not put in jeopardy by this move by the administration to lose the depletion allowance. However, one should reflect on the fact that this may be the camel's nose under the tent. It is only a matter of time until this administration will again use the Tax Code to go after oil and gas and the coal industry.

Having heard my friend from North Dakota express his concern over the deficit balance of payments, I again remind the President and my colleagues, this Nation grew strong on the development of our natural resources, our oil, our coal, our gas, our timbering industry, our mining industry, our grazing industry. All these appear to be put in jeopardy. In fact, the development of resources from all public lands appears to be on the administration's blacklist.

The rationale of how they could see the tremendous decline in these high-paying blue collar jobs and the reality that they seem to think it is better to import is beyond me. That is specifically exporting our dollars and our jobs overseas.

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

THE FOREST SERVICE GRINCH STEALING CHRISTMAS IN ALASKA

Mr. MURKOWSKI. Mr. President, I have one more short statement relative to another policy of the administration. I want to speak briefly on an issue that affects my home State of Alaska. It is coming to a head during this holiday season, but unfortunately, unless there is a legislative solution the problem will not end with Christmas but it will be a gift that will keep on giving throughout the year 1996.

The gift is the policies that promote unemployment. The bearer of this unwelcome present seems to be the U.S. Forest Service. In fact, it is not too strong to say that in the small community of Wrangell, AK, a town I once lived in, the U.S. Forest Service is truly becoming the Grinch that stole Christmas and is stealing the hopes and dreams of many of the people in that community.

The Forest Service, under the Clinton administration, has canceled the contract that provided timber to the town's only year-round industry, a small sawmill. The Service has also been unresponsive in putting up independent sales to permit the sawmill to operate. For that reason, the timber industry in southeastern Alaska, an industry dependent upon wood from the Nation's largest national forest, the 17-million-acre Tongass National Forest, is being destroyed.

People live in the forest. Unlike in many areas where you have State and private timber, in our part of the country, towns such as Ketchikan, Wrangell, Petersburg, Juneau, and so forth, are all in the forest.

We have the situation, since the Clinton administration came to power more than 3 years ago, that more than 1,100 direct logging jobs have been lost, cutting timber employment by 42 percent. Environmental groups earlier this year claimed loudly that the economy in southeastern Alaska did not need a timber industry, that everything was doing fine. They should tell the folks back in Wrangell, that 2,500 population town. The local newspaper a week ago filed for bankruptcy. This would end a continuous publication, for 93 years, of the Wrangell Sentinel, the longest continually published newspaper in our State. The paper is only the latest victim of the revenue loss caused for all businesses when the sawmill closed, costing more than 200 jobs in the community.

Besides the newspaper, there have been jobs lost in the machine shop, the transportation company, the markets, even the fixture of the community bar, the Stikine Bar. The unthinkable has happened. The bar is shut down, putting 12 people out of work.

This is the real result of the shortsighted Forest Service policies. These are not policies that will help the environment. According to the Forest Service draft of a revised Tongass Land Management Plan in 1993, enough timber could have been cut in southeast to keep all these people working with little effect, if any, on the environment. We are only seeking to harvest just 10 percent of the Tongass over a 100-year regrowth cycle, while nearly half the forest old growth is fully protected. Alaskans are seeking just to log 1.7 million acres of that forest—while nearly 7 million acres are fully protected in wilderness or other restricted areas.

We are currently working on a temporary fix that may help Wrangell and other southeast towns that depend on timber to have a hope of a brighter future. Hopefully, Congress will approve the fix and I pray that the President will sign it in the Interior appropriations bill later this week.

It will present a hope during the holidays for the thousands whose future depends on some level of logging in southeastern Alaska in the Tongass.

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

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

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

FLAG DESECRATION CONSTITUTIONAL AMENDMENT

The Senate continued with the consideration of the joint resolution

Mr. BIDEN addressed the Chair.

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

Mr. BIDEN. That is what I wish to speak to, Mr. President.

Mr. President, we have had some discussion this morning, we will have some more discussions this afternoon, and some discussion tomorrow as well, on a constitutional amendment to protect the flag.

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

There are those who believe that we should not, under any circumstances, and no matter how it is worded, write an amendment into the Constitution to protect the flag because they believe there is no way to do that without damaging an even more cherished right, our right to say whatever we wish to say when we wish to say it without the Government acting as a censor, without the Government choosing among our words, which are appropriate and which are not.

I understand their view and I respect it. I believe, as strongly as I believe anything about this debate, that those against the amendment in question are no less patriotic, no more un-American, no less American, no better, no worse than those who share the view that the amendment in question is an appropriate way to protect the flag, which really means to speak to our national spirit and consensus that exists in America about what we stand for. The so-called culture norms people often speak to.

I respect their motives and I respect their views. But they are not mine. Although it is arguably not necessary to enshrine in the Constitution a way of protecting the flag, I believe that written properly, I believe stated properly, it can in fact legitimately be placed in the Constitution without doing damage to any of the other elements of our Constitution. But I should say up front that the amendment in question, in my view, does not do that. I say this as one who has made it his business here on the floor, along with my friend from Vermont, whom I see on the floor, and others, of sometimes being out of step in the minds of many people in terms of protecting the civil liberties of persons in this country to say what they wish to say, to publish what we do not wish them to publish, and to take actions we find reprehensible. But the Senator from Vermont, myself, and

others believe they are guaranteed under the first amendment.

The first amendment does not say that you can only say things which reflect insight. The first amendment does not say you have to be bright. The first amendment does not say you have to be right. All the first amendment says is that you can say what you wish to say in relation to speech, and the Government cannot censor what you say no matter how, with notable exceptions, how much we do not like what is being said.

But I believe that the flag stands alone, and that is a legitimate way to protect our flag as the singular and unifying symbol of a diverse people in need—I would add in urgent need sometimes—of common ground. America is the most extraordinary nation on Earth.

I realize those who are here in the galleries who may be from other countries, or those who listen to this on CNN, or C–SPAN—if it is carried—will say, ''Isn't that a typical American assertion, a chauvinistic assertion?'' ''We are the most extraordinary nation on Earth.'' We are extraordinary in the sense not that we are better as individuals, not that we are smarter, not that we are wiser, more generous, or less venal than other people, but the genius of America is the American system, a system that takes into account our significant diversity which in other countries—that diversity I am referring to—and in other systems creates great strife.

We take that diversity, which in other countries creates strife, and we have turned it into strength. That is not very easy to do. People often fear diversity. The fact that we are black and white does not automatically generate fellowship and harmony. The fact that we are Christian, Jew, and Moslem does not send us running into one another's embrace to herald our differences. The fact of the matter is that people fear that which is different. It is a human condition.

Our diversity naturally pushes us apart, not together. But what holds us together as a nation, Mr. President, is not a common language, although I think that is necessary; not a common world view, which I do not think is necessary. What holds us together is a common commitment to a system of government, a covenant of goodwill, of tolerance, of equality, and freedom, that is enshrined in the Constitution. And the flag stands as the single most important symbol of that covenant. It is the story of all we have been and the symbol of what we wish to become.

To me, the flag is much more than the sum of the stars and the stripes. It sounds corny to say, and to listen to it sometimes, but it is also idealistic. I believe that it is important even more now than then for all Americans to feel like a family. Like all families we have our problems. We squabble with each other. We misunderstood each other. And we hurt each other in countless ways. But at the end of the day we still need to feel like a family under one roof bound together by shaped and shared values, and a shared sense of respect and tolerance.

It is the flag that symbolizes those shared values and which reminds us of how the shared covenant of respect and tolerance has to be maintained. It is the flag under which we as a diverse and sometimes divisive community can come together as one. And it is the flag that flies high and proud over our Nation's home.

But to say that the flag is worth protecting does not end our conversation. It is only, in my view, where we start, for we must ask how the flag should be protected. As we look to protect the flag, we must not lose sight of the first amendment and its guiding principles for, although the flag may stand alone, it should not and it cannot stand above our most cherished freedom of speech.

Here is what I mean. At heart of the first amendment lies a very basic notion; that is, the Government cannot muzzle a speaker because it dislikes what he or she says, or discriminate between your speech and mine because it agrees with me but disagrees with you. That sort of viewpoint discrimination is most importantly what the first amendment forbids.

As the Supreme Court has said, and I quote:

> Above all else, the first amendment means that government has no tolerance to restrict expression because of its message, its ideas, its subject matter, or its content. The essence of forbidden censorship is content control.

Just last term, the Supreme Court forcefully reiterated its intolerance for viewpoint discrimination in the majority opinion of Rosenberger versus the University of Virginia. Justices Rehnquist, Scalia, Thomas, Kennedy, and O'Connor—Rehnquist, Scalia, and Thomas not accused of being a liberal triumvirate—said:

> In the realm of private speech or expression, government regulation may not favor one speaker over another. When the government targets particular views taken by speakers on a subject, the violation of the first amendment is all the more blatant.

The Government can tell us we may not blast our opinions over a loudspeaker at 3 a.m. in the morning. It can tell us that we cannot distribute obscenity and that we cannot spread libelous statements about one another. But it cannot apply different rules based upon the viewpoint of the broadcast, the obscenity, or the libel. It cannot say you cannot engage in that obscenity because of the viewpoint of the expression, you cannot broadcast something because of the viewpoint you are expressing, or you cannot say that about another person because of the viewpoint that you are expressing. It cannot apply different rules to Democrats and Republican, hippies and yuppies, rich and poor, black and white, or any other division in this country.

It was on this point to protect the flag, while not doing violence to the core first amendment principle of viewpoint neutrality, that I wrote the Flag Protection Act of 1988. That act aimed to safeguard the physical integrity of the flag across the board by making it a Federal crime to mutilate, deface, physically defile, burn, maintain on the floor, or ground, or trample upon the American flag. It passed the Senate, was signed by the President, and it became law.

The statute focused solely on the exclusivity of the conduct of the actor, regardless of any idea the actor might have been trying to convey, regardless of whether he meant to cast contempt on the flag, regardless of whether anyone was offended by his actions.

The statute was written that way because, in my view and in the view of other of constitutional scholars, the Government's interest in preserving the flag is the same regardless of the particular idea that may have motivated any particular person to burn or mutilate the flag. Our interest in the flag is in the flag itself as the symbol of what we know in our hearts to be precious and rare and which flies high and proud over this place we call home, a precious and rare symbol of this Nation.

The flag's unique place in our national life means that we should preserve it against all manner of destruction. It does not matter whether the flag burner means to protest a war, or praise a war, or start a barbecue. It is the flag that is the treasured symbol—not the obnoxious speech nor the positive speech that accompanies the burning of the flag—that must be protected.

We are here today deciding whether to add the 28th amendment to the Constitution, with a thought, I believe, that the flag is worthy of constitutional protection. Although I believe it is worthy of constitutional protection, I nevertheless must oppose the constitutional amendment that is before us now. I oppose it because, in my view, it puts the flag on a collision course with the Bill of Rights.

Again, the purpose of these amendments is to protect the flag as if we are going to protect a tombstone, as if we are going to protect the national eagle, as if we are going to protect it as the most precious of those symbols. It does not matter to me whether someone comes with a sledgehammer and defiles a tombstone of a war hero by saying, ''I do this because I do not think this slate of granite warrants being on top of your sacred body.'' I do not care whether they do it when they smash it because they say, ''I do this because I protest you and the war that you fought in,'' and so on. The end result is the tombstone is destroyed.

That is the story I want to get across about the flag. If it is the flag we wish to protect and not amend the first amendment, not make choices among the types of speech we can engage in, then let us protect the flag—nothing

else. As I said, I do not care whether someone takes that flag and lights the flag and burns it in this Chamber offering it up as a sacred symbol for all who died in the name of this country or grabbed it and burned it because they are protesting the grotesque policy of the United States on such and such. The end result is the national symbol is burned. And when we go beyond protecting merely the symbol, we go to choosing, making choices among the types of speech we will allow Americans to engage in.

I oppose the amendment because it puts the flag on a collision course with the Bill of Rights. Let me expand on that. The proposed amendment gives the Congress and the 50 States the power to prohibit the physical desecration of the flag. And that word ''desecration'' is loaded. It is loaded with ambiguity. It is laden with value. And it will inevitably lead to trouble. To desecrate, like beauty, is in the eye of the beholder.

Here is what the dictionary says desecrate means:

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

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

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

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

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

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

How about the woman who buys the $5,000 sequin dress that has a flag on it? Is that profaning the flag? Does it matter what her figure is like to determine what use the flag is being put to?

I rode in a parade recently in my home State, and it was a parade that was honoring the war dead. It was Memorial Day. We went by on Union Street in Wilmington, DE, the home of a black veteran, and he proudly had his flag flying on his front porch on a row house, and on the other side of the flag sewn perfectly so it was the exact same size was the African national symbol, black, red, and green. Is that profaning the flag? He meant it out of respect. He was a war veteran. If I am not mistaken, he had been president of one of our veterans organizations. Is that profaning the flag? Well, in Maine, maybe it would not be profaning the flag. In southern Delaware or Alabama it maybe would be viewed as profaning the flag.

Who makes those choices—the local constable, the local cop, the local censor? That is the crux of my objection to this amendment. It makes not the act but the message the crime. And in doing so it gives the Congress and the States license to discriminate between types of speech they like and types of speech they do not like. But you do not have to take my word for it.

Back in the bad old days, when I was chairman of the Judiciary Committee and subsequently as the ranking member, we held extensive hearings about the exact same amendment 5 and 6 years ago, and we heard from its authors, then members of the Bush administration, noble and honorable men, and they pulled no punches to this question. They admitted right out that the goal was to allow the Government to discriminate between bad flag burners and good flag burners.

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

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

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

If I am not mistaken, I remember the example I gave. I said, how about if there are two veterans at the war memorial, the Vietnam War Memorial, and they each go down and they have their own flag, and he kneels down before the wall, one of them, and one happens to be a woman. And she takes out the flag, very respectfully, puts it in an urn, puts a little lighter fluid on it and lights it, and says, ''I'm offering this flag up to purify the soul of my deceased husband whose name is on the wall and fought valiantly for his country in a noble effort.''

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

If there is a park cop, a D.C. cop standing there, what does he do? And he says, ''Arrest the veteran who said he is burning this flag out of anger, but do not arrest the widow who is burning this flag to honor.''

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

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

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

You all think I am kidding about this? Any of the people in this Chamber who listened, you get 1,000 catalogs in the mail, everyone from L.L. Bean to, I do not know, all these catalogs. Look at the catalogs you get for swimsuits. Look at them—not even ones you asked to have sent to you—and you will see the swimsuits, men and women's are flags—a flag.

In some parts of my community, someone wearing a one-piece swimsuit with a flag on it would not be viewed as disrespectful, someone wearing a two-piece swimsuit would maybe not be, someone wearing a bikini may very well be. And you think—I know this is funny, but it is real. It is real. These are real things. You are going to empower some local cop, some local community, to make a judgment. If I show up in boxer shorts, a kind of swimsuit with a flag on it, no problem. If some young, 19-year-old, muscle-bound guy shows up in a bikini with it on, well, they may say that is kind of offensive, that is too revealing.

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

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

[P]ublic sentiment is not neutral.

Parenthetically, I would note that is a profound observation.

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

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

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

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

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

So if I decide, as Mr. Cooper says, public sentiment is not neutral, it is not neutral on that, it is not neutral on the Ku Klux Klan, it is not neutral on white supremacist organizations, it is overwhelmingly opposed, so because it is not neutral, we go with a majority sentiment? Are we prepared to say that? Are we prepared to outlaw their speech? Well, it would make me feel good. I would like to do it. But if we go for them today, who do we go for next?

How about the time when people stood up 40 years ago and made speeches about black equality, made speeches about the rights of blacks to participate in our society? The majority of folks in certain parts of the country, including my State, were not for that. Would they be able to pass a law in the State of Delaware saying you cannot say that? ''You're a rabble-rouser, talking about that 19 percent of my population that is black having equal rights.''

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

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

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

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

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

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

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

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

The very purpose of the Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials. . . If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion or other matters of opinion or force citizens to confess by word or act or faith therein.

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

This discrimination is precisely and most profoundly what the first amendment forbids, and the amendment that works this kind of discrimination does not protect the flag, it censors speech.

Another problem with the amendment is that it fails to define the word ''flag.'' This would add yet another layer of difficulty in interpretation and application and open the door further to inconsistencies among the States. Again, each State would have considerable discretion to craft its own definition, and, again, the possibilities are nearly endless.

As Assistant Attorney General Barr testified, the legislation would be able to criminalize conduct dealing not only with the flag as we know it but with, and I quote, ''descriptions of the flag, such as posters, murals, pictures, buttons or other representations of the flag.''

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

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

This sort of disparity among State laws, whether it is over the meaning of ''desecration'' or the definition of ''flag,'' is especially inappropriate here where we are talking about the Nation's symbol. This is not the symbol of Mississippi or Delaware, Alabama, South Carolina, California, Maine, or Montana. It is the national symbol. The reason it is worth preserving is because it unifies this diverse Nation, and the notion that a single State can determine what that should be is, on its face, preposterous.

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

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

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

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

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

If we want to protect the flag, we should have one national viewpoint-neutral standard. The Constitution, after all, stands for proud and broad principles, not a patchwork of 50 different and idiosyncratic ideas. I agree that we should honor the flag. We should hold it high in our hearts and in our law, but we should not dishonor the Constitution in the process.

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

AMENDMENT NO. 3093

(Purpose: Proposing an amendment to the Constitution authorizing Congress to protect the physical integrity of the flag of the United States)

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

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Delaware [Mr. BIDEN] proposes an amendment numbered 3093.

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

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

The amendment is as follows:

Strike all after the resolving clause and insert the following: That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution if ratified by the legislatures of three-fourths of the several States within seven years after its submission to the States for ratification:

''ARTICLE—

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

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

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

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

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

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

My amendment is simple and straightforward. It leaves no room for guesswork about what it will mean. It gives the Congress the power to enact—it is a constitutional amendment—it gives Congress the power to enact a specific viewpoint-neutral statute, a statute making it unlawful to burn, mutilate or trample upon any flag of the United States, period. It does not matter who burns, mutilates, or tramples the flag, and it does not matter why. Under my proposal, it would be unlawful to do the flag harm, no ifs, ands, or buts. It makes a single exception for disposing of the flag when it has become worn or soiled, and it says a flag is what we all know a flag to be, that which is commonly displayed and is defined by the Congress. It rules out things like pictures of flags, napkins with flags on them, and other representations of the flag.

My proposal also gives the Congress the power to write appropriate penalties for violating the statute. Let me say at the outset that I am the first to acknowledge that the restriction on flag burning is a restriction on expressive conduct. There are no two ways about it. When Gregory Johnson burned the flag at the Republican convention in 1984 and chanted the words ''America, red, white, and blue, I spit on you,'' he was trying to say something. It may have been no more than an ''inarticulate grunt or roar,'' as Chief Justice Rehnquist puts it, but it was communicative nonetheless.

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

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

We limit the manner in which folks can express themselves all the time, as long as we limit everyone the same way. We cannot say that I can have a fireworks display and you cannot. We cannot say that one nude person could go through a park and another one cannot. We must treat all people the

same—as long as we do it the same way. But we do limit the ways in which we can express ourselves. And that, Mr. President, is precisely the point.

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

I think that we can and that we should tell everyone they cannot burn the flag. I agree with Justices Warren, Fortas, and Black that the right to burn the flag does not sit at the heart of the first amendment. But I also agree with Justice Scalia when he said, ''The Government may not regulate speech based on hostility or favoritism toward the underlying message expressed.'' The point of the first amendment is that the majority preferences must be expressed in some fashion other than silencing speech on the basis of content. Yes, I agree with Justices Scalia, Rehnquist, Thomas, Kennedy, and O'Connor in their strong and unequivocal condemnation of viewpoint discrimination just last term in the Rosenberg case. I remind my colleagues, nobody has ever accused Justice Rehnquist of being a radical or a liberal, or Justice Scalia of being a radical or a liberal, or Justice Thomas of being a liberal, and the list goes on. Flag burning may not sit at the heart of the first amendment, but the principle against viewpoint discrimination does sit at the heart of the first amendment.

This is one of those defining constitutional principles that sets America apart and, in so many ways, above other nations. Here, the Government cannot regulate speech based on the viewpoint of the speaker. Here, the Government cannot pick and choose between speech it likes and speech it does not like, and criminalize what it rejects but not what it respects.

That is the bedrock first amendment principle upon which my proposed amendment is based, and it is the principle—the core principle, in my view—that separates my proposal, my constitutional amendment, from the one proposed by Senators HATCH and HEFLIN.

Their amendment allows and, in fact, encourages viewpoint discrimination. Mine, flatly stated, prohibits it. Their amendment would send to jail a guy who burns the flag to protest the war, but not the guy who burns the flag to praise the war. My amendment would throw them both in jail, if that is what the Congress decides to legislate. Their amendment would make it a crime to walk on the flag at a college campus sit-in, but not at the war memorial. My amendment would criminalize both, if that is what the Congress legislated.

In my view, it does not matter why you burn or mutilate or trample on the flag; you should not do it, period. I do not care whether you mean to protest the war or praise the war or start a war. You should not do it. Our interest in the flag is in the flag itself as a unifying symbol. I might add, the person riding down Constitution Avenue watching the veteran burn the flag to memorialize his colleagues has no notion why he is doing it. All he knows is that the national symbol is being burned. Under their amendment, you would have to get close enough to hear what was being said in order to determine whether or not it should be allowed or not allowed. I find it no less demeaning that someone would, in order to pay respect to my deceased family, trample across our grave plots than I would if someone tramples across them to show disrespect. I do not want anybody trampling where my family is buried. I do not want anybody burning the flag, whether they are doing it to praise me or condemn me. They should not do it.

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

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

For what else is the reason? Interested in a cloth maker, we do not want them burned? Or we have a greater interest in cloth makers, so they can buy and sell more flags? What is the purpose?

It either unifies or does not; it either should be soiled or not soiled. We cannot have any other rationale that I can come up with. The flag is a cherished symbol, not as a vehicle for speech; it is a cherished symbol, period. That is why it should be protected.

That is what my amendment does. The amendment authorizes Congress, and Congress alone—not the States—for, as I said earlier, I do not want any other State defining to me what my national symbol means. This is a national symbol. This is the National Government, and the National Government should have unifying rules about the national symbol. That is what my amendment does. Only the National Government, speaking for the Nation as a whole, can speak to how we should treat that unifying symbol.

This means my amendment would not let some violate the physical integrity of the flag but not others. Under this amendment, no one will be able to do the flag harm. With viewpoint neutrality as its signpost, the amendment preserves the first amendment's cardinal value.

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

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

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

I join them in believing that the singular symbol of our Nation ought to be protected. They recognize, as Justice Holmes once said, ''We live by symbols.'' We live by symbols. I share that view. We must protect both the flag and the first amendment. One is a symbol, the other is the heart of the Nation and who we are as a people.

We must protect the flag because it is a unique and unifying symbol of our Nation, and we must protect the first amendment because it is our single greatest guarantee of freedom in this country.

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

In conclusion, Mr. President, I also respect those who believe my amendment should not become part of the

Constitution. I respect them very much. What I do not think anyone can disagree with is that there is a fundamental distinction between the amendment in terms of its impact on the first amendment.

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

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

I yield the floor.

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

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

This is not a partisan issue. Ninety three Democratic Representatives, nearly half of the Democratic Members of the House, voted in favor of this amendment. The Democratic leader, DICK GEPHARDT voted ''yes,'' as did 2 Democratic whips, 2 cochairs of the Democratic Policy Committee, the chairman of the Democratic Congressional Campaign Committee, and 36 ranking committee and subcommittee members. It is truly nonpartisan. Here in the Senate, amendment cosponsors include both Republican and Democrats. Old Glory is not a Republican banner or a Democratic banner. The American flag is a symbol of our unity as a Nation—it represents all Americans, regardless of party or philosophy.

Last Thursday, December 7, was one of those days which holds a special place in our history; the anniversary of the attack on Pearl Harbor. It is a day when we are particularly mindful of the unique symbolism of the American flag.

The flag, which flies today and everyday over the remains of the U.S.S. *Arizona*, one of the ships sunk during the Japanese attack, and which has been preserved as a monument to those who perished in that attack, represents our Nation and all that it stands for; the freedoms and ideals that have inspired generations of brave Americans to fight, and in some cases, to give their lives, in its defense. More than 2,300 brave Americans made the ultimate sacrifice for that flag and the Nation it represents on that fateful day 54 years ago.

The flag is the one symbol that unites our very diverse people in a way nothing else can, in war or in peace. Whatever our differences of race, ethnic background, religion, social or economic status, geographic region, politics, or philosophy, the American flag forms a unique, common bond among us.

The American flag is more than a symbol of unity to the people of this Nation. For generations, it has served as a symbol of hope and of freedom to people around the world.

For over 200 years, the American people enjoyed the right to protect one unique national symbol, their flag, from acts of physical desecration. This right was exercised by the Congress and the 48 States which adopted flag protection statutes, until two wrongly decided, 5 to 4 Supreme Court decisions took away that right.

It is up to the Senate to decide whether to acquiesce in Supreme Court decisions which misconstrue the first amendment and leave our national symbol with no greater protection than an ordinary rag.

I believe that protecting our flag against acts of physical desecration does not infringe on constitutionally protected freedom of speech. I believe that Chief Justice Earl Warren, Justice Hugo Black, and Justice Abe Fortas were correct when they wrote that the first amendment, which those distinguished jurists so passionately defended, does not bar Congress from prohibiting physical desecration of the American flag.

Amending our Constitution is not an easy task, nor should it be undertaken lightly. With respect to enacting legal protection for the American flag, however, the decisions of the Supreme Court in the Johnson and Eichman cases make it absolutely clear that a constitutional amendment is the best approach. We have tried the statutory approach. In 1989, after the Johnson decision, Congress promptly enacted a flag protection statute; and the Supreme Court just as promptly struck it down in the Eichman case. I have great respect for my colleague, Senator MCCONNELL, who proposes to substitute for this amendment a flag protection statute. We share the goal of protecting our flag from physical desecration. But I respectfully suggest to my colleague that his approach, however sincere and well intentioned, will not accomplish that goal. In light of the decisions of the Supreme Court, I believe that a constitutional amendment is the best method available to the Senate and the American people for restoring legal protection to our flag.

I ask unanimous consent to have printed in the RECORD letters dated October 23, 1995, from two distinguished scholars, Richard Parker of the Harvard Law School and Stephen Presser of Northwestern University School of Law, on this point.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

HARVARD LAW SCHOOL,
Cambridge, MA, October 23, 1995.

DANIEL S. WHEELER,
Citizens Flag Alliance,
Indianapolis, IN.

DEAR DAN, Thank you for sending the portion of the Congressional Record for October 19 including the ''Flag Protection and Free Speech Act of 1995'' proposed by Senator McConnell on behalf of himself and Senators Bennett and Dorgan.

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

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

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

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

In fact, there is a Court decision even more recent than *Eichman* that would doom the

proposed statute, in the absence of a new constitutional amendment authorizing prohibition of physical desecration of the flag. It is *R.A.V. v. St. Paul,* handed down in 1992. In that case, a 5-4 majority of the Justices struck down an ordinance that singled out particular offensive sorts of expression, within the general category of ''fighting words,'' for prohibition. This, the Court held, involved a taking of sides among sorts of messages and, so, was invalid. The fact that ''fighting words'' in general may be prohibited, the Court said, does *not* allow government to write and enforce laws that prohibit particular ideological sub-categories of ''fighting words.'' The statute proposed by the three Senators thus would be held to violate the Constitution as it is now written—not just arguably, but patently.

Senator McConnell spoke last Friday of respect for the Constitution. The question I would ask the three Senators, then, is this: Does proposing to enact a statute that is in patent violation of the Court's interpretation of that document show respect for it?

Isn't the path that is most respectful of the Constitution the one originally specified by the founding fathers in Article V—the path of constitutional amendment?

The deepest question, however, is this: Do the three Senators believe the flag is no different from any other symbol—that it is not unique, not uniquely valuable? Or do they want to single out the flag and *take sides* in favor of what is uniquely symbolized by it? If that is their view, then they have only one real choice now: to support a narrowly-focused constitutional amendment that would permit us to do the thing that they tell us they believe we should do.

It is that simple.

Sincerely,

RICHARD D. PARKER,
Professor of Law.

RAOUL BERGER, PROFESSOR OF LEGAL HISTORY, NORTHWESTERN UNIVERSITY SCHOOL OF LAW,
Chicago, IL, October 23, 1995.

DAN WHEELER,
President, Citizens Flag Alliance, Indianapolis, IN.

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

The new proposed statute is grounded in Constitutional error in two ways. First, and most obvious, is the implication made in Section (2) of the ''Findings'' clause which suggests that the proposed Flag Protection Amendment is an alteration of the Bill of Rights. It is no such thing, as I and others testified before the House and Senate Subcommittees this summer. The proposed Amendment does nothing to alter the guarantee of the freedom of speech in the First Amendment. Once the Flag Protection Amendment becomes law, no one will find themselves unable to express any ideas; only one particularly odious act will have been barred, an act that is, after all, as Chief Justice Rehnquist suggested, more like ''an inarticulate grunt,'' than the expression of a political view. The Proposed Flag Protection Amendment merely returns Constitutional law to where it was in 1989, where it was before *Johnson,* and where it had been for over a hundred years. The Flag Protection Amendment, in other words, merely corrects the erroneous constitutional interpretation of the majority in the *Johnson* case. It returns us to the view that the Bill of Rights has nothing to say which bars flag protection legislation, a view that was not only held by Justice Rehnquist, but also by such well known defenders of the Bill of Rights as Hugo Black and Earl Warren, as I and others made clear in our Congressional testimony on the Amendment.

The second clear constitutional error made by the proposed statute is the assumption, also expressed in the ''Findings'' section, that the proposed statute can be successfully grounded in the ''fighting words'' doctrine, in the notion that the statute could (without a supporting Constitutional Amendment) be justified because flag desecration presents ''a direct threat to the physical and emotional well-being of individuals,'' or in the notion that flag desecration might be intended to ''incite a violent response.'' These justifications have already been clearly rejected by the Supreme Court. In the *Johnson* case itself, the court stated:

''The State's position, therefore, amounts to a claim that an audience that takes serious offense at particular expression is necessarily likely to disturb the peace and that the expression may be prohibited on this basis. . . Our precedents do not countenance such a presumption. On the contrary, they recognize that a principal ''function of free speech under our system of government is to invite dispute. It may indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger.'' . . . It would be odd indeed to conclude both that ''if it is the speaker's opinion that gives offense, that consequence is a reason for according it constitutional protection,''. . . and that the government may ban the expression of certain disagreeable ideas on the unsupported presumption that their very disagreeableness will provoke violence.''

Texas v. Johnson, 491 U.S., at 408–409 (1989) (citations and footnotes omitted). In other words, the very justification now offered by the three Senators for their legislation was the very position of Texas rejected in *Johnson*. In *Johnson* the court expressly rejected the application of the ''fighting words'' or imminent breach of the peace rationales offered by Texas (and offered by the three senators), and then went on to declare, ''No reasonable onlooker would have regarded Johnson's generalized expression of dissatisfaction with the policies of the Federal Government [his act of flag-burning] as a direct personal insult or an invitation to exchange fisticuffs.'' 491 U.S., at 409. The court would be bound to reach the same conclusion in any test of S. 1335.

Taken together U.S. v. Eichman and Texas v. Johnson, in my opinion, make as clear as can be that the Supreme Court would find S. 1335 to be an impermissible attempt to engage in the kind of content discrimination in expression that the Court has declared constitutionally invalid. I think that the Court's reasoning is faulty when what we are speaking of is preventing flag desecration, since I do not regard that as the kind of speech the Framers of the First Amendment sought to protect. Nevertheless, since the Court has been obdurate on this point, it is now clear that only a Constitutional Amendment can protect the flag in the manner Senators McConnell, Bennett, and Dorgan indicate that they clearly desire. My feeling is that rather than fearing such a Constitutional Amendment they should embrace it. It is a profound demonstration of the feeling of the American people, and is the people's time-honored way of correcting erroneous constitutional interpretations of the Supreme Court. The proposed Flag Protection Amendment is no infringement of the Bill of Rights, it is, instead, a wonderful exercise in the popular sovereignty the Bill of Rights was designed to protect.

Please forgive me for going on at such length. As you can tell, I feel strongly on this issue, and believe the Flag Protection Amendment is sorely needed. Please let me know if I can provide any further assistance.

With very best wishes,

STEPHEN B. PRESSER.

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

Mr. President, I ask unanimous consent that a list of 105 organizations of the Citizens Flag Alliance, supporting Senate Joint Resolution 31, be printed in the RECORD at this point.

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

CITIZENS FLAG ALLIANCE, INC.,
MEMBER ORGANIZATIONS

1. AMVETS (American Veterans of WWII, Korea and Vietnam).
2. African-American Women's Clergy Association.
3. Air Force Association.
4. Air Force Sergeants Association.
5. Alliance of Women Veterans.
6. American Diamond Veterans, National Association.
7. American GI Forum of the U.S.
8. American GI Forum of the U.S., Founding Chapter.
9. The American Legion.
10. American Legion Auxiliary.
11. American Merchant Marine Veterans.
12. American War Mothers.
13. Ancient Order of Hibernians.
14. Association of the U.S. Army.
15. Baltic Women's Council.
16. Benevolent & Protective Order of the Elks.
17. Bunker Hill Monument Association, Inc.
18. Catholic Family Life Insurance.
19. The Chosin Few.
20. Congressional Medal of Honor Society of the USA.
21. Croatian American Association.
22. Croatian Catholic Union.
23. Czech Catholic Union.
24. Czechoslovak Christian Democracy in the U.S.A.
25. Drum Corps Associates.
26. Enlisted Association National Guard U.S. (EANGUS).
27. Family Research Council.
28. Fleet Reserve Association.
29. The Forty & Eight (La Societe des Quarante Hommes et Huit Chevaux).
30. Fox Associates, Inc.
31. Gold Star Wives of America, Inc.
32. Grand Aerie, Fraternal Order of Eagles.
33. Grand Lodge Fraternal Order of Police.
34. Grand Lodge of Masons of Oklahoma.

35. Great Council of Texas, Order of Red Men.
36. Hugarian Association.
37. Hungarian Reformed Federation of America.
38. Italian Sons and Daughters of America.
39. Knights of Columbus.
Korean American Association of Greater Washington.
41. Laborers' International Union of N.A.
42. MBNA America.
43. Marine Corps League.
44. Marine Corps Mustang Association, Inc.
45. Marine Corps Reserve Officers Association.
46. Military Order of the Purple Heart of the USA.
47. Moose International.
48. National Alliance of Families.
49. National Association for Uniformed Services.
50. National Center for Public Policy Research.
51. National Cosmetology Association.
52. National Federation of American Hungarians, Inc.
53. National Federation of Hungarian-Americans.
54. National Federation of State High School Associations.
55. National Flag Foundation.
56. National Grange.
57. National Guard Association of the U.S.
58. National League of Families of Am. Prisoners and Missing in SE Asia.
59. National Officers Association (NOA).
60. National Organization of World War Nurses.
61. National Service Star Legion.
62. National Sojourners, Inc.
63. National Vietnam Veterans Coalition.
64. Native Daughters of the Golden West.
65. Native Sons of the Golden West.
66. Navajo Codetalkers Association.
67. Navy League of the U.S.
68. Navy Seabee Veterans of America.
69. Navy Seabee Veterans of America Auxiliary.
70. Non-Commissioned Officers Association.
71. PAC Craft Sailors Association.
72. Patrol Craft Sailors Association.
73. Polish American Congress.
74. Polish Army Veterans Association (S.W.A.P.).
75. Polish Falcons of America.
76. Polish Falcons of America—District II.
77. Polish Home Army.
78. Polish Legion of American Veterans, USA.
79. Polish National Alliance.
80. Polish National Union.
81. Polish Roman Catholic Union of North America.
82. Polish Scouting Organization.
83. Polish Western Association.
84. Polish Women's Alliance.
85. RR Donnelley & Sons, Company.
86. Robinson International.
87. Scottish Rite of Freemasonry—Northern Masonic Jurisdiction.
88. Scottish Rite of Freemasonry—Southern Jurisdiction.
89. Sons of The American Legion.
90. The Orchard Lakes Schools.
91. The Retired Enlisted Association (TREA).
92. The Travelers Protective Association.
93. The Uniformed Services Association (TUSA).
94. Ukrainian Gold Cross.
95. United Armed Forces Association.
96. U.S. Coast Guard Enlisted Association.
97. U.S. Marine Corps Combat Corresponents Association.
98. U.S. Pan Asian American Chamber of Commerce.
99. U.S.A. Letters, Inc.
100. U.S.C.G. Chief Petty Officers Association.
101. Veterans of the Vetnam War, Inc.
102. VietNow.
103. Women's Army Corps Veterans Association.
104. Women's Overseas Service League.
105. Woodmen of the World.
Total Count: 105.
June 26, 1995.

Mr. THURMOND. Mr. President, I hope Senators read this list of the Citizens Flag Alliance member organizations, like the AMVETS, the American Legion—not only the veterans organizations, but law enforcement organizations, religious organizations, and fraternal organizations all over this Nation, 105 of them. That is what I am putting in the RECORD. I hope the Senate will take occasion to read this list and that the Congress will pass this amendment without further debate.

I yield the floor.

The PRESIDING OFFICER. The Senator from Illinois.

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

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

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

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

At my home in rural southern Illinois, you will see a flag flying. We are proud of that flag. But I strongly oppose a constitutional amendment.

What is the big problem? The Congressional Reference Bureau says, in 1994, three flags around the Nation were burned. In 1993, how many flags were burned around the Nation? Zero. If we adopt an amendment to the Constitution, there will be more flags burned in protest, not fewer. There will always be somebody who is so extreme that he or she is going to do it. And, if we ban the burning of the flag, what about the Constitution? You know, prior to the Civil War, in Massachusetts, because the Constitution permitted slavery, you had over 3,000 people gathered in the home State of my colleague from Massachusetts who gathered and burned the Constitution. Are we going to have another amendment to ban burning the Constitution?

What about the Bible? That is certainly sacred to millions of Americans. Are we going to make a constitutional amendment on that?

Take a look at the New York Times, June 22, 1989. ''Supreme Court, 5 to 4.'' I happened to disagree with that decision. Incidentally, Justice Hugo Black earlier disagreed with that idea. But by a 5 to 4 majority, including Justice Scalia in the majority, the Supreme Court said you can, as part of freedom of expression, burn the flag.

Right next to it on the front page of the New York Times it says, ''Chinese Execute Three in Public Display for Protest Role.'' That is what America is all about, that we can protest in freedom. I do not happen to like protests with burning the flag. But we can stand up and do that.

Mr. President, prior to your coming here, one of the most conservative men I ever served with in the U.S. Congress was Senator Gordon Humphrey of New Hampshire. He was more conservative than Senator THURMOND who just spoke and usually was listed as more conservative than Senator HELMS. He got up in opposition to this amendment on the floor. Listen to what Gordon Humphrey had to say.

> I understand the revulsion and the disgust and the popular cry for remedy that arose out of the Johnson decision. I understand that very well. But it seems to me there are times when this body at least ought to be able to rise above popular passion and Gallup polls and political leverage for the next elections and do what is right for posterity. Lord knows, we do not do it with respect to the budget process or any fiscal matters. Let us at least do it with respect to our precious natural rights and the preservation of the Constitution.

Gordon Humphrey, one of the most conservative Members that Senator HATCH or Senator KENNEDY or Senator HEFLIN or Senator HOLLINGS or I served with.

You do not get patriotism by passing laws. We get patriotism by having the kind of government our Americans can be proud of. And, for all its flaws, I am proud of this Government and I am proud of the flag that represents that Government. But, to start, because three people last year burned a flag, and say we are going to rush in to having a constitutional amendment, that is ridiculous. That is not honoring the Constitution as we should.

Mr. President, I yield the floor. I thank my colleague from Utah for his courtesy.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. I thank my colleague from Illinois. I do not agree with him, but I thank him. He is ever so gracious.

AMENDMENT NO. 3094

(Purpose: To strike the authorization with respect to the States)

Mr. HATCH. Mr. President I send an amendment to the desk in the nature of a substitute for and on behalf of myself, Senator HEFLIN, and Senator FEINSTEIN.

I ask for its immediate consideration.

The PRESIDING OFFICER. Without objection, the pending amendment is laid aside.

The clerk will report.

The legislative clerk read as follows:

The Senator from Utah [Mr. HATCH], for himself, Mr. HEFLIN, and Mrs. FEINSTEIN, proposes an amendment numbered 3094.

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

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

The amendment is as follows:

Strike all after the resolving clause and insert the following:

That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States within seven years after the date of its submission for ratification:

''ARTICLE —

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

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

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

I withhold that.

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

TRIBUTE TO SENATOR HEFLIN

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

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

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

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

The Birmingham News of October 10, 1944, has quite a story on our colleague, noting that ''he is home again in Alabama to modestly and reluctantly tell the stories of a Marine first lieutenant's not-to-be-envied life in the Pacific.'' Nearly 50 years later, in a 1994 D-day story in the Washington Times, the reporter remarked, ''When discussing these battles, the senator never uses the personal pronoun. It's always 'we,' referring to the Marines who fought beside him. He is clearly made uncomfortable when asked to comment on his personal valor.''

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

For conspicuous gallantry and intrepidity as Commanding Officer of an Assault Platoon attached to a company of the First Battalion, Ninth Marines, Third Marine Division, during the Battle of Piva Forks, Bougainville, Solomon Islands, on November 25, 1943. When his men were subjected to intense fire from hostile mortars and automatic weapons while advancing on a strongly organized and defended Japanese position, First Lieutenant Heflin promptly and skillfully deployed his platoon and courageously led it through difficult jungle terrain under a barrage of grenades and gunfire to the edge of the enemy's position. Directing his troops in a vigorous, prolonged battle, he frequently exposed himself to devastating fire at close range in order to control the attack more effectively and, by his unflinching determination and aggressive fighting spirit, contributed materially to the defeat of the enemy and the attainment of his company's objective. First Lieutenant Heflin's expert leadership and fearless conduct under extremely hazardous conditions were in keeping with the highest traditions of the United States Naval Service.

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

Howell was a big guy and we found four of the biggest Marines we could find to carry his stretcher, said Mr. Fowler. The last I saw of them they were going over a hill toward the beach, and Howell was limping along with a stick, and the four Marines were following him, carrying the empty stretcher.

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

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

COMPROMISE

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

If the amendment I have offered is adopted, the revised amendment would read as follows:

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

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

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

I urge all of the cosponsors and other supporters of Senate Joint Resolution 31 as introduced, to support this amendment. I ask the opponents of Senate Joint Resolution 31 as introduced to bend a little, as well. Let us send a revised amendment to the other body and to the States and offer the flag protection at the Federal level.

I also hope that President Clinton will reconsider his opposition to a constitutional amendment protecting. We have gone more than halfway on this.

COMPROMISE II

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

For those of my colleagues who have been worried about letting the American people have the power to protect the flag through their State legislatures, they need worry no longer. For those of my colleagues who do not trust State legislators to protect the American flag in a reasonable way, their concerns are over with this amendment.

My question to those colleagues is this: Do you trust yourselves to write a reasonable statute protecting the American flag? If the amendment is ratified, there are ample safeguards. Here in the Senate, members of the Judiciary Committee on both sides of the aisle are going to be vigilant in writing the statute sent to the floor. The cloture rule provides ample protection to

a minority of Senators who disapprove of any such statute pending on the Senate floor. The President can veto a measure he does not like, requiring a two-thirds vote. We already know how difficult it is to try to get such a vote on this issue.

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

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

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

The notion that physical desecration of the American flag is a fundamental right is an invention of five Supreme Court Justices who made a mistake. If just one Justice had come out the other way, we would not even be on the floor of the Senate debating this issue today.

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

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

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

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

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

Mr. HATCH. I thank the Senator.

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

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

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

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

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

Mr. BYRD. I thank all Senators.

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

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

So the amendment (No. 3094) was agreed to.

Mrs. FEINSTEIN addressed the Chair.

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

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

Mr. HATCH. It has been agreed to. All right. Then I move to reconsider.

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

The motion to lay on the table was agreed to.

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

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

Mr. HATCH. I thank my colleagues.

Mr. HOLLINGS addressed the Chair.

The PRESIDING OFFICER. The Senator from South Carolina.

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

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

A point of order could be raised perhaps about the relevancy of my amendment, and if it were and I was ruled not to be in order, I would have to appeal that in order to get a vote.

This particular Senator has waited all year long. I have carried around in my pocket the amendment itself. I know the distinguished Speaker of the House has his contract. The distinguished Senator from West Virginia has the Constitution that he carries around in his pocket. There he is. And I have dutifully—in order to bring the truth to the American public—carried around an amendment to the Constitution for a balanced budget that did not repeal the formal statutory law signed by President Bush, section 13301 of the code of laws of the United States.

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

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

Subtitle C—Social Security

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

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

(1) the budget of the United States Government as submitted by the President,

(2) the congressional budget, or

(3) the Balanced Budget and Emergency Deficit Control Act of 1985.

(b) EXCLUSION OF SOCIAL SECURITY FROM CONGRESSIONAL BUDGET.—Section 301(a) of the Congressional Budget Act of 1974 is

amended by adding at the end the following: ''The concurrent resolution shall not include the outlays and revenue totals of the old age, survivors, and disability insurance program established under title II of the Social Security Act or the related provisions of the Internal Revenue Code of 1986 in the surplus or deficit totals required by this subsection or in any other surplus or deficit totals required by this title.''.

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

There is no question, Mr. President, that the intent of the Congress is in that particular regard. Very recently, on November 13, I believe it was, we voted just exactly that particular instruction. On November 13, by a vote of 97 to 2, we voted to instruct the conferees on the budget that Social Security trust funds not be used.

So the Senators themselves have affirmed that less than a month ago.

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

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

VOTE OF NOVEMBER 13, 1995

[Rollcall Vote No. 572 Leg.]

YEAS—97

Abraham	Feingold	Mack
Akaka	Feinstein	McCain
Ashcroft	Ford	McConnell
Baucus	Frist	Mikulski
Bennett	Glenn	Moseley-Braun
Biden	Gorton	Moynihan
Bingaman	Graham	Murkowski
Bond	Grams	Murray
Boxer	Grassley	Nickles
Bradley	Gregg	Nunn
Breaux	Harkin	Pell
Brown	Hatch	Pressler
Bryan	Hatfield	Pryor
Bumpers	Heflin	Reid
Burns	Helms	Robb
Byrd	Hollings	Rockefeller
Campbell	Hutchison	Roth
Chafee	Inhofe	Santorum
Coats	Inouye	Sarbanes
Cochran	Jeffords	Shelby
Cohen	Johnston	Simon
Conrad	Kassebaum	Simpson
Coverdell	Kempthorne	Smith
Craig	Kennedy	Snowe
D'Amato	Kerrey	Specter
Daschle	Kerry	Stevens
DeWine	Kohl	Thomas
Dodd	Kyl	Thompson
Dole	Lautenberg	Thurmond
Domenici	Leahy	Warner
Dorgan	Levin	Wellstone
Exon	Lieberman	
Faircloth	Lott	

NOT VOTING—2

Gramm	Lugar

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

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

HOLLINGS MOTION TO REPORT THE SOCIAL SECURITY PRESERVATION ACT

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

Yeas:

Mr. Sasser, Mr. Hollings, Mr. Johnston, Mr. Riegle, Mr. Exon, Mr. Lautenberg, Mr. Simon, Mr. Sanford, Mr. Wirth, Mr. Fowler, Mr. Conrad, Mr. Dodd, Mr. Robb, Mr. Domenici, Mr. Boschwitz, Mr. Symms, Mr. Grassley, Mr. Kasten, Mr. Nickles, Mr. Bond.

Nays:

Mr. Gramm.

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

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

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

HOLLINGS-HEINZ, ET AL., AMENDMENT WHICH EXCLUDES THE SOCIAL SECURITY TRUST FUNDS FROM THE BUDGET DEFICIT CALCULATION, BEGINNING IN FISCAL YEAR 1991

YEAS (98)

Democrats (55 or 100%):

Adams, Akaka, Baucus, Bentsen, Biden, Bingaman, Boren, Bradley, Breaux, Bryan, Bumpers, Burdick, Byrd, Conrad, Cranston, Daschle, DeConcini, Dixon, Dodd, Exon, Ford, Fowler, Glenn, Gore, Graham, Harkin, Heflin, Hollings, Inouye, Johnston, Kennedy, Kerrey, Kerry, Kohl, Lautenberg, Leahy, Levin, Lieberman, Metzenbaum, Mikulski, Mitchell, Moynihan, Nunn, Pell, Pryor, Reid, Riegle, Robb, Rockefeller, Sanford, Sarbanes, Sasser, Shelby, Simon, Wirth.

Republicans (43 or 96%):

Bond, Boschwitz, Burns, Chafee, Coats, Cochran, Cohen, D'Amato, Danforth, Dole, Domenici, Durenberger, Garn, Gorton, Gramm, Grassley, Hatch, Hatfield, Heinz, Helms, Humphrey, Jeffords, Kassebaum, Kasten, Lott, Lugar, Mack, McCain, McClure, McConnell, Murkowski, Nickles, Packwood, Pressler, Roth, Rudman, Simpson, Specter, Stevens, Symms, Thurmond, Warner, Wilson.

NAYS (2)

Democrats (0 or 0%)

Republicans (2 or 4%)

Armstrong, Wallop.

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

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

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

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

CONGRESSIONAL RESEARCH SERVICE,
THE LIBRARY OF CONGRESS,
Washington, DC, February 6, 1995.

To: Senator Dianne Feinstein

Attention: Mark Kadesh

From: American Law Division

Subject: Whether the Social Security Trust Funds Can Be Excluded From the Calculations Required by the Proposed Balanced Budget Amendment

This is to respond to your request to evaluate whether Congress could by statute or resolution provide that certain outlays or receipts would not be included within the term ''total outlays and receipts'' as used in the proposed Balance Budget Amendment. Specifically, you requested an analysis as to whether the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund could be exempted from the calculation necessary to determine compliance with the constitutional amendment proposed in H.J. Res. 1, which provides that total expenditures will not exceed total outlays.[1]

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

Under the proposed language, it would appear that the receipts received by the United States which go to the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund would be included in the calculations of total receipts, and that payments from those funds would similarly be considered in the calculation of total outlays. This is confirmed by the House Report issued with H.J. Res. 1.[2] Thus, if the proposed amendment was ratified, then Congress would appear to be without the authority to exclude the Social Security Trust Funds from the calculations of total receipts and outlays under section 1 of the amendment.[3]

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

FOOTNOTES

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

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

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

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

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

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

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

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

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

[2] House Rept. 104–3, 104th Congress, 1st Session states the following:

''The committee concluded that exempting Social Security from computations of receipts and outlays

Footnotes at end of letter.

would not be helpful to Social Security beneficiaries. Although Social Security accounts are running a surplus at this time, the situation is expected to change in the future with a Social Security related deficit developing. If we exclude Social Security from balanced budget computations, Congress will not have to make adjustments elsewhere in the budget to compensate for this projected deficit. . . .'' Id. at 11.

It should also be noted that an amendment by Representative Frank to exempt the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund from total receipts and total outlays was defeated in committee by a 16–19 rollcall vote. Id. at 14. A similar amendment by Representative Conyers was defeated in the House, 141 Cong. Rec. H741 (daily ed. January 23, 1995), as was an amendment by Representative Wise. Id. at H731.

[3] Although the Congress is given the authority to implement this article by appropriate legislation, there is no indication that the Congress would have the authority to pass legislation which conflicts with the provisions of the amendment.

Mr. HOLLINGS. There are two sentences I will read again, trying to save time. ''If the proposed amendment was ratified''—that is, Senate Joint Resolution 1—''then Congress would appear to be without authority to exclude the Social Security trust funds from the calculations of total receipts and outlays under section 1 of the amendment.''

Then down at the bottom a footnote: ''Although the Congress is given the authority to implement this article by appropriate legislation, there is no indication that Congress would have the authority to pass legislation which conflicts with the provision of this amendment.''

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

I ask unanimous consent that a copy of the letter dated March 1 be printed in the RECORD at this particular point.

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

MARCH 1, 1995.

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

DEAR MR. LEADER, we have received from Senator Domenici's office a proposal to address our concerns about using the Social Security trust funds to balance the Federal budget. We have reviewed this proposal, and after consultations with legal counsel, believe that this statutory approach does not adequately protect Social Security. Specifically, Constitutional experts from the Congressional Research Service advise us that the Constitutional language of the amendment will supersede any statutory constraint.

We want you to know that all of us have voted for, and are prepared to vote again for a balanced budget amendment. In that spirit, we have attached a version of the balanced budget amendment that we believe can resolve the impasse over the Social Security issue.

To us, the fundamental question is, whether the Federal Government will be able to raid the Social Security trust funds. Our proposal modifies those put forth by Senators Reid and Feinstein to address objections raised by some Members of the Majority. Specifically, our proposal closes a perceived loophole in the Reid and Feinstein language regarding future uses of the Social Security trust funds for purposes other than those for which the system was designed.

If the Majority Party can support this solution, then we are confident that the Senate can pass the balanced budget amendment with more than 70 votes. If not, then we see no reason to delay further the vote on final passage of the amendent.

Sincerely,

BYRON L. DORGAN.
ERNEST F. HOLLINGS.
WENDELL H. FORD.
HARRY M. REID.
DIANNE FEINSTEIN.

Mr. HOLLINGS. So, Mr. President, it is quite obvious if the true intent is to really pass an amendment to the Constitution requiring a balanced budget, it can be done here in the next 24 hours. There is no problem. It is a wonderful opportunity, because we have the amendment drawn in the proper fashion with two particular changes to Senate Joint Resolution 1. The one change, of course, was the Nunn amendment about the judicial power not to put balanced budget questions before the judiciary but to retain them within the congressional branches; and, second, of course, to reiterate the statutory law protecting the Federal old age and survivors insurance trust fund and federal disability insurance trust fund.

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

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

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

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

I have before me a table of the deficits for the years beginning in 1945 going all the way down, the U.S. budget in outlays and trust funds, the real deficit, the gross Federal debt and the gross interest cost under the various Presidents.

From 1945 until 1996, we have gone from outlays of $92,700,000,000 to now outlays for this fiscal year 1996 of $1,602,000,000,000. You can see how it has grown like Topsy. I remember the last balanced budget. To bring it into the perspective of the distinguished Chair, when Johnson balanced the budget back in 1968–69, the entire outlay in 1968–69 at that particular time was $178,100,000,000. Can you imagine, $178,100,000,000 for guns and butter, for the war in Vietnam and for the Great Society. And paid for with what? With a surplus at that particular time of $300 million. That is—no. That $300 million was used from the trust fund. I am looking at the statute in error here. Let me look at it accurately. So $300 million was used from the trust funds. That still left a balance of $2.9 trillion. If trust funds were not used really to balance that budget, we had a surplus of $3.2 billion.

Here was an entire budget for the Social Security, Medicare, guns and butter, war in Vietnam, defense, and all, welfare and all the other programs. We are expending, instead of the $178 billion, we are expending $348 billion this year just on interest costs for nothing. There is the real problem. And that problem is obscured in large measure by the use of Social Security trust funds, exactly the opposite as contended by my colleagues in that particular House report.

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

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

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

Who is going to raise taxes $1 trillion? Who is going to cut benefits $1

trillion? That is why I have been trying to get attention of my colleagues that we have truth in budgeting. And that is why we have the amendment drawn at this particular time where people on both sides of the aisle—I voted for a constitutional amendment, cosponsored it with my senior colleague back in the 1980's, voted for it several times.

But when I realized the import of section 7 under the Dole Senate Joint Resolution 1 that it was going to repeal the statutory law that I helped cosponsor, along with Senator MOYNIHAN and Senator Heinz, I could not go in two different directions at the same time.

As a person somewhat experienced in budgets, I was able, as Governor back in 1959, to get the first AAA credit rating for our State. I participated in the balanced budget work of 1968–69. I chaired on behalf of the Congress, both Houses, the first reconciliation budget conference, the first reconciliation bill signed into law where we cut back already appropriated funds in December 1980 under President Carter. And I put in the budget freeze. I have cosponsored, with Senators Gramm and Rudman, the Gramm–Rudman-Hollings initiative. And I have been very alert, as possibly as I can be, to make certain that we have truth in budgeting.

And so it is that we have now proposed this particular amendment. I could go on at length as to the debate itself before I present the amendment.

I have this one particular phrase of our majority whip, the distinguished Senator from Mississippi. In February, on national TV, Senator TRENT LOTT stated, and I quote:

> Nobody—Republican, Democrat, conservative, liberal, moderate—is even thinking about using Social Security to balance the budget.

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

AMENDMENT NO. 3095

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

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

The PRESIDING OFFICER. The clerk will report the amendment.

The bill clerk read as follows:

> The Senator from South Carolina [Mr. HOLLINGS] proposes an amendment numbered 3095.

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

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

The amendment is as follows:

> After the first article add the following:
>
> ''ARTICLE —
>
> ''SECTION 1. Total outlays for any fiscal year shall not exceed total receipts for that fiscal year, unless three-fifths of the whole number of each House of Congress shall provide by law for a specific excess of outlays over receipts by a rollcall vote.
>
> ''SECTION 2. The limit on the debt of the United States held by the public shall not be increased, unless three-fifths of the whole number of each House shall provide by law for such an increase by a rollcall vote.
>
> ''SECTION 3. Prior to each fiscal year, the President shall transmit to the Congress a proposed budget for the United States government for that fiscal year, in which total outlays do not exceed total receipts.
>
> ''SECTION 4. No bill to increase revenue shall become law unless approved by a majority of the whole number of each House by a rollcall vote.
>
> ''SECTION 5. The Congress may waive the provisions of this article for any fiscal year in which a declaration of war is in effect. The provisions of this article may be waived for any fiscal year in which the United States is engaged in military conflict which causes an imminent and serious military threat to national security and is so declared by a joint resolution, adopted by a majority of the whole number of each House, which becomes law.
>
> ''SECTION 6. The Congress shall enforce and implement this article by appropriate legislation, which may rely on estimates of outlays and receipts. The judicial power of the United States shall not extend to any case or controversy arising under this article except as may be specifically authorized by legislation adopted pursuant to this section.
>
> ''SECTION 7. Total receipts shall include all receipts of the United States government except those derived from borrowing. Total outlays shall include all outlays of the United States government except those for repayment of debt principal. The receipts (including attributable interest) and outlays of the Federal Old-Age and Survivors Insurance Trust Fund and Federal Disability Insurance Trust Fund (as and if modified to preserve the solvency of the funds) used to provide old age, survivors, and disabilities benefits shall not be counted as receipts or outlays for the purpose of this article.
>
> ''SECTION 8. This article shall take effect beginning with fiscal year 2002 or with the second fiscal year beginning after its ratification, whichever is later.''

Mr. HOLLINGS. Mr. President, once again, by way of emphasis, it is word for word Senator DOLE's House Joint Resolution 1, with the exception of the Nunn amendment which is included therein with respect to the limitation on judicial power on balanced budgets and, second, the Dole section 7, the language that would encompass a repeal of section 13301 of the Budget Act. Specifically, I repeal the repeal. I have provided and continue the protection of 13301.

AMENDMENT NO. 3096

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

Mr. HOLLINGS. Mr. President, there is another wonderful subject we have debated ad nauseam, except with respect abortion. This is one you can really do something about if you really want to limit spending in campaigns as one cancer to public service. Ask the 12 Senators now retiring. They would agree in a sentence, Mr. President, that the one cancer to public service is money, and if you want to control the money, then let us get back to the 1974 act as intended.

There never was any dispute at that particular time. I remember the history well. It so happened in the 1968 race of President Nixon that he had thereafter a Secretary of Commerce, Maurice Stans, who went around and allocated almost like the United Fund: Your fair share.

He came to South Carolina to the textile industry and said, ''Your fair share for the Nixon campaign is $350,000,'' and so textile entities gathered up $35,000 apiece and sent it to Washington to qualify. Other individuals gave a half million dollars. A gentleman from Chicago gave $2 million.

It was thereafter that Secretary of Treasury Connally came to President Nixon and said,

> Mr. President, there have been substantial contributions made in your behalf and you have not had a chance to even meet some of them, much less thank them personally. I would like to give a barbecue on the ranch down in Texas where you can meet and thank them.

President Nixon thought that was a wonderful idea, and on that particular weekend, as they turned into the Connally ranch, there was a Brinks truck with that prankster Dick Tuck from the Kennedy campaign. They had that all embellished in the news and newspapers and otherwise, and everybody in Washington said, ''Heavens above, the Government is up for sale. We have to do something about it.''

So in good spirit, both Republicans and Democrats joined hands into the Federal Elections Campaign Practices Act of 1974. At that particular time, we said, ''Look, every dollar in and every dollar out is recorded. You cannot give more than $1,000. You cannot, as a PAC, give more than $5,000. You cannot take cash.'' And, for voters in a particular State like Tennessee and South Carolina, we were limited per registered voters. In South Carolina, I remember we were limited to around $600,000. The last race I ran for reelection, in 1992, was $3.5 million. It goes up, up, and away.

Right now, every Senator every week has to collect at least $13,000. If you have not collected your $13,000 for your campaign 6 years out, you are behind the curve. You are behind the curve. That statement ought to embarrass all in America.

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

With that one line, we can get back to the original intent of 1974 and actually limit spending. That was passed by an overwhelming bipartisan vote, and

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

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

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

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

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

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

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

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

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

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

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

Right to the point, in its landmark 1976 ruling in Buckley versus Valeo, the Supreme Court mistakenly equated a candidate's right to spend unlimited sums of money with his right to free speech. In the face of spirited dissents, the Court drew a bizarre distinction between campaign contributions on the grounds that ''* * * the governmental interest in preventing corruption and the appearance of corruption outweighs considerations of free speech.''

I have never been able to fathom why that same test—the governmental interest in preventing corruption and the appearance of corruption—does not overwhelmingly justify limits on campaign spending. However, it seems to me that the Court committed a far graver error by striking down spending limits as a threat to free speech. The fact is, spending limits in Federal campaigns would act to restore the free speech that has been eroded by the Buckley decision.

After all, as a practical reality, what Buckley says is: Yes, if you have personal wealth, then you have access to television, you have freedom of speech. But if you do not have personal wealth, then you are denied access to television. Instead of freedom of speech, you have only the freedom to shut up.

So let us be done with this phony charge that spending limits are somehow an attack on freedom of speech. As Justice Byron White points out, clear as a bell, in his dissent, both contribution limits and spending limits are neutral as to the content of speech and are not motivated by fear of the consequences of the political speech in general.

Mr. President, every Senator realizes that television advertising is the name of the game in modern American politics. In warfare, if you control the air, you control the battlefield. In politics, if you control the airwaves, you control the tenor and focus of a campaign.

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

The hard fact of life for a candidate is that if you're not on TV, you're not truly in the race. Wealthy challengers as well as incumbents flushed with money go directly to the TV studio. Those without personal wealth are sidetracked to the time-consuming pursuit of cash.

The Buckley decision created a double bind. It upheld restrictions on campaign contributions, but struck down restrictions on how much candidates with deep pockets can spend. The Court ignored the practical reality that if my opponent has only $50,000 to spend in a race and I have $1 million, then I can effectively deprive him of his speech. By failing to respond to my advertising, my cash-poor opponent will appear unwilling to speak up in his own defense.

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

Indeed, Justice Marshall went further: He argued that by upholding the limitations on contributions but striking down limits on overall spending, the Court put an additional premium on a candidate's personal wealth.

Justice Marshall was dead right. Our urgent task is to right the injustice of Buckley versus Valeo by empowering Congress to place caps on Federal campaign spending. We are all painfully aware of the uncontrolled escalation of campaign spending. The average cost of a winning Senate race was $1.2 million in 1980, rising to $2.1 million in 1984, and skyrocketing to $3.1 million in 1986, $3.7 million in 1988, and up to $4.1 million this past year. To raise that kind of money, the average Senator must raise over $13,200 a week, every week of his or her 6-year term. Overall spending in congressional races increased from $403 million in 1990 to more than $590 million in 1994—almost a 50-percent increase in 4 short years.

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

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

around. But in recent years, those mill visits and dropping by the country store have become a casualty of the system. There is very little time for them. We're out chasing dollars.

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

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

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

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

And incidentally, Mr. President, let's be done with the canard that spending limits would be a boon to incumbents, who supposedly already have name recognition and standing with the public and therefore begin with a built-in advantage over challengers. Nonsense. I hardly need to remind my Senate colleagues of the high rate of mortality in upper Chamber elections. And as to the alleged invulnerability of incumbents in the House, I would simply note that more than 50 percent of the House membership has been replaced since the 1990 elections.

I can tell you from experience that any advantages of incumbency are more than counterbalanced by the obvious disadvantages of incumbency, specifically the disadvantage of defending hundreds of controversial votes in Congress.

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

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

On the issue of PAC's, Mr. President, let me say that I have never believed that PAC's per se are an evil in the current system. On the contrary, PAC's are a very healthy instrumentality of politics. PAC's have brought people into the political process: nurses, educators, small business people, senior citizens, unionists, you name it. They permit people of modest means and limited individual influence to band together with others of mutual interest so their message is heard and known.

For years we have encouraged these people to get involved, to participate. Yet now that they are participating, we turn around and say, ''Oh, no, your influence is corrupting, your money is tainted.'' This is wrong. The evil to be corrected is not the abundance of participation but the superabundance of money. The culprit is runaway campaign spending.

To a distressing degree, elections are determined not in the political marketplace but in the financial marketplace. Our elections are supposed to be contests of ideas, but too often they degenerate into megadollar derbies, paper chases through the board rooms of corporations and special interests.

Mr. President, I repeat, campaign spending must be brought under control. The constitutional amendment I have proposed would permit Congress to impose fair, responsible, workable limits on Federal campaign expenditures.

Such a reform would have four important impacts. First, it would end the mindless pursuits of ever-fatter campaign war chests. Second, it would free candidates from their current obsession with fundraising and allow them to focus more on issues and ideas; once elected to office, we wouldn't have to spend 20 percent of our time raising money to keep our seats. Third, it would curb the influence of special interests. And fourth, it would create a more level playing field for our Federal campaigns—a competitive environment where personal wealth does not give candidates an insurmountable advantage.

Finally, Mr. President, a word about the advantages of the amend-the-Constitution approach that I propose. Recent history amply demonstrates the practicality and viability of this constitutional route. Certainly, it is not coincidence that all five of the most recent amendments to the Constitution have dealt with Federal election issues. In elections, the process drives and shapes the end result. Election laws can skew election results, whether you're talking about a poll tax depriving minorities of their right to vote, or the absence of campaign spending limits giving an unfair advantage to wealthy candidates. These are profound issues which go to the heart of our democracy, and it is entirely appropriate that they be addressed through a constitutional amendment.

And let's not be distracted by the argument that the amend-the-Constitution approach will take too long. Take too long? We have been dithering on this campaign finance issue since the early 1970's, and we haven't advanced the ball a single yard. It has been a quarter of a century, and no legislative solution has done the job.

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

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

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

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

Along with Senator Nancy Kassebaum of Kansas and Mr. Douglas Dillon, I am a co-chairman of the Committee on the Constitutional System, a group of several hundred present and former legislators, executive branch officials, political party officials, professors, and civic leaders, who are interested

in analyzing and correcting some of the weaknesses that have developed in our political system.

I will skip over some just to read the conclusion on the third page.

I ask unanimous consent that the entire testimony of Lloyd Cutler be printed in the RECORD at this point.

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

STATEMENT OF LLOYD N. CUTLER

My name is Lloyd N. Cutler. Along with Senator Nancy Kassebaum of Kansas and Mr. Douglas Dillon, I am a Co-Chairman of the Committee on the Constitutional System, a group of several hundred present and former legislators, executive branch officials, political party officials, professors and civic leaders who are interested in analyzing and correcting some of the weaknesses that have developed in our political system.

On of the most glaring weaknesses, of course, is the rapidly escalating cost of political campaigns, and the growing dependence of incumbents and candidates on money from interest groups who except the receipent to vote in favor of their particular interests. Incumbents and candidates must devote large portions of their time to begging for money; they are often tempted to vote the conflicting interests of their contributors and to create a hodgepodge of conflicting and indefensible policies; and in turn public frustration with these policies creates cynicism and contempt for the entire political process.

A serious attempt to deal with the campaign financing problem was made in the Federal Election Campaign Act of 1974 and the 1976 amendments, which set maximum limits on the amounts of individual contributions and on the aggregate expenditures of candidates and so-called independent committees supporting such candidates. The constitutionally of these provisions was challenged in the famous case of Buckley v. Valeo, 424 U.S. 1, in which I had the honor of sharing the argument in support of the statute with Professor Archibald Cox. While the Supreme Court sustained the constitutionality of the limits on contributions, it struck down the provision limiting expenditures for candidates and independent committees supporting such candidates. It found an inseparable connection between an expenditure limit and the extent of a candidate's or committee's political speech, which did not exist in the case of a limit on the size of each contribution by a non-speaker unaccompanied by any limit on the aggregate amount a candidate could raise. It also found little if any proven connection between corruption and the size of a candidate's aggregate expenditures, as distinguished from the size of individual contributions to a candidate.

The Court did, however, approve the Presidential Campaign Financing Fund created by the 1976 amendments, including the condition it imposed barring any presidential nominee who accepted the public funds from spending more than a specified limit.

However, it remains unconstitutional for Congress to place any limits on expenditures by independent committees on behalf of a candidate.

In recent presidential elections these independent expenditures on behalf of one candidate exceeded the amount of federal funding he accepted.

Moreover, so long as the Congress remains deadlocked on proposed legislation for the public financing of Congressional campaigns, it is not possible to use the public financing device as a means of limiting Congressional campaign expenditures.

Accordingly, the Committee on the Constitutional System has come to the conclusion that the only effective way to limit the explosive growth of campaign financing is to adopt a constitutional amendment. The amendment would be a very simple one consisting of only 46 words. It would state merely that ''Congress shall have power to set reasonable limits on campaign expenditures by or in support of any candidate in a primary or general election for federal office. The States shall have the same power with respect to campaign expenditures in elections for state and local offices''.

Our proposed amendment would enable Congress to set limits not only on direct expenditures by candidates and their own committees, but also on expenditures by so-called independent committees in support of such a candidate. The details of the actual limits would be contained in future legislation and could be changed from time to time as Congress in its judgment sees fit.

It may of course be argued that the proposed amendment, by authorizing reasonable limits on expenditures, would necessarily set limits on the quantity of speech on behalf of a candidate and that any limits, no matter how ample, is undesirable. But in our view the evidence is overwhelming by now that unlimited campaign expenditures will eventually grow to the point where they consume so much of our political energies and so fracture our political consensus that they will make the political process incapable of governing effectively. Even the Congress has found that unlimited speech can destroy the power to govern; that is why the House of Representatives has imposed time limits on Members' speeches for decades and why the Senate has adopted a rule permitting 60 senators to end a filibuster. One might fairly paraphrase Lord Acton's famous aphorism about power by saying, ''All political money corrupts; unlimited political money corrupts absolutely.''

Finally, Mr. Chairman, I would not be discouraged from taking the amendment route by any feeling that constitutional amendments take too long to get ratified. The fact is that the great majority of amendments submitted by Congress to the states during the last 50 years have been ratified within twenty months after they were submitted. All polls show that the public strongly supports limits on campaign expenditures. The principal delay will be in getting the amendment through Congress. Since that is going to be a difficult task, we ought to start immediately. Unlimited campaign expenditures and the political diseases they cause are going to increase at least as rapidly as new cases of AIDS, and it is high time to start getting serious about the problem.

Mr. Chairman, on three past occasions we the people have amended the Constitution to correct weaknesses in that rightly revered document as interpreted by the Supreme Court. On at least two of those occasions—the Dred Scott decision and the decision striking down federal income taxes, history has subsequently confirmed that the amendments were essential to our development as a healthy, just and powerful society. A third such challenge is now before us. The time has come to meet it.

For a fuller discussion of the case for a constitutional amendment, I am attaching an article written shortly before his death by Congressman Jonathan Bingham, my college and law school classmate and, in my view, one of the finest public servants of our times.

Mr. HOLLINGS. Mr. President, I read this sentence on the third page:

Accordingly, the Committee on the Constitutional System has come to the conclusion that the only effective way to limit the explosive growth of campaign financing is to adopt a constitutional amendment.

Mr. President, I take the position—for those who are interested in the Bill of Rights and the first amendment and the freedom of speech—that the Supreme Court erroneously amended the Constitution, or deteriorated the value and worth of the freedom of speech under the Constitution and the Bill of Rights.

So what we are trying to do is not treat lightly, by any manner or means, the Constitution or amendments. Others will get up and say we have had 3,564 amendments offered and here comes another. Not at all. We have tried in Congress after Congress after Congress, for over 20-some years now, to correct this particular flawed decision of Buckley versus Valeo, and get back to controlling spending in politics. The one way to do it is take the amendment that I have, which I will send to the desk. This amendment would provide the authority for both the United States and the several States within their particular jurisdiction, because it was asked to be amended accordingly at the time we debated it last, on how the States also ought to have this particular authority.

The last 10 amendments to the Constitution—their time for ratification has been 20 months. There is no doubt in this particular Senator's mind that this could easily be ratified next November 1996. Then the Congress could come back and they could get to this bundling problem, this third party problem, and they can get to all the little tricks in politics, national committees, individual committees, and everything else of that kind, and we can legislate the honest intent of a majority of Democrats and Republicans in a former session, getting back to what we intended in 1974. We said on the floor of this body that you cannot buy this election anymore. Instead, under Buckley versus Valeo, that is the only way.

We have a candidate right now for President who has never run for anything, and he has one idea about the flat tax that will give himself a tax cut, and he is buying up $25 million of airwaves in the Republican primaries. That would ordinarily be an embarrassment. The fact that it is accepted has embarrassed this particular Senator.

We have to get away from that kind of nonsense. Just because you are rich and you can buy up time and you have never even been in a campaign, and others have been in there 2, 3 years, you can get up there in 2 months and run No. 2—just by money? A flat tax is no unique idea. Come on. So that is what is occurring. We ought to all be embarrassed, and we ought to jump at the chance of correcting it.

Mr. President, I ask unanimous consent that the pending amendment be temporarily laid aside.

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

Mr. HOLLINGS. Mr. President, I send the amendment to the desk.

The PRESIDING OFFICER (Mr. KYL). The clerk will report.

The bill clerk read as follows:

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

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

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

The amendment is as follows:

After the first article add the following:

''ARTICLE —

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

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

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

''SECTION 4. Congress shall have power to implement and enforce this article by appropriate legislation.''.

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

Mr. BYRD addressed the Chair.

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

UNITED STATES LEADERSHIP IN BOSNIA

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

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

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

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

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

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

This vital military relationship with Europe also affects U.S. vital interests in other areas of the world, as well as in Europe. How will other nations depend on the United States, on our word, if we walk away from NATO by not participating in this unique NATO mission? Our security relationships with NATO, with Asian nations, and elsewhere, are intimately tied through our trading, banking, and diplomatic relationships. U.S. military leadership and security agreements create a strong base upon which to build fertile economic and diplomatic relationships. It is a mistake to view this current situation as some sort of stand-alone problem.

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

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

Whether we like it or not, as we are fond of saying, the United States is the world's sole remaining superpower. I find it ironic that some Senators who promote robust defense budgets, even at the expense of not funding needed domestic infrastructure, educational, and other needs, still shrink from endorsing a role for the United States which has been requested by the NATO alliance. Given our power, given the unbroken leading role we have played in Europe throughout the entire second half of this century, indeed, given the size of our military budget—I am not altogether supportive of that particular size inasmuch it is representative of the $7 billion increase over and above the President's budget, which I think is too much at this particular time—it cannot be much of a surprise that European powers are heavily dependent on the United States to lead NATO in implementing a peace treaty in Bosnia. It is, in fact, the case that NATO is now vigorous, and, as Secretary of Defense Perry testified before the Senate Armed Services Committee on Wednesday, December 5 of this year, more united than ever before. Indeed, it is a major development that the French have now agreed to participate in the NATO Military Committee, reversing a standoffish position that has so often characterized France's relationship with NATO since the day of General Charles de Gaulle. It is both notable and telling that while there has been a lot of fiery rhetoric in Congress about not placing U.S. troops under the command of foreign military officers, none of our NATO allies, and none of the other nations sending troops to Bosnia, has expressed any reservation about putting their soldiers under U.S. command. Even the Russian troops who will serve under the U.S. 1st Armored Division around Tuzla have had great difficulty, as a matter of fact had greater difficulty in putting themselves under NATO command than under U.S. command. This is another testament, it seems to me, to U.S. leadership.

President Clinton and the United States accepted a leadership role in Bosnia only reluctantly. We all can recall the cries of outrage from across the United States a year or two ago, as media coverage of wartime atrocities in Bosnia were beamed into our living rooms. Pictures of refugees fleeing burned-out homes, pictures of skeletal prisoners of war recounting tales of torture and suffering, of sobbing women admitting to the rapes they endured, pictures of stoic faces of United Nations observers chained to ammunition bunkers—all of these images led to cries for action by the United States, cries for immediate military reprisals from across the United States.

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

But the President did not commit U.S. troops to such an effort, and in my opinion he would have been on dubious constitutional grounds had he done so. I know there are those who would say he is the Commander in Chief and that he has that authority. I am not going into that argument at this point but I am prepared to, and may do so before many days have passed—that is a very dubious ground of constitutionality. He

promised troops for our NATO mission on the ground in Bosnia only to help implement a peace agreement, and there was no peace agreement in sight at that time. Now, there is a peace agreement in sight, brought about in large part by the efforts of this administration, and we are faced with the decision of whether or not to support that agreement. We can be sure that those calls for U.S. military action would be heard again, should those tragic images be resurrected as a result of our unwillingness to follow through on this opportunity; that is what it is, an opportunity. That is all it is at the moment, an opportunity. We hope that it will eventually lead to peace, but it is an opportunity for peace.

In many ways, Bosnia represents the future of conflict in the world—an ugly, convoluted, and murderous small war with the ability to spread across borders and to convocate and to draw in neighboring nations and religio-ethnic groups. There is no clear superpower prism to focus and sharpen the lines between warring factions, as there was in the cold war. We cannot intervene in all of these conflicts, of course, nor can we hope to solve all of them. But some can be averted, or shortened, or perhaps settled, as Iraq, and now, hopefully, Bosnia has been, or soon will be, by the combined efforts of the United States and other powers. No single nation can wade in and settle these conflicts as they are too deep-seated, too complex. This places a premium on coalition building and on cooperative efforts by interested parties. It is an approach that worked in Iraq, and hopefully will work in Bosnia. United States leadership and participation have been critical, but we cannot do it alone, anymore than the other nations concerned about Bosnia can do it—or will do it—without us.

The Dayton accords, to be signed in Paris on December 14, are impressive. They comprise the basis for a new start for all the people of Bosnia, covering territorial, military, civil, governmental, and electoral matters. Not every issue is finally resolved, not every issue will be finally resolved, but additional negotiations are called for to resolve the outstanding issues. All three parties to the conflict have initialed these accords, and all three parties have pledged to abide by them. All the parties have sought this peace, and have made the many difficult decisions necessary to reach agreement on these accords. After almost 4 years of bitter conflict, this is truly an impressive achievement, and one that should not be underestimated.

The administration has done a good job in testifying before congressional committees, in laying out in detail the military plan and tasks that we would undertake to fulfill the NATO implementation plan.

I have participated in hearings by the Senate Appropriations Committee, of which I am a member. I have likewise participated in hearings by the Armed Services Committee, of which I am a member.

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

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

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

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

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

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

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

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

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

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

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

Our foreign military men and women will not have the opportunity to hedge their bets. They are being sent to battle, and they will stand at the plate. And we have a responsibility to do the same. The Constitution places that responsibility right here.

I believe that any resolution that we pass on this matter should clearly state that the Congress is approving

the operation. I would prefer to use the word ''authorizing'' the operation. That is what we did in the case of the war in the Persian Gulf. Congress authorized the President of the United States, the words being these, and I quote from the Joint Resolution, Senate Joint Resolution 2, as voted on January 12, 1991: ''The President is authorized,'' et cetera.

So we should take a clear stand. It should have the effect of giving the President the clear aegis of congressional authority that there is no doubt in the minds of friend or foe.

I can understand those who may wish to vote against such a measure, but vote we should. It should have the effect, as I say, of giving the President a clear aegis of congressional authority, which will help our military forces to succeed, and thus help America to succeed.

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

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

This is unique. It is unique. In Bosnia, our mission is to deter further war, to ensure stability by our very presence, and to give all three parties a chance to back away from conflict and begin anew in peace. This is an important difference. America has long valued peace and valued compromise over conflict.

We should think long and we should think hard before we consider rejecting this compromise, this chance for peace instead of more war. In the end, we do not know how this effort will turn out. It is a serious undertaking, as can be said of many decisions that have been made by our forbears in the past and in many actions that have been taken by our forefathers in the past. The outcome was not assured in their day. The outcome is not assured here, but we must make the best possible choice and decide what is best for America's security interests.

Furthermore, there has been concern over the so-called exit strategy; that is, the standards of success and benchmarks of military action by the international force which will result in a departure of our forces. The Secretary of Defense, Mr. Perry, and the Chairman of the Joint Chiefs of Staff, General Shalikashvili, testified on Wednesday, December 5, 1995, that they will have no trouble in completing the military mission and removing our forces from the ground operation in Bosnia in ''approximately'' a year.

That is the exit strategy! Let us vote on language putting their assurances into print, into law, into the action of the Senate. That is the exit strategy, ''approximately 1 year.'' Indeed, they have emphatically argued that the military missions are structured so as to be able to be accomplished well within that time period.

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

The PRESIDING OFFICER. The Senator has 13 minutes and 10 seconds remaining.

Mr. BYRD. I thank the Chair.

The Dayton agreement itself, in Article I, General Obligations, states that the parties ''welcome the willingness of the international community to send to the region, for a period of approximately one year, a force to assist in implementation of the territorial and other militarily related provisions of the agreement.'' Therefore, the expectation of the parties themselves in language that they have initialed is that approximately 1 year is what they get in terms of the NATO operation. This is the clear understanding of the duration of the military mission, and so I think that there should be no ambiguity about this, no invitation to mission creep, no cloud of uncertainty that we are being drawn into a quagmire. The administration and the parties themselves, therefore, have made it indubitably clear that the mission is for approximately 1 year, and the American people have a right to expect it to last no longer than that.

The military operation should not be dependent upon the success of reconstruction attempts by civilian agencies, should not be dependent on the pace of civilian reconstruction, should not be dependent on elections, or other nonmilitary tasks. Therefore, I think it is appropriate to write into whatever resolution we pass a clear date certain—if not that, then the words ''approximately 1 year''—so that it would be clear as to when U.S. forces will be expected to have fulfilled their mission and departed. I suggest that it be the language because that is the language the administration witnesses, that is the language that the President, and that is the language that the parties to the agreement themselves have proposed.

The language then should say—should, indeed, let the President know—that we expect that word to be kept. If for some unforeseen reason the circumstances are such that there may appear to be justification for seeking an extension, then I think that the President can come back to the Congress at that time and seek an extension, and seek the appropriations that are necessary, and Congress may at that time then address such a request promptly and appropriately, based on circumstances at such time.

I am not saying that Congress would favorably respond or that it would not favorably respond. But, again, Congress would speak. The deadline itself then is the ultimate exit strategy, and the administration can clearly plan its activities and withdrawal in an orderly fashion with that deadline understood from the outset. There will be no ambiguity about timeframes, then, regarding American military involvement and exposure of our forces to extended risk in Bosnia.

I should say that such language in no way would prevent the troops from being withdrawn earlier than ''approximately 1 year,'' if all goes as well as expected. And if the mission does not go well, I remind my colleagues that Congress has the ability to end U.S. participation earlier, if necessary. Congress retains the power of the purse. I hope that Congress will think long and many times before it ever shifts that power of the purse to the Chief Executive.

Congress retains the power of the purse and can at any time draw a dateline for cutting off the funds for the mission and bringing the troops home. This is the ultimate authority, the ultimate authority of Congress and the ultimate authority of the American people through their elected representatives in Congress. And the power of the purse is the ultimate oversight tool of the Congress.

While I accept the assurances of our military leadership that the mission is achievable and that U.S. forces are well prepared to deal with the expected problems that may arise, if the situation changes and the parties resume their conflict despite our efforts and despite their pledges, then I would support action to bring our troops home, as I have done in the past.

There may well be needed a follow-on security force, manned by European troops on the ground, when the U.S. mission is over. I strongly encourage the administration to begin planning for such a turnover now. While U.S. leadership is needed now to stabilize the situation, after it is stabilized an insurance policy in the way of a residual European force should be contemplated.

I say all of this, Mr. President, after long consideration and with deep personal reflection and concern. This is a sober, somber thing that we are contemplating. I feel deeply my obligations to the Constitution and to the people of West Virginia and to the people of the United States and to our men and women in uniform. West Virginians will play a role in this mission as they have done so well and so valiantly in so many U.S. military missions throughout the Nation's history.

West Virginians were playing a role even before West Virginia itself became a State. Even before it became the 35th star in the universe of stars, the people of West Virginia, the people beyond the mountains, beyond the Alleghenies played a role. The 152nd POW Information Center, an Army National Guard unit in Moundsville, WV, is among the units that have been ordered to deploy to Bosnia. I wish them well, and I will remember their patriotism daily.

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

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

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

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

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

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

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

The PRESIDING OFFICER. The Senator has 2 minutes and 45 seconds remaining.

Mr. BYRD. I thank the Chair.

Now, Mr. President, I read from a letter that has been sent to our Democratic leader, Mr. DASCHLE, and I understand that the Democratic leader has no objection to my reading from this letter and that he authorizes my doing so.

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

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

Let me say that again.

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

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

Mr. President, I ask unanimous consent on behalf of Mr. DASCHLE that the entire letter be printed in the RECORD.

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

THE WHITE HOUSE,
Washington, December 11, 1995.

Hon. THOMAS A. DASCHLE,
Democratic Leader, U.S. Senate,
Washington, DC.

DEAR MR. LEADER: Just four weeks ago, the leaders of Bosnia, Croatia and Serbia came to Dayton, Ohio, in America's heartland, to negotiate and initial a peace agreement to end the war in Bosnia. There, they made a commitment to peace. They agreed to put down their guns; to preserve Bosnia as a single state; to cooperate with the War Crimes Tribunal and to try to build a peaceful, democratic future for all the people of Bosnia. They asked for NATO and America's help to implement this peace agreement.

On Friday, December 1, the North Atlantic Council approved NATO's operational plan, OPLAN 10405, the Implementation of a Peace Agreement in the Former Yugoslavia. On Saturday, General George Joulwan, Supreme Allied Commander Europe, who will be commanding the NATO operation, briefed me in Germany on the final OPLAN.

Having reviewed the OPLAN, I find the mission is clearly defined with realistic goals that can be achieved in a definite period of time. The risks to our troops have been minimized to the maximum extent possible. American troops will take their orders from the American general who commands NATO. They will be heavily armed and thoroughly trained. In making an overwhelming show of force, they will lessen the need to use force. They will have the authority, as well as the training and the equipment, to respond with decisive force to any threat to their own safety or any violations of the military provisions of the peace agreement. U.S. and NATO commanders believe the military mission can be accomplished in about a year.

A summary of the OPLAN is attached. Of course, members of my staff and the Administration are available to answer your questions and further brief you on the OPLAN as you require.

I consider the Dayton peace agreement to be a serious commitment by the parties to settle this conflict. In light of that agreement and my approval of the final NATO OPLAN, I would welcome a Congressional expression of support for U.S. participation in a NATO-led Implementation Force in Bosnia. I believe Congressional support for U.S. participation is immensely important to the unity of our purpose and the morale of our troops.

I believe there has been a timely opportunity for the Congress to consider and act upon my request for support since the initialing in Dayton on November 21. As you know, the formal signing of the Peace Agreement will take place in Paris on December 14.

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

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

Sincerely,

BILL CLINTON.

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

Mr. KENNEDY addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts if recognized.

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

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

And for what reason? What is the menace? Flag burning is exceedingly rare. Published reports indicate that fewer than 10 flag burning incidents have occurred a year since the Supreme Court's decision in Texas versus Johnson in 1989. According to the Congressional Research Service, there were 7 reported incidents in 1990; 13 in 1991; 10 in 1992; 0 in 1993; and 3 in 1994.

Mr. President, this is hardly the kind of serious and widespread problem in

American life that warrants a loophole in the first amendment. Surely there is no clear and present danger that warrants such a change.

Mr. President, we just heard the excellent statement of the Senator from West Virginia. His statement emphasized that issues of security and interests of peace in the Balkans are a matter of great importance to the American people. It is right that we will debate issues relating to national security and the well-being of our men and women under arms.

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

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

But, when you look at the incidents of flag desecration during the last 5 years—three in 1994, none in 1993—it is difficult to believe that we are going to take time to amend the first amendment to the Constitution. I think such an action fails the reality test.

I can remember listening to a speech given by Justice Bill Douglas, one of the great Supreme Court Justices. Students asked him what was the most important export of the United States. He said, without hesitation, ''The first amendment.'' That is the defining amendment for the preservation of speech and religion, so basic and fundamental in shaping our Nation. Now, in the next 2 days, are we going to make the first alteration to the first amendment? I believe it is not wise to do so.

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

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

But how do we honor the flag by dishonoring the first amendment? Consider the words of James Warner, a former marine aviator, who was a prisoner in North Vietnam from 1967 to 1973:

It hurts to see the flag burned, but I part company with those who want to punish the flag burners. . .. I remember one interrogation [in North Vietnam] where I was shown a photograph of Americans protesting the war by burning a flag. ''There,'' the officer said. ''People in your country protest against your cause. That proves you are wrong.'' ''No,'' I said. ''That proves that I am right. In my country we are not afraid of freedom, even if it means that people disagree with us.'' The officer was on his feet in an instant, his face purple with rage. He smashed his fist onto the table and screamed at me to shut up. While he was ranting, I was astonished to see pain, compounded by fear, in his eyes. I have never forgotten that look nor have I forgotten the satisfaction I felt at using his tool, the picture of the burning flag, against him.

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

It hurts to see the flag burned, but I part company with those who want to punish the flag burners. . . I remember one interrogation [in North Vietnam] where I was shown a photograph of Americans protesting the war by burning a flag. ''There,'' the officer said. ''People in your country protest against your cause. That proves you are wrong.'' ''No,'' I said. ''That proves that I am right. In my country we are not afraid of freedom, even if it means that people disagree with us.'' The officer was on his feet in an instant, his face purple with rage. He smashed his fist onto the table and screamed at me to shut up. While he was ranting, I was astonished to see pain, compounded by fear, in his eyes. I have never forgotten that look nor have I forgotten the satisfaction I felt at using his tool, the picture of the burning flag, against him.

Mr. President, that says it all. We respect the flag the most, we protect it the best, and the flag itself flies the highest when we honor the freedom for which it stands.

Mr. President, I yield the floor.

Mr. HATCH. Mr. President, this amendment, granting Congress power to prohibit physical desecration of the flag, does not amend the first amendment. The flag amendment overturns two Supreme Court decisions which have misconstrued the first amendment.

The first amendment's guarantee of freedom of speech has never been deemed absolute. Libel is not protected under the first amendment. Obscenity is not protected under the first amendment. A person cannot blare out his or her political views at 2 o'clock in the morning in a residential neighborhood and claim first amendment protection. Fighting words which provide violence or breaches of the peace are not protected under the first amendment.

The view that the first amendment does not disable Congress from prohibiting physical desecration of the flag has been shared by ardent supporters of the first amendment and freedom of expression.

In *Street* v. *New York*, 394 U.S. 576 (1969), the defendant burned a flag while uttering a political protest. The Court overturned his conviction since the defendant might have been convicted solely because of his words. The Court reserved judgment on whether a conviction for flag burning itself could withstand constitutional scrutiny. [Id. at 581.] Chief Justice Warren dissented, and in so doing, asserted:

I believe that the States and the Federal Government do have the power to protect the flag from acts of desecration and disgrace . . . Id. at 605 (Warren, C.J., dissenting).

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

It passes my belief that anything in the Federal Constitution bars a State from making the deliberate burning of the American Flag an offense. Id. at 610 (Black, J., dissenting).

Justice Fortas agreed with Chief Justice Warren and Justice Black:

[T]he states and the Federal Government have the power to protect the flag from acts of desecration committed in public. . . . [T]he flag is a special kind of personality. Its use is traditionally and universally subject to special rules and regulation. . . . A person may ''own'' a flag, but ownership is subject to special burdens and responsibilities. A flag may be property, in a sense; but it is property burdened with peculiar obligations and restrictions. Certainly . . . these special conditions are not per se arbitrary or beyond governmental power under our Constitution. Id. at 615–617 (Fortas, J., dissenting).

Prof. Stephen B. Presser of Northwestern Law School testified before the Subcommittee on the Constitution on June 6:

The Flag Amendment would not in any way infringe the First Amendment. . . . The Flag Protection Amendment does not forbid the expression of ideas, nor does it foreclose dissent. [Written Testimony of Professor Stephen B. Presser, June 6, 1995 at p. 11]

Richard Parker, professor of law at Harvard Law School, testified:

The proposal would not ''amend the First Amendment.'' Rather, each amendment would be interpreted in light of the other—much as in the case with the guaranties of Freedom of Speech and Equal Protection of the Laws. When the Fourteenth Amendment was proposed, the argument could have been made that congressional power to enforce the Equal Protection Clause might be used to undermine the First Amendment. The courts have seemed able, however, to harmonize the two. The same would be true here. Courts would interpret ''desecration'' and ''flag of the United States'' in light of general values of free speech. They would simply restore one narrow democratic authority. Experience justifies this much confidence in our judicial system.

But, we're asked, is 'harmonization' possible? If the Johnson and Eichman decisions protecting flag desecration were rooted in established strains of free speech law—as they were—how could an amendment countering those decisions coexist with the First Amendment?

First, it's important to keep in mind that free speech law has within it multiple, often competing strains. The dissenting opinions Johnson and Eichman were also rooted in established arguments about the meaning of freedom of speech. Second, even if the general principles invoked by the five Justices in the majority are admirable in general—as I believe they are—that doesn't mean that the proposed amendment would tend to undermine them, so long as it is confined, as it is intended, to mandating a unique exception for a unique symbol of nationhood. Indeed, carving out the exception in a new amendment—rather than through interpretation of

the First Amendment itself—best ensures that it will be so confined. Even opponents of the new amendment agree on this point. Third, it's vital to recognize that the proposed amendment is not in general tension with the free speech principle forbidding discrimination against specific 'messages' in regulation of speech content. Those who desecrate the flag may be doing so to communicate any number of messages. They may be saying that government is doing too much—or too little—about a particular problem. In fact, they may be burning the flag to protest the behavior of non-governmental, 'patriotic' groups and to support efforts of the government to squash those groups. Laws enacted under the proposed amendment would have to apply to all such activity, whatever the specific 'point of view.' One, and only one, generalized message could be regulated: 'desecration' of the flag itself. And regulation could extend no farther than a ban on one, and only one, mode of doing it: 'physical' desecration. Finally, and perhaps most importantly, we mustn't lose sight of the fundamental purpose of the proposed amendment. That purpose is to restore democratic authority to protect the unique symbol of our aspiration to national unity, an aspiration that, I've said, nurtures—rather than undermines—freedom of speech that is ''robust and wide-open. [Written Testimony, Professor Richard D. Parker, June 6, 1995, pages 6–8, footnotes omitted].

In short, Mr. President, there is no conflict between the flag protection amendment and the first amendment—we are only overturning two mistaken Supreme Court decisions.

Mrs. FEINSTEIN addressed the Chair.

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

Mr. HATCH. Will the Senator yield?

Mrs. FEINSTEIN. Yes.

Mr. HATCH. I ask unanimous consent that the distinguished Senator from Alaska, Senator STEVENS, be permitted to speak after our friend, the Senator from California.

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

The Senator from California.

Mrs. FEINSTEIN. I thank the Chair.

Mr. President, I think you have heard some very eloquent words from the senior Senator from Massachusetts. I respect him greatly. I respect the words he said. I think what this proves is that there is no lack of patriotism on either side of this debate. Patriotism and love of country are equally as strong for those of us on each side of this debate.

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

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

I will never forget the emotion I felt as a child when I saw that famous photograph by photographer Joe Rosenthal—a photograph of the soldiers raising the American flag at Iwo Jima—capturing in one moment in time, the strength and the determination of this entire Nation.

The unique status of the national flag has been supported by constitutional scholars as diverse as Chief Justices William Rehnquist and Earl Warren, and Justices John Paul Stevens and Hugo Black.

The flag flies proudly over official buildings, and many Americans fly them at their homes. I happen to be one of them.

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

(Mr. GRAMS assumed the chair.)

Mrs. FEINSTEIN. Mr. President, our flag is recognized as unique, not only in the hearts and minds of Americans, but in our laws and customs as well. No other emblem or symbol in our Nation carries with it such a specific code of conduct and protocol in its display and handling.

Here are just a few sections of the Federal law:

The United States flag should never be displayed with the Union down, except as a signal of dire distress or in instances of extreme danger to life or property.

The United States flag should never touch anything beneath it—ground, floor, water or merchandise.

The United States flag should never be dipped to any person or thing.

The United States flag should never be carried horizontally, but it should always be carried aloft and free.

Why then, should it be permissible conduct to urinate on, to defecate on, or to burn the flag? That is not my definition of free speech.

Until the Supreme Court's decision in Texas versus Johnson in 1990, 48 of 50 States had laws preventing the burning or defacing of our Nation's flag.

I do not take amending the Constitution lightly. However, when the Supreme Court issued the Johnson decision and then the Eichman decision, those who wanted to protect the flag were forced to find an alternative path.

The Nation's flag is a revered object as well as a symbol. I believe that it should be viewed as such—as a revered national object, not simply as one of many vehicles for free speech.

Everything about the flag in its tangible form, in its very fabric, has significance. The shape, the colors, the dimensions, and the arrangement of the patterns help make the flag what it is.

The colors of the flag were chosen by the Continental Congress in the 18th century. In 1782, the Congress of the Confederation chose the same colors for the Great Seal of the United States: Red for hardiness and courage; white for purity and innocence; blue for vigilance, perseverance, and justice.

If one were to change the colors, the orientation of the stripes, or the location of the field of stars, it would no longer be the American flag. What I am saying is that I believe that the physical integrity of the flag is crucial.

Despite this fact, because the flag also has symbolic value, the Supreme Court has determined that physically burning or mutilating the flag does not destroy the symbol. Therefore, a prohibition on burning or mutilating the flag would not serve a ''compelling'' governmental interest and could not be justified under the first amendment.

I do not agree. I believe that burning, tearing, and trampling on the object undermines the symbol. The process may be incremental, but over time the symbol erodes. The Supreme Court arguably has placed the flag in a kind of catch-22 situation. Because the flag is so important, because the flag is unique, because the flag has such powerful symbolic value, it, ironically, goes unprotected.

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

In the Senate Judiciary Committee's markup of Senate Joint Resolution 31, I proposed alternative legislation with more specific, narrowly tailored language. Although this was not voted on in committee, Chairman HATCH offered to work with me to see if we could develop language we could agree upon.

He has now proposed the substitute amendment that I believe represents a vast improvement over the original language of Senate Joint Resolution 31.

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

The proposed substitute amendment offered earlier this afternoon would give Congress, and Congress alone, the authority to draft a statute to protect the flag. This will give Congress the opportunity to draft, carefully and deliberatively, precise statutory language that clearly defines the contours of prohibited conduct, something along the lines of the language I offered in committee. It would allow Congress to establish a uniform definition for ''flag of the United States,'' rather than allowing for 50 separate State definitions.

Because we are protecting our national symbol, it makes sense to me that Members of Congress, representing the Nation as a whole, should craft the statute protecting our flag.

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

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

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

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

Furthermore, the right to free speech is not unrestricted. For example, the Government can prohibit speech that threatens to cause imminent tangible harm, including face-to-face ''fighting words,'' incitement to violation of law, or shouting ''fire'' in a crowded theater. Obscenity and false advertising are not protected under the first amendment, and indecency over the broadcast media can be limited to certain times of day. Ever since Justice Brennan's 1964 decision in New York Times versus Sullivan, statements criticizing official conduct of a public official may be sanctioned if they are known to be false and if they damage the reputation of the official. There is much that is open to debate about the proper parameters of free speech.

In voting for this legislation, however, I extend a cautionary note. This amendment should not be viewed as a precedent for a host of new constitutional amendments on a limitless variety of subjects. The Constitution was designed to endure throughout the ages, and for that reason it should not be amended to accommodate the myriad of issues of the day. My support of a constitutional amendment to protect the flag reflects the gravity of my belief in the purpose.

I recognize that by supporting a constitutional amendment to protect the flag, I am choosing a different course from many Democrats in Congress and, quite frankly, from many of my close friends for whom I have the greatest respect.

But my support for this amendment reflects my broader belief that the time has come for the Nation to begin a major debate on values. I believe that this country must look at itself in the mirror and come to terms with those values. I do not wish to imply that one set of values is necessarily superior to another. But we cannot keep pressing the envelope and still remain a functional society.

We need to ask ourselves what we hold dear—Is there anything we will not cast contempt upon? We need to ask ourselves: How can we foster respect for tradition as well as for ideological and cultural diversity? How can we foster community as well as individuality, nationhood as well as internationalism? These are all important values, and we have to learn to reconcile them. We must not jettison one at the expense of another.

The Framers of the Constitution recognized two important elements of our constitutional tradition: a liberty element and a responsibility element. Without responsibility, without a rule of law, there could be no protection of life, limb, or property—there could be no lasting liberty. I believe there is a danger of moving too far in either direction—toward too restrictive order, or toward unlimited individual liberty.

In this instance, I believe we cannot tilt the scales entirely in favor of individual rights, when there exists a vast community of people in this country who have gone to war for our flag. And there are mothers and fathers and wives and children who have received a knock at their front door and have been told that their son, or husband, or father had died alone, in a trench. They were given a flag on this occasion, a flag which helps preserve the memory of their loved one, and which speaks to his or her courage.

Last June, the Senate Judiciary Committee heard testimony from Rose Lee of the Gold Star Wives of America, an organization representing 10,000 widows of American servicemen. This is what she said:

> The flag, my flag, our flag . . . means something different to each and every American. But to the Gold Star Wives, it has the most personal of meanings. Twenty-three years ago this American flag covered the casket of my husband, Chew-Mon Lee, United States Army. . . Every Gold Star Wife has a flag like this one, folded neatly in a triangle and kept in a special place . . . My husband defended this flag during his life . . . [b]urning the flag is . . . a slap in the face of every widow who has a flag just like mine.

Requiring certain individuals to refrain from defacing or burning the flag, I believe, is a small price to pay on behalf of the millions of Americans for whom the flag has deep personal significance. Just 5 years ago, when 48 States had laws against flag burning, the first amendment continued to thrive.

I believe that this legislation will protect the integrity of the flag while keeping our first amendment jurisprudence intact. I urge my colleagues to support it.

I thank the Chair and yield the floor.

Mr. LEAHY addressed the Chair.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, I understand there is a unanimous-consent request for the senior Senator from Alaska to proceed at this time, is that correct?

The PRESIDING OFFICER. That is correct.

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

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

The Senator from Vermont is recognized.

Mr. LEAHY. I thank the Chair and my friend from Utah.

Mr. President, I find flag burning a reprehensible form of protest. We have, in this the greatest democracy on Earth, freedom of speech, and we have so many ways that we can have political debate and well-understood protests, that it seems like a slap at so many people in this country, certainly those of us who serve our country and are sworn to uphold its laws, and a particularly vile form of protest. It demeans an important symbol of our country and shows disrespect for the sacrifice so many have made to preserve our freedoms. I know that the veterans, the Gold Star Wives, whom the distinguished Senator from California just referred to, and others who are pressing for this amendment are doing so out of sincerity and out of a strong sense of patriotism.

I feel fortunate that we live in a country where the vast majority—I would say 99.9 percent—of our citizens share a deep respect for the flag and all that it symbolizes. It was one of the first things that my grandparents saw when they came to this country—not speaking a word of English but knowing it was a symbol of freedom.

Indeed, most of us do not need a law or the Constitution to require us to honor America. We do so willingly and spontaneously, as I do when I fly the flag at my home in Vermont.

We salute the flag and we stand for ''The Star Spangled Banner'' not because the law compels it, but out of respect. These are ways of expressing our thanks to those who have left us such a rich heritage. It is that respect that comes voluntarily, that comes from a sense of our history and our debt to prior generations that inspires us to salute, not the command of law or outside imposition of any legal requirement.

I believe that we are being asked to take steps down a road that leads to a weakening of the Bill of Rights and our fundamental guarantees of freedom. No right is more precious than that of freedom, and no freedom is more important than the first amendment's guarantee of freedom of speech. Even though, for a good cause, this proposed constitutional amendment would restrict others' free speech rights, it would set a dangerous precedent.

I believe—and I have said it many times on the floor—that the first amendment is the most valuable bedrock in our Constitution and in our democracy. The first amendment guarantees us the right to practice any religion we want, or no religion if we want. It gives us the right of free speech. That right is unprecedented in any other significant country on this Earth. It guarantees diversity of religion, diversity of belief, diversity of speech, and if you have protected diversity, you have a democracy.

I cannot believe that there is a Member of this Senate—certainly not myself—who was not offended, in 1989 and 1990, by the publicity-hungry flag burners. I am offended to see the American flag burned or trampled overseas. I am offended when our President and Commander in Chief and his family are subjected to mean-spirited and defamatory characterizations, and when nationally syndicated radio personalities talk about how to shoot to kill Federal law enforcement officers.

I am offended when anyone makes such a suggestion.

I am offended by militant extremists who called our Senate colleague from Pennsylvania a representative of ''corruption and tyranny'' when he chaired a hearing exposing their ideas. I am offended by those who spew racial and ethnic hatred. I am offended that the Supreme Court of the United States required Columbus, OH, to allow the Ku Klux Klan to erect in a public square the KKK's ''symbol of white supremacy and a tool for the intimidation and harassment of racial minorities, Catholics, Jews, Communists and other groups hated by the Klan.'' There is certainly much that offends in our contemporary society.

But we must resist the temptation to make an exception here to limit one form of obnoxious speech. The guts of the first amendment is its extraordinary protection of antigovernment, political speech. Nowhere else in the world or through history has there been such a profound commitment to allow unrestricted criticism of those in power. The shouts of protest disturb, provoke, challenge, and offend. We must tolerate them because they also demonstrate the strength of America.

Polls and resolutions of State legislatures are being cited as reasons to support this proposed constitutional amendment. I have thought hard about the argument that this is a populist amendment and that the States should be given the opportunity to decide whether to amend our Constitution. In many settings, this would be a strong argument. But here, we are confronted with a proposed amendment to the Bill of Rights, and to that part of the first amendment intended to protect the minority from an orthodoxy of the majority.

We are this year commemorating the 50th anniversary of the end of the Second World War. While that profound conflict raged, in June, 1943, the Supreme Court decided West Virginia State Board of Education versus Barnette, a case that raised the question whether children attending public schools could be compelled to salute the flag and pledge allegiance. The Court held, over the vigorous dissent of Justice Frankfurter, that the State could not employ such compulsion to achieve national unity, even in that time of world war.

The Supreme Court's opinion was written by Justice Robert Jackson, a former Attorney General of the United States who later served as the chief prosecutor at the Nurenberg trials. Let me quote from Justice Jackson's opinion:

> The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts. One's right to life, liberty, and property, to free speech, a free press, freedom of worship and assembly, and other fundamental rights may not be submitted to vote; they depend on the outcome of no elections. . . .
>
> The case is made difficult not because the principles of its decision are obscure but because the flag involved is our own.
>
> Nevertheless, we apply the limitations of the Constitution with no fear that freedom to be intellectually and spiritually diverse or even contrary will disintegrate the social organization. To believe that patriotism will not flourish if patriotic ceremonies are voluntary and spontaneous instead of a compulsory routine is to make an unflattering estimate of the appeal of our institutions to free minds. We can have intellectual individualism and the rich cultural diversities that we owe to exceptional minds only at the price of occasional eccentricity and abnormal attitudes. Where they are so harmless to others or to the State as those we deal with here, the price is not too great. But freedom to differ is not limited to things that do not matter much. That would be a mere shadow of freedom. The test of its substance is the right to differ as to things that touch the heart of the existing order.
>
> If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein. If there are any circumstances which permit an exception, they do not now occur to us.

If World War II itself was not a circumstance that permitted an exception to the first amendment to foster patriotism and national unity, I do not believe that the potential for disrespectful political protest of today's Government policy provides the justification required by article V of the Constitution for its amendment. There exists no compelling reason for limiting the Bill of Rights.

I am proud that earlier this year the Vermont Legislature chose the first amendment over the temptation to take popular action. The Vermont House passed a resolution urging respect for the flag and also recognizing the value of protecting free speech ''both benign and overtly offensive.'' Our Vermont attorney general has urged that we trust the Constitution and not the passions of the times.

Vermont's action this year is consistent with its strong tradition of independence and commitment to the Bill of Rights. Indeed, Vermont's own Constitution is based on our commitment to freedom and our belief that it is best protected by open debate. Vermont did not join the Union until the Bill of Rights was ratified and part of the country's fundamental charter.

Vermont sent Matthew Lyon to Congress and he cast the decisive vote of Vermont for the election of Thomas Jefferson. He was the same House Member who was the target of a shameful prosecution under the Sedition Act in 1789 for comments made in a private letter. Vermont served the Nation again in the dark days of McCarthyism when Senator Ralph Flanders stood up for democracy and in opposition to the repressive tactics of Joseph McCarthy. Vermont's is a great tradition that we cherish and that I intend to uphold.

I have deep respect for the position of William Detweiler, the national commander of the American Legion. When he testified this year before the Judiciary Committee he shared with us his concern that we, as a country, ''slide down that slippery slope * * * every time we deny our heritage.'' But the slippery slope that most concerns me is the proposed restriction of the Bill of Rights and the precedent such an amendment would establish.

Never in our history as a Nation have we narrowed the Bill of Rights through constitutional amendment. Our history has been one of expanding individual rights and protections.

Some of our colleagues contend that because the flag is such a unique national symbol, this will be the only time that we will be called upon to limit first amendment rights. Unfortunately, no one can give that assurance or make such a guarantee. Just this session, in the wake of the bombing in Oklahoma City, the Senate passed a terrorism bill that includes new limits on associational rights and, in the heat of the moment, 84 Members of this body voted to censor the Internet and criminalize private, constitutionally protected speech that might be considered indecent during consideration of the telecommunications bill. We cannot be so sure that without the bulwark of the first amendment our rights will be protected.

Barely 5 years ago a similar proposed constitutional amendment was considered and rejected by this Senate after

the U.S. Supreme Court ruled that the conviction in the Eichman case resulted from an unconstitutional application of the Flag Protection Act of 1989. Little has changed. Indeed, in the intervening years, following the protests sparked by Desert Storm, there have been only a handful of flag burnings. None was reported in 1993 and three were reported in 1994, as the drive to amend the Constitution built momentum.

In 1990, 42 Senators stood up for the Bill of Rights and voted against the constitutional amendment we are voting on again today. I urge my colleagues to join with me to preserve the Constitution and protect the very principles of freedom that the flag symbolizes. Fundamental constitutional principles are too important for partisan politics or short-term expediency. Let us not allow this matter to devolve into the bumper sticker politics of emotion that has so dominated this Congress.

One of the best statements that I have ever seen in all the years that we have been debating this issue is that by James H. Warner, a former Marine flyer who had been a prisoner of the North Vietnamese for 5½ years. I ask that his full statement from July 1989 be printed in the RECORD and urge my colleagues to consider it.

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

[From the Washington Post, July 11, 1995]

WHEN THEY BURNED THE FLAG BACK HOME—THOUGHTS OF A FORMER POW

(By James H. Warner)

In March of 1973, when we were released from a prisoner of war camp in North Vietnam, we were flown to Clark Air Force base in the Philippines. As I stepped out of the aircraft I looked up and saw the flag. I caught my breath, then, as tears filled my eyes. I saluted it. I never loved my country more than at that moment. Although I have received the Silver Star Medal and two Purple Hearts, they were nothing compared with the gratitude I felt then for having been allowed to serve the cause of freedom.

Because the mere sight of the flag meant so much to me when I saw it for the first time after 5½ years, it hurts me to see other Americans willfully descreate it. But I have been in a Communist prison where I looked into the pit of hell. I cannot compromise on freedom. It hurts to see the flag burned, but I part company with those who want to punish the flag burners. Let me explain myself.

Early in the imprisonment the Communists told us that we did not have to stay there. If we would only admit we were wrong if we would only apologize, we could be released early. If we did not, we would be punished. A handful accepted, most did not. In our minds, early release under those conditions would amount to a betrayal, of our comrades of our country and of our flag.

Because we would not say the words they wanted us to say, they made our lives wretched. Most of us were tortured and some of my comrades died. I was tortured for most of the summer of 1969. I developed beriberi from malnutriton. I had long bouts of dysentery. I was infested with intestinal parasites. I spent 13 months in solitary confinement. Was our cause worth all of this? Yes, it was worth all this and more.

Rose Wilder Lane in her magnificent book ''The Discovery of Freedom,'' said there are two fundamental truths that men must know in order to be free. They must know that all men are brothers, and they must know that all men are born free. Once men accept these two ideas, they will never accept bondage. The power of these ideas explains why it was illegal to teach slaves to read.

One can teach these ideas, even in a Communist prison camp. Maoists believe that ideas are merely the product of material conditions; change those material conditions, and one will change the ideas they produce. They tried to ''reeducate'' us. If we could show them that we would not abandon our belief in fundamental principles, then we could prove the falseness of their doctrine. We could subvert them by teaching them about freedom through our example. We could show them the power of ideas.

I do not appreciate this power before I was a prisoner of war. I remember one interrogation where I was shown a photograph of some Americans protesting the war by burning a flag. ''There,'' the officer said. ''People in your country protest against your cause. That proves that you are wrong.''

''No.'' I said, ''That proves that I am right. In my country we are not afraid of freedom, even if it means that people disagree with us.'' The officer was on his feet in an instant his face purple with rage. He smashed his fist onto the table and screamed at me to shut up. While he was ranting I was astonished to see pain, compounded by fear, in his eyes. I have never forgotten that look, nor have I forgotten the satisfaction. I felt at using his tool, the picture of the burning flag, against him.

Aneurin Bevan, former official of the British Labor Party, was once asked by Nikita Khrushchev how the British definition of democracy differed from the Soviet view, Bevan responded forcefully that if Khrushchev really wanted to know the difference, he should read the funeral oration of Pericles.

In that speech, recorded in the Second Book of Thucydides' ''History of the Peloponnesian War,'' Pericles contrasted democratic Athens with totalitarian Sparta. Unlike the Spartans, he said the Athenians did not fear freedom. Rather they viewed freedom as the very source of their strength. As it was for Athens, so it is for America—our freedom is not to be feared, for our freedom is our strength.

We don't need to amend the Constitution in order to punish those who burn our flag. They burn the flag because they hate America and they are afraid of freedom. What better way to hurt them than with the subversive idea of freedom? Spread freedom. The flag in Dallas was burned to protest the nomination of Ronald Reagan, and he told us how to spread the idea of freedom when he said that we should turn America into ''a city shining on a hill, a light to all nations.'' Don't be afraid of freedom, it is the best weapon we have.

Mr. LEAHY. While a prisoner of war, he was shown a photo of Americans protesting the Vietnam war by burning a flag. His reaction was that of a true American hero: He turned the use of the photo against his captors by proclaiming that the photo proved the rightness of the cause of freedom. He was proud that we in this great country ''are not afraid of freedom, even if it means that people disagree with us.'' Let us heed his words and ''not be afraid of freedom.''

Mr. President, we are each custodians of the Constitution as well as contemporary representatives during our brief terms in office. We were given a Bill of Rights that has served to protect our rights and speech for over 200 years. We should provide no less to our children and grandchildren.

My family and I fly the flag at our home. I display it in my office. No law tells me to do that. Love of my country and its symbols tells me to. That love is far more compelling than any law.

Mr. STEVENS. Mr. President, this resolution proposes a constitutional amendment to empower Congress to prohibit the physical desecration of the flag. I have come to commend my friend from Utah, Senator HATCH, for his leadership on this issue; and I am pleased to join with him as a sponsor of the proposal.

On this subject, I do believe I speak for a majority of Alaskans as I support this legislation. Mr. President, 90 percent of Alaskans who have contacted my office since this matter was proposed are in favor of this amendment.

Our support comes on a little different basis, Mr. President, than others who stand on this floor. We live a long way from this Capitol. We are actually closer to Tokyo than to Washington, DC. We are an independent bunch. Yet we have some very deep-seated feelings on this issue. Why are we for this bill? It is because the flag is truly the symbol of the Nation that we sought to join as a State not too long ago.

As a veteran, I have felt and seen our flag's importance overseas. Living away from home, overseas, away from our freedoms, those of us who served during the long period of World War II learned to respect our flag deeply. It represents what our country stands for, qualities that no other nation can offer its citizens. We stand for freedom in this country, and that is what this flag reminds us all of. Our Nation's anthem, ''The Star Spangled Banner,'' captures the bond that Americans feel toward our flag.

The flag does, in fact, represent America. The 13 stripes represent the 13 States that brought about our Constitution. There are 50 stars, one for each State. I remember well the day that the 49th star was placed on that flag. I was in Maryland assisting in raising the first flag. And also in Alaska, once a territory, now becoming a State, Rita Gravel, the wife of a former Senator, climbed up a long ladder to pin the 49th star on a flag flying in our major city. Those of us who had worked in the statehood movement will never forget that moment. It meant a great deal to us.

In short, it is more than just a symbol. It is a question of belonging. Every State is represented there on that flag, and that has been our tradition since the very beginning. As I said, participating in the statehood movement, which does not happen very often, is something that is deeply ingrained in the soul. It was and remains meaningful to us to have our star on the flag.

I think, then, that desecration of the flag has meant a great deal to States.

I am not sure how many Members of the Senate know, it has probably been said on the floor time and time again, but 48 of our States had laws on the books that punished flag desecration when the Supreme Court rejected such laws.

The Supreme Court has indicated that, absent an expression from the national legislature, State and Federal prohibitions on flag desecration are subject to strict first amendment proscriptions. I do believe we must act now to give our people the opportunity to reverse that position.

I do not take too lightly, and I do not think Alaskans take too lightly, the concept of suggesting and supporting amendments to our Constitution. That is a powerful action to suggest, and a route that has not been taken too often by the Congress.

Mr. President, we pledge allegiance to our flag and to the Nation it represents. If anyone doubts, really, what it means to a veteran to consider the flag, I think a person should take a trip to the Iwo Jima monument. Nothing, I think, represents the Nation the way the flag does. Therefore, I am hopeful that this amendment will be approved by our States, and that it will restore the demand for everyone in this Nation to respect the symbol of our freedoms.

Mr. HATCH. Mr. President, I thank my colleague from Alaska for his excellent statement and for the continuing great work that he does as a Member of the Senate. I really appreciate him personally and I appreciate his support for this amendment.

I might mention that earlier in the day my colleague and friend from Massachusetts said there just are not many flag-burning desecrations, and he cited some statistics that I think are quite wrong.

Based on information provided to me by the Congressional Research Service, the number of flags desecrated have been as follows—and keep in mind these are ones that are reported, the ones where we have had a fuss about. This does not begin to cover those desecrated that were not reported:

In 1990, at least 20 flags in this country; in 1991, at least 10 flags; in 1992, at least 7 flags; in 1993, at least 3 flags; in 1994, at least 5 flags; for a total of 45 flags between 1990 and 1994. In 1995, there have been over 20 flags so far.

Every one of these known flag-burning cases have been covered by the media, so millions of people have been affected by them. Millions of people have seen our national symbol desecrated and held in contempt.

Millions of people are beginning to wonder, why don't we have any values in this country? Why don't we stand up for the things that are worthwhile? Why don't we stand up for our national symbol? What is wrong with that?

What this amendment would do is allow the Congress of the United States to pass legislation that would protect the flag. What is so wrong about that? It would allow us to do that. We could do whatever we wanted to.

If people did not like it, they could vote against it. They could filibuster it, where you have to get 60 votes in the Senate. The President, if he does not like it, has a right to veto it, where you have to get 67 votes in the Senate. It is not like people's rights are being taken away because we pass a constitutional amendment.

I wonder if my friend from Massachusetts believes that the Supreme Court has so far construed the first amendment correctly by holding that it does not protect obscenity and child pornography?

He was attempting to make the point that this amendment is somehow an unprecedented infringement on the first amendment. With all due respect, that is a joke. Last Friday, I listed 21 instances where the Supreme Court upheld laws which limit speech or conduct which some have argued was protected by the first amendment. What we are considering here is not something new.

Some of those cases involved actual speech, including obscenity and limitations on Government speaking. Here, we are talking about offensive conduct, not speech. The Supreme Court, in one of its off days—in fact two off days, when you consider both Johnson and Eichman—decided by a 5 to 4 margin, that this offensive conduct rises to the dignity of free expression.

If my friend from Massachusetts thinks it is terrible to interfere under any circumstances with speech or conduct which some might argue is somehow protected by the first amendment, what about laws prohibiting child pornography? What about laws against obscenity?

Put aside whether my friend would use the same legal test for determining what is obscenity or child pornography as the Supreme Court presently uses. He may not. But I think he would admit that would not want his children or grandchildren to be buffeted by child pornography.

If, after 200-plus years of legal precedent to the contrary, the Supreme Court were to decide, by a 5 to 4 vote, that obscenity is protected by the first amendment, I wonder if some of the people who have argued against this amendment, because they claim it infringes upon the first amendment, would oppose an amendment authorizing the prohibition of the sale and distribution of obscenity or pornography?

And if my friend felt that the 5-to-4 decision was wrong, would he view such an amendment as tampering with the Bill of rights, or just overturning a mistaken judicial interpretation of it?

Would my friend be demanding on the floor of Congress that supporters of an antiobscenity amendment determine in advance whether this or that hypothetical picture, photograph, or writing would qualify as obscene under the amendment?

I doubt it. I sincerely doubt it.

I want to say a few words about Senator BIDEN'S content-neutral constitutional amendment, and then I understand my friend from Idaho is here, and also my friend from Kentucky.

A few critics of the flag amendment believe that all physical impairments of the integrity of the flag, such as by burning or mutilating, must be made illegal or no such misuse of the flag should be illegal. An exception is provided for disposal of a worn or soiled flag. This all or nothing approach flies in the face of nearly a century of legislative protection of the flag.

A content neutral amendment would forbid an American combat veteran from taking an American flag flown in battle and having printed on it the name of his unit and location of specific battles, in honor of his unit, the service his fellow soldiers, and the memory of the lost.

Then Assistant Attorney General for Legal Counsel William S. Barr testified before the Senate Judiciary committee August 1, 1989, and brought a certain American flag with him:

> Now let me give you an example of . . . the kind of result that we get under the [content-neutral approach]. This is the actual flag carried in San Juan Hill. It was carried by the lead unit, the 13th Regiment U.S. Infantry, and they proudly emblazon their name right across the flag, as you see; 1,078 Americans died following this flag up San Juan Hill.
>
> . . . Under [a content neutral approach], you can't have regiments put their name on the flag that's defacement . . . (Testimony, Assistant Attorney General William P. Barr, August 1, 1989, at 68).

I wish to empower Congress to prohibit the contemptuous or disrespectful physical treatment of the flag. I do not wish to compel Congress to penalize respectful treatment of the flag. A constitutional amendment which would force the American people to treat the placing of the name of a military unit on a flag as the equivalent of placing the words ''Down with the Fascist Federal Government'' or racist remarks on the flag is not what the popular movement for protecting the flag is all about. I respectfully submit that such an approach ignores distinctions well understood by tens of millions of Americans.

Moreover, never in the 204 years of the first amendment has the free speech clause been construed as totally ''content neutral.'' Prof. Richard Parker, of Harvard Law School, who believes in ''robust and wide-open'' freedom of speech and that it ought to be more robust than the Supreme Court currently allows in some respects, noted as much in his testimony:

> . . . Everyone agrees that there must be ''procedural'' parameters of free speech—involving, for example, places and times at which certain modes of expression are permitted. Practically everyone accepts some explicitly ''substantive'' parameters of speech content as well. Indeed, despite talk of ''content-neutrality,'' the following principle of constitutional law is very clear: Government sometimes may sanction you for speaking because of the way the content of what you say affects other people.
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> What is less clear is the shape of this principle. There are few bright lines to define it.

The Supreme Court understands the principle to rule out speech that threatens to cause imminent tangible harm: face-to-face fighting words, incitement to violation of law, shouting ''fire'' in a crowded theater. And it does not stop there. It understands the principle, also, to rule out speech that threatens certain intangible, even diffuse, harms. It has, for instance, described obscenity as pollution of the moral ''environment.''

I think he makes some very important points. But what about political speech critical of the Government? Is there not there a bright line protecting that, at least so long as no imminent physical harm is threatened? The answer is: No. The Court has made clear, for instance, that statements criticizing official conduct of a public official may be sanctioned if they are known to be false and damage the reputation of the official. There has been no outcry against this rule. It was set forth by the Warren Court—in an opinion by Justice Brennan, the very opinion that established freedom of speech as 'robust and wide-open.' [*New York Times* v. *Sullivan*, 376 U.S. 254 (1964)]. It has been reaffirmed ever since. Allowing the Congress to prohibit contemptuous treatment of the American flag does not unravel the first amendment or freedom of speech.

Incidentally, I might add that, in order to be truly ''content neutral,'' an amendment must have no exceptions, even for the disposal of a worn or soiled flag. Once such an exception is allowed, as in the Biden amendment, the veneer of content neutrality is stripped away. The Texas versus Johnson majority itself pointedly noted:

if we were to hold that a state may forbid flag burning wherever it is likely to endanger the flag's symbolic role, but allow it whenever burning a flag promotes that role—as where, for example, a person ceremoniously burns a dirty flag—we would be saying that when it comes to impairing the flag's physical integrity, the flag itself may be used as a symbol . . . only in one direction . . .'' [491 U.S. at 416–417].

Of course, if Congress proposes and the States ratify a constitutional amendment with such an exception, the Supreme Court would have to uphold the exception. But the amendment would not be content neutral.

The suggestion that a worn or soiled flag is no longer a flag, in an effort to escape the logical inconsistency of a so-called content neutral amendment which would permit an exception for disposal of such a flag, is unavailing. Obviously, a worn or soiled American flag is still a flag, recognizable as such, even if no longer fit for display.

BIDEN AMENDMENT—ODD FORM

Mr. President, I draw to my colleagues' attention the text of the amendment by my friend from Delaware. I say with great respect to my friend, and to my colleagues, you will search the Constitution in vain for anything that looks like this. Even if I agreed with its substance, not in 206 years have we had a statute written right in to the text of the Constitution itself with Congress given no more than a right to vote on it up or down.

We have always prided ourselves on distinguishing our fundamental charter from a statutory code. This amendment is a textbook case of blurring that 206-year-old distinction.

Mr. President, I notice the distinguished Senator from Idaho is here. I will be happy to yield the floor.

Mr. CRAIG. Mr. President, I thank the chairman of the Judiciary Committee.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAIG. Mr. Chairman, I thank the chairman of the Judiciary Committee for yielding to me and let me thank him personally for the tremendous leadership he has shown in the area of protecting our flag and offering forth this unique constitutional amendment. He has, without doubt, led the way for us to finally bring this critical issue to the floor.

I think it is high time that we listen, that we listen to not only the debate on the floor but, more important, we listen to the American people on the issue of flag protection and this amendment.

Some of my colleagues may remember that more than a year ago, I came to this Senate floor with memorials from 43 State legislatures—memorials urging Congress to take action to protect the American flag from physical desecration. Those memorials were inserted in the CONGRESSIONAL RECORD for all to read.

Now the number of those memorials has reached 49, and a 1995 Gallup Poll found that almost 80 percent of the American public supports a flag protection amendment.

This is a truly historic outpouring of popular support. And we have an opportunity to respond to the American people by passing a very simple amendment and sending it to the States for ratification: It authorizes Congress and the States to prohibit physical desecration of the flag of the United States.

Opponents of this amendment are doing their best to find bogeymen hiding inside this proposal, or to tie it up in a mass of legal complications—but in fact, it is a very straightforward issue to most Americans.

Old Glory holds a special place in our hearts. No other emblem, token, or artifact of our Nation has been defended to the death by legions of patriots. No other has drawn multitudes from abroad with the promise of freedom. No other unifies the diverse cultures that form the amalgam we call the United States.

No other has inspired generations with the belief that life, liberty, and the pursuit of happiness are the birthright of every human being. It is because the flag holds the unique place in the hearts of Americans that they have demanded ultimate protection for it. Congress has already tried furnishing that protection by statute, and, as we know, the Supreme Court shut the door on that particular strategy—firmly and for all time, in my opinion. A constitutional amendment is the only vehicle left for those who believe in protecting the flag.

I expect the opposition to argue that protecting the flag from physical desecration somehow runs afoul of the first amendment and the freedom of expression, Mr. President. That is part of the debate that has been going on here now for a good many hours. I believe—and I think all Americans believe—that nothing could be further from the truth. The flag amendment does not prevent the expression of any ideas. As a matter of fact, there are far more direct ways of expressing one's opinion than engaging in an act—even the act of destroying or defiling a flag.

Another accusation the opposition will try to use is that this is a slippery slope to Government censorship. I say hogwash as straightforward and as best I can, Mr. President. We are trying to protect the flag—and only the flag and only from physical desecration—because it is uniquely revered by Americans. That uniqueness absolutely prevents this effort from being extended to anything else. It is a very specific amendment.

Mr. President, obscene speech that outrages a community is not protected by the Constitution. Fighting words that outrage individuals and provoke violence are not protected by the Constitution. Both these standards are well known and widely accepted in this country. Yet, when 80 percent of Americans say they are outraged by the physical desecration of the flag and ask us to protect it, our opponents accuse them of advocating censorship and interfering with the freedom of speech.

I say to the American people, do not believe them. This amendment is narrowly tailored to allow protection only of the flag and only from physical desecration. It will not force anyone to salute the flag. It will not mandate participation in the Pledge of Allegiance. It will not stop individuals from telling the world exactly and in detail how they feel about the flag, even if they despise it. This simply allows Congress and the States to prevent one act: the physical act of desecrating the flag.

The concern has been raised that physical desecration can be defined to mean anything. That may be true in a vacuum. But it is most certainly not true in the marketplace of ideas, where all points of view have an opportunity to be heard, and that is precisely where this definition is going to be written, Mr. President.

This amendment enables the American people to weigh in on this definition, whether they support or oppose protecting the flag. There will not be any midnight, closed-door, secret session to write this definition. It is going to be fully and openly discussed in every State in the Union.

Mr. President, Congress has acted once before to protect the flag. By the narrowest of margins, the Supreme Court stopped that effort from succeeding. However, the Supreme Court's decision did not change the value at

stake, it did not change the need for this protection, and, most important, it did not change the heart and the minds of the American people.

Against all odds, against all expectations, support for this effort continues to grow, not to diminish. At a time when some are wringing their hands about the erosion of values in America, we have a grassroots movement demanding the opportunity to protect the symbol of our country's aspirations and our country's values.

Are we so preoccupied with the problems of our Nation here in Washington that we cannot recognize the positive signs when we see it, Mr. President? Millions of our fellow citizens are telling us that the sight or mention of our flag still has the power to awaken the American spirit of the American patriot. We should be cheering them on, not ignoring them or denying them access to their Constitution.

In providing two methods for amending the Constitution, article V safeguards the people's right to correct what they believe is a wrong decision by the Supreme Court or the Congress. The people have asked for this opportunity to make a correction in the case of the flag, and I urge my colleagues to listen to them, to send the American people an amendment allowing protection of the great flag of our country.

Mr. President, I yield the floor.

Mr. MCCONNELL addressed the Chair.

The PRESIDING OFFICER. The Senator from Kentucky is recognized.

Mr. MCCONNELL. Mr. President, parliamentary inquiry. We are operating under a unanimous-consent agreement, are we not, that anticipates that I will send to the desk an amendment in the nature of a substitute which will be voted on in the morning, along with the constitutional amendment?

The PRESIDING OFFICER. The Senator from Kentucky is correct.

AMENDMENT NO. 3097

(Purpose: To provide a substitute)

Mr. MCCONNELL. Mr. President, I therefore send that amendment to the desk on behalf of myself, Senator BENNETT, Senator DORGAN, and Senator BUMPERS.

The PRESIDING OFFICER. Without objection, the pending amendment will be set aside.

The clerk will report.

The bill clerk read as follows:

The Senator from Kentucky (Mr. MCCONNELL), for himself, Mr. BENNETT, Mr. DORGAN, and Mr. BUMPERS, proposes an amendment numbered 3097.

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

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

The amendment is as follows:

Strike all after resolving clause and inserting the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Flag Protection and Free Speech Act of 1995''.

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—The Congress finds that—

(1) the flag of the United States is a unique symbol of national unity and represents the values of liberty, justice, and equality that make this Nation an example of freedom unmatched throughout the world;

(2) the Bill of Rights is a guarantee of those freedoms and should not be amended in a manner that could be interpreted to restrict freedom, a course that is regularly resorted to by authoritarian governments which fear freedom and not by free and democratic nations;

(3) abuse of the flag of the United States causes more than pain and distress to the overwhelming majority of the American people and may amount to fighting words or a direct threat to the physical and emotional well-being of individuals at whom the threat is targeted; and

(4) destruction of the flag of the United States can be intended to incite a violent response rather than make a political statement and such conduct is outside the protections afforded by the first amendment to the United States Constitution.

(b) PURPOSE.—It is the purpose of this Act to provide the maximum protection against the use of the flag of the United States to promote violence while respecting the liberties that it symbolizes.

SEC. 3. PROTECTION OF THE FLAG OF THE UNITED STATES AGAINST USE FOR PROMOTING VIOLENCE.

(a) IN GENERAL.—Section 700 of title 18, United States Code, is amended to read as follows:

''§ 700. Incitement; damage or destruction of property involving the flag of the United States

''(a) ACTIONS PROMOTING VIOLENCE.—Any person who destroys or damages a flag of the United States with the primary purpose and intent to incite or produce imminent violence or a breach of the peace, and in circumstances where the person knows it is reasonably likely to produce imminent violence or a breach of the peace, shall be fined not more than $100,000 or imprisoned not more than 1 year, or both.

''(b) DAMAGING A FLAG BELONGING TO THE UNITED STATES.—Any person who steals or knowingly converts to his or her use, or to the use of another, a flag of the United States belonging to the United States and intentionally destroys or damages that flag shall be fined not more than $250,000 or imprisoned not more than 2 years, or both.

''(c) DAMAGING A FLAG OF ANOTHER ON FEDERAL LAND.—Any person who, within any lands reserved for the use of the United States, or under the exclusive or concurrent jurisdiction of the United States, steals or knowingly converts to his or her use, or to the use of another, a flag of the United States belonging to another person, and intentionally destroys or damages that flag shall be fined not more than $250,000 or imprisoned not more than 2 years, or both.

''(d) CONSTRUCTION.—Nothing in this section shall be construed to indicate an intent on the part of Congress to deprive any State, territory or possession of the United States, or the Commonwealth of Puerto Rico of jurisdiction over any offense over which it would have jurisdiction in the absence of this section.

''(e) DEFINITION.—As used in this section, the term 'flag of the United States' means any flag of the United States, or any part thereof, made of any substance, in any size, in a form that is commonly displayed as a flag and would be taken to be a flag by the reasonable observer.''.

(b) CLERICAL AMENDMENT.—The table of sections for chapter 33 of title 18, United States Code, is amended by striking the item relating to section 700 and inserting the following new item:

700. Incitement; damage or destruction of property involving the flag of the United States.''.

Mr. MCCONNELL. Mr. President, I assume that I have to do nothing further in order to have this amendment in the nature of a substitute be pending in the morning for a vote.

The PRESIDING OFFICER. The Senator is correct.

Mr. DORGAN. Mr. President, I am pleased to join my colleagues Senators MCCONNELL and BENNETT in offering a statutory proposal, rather than a constitutional amendment, to prohibit the desecration of the American flag.

For me and for most American citizens, the flag of this Nation holds a special place in our minds and hearts as the unique symbol of our Nation and of the fundamental democratic freedoms for which it stands. It symbolizes the extraordinary sacrifices that millions of Americans have made over the past 200 years to preserve those freedoms. And freedom-loving Americans throughout this great Nation are appalled when someone chooses to defile, deface, or destroy our national symbol.

Honorable men and women in this country and in this body may disagree on the means to achieve the objective we all share—the protection of the flag of the United States. But we are united in our love and respect for it. Protecting the flag from those who would destroy it is not in dispute. What is in dispute is how we best achieve the objective of protecting our national symbol while preserving the principles and values for which it stands.

One of the most fundamental freedoms guaranteed by the Constitution and symbolized by the flag is the right to express one's views without fear of retribution. It is enshrined in the first amendment to the Constitution. It is part of the Bill of Rights. It is a right we all cherish. It is a right we all want to preserve. Preserving this basic right guaranteed by the Constitution is not always easy. Often it poses a dilemma. Such is the case with protecting the flag. But preserving the Constitution should be the backdrop of this debate. Justice Holmes framed the issue this way:

> [I]f there is any principle of the Constitution that more imperatively calls for attachment than any other it is the principle of free thought—not free thought for those who agree with us but freedom for the thought that we hate.

His imperative is one we should all take to heart.

Unfortunately, the rhetoric of the flag debate has been highly charged. Accusations of disloyalty have been hurled against those who oppose the proposed constitutional amendment while those who support it are referred to as patriots. I hope we can lower the rhetoric and instead focus on the substance of this issue. Let us begin the debate by agreeing that honorable men and women can disagree on this very

important issue. As the esteemed senior Senator from South Carolina, Senator THURMOND, has stated: ''The fact is, there are intelligent arguments on both sides of the debate.''

Mr. President, I have worked closely with Senators MCCONNELL and BENNETT to develop a legislative solution to protect the flag that we believe will pass constitutional muster. The American Law Division of the Congressional Research Service has provided an analysis of our proposal which makes us optimistic that our approach will survive any constitutional attack on first amendment grounds. I ask unanimous consent that the CRS analysis be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. DORGAN. Amending the Constitution should never be taken lightly. It is an approach that ought not be pursued if there is an alternative which can achieve the same objective. The amendment we are offering provides such an alternative, and I hope my colleagues will give it careful consideration.

Our amendment, which was introduced earlier this year as S. 1335, would punish criminal acts of incitement, damage, or destruction of property involving the flag of the United States. The destruction of the flag can be intended to incite a violent response rather than to make a political statement. If that is the intent, that conduct is outside the protections offered by the first amendment, just like shouting fire in a crowded theater is outside its purview. Under our legislation, those who destroy or damage the flag with the intent of inciting violence or breaching the peace would be fined or imprisoned or both. Our proposal would also punish those who steal a flag belonging to the Federal Government and intentionally destroy or damage it.

Our purpose in offering this amendment is clear. We want to provide the maximum protection of our flag from those who would defile it while preserving the constitutional liberties that it symbolizes. We believe our proposal strikes that important and delicate balance.

During a June 21, 1990 Senate Judiciary Committee hearing on a constitutional amendment to prohibit flag desecration, several constitutional scholars were asked to analyze a similar bill which had been introduced by Congressman Jim Cooper in the House of Representatives. The views of these experts is quite telling.

One of them, Charles Fried, the Carter Professor of General Jurisprudence at Harvard University, said that this approach was perfectly proper and perfectly constitutional. He stated that if a person burns a flag in a situation which presents an immediate incitement to violence, that is squarely within Supreme Court doctrine as the kind of thing which can be criminalized.

Many other experts also agree that our legislative proposal would pass constitutional muster and protect the flag from those who would use it to promote violence or to infringe on another's right to wave the flag. Those are important goals and ones which I believe are the crux of this issue. We can achieve these goals by passing a statutory remedy. We do not need to, nor should we, amend the Constitution of the United States if a statutory alternative can accomplish the same objective. I ask unanimous consent that a very thoughtful column which appeared in the Washington Post and was written by James H. Warner, a former marine pilot and POW in Vietnam, be printed in the RECORD.

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

[From the Washington Post, July 11, 1989]

WHEN THEY BURNED THE FLAG BACK HOME

(By James H. Warner)

THOUGHTS OF A FORMER POW

In March of 1973, when we were released from a prisoner of war camp in North Vietnam, we were flown to Clark Air Force base in the Philippines. As I stepped out of the aircraft I looked up and saw the flag. I caught my breath, then, as tears filled my eyes, I saluted it. I never loved my country more than at that moment. Although I have received the Silver Star Medal and two Purple Hearts, they were nothing compared with the gratitude I felt then for having been allowed to serve the cause of freedom.

Because the mere sight of the flag meant so much to me when I saw it for the first time after 5½ years, it hurts me to see other Americans willfully desecrate it. But I have been in a Communist prison where I looked into the pit of hell. I cannot compromise on freedom. It hurts to see the flag burned, but I part company with those who want to punish the flag burners. Let me explain myself.

Early in the imprisonment the Communists told us that we did not have to stay there. If we would only admit we were wrong, if we would only apologize, we could be released early. If we did not, we would be punished. A handful accepted, most did not. In our minds, early release under those conditions would amount to a betrayal, of our comrades, of our country and of our flag.

Because we would not say the words they wanted us to say, they made our lives wretched. Most of us were tortured, and some of my comrades died. I was tortured for most of the summer of 1969. I developed beriberi from malnutrition. I had long bouts of dysentery. I was infested with intestinal parasites. I spent 13 months in solitary confinement. Was our cause worth all of this? Yes, it was worth all this and more.

Rose Wilder Lane in her magnificent book ''The Discovery of Freedom,'' said there are two fundamental truths that men must know in order to be free. They must know that all men are brothers, and they must know that all men are born free. Once men accept these two ideas, they will never accept bondage. The power of these ideas explains why it was illegal to teach slaves to read.

One can teach these ideas, even in a Communist prison camp. Marxists believe that ideas are merely the product of material conditions; change those material conditions, and one will change the ideas they produce. They tried to ''re-educate'' us. If we could slow them that we would not abandon our belief in fundamental principles, then we could prove the falseness of their doctrine. We could subvert them by teaching them about freedom through our example. We could show them the power of ideas.

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 you country protest against your cause. That proves that you are wrong.''

''No, I said. ''That proves that I am right. In my country we are not afraid of freedom, even if it means that people disagree with us.'' The officer was on his feet in an instant, his face purple with rage. He smashed his fist onto the table and screamed at me to shut up. While he was ranting I was astonished to see pain, compounded by fear, in his eyes. I have never forgotten that look nor have I forgotten the satisfaction I felt at using his tool, the picture of the burning flag, against him.

Aneurin Bevan, former official of the British Labor Party, was once asked by Nikita Khrushchev how the British definition of democracy differed from the Soviet view. Bevan responded, forcefully, that if Khrushchev really wanted to know the difference, he should read the funeral oration of Pericles.

In that speech, recorded in the Second Book of Thucydides ''History of the Peloponnesian War,'' Pericles contrasted democratic Athens with totalitarian Sparta. Unlike the Spartans, he said, the Athenians did not fear freedom. Rather, they viewed freedom as the very source of their strength. As it was for Athens, so it is for America—our freedom is not to be feared, for our freedom is our strength.

We don't need to amend the Constitution in order to punish those who burn our flag. They burn the flag because they hate America and they are afraid of freedom. What better way to hurt them than with the subversive idea of freedom? Spread freedom. The flag in Dallas was burned to protest the nomination of Ronald Reagan, and he told us how to spread the idea of freedom when he said that we should turn American into ''a city shining on a hill, a light to all nations.'' Don't be afraid of freedom, it is the best weapon we have.

Mr. DORGAN. Mr. Warner's sentiments express far better than I am able why we should not amend the Constitution to safeguard the flag. I hope, therefore, that my colleagues will join our efforts to protect the flag from desecration without amending the Bill of Rights. I believe that is the right approach. The flag, which all of us love and respect, will then be protected, as will be the freedoms our flag has symbolized since the dawn of the Republic.

EXHIBIT 1

CONGRESSIONAL RESEARCH SERVICE,
Washington, DC, November 8, 1995.

To: Honorable Kent Conrad.
From: American Law Division.
Subject: Analysis of S. 1335, the Flag Protection and Free Speech Act of 1995.

This memorandum is furnished in response to your request for an analysis of the constitutionality of S. 1335, the Flag Protection and Free Speech Act of 1995. This bill would amend 18 U.S.C. §700 to criminalize the destruction or damage of a United States flag under three circumstances. First, subsection (a) of the new §700 would penalize such conduct when the person engaging in it does so with the primary purpose and intent to incite or produce imminent violence or a

breach of the peace and in circumstances where the person knows it is reasonably likely to produce imminent violence or a breach of the peace.

Second, subsection (b) would punish any person who steals or knowingly converts to his or her use, or to the use of another, a United States flag belonging to the United States and who intentionally destroys or damages that flag. Third, subsection (c) punishes any person who, within any lands reserved for the use of the United States or under the exclusive or concurrent jurisdiction of the United States, steals or knowingly converts to his or her use, or to the use of another, a flag of the United States belonging to another person and who intentionally destroys or damages that flag.

The bill appears intended to offer protection for the flag of the United States in circumstances under which statutory protection may still be afforded after the decisions of the Supreme Court in *United States* v. *Eichman*[1] and *Texas* v. *Johnson*.[2] These cases had established the principles that flag desecration or burning, in a political protest context, is expressive conduct if committed to ''send a message,'' that the Court would review limits on this conduct with exacting scrutiny; and legislation that proposed to penalize the conduct in order to silence the message or out of disagreement with the message violates the First Amendment speech clause.

Subsections (b) and (c) appear to present no constitutional difficulties, based on judicial precedents, either facially or as applied. These subsections are restatements of other general criminal prohibitions with specific focus on the flag.[3] The Court has been plain that one may be prohibited from exercising expressive conduct or symbolic speech with or upon the converted property of others or by trespass upon the property of another.[4] The subsections are directed precisely to the theft or conversion of a flag belonging to someone else, the government or a private party, and the destruction of or damage to that flag.

Almost as evident from the Supreme Court's precedents, subsection (a) is quite likely to pass constitutional muster. The provision's language is drawn from the ''fighting words'' doctrine of *Chaplinsky* v. *New Hampshire*.[5] In that case the Court defined a variety of expression that was unprotected by the First Amendment, among the categories being speech that inflicts injury or tends to incite immediate violence.[6] While the Court over the years has modified the other categories listed in *Chaplinsky*, it has not departed from the holding that the ''fighting words'' exception continues to exist. It has, of course, laid down some governing principles, which are reflected in the subsection's language. Thus, the Court has applied to ''fighting words'' the principle of *Brandenburg* v. *Ohio*,[7] under which speech advocating unlawful action may be punished only if it is directed to inciting or producing imminent lawless action and is likely to incite or produce such action.[8]

A second principle, enunciated in an opinion demonstrating the continuing vitality of the ''fighting words'' doctrine, is that it is impermissible to punish only those ''fighting words'' of which government disapproves. Government may not distinguish between classes of ''fighting words'' on an ideological basis.[9]

Subsection (a) reflects both these principles. It requires not only that the conduct be reasonably likely to produce imminent violence or breach of the peace, but that the person intend to bring about imminent violence or breach of the peace. Further, nothing in the subsection draws a distinction between approved or disapproved expression that is communicated by the action committed with or on the flag.

There is a question which should be noted concerning this subsection. There is no express limitation of the application of the provision to acts on lands under Federal jurisdiction, neither is there any specific connection to flags or persons that have been in interstate commerce. Therefore, application of this provision to actions which do not have either of these, or some other Federal nexus, might well be found to be beyond the power of Congress under the decision of the Court in *United States* v. *Lopez*.[10]

In conclusion, the judicial precedents establish that the bill, if enacted, while not reversing *Johnson* and *Eichman*, should survive constitutional attack on First Amendment grounds. Subsections (b) and (c) are more securely grounded in constitutional law, but subsection (a) is only a little less anchored in decisional law.

We hope this information is responsive to your request. If we may be of further assistance, please call.

JOHN R. LUCKEY,
Legislative Attorney, American Law Division.

FOOTNOTES

[1] 496 U.S. 310 (1990).
[2] 491 U.S. 397 (1989).
[3] *See*, 18 U.S. §§641, 661, and 1361.
[4] *Eichman*, supra, 496 U.S., 316 n. 5; *Johnson*, supra, 412 n. 8; *Spence v. Washington*, 418 U.S. 405, 408–409 (1974). See also *R.A.V. v. City of St. Paul*, 112 S.Ct. 2538 (1992) (cross burning on another's property).
[5] 315 U.S. 568 (1942).
[6] *Id.*, at 572.
[7] 395 U.S. 444 (1969).
[8] *Id*, at 447. This development is spelled out in *Cohen v. California*, 403 U.S. 15, 20, 22–23 (1971). *See*, also *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886, 928 (1982); *Hess v. Indiana*, 414 U.S. 105 (1973).
[9] *R.A.V. v. City of St. Paul*, 505 U.S. 377 (1992).
[10] 115 S. Ct. 1624 (1995).

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

(At the request of Mr. DASCHLE, the following statement was ordered to be printed in the RECORD.)

• Mr. KOHL. Mr. President, we all agree that flag burning is reprehensible. After all, hundreds of thousands of Americans have given their lives to protect the principles that our flag represents, and burning the flag offends the memory of those who made that ultimate sacrifice. Acting on this belief, I voted for legislation to protect the flag. Unfortunately, however, our statute was struck down by the Supreme Court.

Although we should protect the flag, we must also approach amendments to the Constitution with great caution. Throughout our 200-year history we have never amended the Bill of Rights—the guardian of the principles and freedoms that our flag represents. During all this time—through a bloody Civil War, two world wars, a Depression, and urban riots—the first amendment has needed no repair.

Mr. President, I have great faith that the American flag is strong enough to withstand the foolish actions of a handful of extremists. The Bill of Rights, however, is much more fragile. If we pass a constitutional amendment to prohibit this behavior—deplorable as it is—sooner or later the Government may prohibit other more legitimate types of expression and protest. So to my mind, protecting our revered symbol means ensuring that we do not infringe upon the freedoms that it represents.

One of the most persuasive arguments against this amendment came from Keith Kruel of Fennimore, WI. A former national commander of the American Legion, he wrote that ''when the flag is not accorded proper consideration under the present flag code, it upsets patriotic Americans. Rightly so. [but] no one ever has, nor can, legislate a patriot.'' I agree.

And do not take my word for it, ask the editorial writers of Wisconsin. Across my home State, from the Milwaukee Journal Sentinel to the Eau Claire Leader-Telegram to the Appleton Post-Crescent to the LaCrosse Tribune, these newspapers firmly believe that a flag desecration amendment is a bad idea. I ask that these editorials be printed in the RECORD at the conclusion of my statement.

In closing, Mr. President, we should all be clear on our opposition to flag burning. But we should also resist this well-intentioned but unwise effort to tinker with the Bill of Rights.

The editorials follow:

[From the Milwaukee Journal Sentinel, June 12, 1995]

FLAG AMENDMENT ILL-ADVISED

Probably nine-tenths of the knuckleheads who get their jollies from burning the American flag or desecrating it in other ways have no idea what freedoms that flag symbolizes. Because these people are stupid as well as ungrateful, they never think about the precious gift they have been given.

The irony is that the American flag stands for, along other things, the freedom to express yourself in dumb and even insulting ways, like burning the flag. This is a freedom literally not conferred on hundreds of millions of people.

A few years ago, several states passed laws that made it illegal to desecrate the flag, but in 1989 the Supreme Court ruled that such statutes violated the Bill of Rights. Congress is now moving to amend the Constitution itself, so that flag desecration laws can be enacted.

That movement is as ill-considered as it is understandable. The Constitution should be amended only reluctantly and rarely, when a genuine threat to our nation emerges and when there is no other way to guard against it.

That is why the founding fathers made it so difficult to revise the Constitution, and why, as a Justice Department spokesman pointed out the other day, the Bill of Rights has not been amended since it was ratified in 1792.

The unpatriotic mischief of adolescent punks is infuriating. But it is not a serious enough act to warrant revision of the nation's charter. The Bill of Rights exists to protect people whose behavior, however repugnant, injures nothing but people's feelings.

Footnotes at end of letter.

The American flag protects even people who burn it; it prevails over both them and their abuse. That is one of the reasons the flag and the nation it stands for are so strong.

[From the Eau Claire Leader-Telegram, June 18, 1995]

LET'S CONCENTRATE ON REAL PROBLEMS

There's no winning for those who oppose a constitutional amendment to outlaw desecration of the American flag.

You might as well be against Mother's Day.

But for several reasons we ought to let this idea die.

Sure, burning the American flag to protest one thing or another is a stupid thing to do. And the few times we've seen someone burn the flag on television, we've never seen the protester follow up by sweeping up the ashes with a broom and dust pan, so it seems there is grounds to nail the protester on a littering charge anyway.

But even if they beat the littering rap, the only thing such protesters prove is their ignorance. Burning a flag doesn't signify anything positive or suggest alternatives to make our nation stronger. It's just an action that indicates you oppose our nation. So what? How do they propose to make it better?

But it's quite a jump from not liking stupidity to tinkering with the U.S. Constitution to make flag-burning illegal. The Constitution has guided us well for more than 200 years, and to amend it in an effort to prohibit flag-burning—which by one estimate occurs only about eight times a year—seems to be an overreaction.

But the most important reasons to stop this proposal are that there are far more important things for Congress and the people to worry about, and that it promotes a mindless nationalism that challenges citizens to ''prove'' their patriotism by endorsing the litmus test in the form of a constitutional amendment.

Politicians without the guts or the brains to solve what really ails this country know that they can fool many voters simply by using the flag as a political prop and making flowery speeches about patriotism, love of country, etc.

We should be more worried about where the flag gets its strength. Instead of focusing on the flag itself, what about the federal deficit (more than $200 billion a year) and the national debt (nearing $5 trillion)? These are far greater threats to Old Glory than some clown with a cigarette lighter at a protest rally.

What a legacy to leave to our children: ''Hey, kids, we've mortgaged your future in the name of special interests and for our convenience, but we've protected the flag with an amendment. Pretty smart, huh?''

What's at work here is a time-tested political practice. That is, if you can't solve the real problems, throw up a diversion to get people thinking and talking about something else.

Paying for health care, environmental protection, defense, education and all the rest are complex issues that bore readers and viewers. So if the real goal is to be re-elected to a job with a six-figure salary, what a better way than to focus on push-button issues like patriotism, the flag, etc.

Burning the American flag won't solve anything, but neither will outlawing burning of the flag while the nation it represents crumbles underneath it.

[From the Appleton Post-Crescent, Oct. 28, 1995]

FLAG-PROTECTION AMENDMENT NOT WHAT IT SEEMS

(By William B. Ketter)

Congress is about to put an asterisk on the First Amendment.

I am talking about the constitutional amendment to ''protect'' the American flag from the kind of free expression that this country was founded on.

It is more commonly called the flag-desecration amendment, and it protects nothing, not the flag, not values and certainly not free speech.

It does represent a test of will that has Congress on the spot with The American Legion, Women's Army Corps, Navy League and every other well-meaning veterans and fraternal organization.

The House in June overwhelmingly passed the amendment. The Senate showdown could come any day now. Sixty-seven Senate votes are needed to send it to the states for ratification. The protect-the-flag partisans are flooding lawmakers with tens of thousands of God-and-motherhood telegrams.

If it is approved, the essence of free political speech will drift from the first time from the First Amendment mooring that gives every citizen a constitutional right to challenge, even cast aspersions on, the icons of government.

The federal government and the 50 states will have wide latitude in determining what desecrates the flag. Given the emotions over this issue, flag-themed soda cans, bumper stickers, or the shirt on your back could be targets of local harassment. Already, there's a town in Minnesota that wants to keep car dealers from flying more than four U.S. flags on their lots.

Yes, this is a Boston Tea Party type of issue even if we don't think of it that way. And yes, few institutions, the press included, seem terribly bothered by it all.

The principal reason for the apathy: The issue has been miscast as a patriotic cause to safeguard the flag against the scruffy likes of Gregory Lee Johnson, and never mind our revered right to free speech.

It is easy to dislike Gregory Lee Johnson. He's the radical protester who doused the American flag with kerosene, then put a match to it in front of the Dallas City Hall during the 1984 Republican National Convention.

He was arrested and convicted and no one cared. Except the U.S. Supreme Court, which ruled in 1989 that the flag-protection law used to prosecute Johnson violated his constitutional right to free expression.

''It was enough to make any American's blood boil,'' says William M. Detweiler, immediate past national commander of The American Legion. ''We cannot allow our proud flag—and our proud nation—to be ripped apart, piece by piece.

Most Americans, myself among them, hate what Johnston did to the flag. From the cradle, we are taught to respect it as a symbol of our unprecedented form of democracy. We grow up saluting it as school children, little leaguers, girl scouts, soldiers, proud citizens.

Beyond that, many of us have family members who died fighting for the exception freedom the flag represents. We don't want it spit at, trampled under foot, burned in protest or in any way defaced.

Yet it is because of that special freedom—including the right to extreme political views—that the Senate should reject the flag amendment.

No nation has a more important history of tolerating dissent, even conduct we have come to genuinely hate, than the United States. The Founding Fathers wanted it that way. They experienced the heavy hand of the British Crown, and saw the right of protest as a vital bulwark against injustice and tyranny. It's what sets America apart from nations that quash citizen protest—and especially flag-burning—nations such as China, North Korea, Vietnam, Iran, Iraq, Cuba.

In other words, any effort to limit liberty is ultimately directed at you. The flag amendment—and the laws that would follow—probably would not prevent extremists from doing violence to the flag. It is attention that the Gregory Lee Johnsons of this world crave, and getting arrested is part of the act.

Furthermore, there aren't a lot of lunkheads like Gregory Lee Johnson. Only four cases of flag burning were reported last year in all of America. And those were prosecuted, with the full authority of existing law and the First Amendment.

How can this be, given the Supreme Court's flag ruling?

Simple. All those cases were prosecuted under other laws prohibiting theft, vandalism or inciting riots.

So to solve a problem that does not exist (when was the last time you remember someone burning a flag?), the proponents of this amendment would chip away at the fundamental freedoms guaranteed to all Americans.

And in case that sounds like a self-interested argument from a First Amendment fundamentalist listen to U.S. Sen. Bob Kerrey of Nebraska, a Vietnam veteran who lost a leg in the war. ''The community's revulsion at those who burn a flag'' Kerrey said, ''is all that we need. It has contained the problem without the government getting involved.''

Indeed, in their effort to protect the flag, the advocates of this amendment do far greater damaged to the principles of liberty for which that flag stands. We need not wrap ourselves in the flag to protect it.

We do need, however, to standing up for the freedom that Old Glory represents and urge the U.S. Senate to turn down the flag amendment.

[From the Wisconsin State Journal, June 14, 1995]

FLAG BURNING AMENDMENT UNPATRIOTIC

Today, Flag Day, is an occasion to celebrate liberty. And one of the best ways you can celebrate liberty is to write your congressman to urge a vote against the proposed constitutional amendment to ban flag burning.

It may seem unpatriotic to stand up for a right to burn the American flag. But the proposed amendment is not about whether it is patriotic to burn a flag. It is about whether it is right to limit the liberties for which our flag flies. A true patriot would answer no.

Consider: It's futile, even counter-productive, to try to require patriotism by law.

In fact, it would inspire greater respect for our nation to refrain from punishing flag burners. As conservative legal scholar Clint Bolick of the Institute for Justice told a House subcommittee, we can lock up flag burners and by doing so make them martyrs, ''or we can demonstrate, by tolerating their expression, the true greatness of our republic.''

Laws to protect the flag would be unworkable.

The proposal now before the House seeks a constitutional amendment to allow Congress and the states to pass laws banning physical desecration of the flag. It would require approval by two-thirds of the House and Senate and three-fourths of the states.

It's called the flag burning amendment because many of its supporters consider burning the flag to be the most egregious form of desecration.

But what counts as desecration of the flag? What if someone desecrated something made up to look like a flag with some flaw, like the wrong number of stars or stripes? Does that count? What if a flag is used in art that some people consider rude or unpatriotic? Does that count as desecration?

The arguments could rage on and on, enriching lawyers and diminishing the nation.

A ban on flag burning would set a dangerous precedent.

The proposed amendment is a reaction to 1989 and 1990 Supreme Court rulings that invalidated federal and state laws banning flag desecration. The court ruled that peaceful flag desecration is symbolic speech, protected by the First Amendment freedom of speech clause.

Supporters of a ban on flag burning argue that burning a flag is not symbolic speech at all but hateful action. But if today's cause is to ban flag burning because it is hateful action, tomorrow's cause may be to ban the display of the Confederate flag because many people consider it to be hateful action. Or to ban the use of racial or sexist comments because they amount to hateful actions. And on and on until we have given up our freedoms because we are intolerant.

The right to protest is central to democracy.

A democracy must protect the right to protest against authority, or it is hardly a democracy. It is plainly undemocratic to take away from dissenters the freedom to protest against authority by peacefully burning or otherwise desecrating a flag as the symbol of that authority.

If the protesters turn violent or if they steal a flag to burn, existing laws can be used to punish them.

Flag burners are not worth a constitutional amendment.

A good rule of thumb about amending the U.S. Constitution is: Think twice, then think twice again. Flag burning is not an issue that merits changing the two-centuries-old blueprint for our democracy.

This nation's founding fathers understood the value of dissent and, moreover, the value of the liberty to dissent. So should we.

[From the La Crosse Tribune, June 7, 1995]

EDITORIAL

The U.S. Supreme Court ruled in a Texas case in 1989 that flag burning is protected by the First Amendment as a form of speech. The court's decision didn't go over very well with friends of Old Glory then, and six years later that ruling still sticks in the craw of many patriots—so much so that constitutional amendments protecting the flag against desecration have picked up 276 cosponsors in the U.S. House of Representatives and 54 in the Senate.

The House Judiciary Committee takes up the amendment today, with a floor vote expected on June 28. The Senate Judiciary Committee tackled a similar amendment on Tuesday.

For two centuries soldiers have given their lives to keep the American flag flying. It is a symbol of freedom and hope for millions. That is what infuses the stars and strips with meaning and inspires the vast majority of Americans to treat it with respect. But to take away the choice in the matter, to make respect for the flag compulsory, diminishes the very freedom represented by the flag.

Do we follow a constitutional amendment banning flag desecration with an amendment requiring everyone to actually sing along when the national anthem is played at sports events? An amendment making attendance at Memorial Day parades compulsory?

Sen. Howell Heflin, D-Ala., argues that the flag unites us and therefore should be protected. But Heflin and like minded amendment supporters are confusing cause and effect. The flag is a symbol of our unity, not the source of it.

Banning flag burning is simply the flip side of the same coin that makes other shows of patriotism compulsory. What are the names of the countries that makes shows of patriotism compulsory? Try China, Iraq. The old Soviet Union.

Coerced respect for the flag isn't respect at all, and an amendment protecting the American flag would actually denigrate that flag.

Allegiance that is voluntary is something beyond price. But allegiance extracted by statute—or, worse yet, but constitutional flat—wouldn't be worth the paper the amendment was drafted on. It is the very fact that the flag is voluntarily honored that makes it a great and powerful symbol.

The possibility of the Balkanization of the American people into bickering special interest groups based on ethnicity or gender or age or class frightens all of us, and it's tempting to try to impose some sort of artificial unity. But can the flag unit us? No. We can be united under the flag, but we can't expect the flag to do the job of uniting us.

We oppose flag burning—or any other show of disrespect for the American flag. There are better ways to communicate dissent than trashing a symbol Americans treasure. But making respect for the flag compulsory would, in the long run, decrease real respect for the flag.

The 104th Congress should put the flag burning issue behind it and move on to the nuts-and-bolts goal it was elected to pursue: a smaller, less intrusive, fiscally responsible federal government. A constitutional amendment protecting the flag runs precisely counter to that goal.

[From the Oshkosh Northwestern, May 28, 1995]

BEWARE TRIVIALIZING OUR CONSTITUTION

It is difficult to come out against anything so sacrosanct as the American flag amendment—difficult but not impossible.

An amendment to protect the flag from desecration is before Congress and has all the lobbying in its favor.

The trouble is, it is an attempt to solve, through the Constitutional amendment process, a problem that really is not a problem.

Flag burning is not rampant. It occurs occasionally; it brings, usually, society's scorn upon the arsonist, and does no one any harm, except the sensitivities of some.

These sensitivities give rise to the effort to abridge the freedom of expression guaranteed by the First Amendment, which has been held by the courts to include expressions of exasperation with government by burning its banner.

At worst, this flag protection is an opening wedge in trimming away at the basic rights of all Americans to criticize its leaders. That right was so highly esteemed by the Founding Fathers that they made free speech virtually absolute.

At best, the flag protection amendment trivializes the Constitution.

That is no small consideration. The Constitution was trivialized once before. The prohibition amendment had no business being made a constitutional chapter. It was not of constitutional stature. It could not have been done by statute alone. Its repeal showed that it was a transitory matter rather than being one of transcendent, eternal concern.

The flag protection amendment is trivial in that flag burning is not always and everywhere a problem. If the amendment succeeds, what else is out there to further trivialize the document?

Must the bald eagle be put under constitutional protection if it is no longer an endangered bird?

This is a ''feel good'' campaign. People feel they accomplish something good by protecting the flag from burning. (Isn't the approved method of disposing of tattered flags to burn them, by the way?)

But it offers about the same protection to flags that the 18th offered to teetotaling.

If someone has a political statement to make and feels strongly enough, he'll do the burning and accept the consequences. The consequences surely will not be draconian enough that flag burning would rank next best thing to a capital offense.

Congress has more pressing thing to do than put time into this amendment.●

Mr. DOLE. Mr. President, was leaders' time reserved?

The PRESIDING OFFICER. The Senator is correct.

DEATH OF HARRY KAUFMAN

Mr. DOLE. Mr. President, last month, two thugs squirted a bottle of flammable liquid into a subway token booth in Brooklyn's Bedford-Stuyvesant neighborhood. They then lit a match, igniting an explosion that blew the token booth apart.

Engulfed in flames, the booth's operator, 50-year-old Harry Kaufman, suffered second- and third-degree burns over nearly 80 percent of his body as well as severe lung injuries. Mr. Kaufman was subsequently taken to the New York Hospital-Cornell Medical Center. The two men who committed this vicious crime continue to remain at large.

The Brooklyn attack closely resembled two scenes depicted in the new move ''The Money Train,'' a Columbia Pictures production starring Woody Harrelson and Wesley Snipes. Since the movie's November 22 debut, there have been a total of seven separate copycat fire attacks on New York City subway token booths.

Yesterday, after a 14-day fight for his life, Harry Kaufman passed away.

I take this opportunity to publicly express my deepest condolences to Stella Kaufman, Harry Kaufman's wife, to their 17-year-old son Adrian, and to the rest of the Kaufman family.

A NEW PARTNERSHIP

Mr. DOLE. Mr. President, when Americans changed the party in control of Congress last November, they also changed the relationship between Capitol Hill and our 50 State capitols.

The Washington, DC-knows-best attitude that was the hallmark of the Democrat Congress has been replaced by a return to the 10th amendment. Paternalism has been replaced by a new partnership between Congress and America's Governors.

One of the most talented of those Governors is William Weld of Massachusetts, who has provided innovative solutions in the areas of health care reform and welfare reform—reducing government spending, and cutting taxes while he was at it.

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

any person within the scope of the above definitions.

The Executive order also prohibits the provision or exportation of services to those areas of the Republic of Bosnia and Herzegovina under the control of Bosnian Serb forces, or to any person for the purpose of any business carried on in those areas, either from the United States or by a United States person. The order also prohibits the entry of any U.S.-flagged vessel, other than a U.S. naval vessel, into the riverine ports of those areas of the Republic of Bosnia and Herzegovina under the control of Bosnian Serb forces. Finally, any transaction by any United States person that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate any of the prohibitions set forth in the order is prohibited. Executive order No. 12934 became effective at 11:59 p.m., e.d.t., on October 25, 1994.

2. The declaration of the national emergency on May 30, 1992, was made pursuant to the authority vested in the President by the Constitution and laws of the United States, including the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*), the National Emergencies Act (50 U.S.C. 1601 *et seq.*), and section 301 of title 3 of the United States Code. The emergency declaration was reported to the Congress on May 30, 1992, pursuant to section 204(b) of the International Emergency Economic Powers Act (50 U.S.C. 1703(b)) and the expansion of that national emergency under the same authorities was reproted to the Congress on October 25, 1994. The additional sanctions set forth in related Executive orders were imposed pursuant to the authority vested in the President by the Constitution and laws of the United States, including the statutes cited above, section 1114 of the Federal Aviation Act (49 U.S.C. App. 1514), and section 5 of the United Nations Participation Act (22 U.S.C. 287c).

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

Treasury's blocking authority as applied to FRY (S&M) subsidiaries and vessels in the United States has been challenged in court. In *Milena Ship Management Company, Ltd.* v. *Newcomb*, 804 F.Supp. 846, 855, and 859 (E.D.L.A. 1992) *aff'd*, 995 F.2d 620 (5th Cir. 1993), *cert. denied*, 114 S.Ct. 877 (1994), involving five ships owned or controlled by FRY (S&M) entities blocked in various U.S. ports, the blocking authority as applied to these vessels was upheld. In *IPT Company, Inc.* v. *United States Department of the Treasury*, No. 92 CIV 5542 (S.D.N.Y. 1994), the district court also upheld the blocking authority as applied to the property of a Yugoslav subsidiary located in the United States, and the case was subsequently settled.

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

5. In accordance with licensing policy and the Regulations, the Office of Foreign Assets Control (FAC) has exercised its authority to license certain specific transactions with respect to the FRY (S&M), which are consistent with U.S. foreign policy and the Security Council sanctions. During the reporting period, FAC has issued 90 specific licenses regarding transactions pertaining to the FRY (S&M) or assets to owns or controls, bringing the total specific licenses issued as of October 13, 1995, to 1,020. Specific licenses have been issued: (1) for payment to U.S. or third country secured creditors, under certain narrowly defined circumstances, for preembargo import and export transactions; (2) for legal representation or advice to the Government of the FRY (S&M) or FRY (S&M)-located or controlled entities; (3) for the liquidation or protection of tangible assets of subsidiaries of FRY (S&M)-located or controlled firms located in the United States; (4) for limited transactions related to FRY (S&M) diplomatic representation in Washington and New York; (5) for patent, trademark, and copyright protection in the FRY (S&M) not involving payment to the FRY (S&M) Government; (6) for certain communications, news media, and travel-related transactions; (7) for the payment of crews' wages, vessel maintenance, and emergency supplies for FRY (S&M)-controlled ships blocked in the United States; (8) for the removal from the FRY (S&M), or protection within the FRY (S&M), of certain property owned and controlled by U.S. entities; (9) to assist the United Nations in its relief operations and the activities of the UNPROFOR; and (10) for payment from funds outside the United States where a third country has licensed the transaction in accordance with U.N. sanctions. Pursuant to U.S. regulations implementing UNSC Resolutions, specific licenses have also been issued to authorize exportation of food, medicine, and supplies intended for humanitarian purposes in the FRY (S&M).

During the period, FAC addressed the status of the unallocated debt of the former Yugoslavia by authorizing nonblocked U.S. creditors under the New Financing Agreement for Yugoslavia (Blocked Debt) to exchange a portion of the Blocked Debt for new debt (bonds) issued by the Republic of Slovenia. The completion of this exchange will mark the transfer to Slovenia of sole liability for a portion of the face value of the $4.2 billion unallocated debt of the FRY (S&M) for which Slovenia, prior to the authorized exchange, was jointly and severally liable. The exchange will relieve Slovenia of the joint and several liability for the remaining unallocated FRY (S&M) debt and pave the way for its entry into international capital markets.

During the past 6 months, FAC has continued to oversee the liquidation of tangible assets of the 15 U.S. subsidiaries of entities organized in the FRY (S&M). Subsequent to the issuance of Executive Order No. 12846, all operating licenses issued for these U.S.-located Serbian or Montenegrin subsidiaries or joint ventures were revoked, and the net proceeds of the liquidation of their assets placed in blocked accounts.

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

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

With the FAC-licensed sales of the M/V Kapetan Martinovic and the M/V Bor, those vessels were removed from the list of blocked FRY (S&M) entities and merchant vessels maintained by FAC. As of October 12, 1995, five additional vessels have been removed from the list of blocked FRY (S&M) entities and merchant vessels maintained by FAC as a result of sales conditions that effectively extinguished any FRY (S&M) interest: the M/V Blue Star, M/V Budva, M/V Bulk Star, M/V Hanuman, and M/V Sumadija. The new owners of several other formerly Yugoslav-owned vessels, which have been sold in other countries, have petitioned

FAC to remove those vessels from the list.

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

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

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

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

8. The actions and polices of the Government of the FRY (S&M), in its involvement in and support for groups attempting to seize and hold territory in the Republics of Croatia and Bosnia and Herzegovina by force and violence, and the actions and policies of the Bosnian Serb forces and the authorities in the areas of Bosnia and Herzegovina under their control, continue to pose an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States. The United States remains committed to a multilateral resolution of the conflict through implementation of the United Nations Security Council resolutions.

I shall continue to exercise the powers at my disposal to apply economic sanctions against the FRY (S&M) and the Bosnian Serb forces, civil authorities, and entities, as long as these measures are appropriate, and will continue to report periodically to the Congress on significant developments pursuant to 50 U.S.C. 1703(c).

WILLIAM J. CLINTON.

THE WHITE HOUSE, *December 8, 1995.*

REPORT ORDERING THE SELECTED RESERVE OF THE ARMED FORCES TO ACTIVE DUTY—MESSAGE FROM THE PRESIDENT RECEIVED DURING THE ADJOURNMENT OF THE SENATE—PM–102

Under the authority of the order of the Senate of January 4, 1995, the Secretary of the Senate on December 8, 1995, received a message from the President of the United States, together with an accompanying report; which was referred to the Committee on Armed Services.

To The Congress of the United States:

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

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

WILLIAM J. CLINTON.

THE WHITE HOUSE, *December 8, 1995.*

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC–1670. A communication from the Director of the Office of Management and Budget, the Executive Office of the President, transmitting, pursuant to law, the report on appropriations legislation within five days of enactment; to the Committee on the Budget.

EC–1671. A communication from the Director of the Office of Management and Budget, the Executive Office of the President, transmitting, pursuant to law, the report on appropriations legislation within five days of enactment; to the Committee on the Budget.

EC–1672. A communication from the Director of the Office of Management and Budget, the Executive Office of the President, transmitting, pursuant to law, the report on appropriations legislation within five days of enactment; to the Committee on the Budget.

EC–1673. A communication from the Director of the Office of Management and Budget, the Executive Office of the President, transmitting, pursuant to law, the report on appropriations legislation within five days of enactment; to the Committee on the Budget.

EC–1674. A communication from the Administrator of the Federal Aviation Administration, transmitting, pursuant to law, the report on the Traffice Alert and Collision Avoidance System for the period July 1 through September 30, 1995; to the Committee on Commerce, Science, and Transportation.

EC–1675. A communication from the Secretary of Transportation, transmitting, pursuant to law, report on the recommendations of the National Academy of Sciences and other qualified organizations relative to environmental and operational safety of tank vessels; to the Committee on Commerce, Science, and Transportation.

EC–1676. A communication from the Deputy Associate Director for Compliance, Royalty Management Program, Minerals Management Service, Department of the Interior, transmitting, pursuant to law, notice of the intention to make refunds of offshore lease revenues where a refund or recoupment is appropriate; to the Committee on Energy and Natural Resources.

EC–1677. A communication from the Deputy Associate Director for Compliance, Royalty Management Program, Minerals Management Service, Department of the Interior, transmitting, pursuant to law, notice of the intention to make refunds of offshore lease revenues where a refund or recoupment is appropriate; to the Committee on Energy and Natural Resources.

EC–1678. A communication from the Deputy Associate Director for Compliance, Royalty Management Program, Minerals Management Service, Department of the Interior, transmitting, pursuant to law, notice of the intention to make refunds of offshore lease revenues where a refund or recoupment is appropriate; to the Committee on Energy and Natural Resources.

EC–1679. A communication from the Deputy Associate Director for Compliance, Royalty Management Program, Minerals Management Service, Department of the Interior, transmitting, pursuant to law, notice of the intention to make refunds of offshore lease revenues where a refund or recoupment is appropriate; to the Committee on Energy and Natural Resources.

EC–1680. A communication from the Administrator of the Department of Health and Human Services, transmitting, pursuant to law, a report relative to the Rural Health Care Transition Grant Program; to the Committee on Finance.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. GRAHAM:

S. 1462. A bill to amend the Agricultural Adjustment Act to provide that imported tomatoes are subject to packing standards contained in marketing orders issued by the

Secretary of Agriculture, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

S. 1463. A bill to amend the Trade Act of 1974 to clarify the definitions of domestic industry and like articles in certain investigations involving perishable agricultural products, and for other purposes; to the Committee on Finance.

By Mr. DOMENICI (for himself and Mr. BINGAMAN):

S. 1464. A bill for the relief of certain former employees of the United States whose firefighting functions were transferred from the Department of Energy to Los Alamos County, New Mexico; to the Committee on Governmental Affairs.

By Mr. HELMS (for himself, Mr. DODD, and Mr. KERRY):

S. 1465. A bill to extend au pair programs; to the Committee on Foreign Relations.

By Mr. MCCAIN (for himself, Mr. BIDEN, and Mr. MACK):

S. 1466. A bill to amend title II of the Social Security Act to provide for increases in the amounts of allowable earnings under the social security earnings limit for individuals who have attained retirement age, and for other purposes; to the Committee on Finance.

By Mr. BURNS (for himself and Mr. BAUCUS):

S. 1467. A bill to authorize the construction of the Fort Peck Rural County Water Supply System, to authorize assistance to the Fort Peck Rural County Water District, Inc., a nonprofit corporation, for the planning, design, and construction of the water supply system, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. HELMS (for himself, Mr. THOMAS, and Mr. MACK):

S.J. Res. 43. A joint resolution expressing the sense of Congress regarding Wei Jingsheng; Gedhun Choekyi Nyima, the next Panchen Lama of Tibet; and the human rights practices of the Government of the People's Republic of China; to the Committee on Foreign Relations.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. DOMENICI (for himself and Mr. BINGAMAN):

S. 1464. A bill for the relief of certain former employees of the United States whose firefighting functions were transferred from the Department of Energy to Los Alamos County, NM; to the Committee on Governmental Affairs.

LOS ALAMOS FIREFIGHTERS LEGISLATION

Mr. DOMENICI. Mr. President, I introduce legislation that will enable the Federal Government to fulfill an outstanding obligation to a small, dedicated group that has committed years of service in the national interest.

In 1989, firefighting responsibilities in Los Alamos, NM, were transferred from the Department of Energy to Los Alamos County. The transfer was part of a larger, continuing effort to divest the Federal Government of functions normally performed by State and local government that the Federal Government has performed in Los Alamos since the Manhattan Engineering District assumed control of all activities at Los Alamos during World War II.

The transfer affected 43 firefighters who, after years of Federal service that for many of them began in Viet Nam, became Los Alamos County employees. At the time, the firefighters were told by the Department of Energy that they would be transferred ''as whole,'' meaning they would lose no benefits. Unfortunately, that did not happen largely due to changes in administration at the Department of Energy and Los Alamos County.

Each firefighter received a severance payment, in accordance with normal practice, that included reimbursement for moneys each had contributed to the Federal retirement system. However, that payment was significantly less than the amount required to purchase service time in the retirement program available to Los Alamos County employees equivalent to their time of Federal service.

The result is straightforward; these firefighters, who continue to perform exactly the same work today as when they were Department of Energy employees, have lost the majority of their retirement because the Federal Government has failed to meet its obligation to transfer them ''as whole.'' These are dedicated workers who continue to provide vital firefighting service to Los Alamos County and the Los Alamos National Laboratory. They should be treated fairly.

The legislation I am introducing today would remedy this unfairness. It would direct the Federal Government pay to the firefighters current State retirement program a sum that when combined with the severance payment made to the firefighters upon their transfer would provide the firefighters with a service credit in the State program equivalent to their Federal time of service. The result would be that the firefighters retirement would not be impacted by the change from Federal to county status.

Mr. President, there is some urgency to this matter. A number of these firefighters are approaching retirement age. Without the benefits of this legislation, they will be entitle to almost no retirement benefits when they reach the mandatory retirement age for firefighters.

I hope my colleagues will give prompt and considered attention to this matter.

● Mr. BINGAMAN. Mr. President, I am pleased to join with my friend and colleague, the senior Senator from New Mexico, Senator DOMENICI, in introducing legislation today that will fairly compensate a group of dedicated former Federal employees for the loss of retirement benefits that they experienced as a result of the transfer of their duties from the Department of Energy to the County of Los Alamos, NM.

Mr. President, in 1989, the responsibility for the Los Alamos Fire Department, which jointly serves the Los Alamos National Laboratories and Los Alamos County municipality, was transferred from the Department of Energy to the county. As a result of the transfer, some of these firefighters lost more than $20,000 in retirement funds that they had accrued with the Federal Government. And, as a result of the transfer, these individuals, who have served an average of 15 years with the Department of Energy, no longer have retirement benefits. Clearly, this is a situation that must be remedied as soon as possible.

Mr. President, with the support of Senator DOMENICI I am sure that we will finally be able to provide these firefighters with the compensation for lost retirement benefits they have incurred as a result of the transfer of their responsibilities from the Federal Government to the State of New Mexico and I look forward to working for the prompt consideration and passage of this legislation.●

By Mr. BURNS (for himself and Mr. BAUCUS):

S. 1467. A bill to authorize the construction of the Fort Peck Rural County Water Supply System, to authorize assistance to the Fort Peck Rural County Water District, Inc., a nonprofit corporation, for the planning, design, and construction of the water supply system, and for other purposes; to the Committee on Energy and Natural Resources.

THE FORT PECK RURAL COUNTY WATER SUPPLY SYSTEM ACT OF 1995

● Mr. BURNS. Mr. President, in July; I introduced S. 1154, a bill to authorize construction of the Fort Peck Rural County Water Supply System in Valley County, MT. Since the introduction of this bill, my staff has been meeting with the Senate Energy Committee staff concerning the bill and its provisions. In addition, I have had discussions with the other members of the Montana congressional delegation about this urgent situation under which hundreds of people must haul their water supplies for miles because of the contamination of the ground water. Based on all of these discussions, the legislation has been redrafted for reintroduction today to reflect the comments of the Energy Committee staff. I want to thank Chairman MURKOWSKI and his staff for their help in streamlining this bill. I am pleased to be joined in the sponsorship of this bill by my colleague, Senator BAUCUS. I appreciated his assistance with this measure. An identical bill will also be introduced in the House of Representatives by Representative PAT WILLIAMS. The Montana delegation is unified in our efforts to obtain congressional authorization for this rural water system to help this depressed area of our State. We look forward to working with Senator MURKOWSKI to move this bill to hearings and a markup.

Mr. President, I ask unanimous consent that the text of this bill be printed in the RECORD.

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

S. 1476

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Fort Peck Rural County Water Supply System Act of 1995''.

SEC. 2. DEFINITIONS.

For the purposes of this Act:

(1) CONSTRUCTION.—The term ''construction'' means such activities associated with the actual development or construction of facilities as are initiated on execution of contracts for construction.

(2) DISTRICT.—The term ''District'' means the Fort Peck Rural County Water District, Inc., a non-profit corporation in Montana.

(3) FEASIBILITY STUDY.—The term ''feasibility study'' means the study entitled ''Final Engineering Report and Alternative Evaluation for the Fort Peck Rural County Water District'', dated September 1994.

(4) PLANNING.—The term ''planning'' means activities such as data collection, evaluation, design, and other associated preconstruction activities required prior to the execution of contracts for construction.

(5) SECRETARY.—The term ''Secretary'' means the Secretary of the Interior.

(6) WATER SUPPLY SYSTEM.—The term ''water supply system'' means the Fort Peck Rural County Water Supply System, to be established and operated substantially in accordance with the feasibility study.

SEC. 3. FEDERAL ASSISTANCE FOR WATER SUPPLY SYSTEM.

(a) IN GENERAL.—Upon request of the District, the Secretary shall enter into a cooperative agreement with the District for the planning, design, and construction by the District of the water supply system.

(b) SERVICE AREA.—The water supply system shall provide for safe and adequate rural water supplies under the jurisdiction of the District in Valley County, northeastern Montana (as described in the feasibility study).

(c) AMOUNT OF FEDERAL CONTRIBUTION.—

(1) IN GENERAL.—Subject to paragraph (3), under the cooperative agreement, the Secretary shall pay the Federal share of—

(A) costs associated with the planning, design, and construction of the water supply system (as identified in the feasibility study); and

(B) such sums as are necessary to defray increases in the budget.

(2) FEDERAL SHARE.—The Federal share referred to in paragraph (a) shall be 80 percent and shall not be reimbursable.

(3) TOTAL.—The amount of Federal funds made available under the cooperative agreement shall not exceed the amount of funds authorized to be appropriated under section 4.

(4) LIMITATIONS.—Not more than 5 percent of the amount of Federal funds made available to the Secretary under section 4 may be used by the Secretary for activities associated with—

(A) compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); and

(B) oversight of the planning, design, and construction by the District of the water supply system.

SEC. 4. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to carry out this Act $5,800,000, to remain available until expended. The funds authorized to be appropriated may be increased or decreased by such amounts as are justified by reason of ordinary fluctuations in development costs incurred after October 1, 1994, as indicated by engineering cost indices applicable to the type of construction project authorized under this Act. ●

● Mr. BAUCUS. Mr. President, today, I am pleased to join Senator BURNS in introducing legislation to ensure that the over 500 people who live near Fort Peck Reservoir have a safe, dependable domestic water supply. Currently those who live adjacent to one of the largest bodies of water ever developed by the Federal Government in the West, the Fort Peck Reservoir, are forced to travel many miles several times a week to fill tanks and barrels for their domestic water use.

This bill will authorize the development of a rural municipal water system for the residents of the Fort Peck Rural Water District in northeastern Montana. The project will tap into Fort Peck Reservoir to construct a safe and reliable drinking system for both municipal and agricultural purposes. It will also enable this scenic area of Montana to attract economic development which has been stifled due to the lack of water.

I propose that this project be a partnership between the Federal Government, the State of Montana, and local interests. The State and local groups will contribute 20 percent of the cost of the project's completion. A needs assessment and feasibility study conducted by the Bureau of Reclamation [BOR] has completed a needs assessment and feasibility study that estimates the total Federal expenditure will be less than $6 million.

If we can afford to spend millions of dollars developing domestic water supplies in other nations around the world, we can and should be able to do the same for Montanans.

I urge the committee to take prompt action on this critical measure and will work toward expeditious passage through the full Senate.●

ADDITIONAL COSPONSORS

S. 413

At the request of Mr. DASCHLE, the name of the Senator from Michigan [Mr. LEVIN] was added as a cosponsor of S. 413, a bill to amend the Fair Labor Standards Act of 1938 to increase the minimum wage rate under such Act, and for other purposes.

S. 704

At the request of Mr. SIMON, the names of the Senator from North Dakota [Mr. DORGAN] and the Senator from New Mexico [Mr. BINGAMAN] were added as cosponsors of S. 704, a bill to establish the Gambling Impact Study Commission.

S. 1028

At the request of Mrs. KASSEBAUM, the names of the Senator from Mississippi [Mr. COCHRAN] and the Senator from South Carolina [Mr. HOLLINGS] were added as cosponsors of S. 1028, a bill to provide increased access to health care benefits, to provide increased portability of health care benefits, to provide increased security of health care benefits, to increase the purchasing power of individuals and small employers, and for other purposes.

S. 1200

At the request of Ms. SNOWE, the name of the Senator from Wisconsin [Mr. KOHL] was added as a cosponsor of S. 1200, a bill to establish and implement efforts to eliminate restrictions on the enclaved people of Cyprus.

S. 1224

At the request of Mr. GRASSLEY, the name of the Senator from Maine [Mr. COHEN] was added as a cosponsor of S. 1224, a bill to amend subchapter IV of chapter 5 of title 5, United States Code, relating to alternative means of dispute resolution in the administrative process, and for other purposes.

S. 1228

At the request of Mr. D'AMATO, the names of the Senator from Illinois [Ms. MOSELEY-BRAUN] and the Senator from Washington [Mrs. MURRAY] were added as cosponsors of S. 1228, a bill to impose sanctions on foreign persons exporting petroleum products, natural gas, or related technology to Iran.

S. 1296

At the request of Mr. HATCH, the name of the Senator from Nebraska [Mr. EXON] was added as a cosponsor of S. 1296, a bill to amend the Employee Retirement Income Security Act of 1974 to clarify the treatment of a qualified football coaches plan.

SENATE CONCURRENT RESOLUTION 11

At the request of Ms. SNOWE, the name of the Senator from New Hampshire [Mr. SMITH] was added as a cosponsor of Senate Concurrent Resolution 11, a concurrent resolution supporting a resolution to the long-standing dispute regarding Cyprus.

AMENDMENTS SUBMITTED

THE AMERICAN FLAG CONSTITUTIONAL AMENDMENT OF 1995

BIDEN AMENDMENT NO. 3093

Mr. BIDEN proposed an amendment to the joint resolution (S.J. Res. 31) proposing an amendment to the Constitution of the United States to grant Congress and the States the power to prohibit the physical desecration of the flag of the United States; as follows:

Strike all after the resolving clause and insert the following: That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution if ratified by the legislatures of three-fourths of the several States within seven years after its submission to the States for ratification:

''ARTICLE —

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

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

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

''SECTION 2. As used in this article, the term 'flag of the United States' means any

flag of the United States adopted by Congress by law, or any part thereof, made of any substance, of any size, in a form that is commonly displayed.

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

HATCH (AND OTHERS) AMENDMENT NO. 3094

Mr. HATCH (for himself, Mr. HEFLIN, and Mrs. FEINSTEIN) proposed an amendment to the joint resolution (S.J. Res. 31) supra; as follows:

Strike all after the resolving clause and insert the following: That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution if ratified by the legislatures of three-fourths of the several States within seven years after its submission to the States for ratification:

''ARTICLE —

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

HOLLINGS AMENDMENTS NOS. 3095–3096

Mr. HOLLINGS proposed two amendments to the joint resolution (S.J. Res. 31) supra; as follows:

AMENDMENT NO. 3095

After the first article add the following:

''ARTICLE

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

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

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

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

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

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

''SECTION 7. Total receipts shall include all receipts of the United States government except those derived from borrowing. Total outlays shall include all outlays of the United States government except those for repayment of debt principal. The receipts (including attributable interest) and outlays of the Federal Old-Age and Survivors Insurance Trust Fund and Federal Disability Insurance Trust Fund (as and if modified to preserve the solvency of the funds) used to provide old age, survivors, and disabilities benefits shall not be counted as receipts or outlays for the purpose of this article.

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

AMENDMENT NO. 3096

After the first article add the following:

''ARTICLE

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

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

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

''SECTION 4. Congress shall have power to implement and enforce this article by appropriate legislation.''.

MCCONNELL (AND OTHERS) AMENDMENT NO. 3097

Mr. MCCONNELL (for himself, Mr. BENNETT, Mr. DORGAN, and Mr. BUMPERS) proposed an amendment to the joint resolution (S.J. Res. 31) supra; as follows:

Strike all after the resolving clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Flag Protection and Free Speech Act of 1995''.

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—The Congress finds that—

(1) the flag of the United States is a unique symbol of national unity and represents the values of liberty, justice, and equality that make this Nation an example of freedom unmatched throughout the world.

(2) the Bill of Rights is a guarantee of those freedoms and should not be amended in a manner that could be interpreted to restrict freedom, a course that is regularly resorted to by authoritarian governments which fear freedom and not by free and democratic nations;

(3) abuse of the flag of the United States causes more than pain and distress to the overwhelming majority of the American people and may amount to fighting words or a direct threat to the physical and emotional well-being of individuals at whom the threat is targeted; and

(4) destruction of the flag of the United States can be intended to incite a violent response rather than make a political statement and such conduct is outside the protections afforded by the first amendment to the United States Constitution.

(b) PURPOSE.—It is the purpose of this Act to provide the maximum protection against the use of the flag of the United States to promote violence while respecting the liberties that it symbolizes.

SEC. 3. PROTECTION OF THE FLAG OF THE UNITED STATES AGAINST USE FOR PROMOTING VIOLENCE.

(a) IN GENERAL.—Section 700 of title 18, United States Code, is amended to read as follows:

''§ 700. Incitement; damage or destruction of property involving the flag of the United States

''(a) ACTIONS PROMOTING VIOLENCE.—Any person who destroys or damages a flag of the United States with the primary purpose and intent to incite or produce imminent violence or a breach of the peace, and in circumstances where the person knows it is reasonably likely to produce imminent violence or a breach of the peace, shall be fined not more than $100,000 or imprisoned not more than 1 year, or both.

''(b) DAMAGING A FLAG BELONGING TO THE UNITED STATES.—Any person who steals or knowingly converts to his or her use, or to the use of another, a flag of the United States belonging to the United States and intentionally destroys or damages that flag shall be fined not more than $250,000 or imprisoned not more than 2 years, or both.

''(c) DAMAGING A FLAG OF ANOTHER ON FEDERAL LAND.—Any person who, within any lands reserved for the use of the United States, or under the exclusive or concurrent jurisdiction of the United States, steals or knowingly converts to his or her use, or to the use of another, a flag of the United States belonging to another person, and intentionally destroys or damages that flag shall be fined not more than $250,000 or imprisoned not more than 2 years, or both.

''(d) CONSTRUCTION.—Nothing in this section shall be construed to indicate an intent on the part of Congress to deprive any State, territory or possession of the United States, or the Commonwealth of Puerto Rico of jurisdiction over any offense over which it would have jurisdiction in the absence of this section.

''(e) DEFINITION.—As used in this section, the term 'flag of the United States' means any flag of the United States, or any part thereof, made of any substance, in any size, in a form that is commonly displayed as a flag and would be taken to be a flag by the reasonable observer.''.

(b) CLERICAL AMENDMENT.—The table of sections for chapter 33 of title 18, United States Code, is amended by striking the item relating to section 700 and inserting the following new item:

''700. Incitement; damage or destruction of property involving the flag of the United States.''.

ADDITIONAL STATEMENTS

SENATE HOMEPAGE RATED TOP 5 PERCENT

• Mr. WARNER. Mr. President, in October of this year I announced the Senate presence on the World Wide Web. Today I am pleased to announce the Senate's Homepage on the World Wide Web has been rated among the top 5 percent of all Web sites on the Internet by an independent group. This group, Point Survey, called the Senate's Web presentation ''the best place to learn about how the Senate really works'' and call it ''a valuable site.''

The Senate Homepage is proving to be a tool that allows citizens to better understand the constitutional and historical role of this institution, and its underlying responsibilities within our society.

Again I would like to acknowledge the hard work of Howard O. Greene, Senate Sergeant at Arms; Kelly D. Johnston, Secretary of the Senate; and

Paul D. Steel, director of Information Systems and Technology, Committee on Rules and Administration for making this effort a success.●

PRESIDENT ROBINSON'S ADDRESS ON HUMAN RIGHTS

● Mr. KENNEDY. Mr. President, yesterday was International Human Rights Day, a day to mark how far the world has come toward respect for human rights, and also a day to reflect on how far we have to go.

In October, President Mary Robinson of Ireland gave an address at Yale Law School in which she discussed the often inadequate response to extreme human rights crises around the world. She spoke of the universal acceptance of the key principles of the international human rights movement and the value of activities by the United Nations and regional organizations which set human rights standards. Having recently returned from Rwanda and Zaire, she poignantly described the gross human rights violations there and the failure of the world to make an adequate response. At the end of her address, she notes that these basic principles of human rights are also at stake in Bosnia.

When President Clinton visited Ireland 10 days ago, he invited President Robinson to the United States for a state visit in June 1996. I look forward to her visit, and I ask that her address at Yale be printed in the RECORD.

The address follows:

THE NEED TO HONOUR DEVELOPMENT HUMAN RIGHTS COMMITMENTS

SPEECH BY PRESIDENT MARY ROBINSON

It is an enormous pleasure to be here this evening. I recall when I was studying law at a place just outside Boston in the late '60s, this institution was referred to as ''that other place in New Haven''. The compliment implied in not naming that other place naturally whetted my interest, but this is the first opportunity I have had to visit. I am greatly honoured to be here as the 1995 Sherril lecturer.

The title of my address this evening—the need to honour developing human rights commitments—has been carefully chosen to provide me with an opportunity to comment on the state of our commitment at the end of the century.

I use the term ''honour'' as opposed to ''compliance'' or ''conformity'' because the lives and integrity of human beings are at stake and because it calls on our notions of dignity and moral obligation. The word ''commitment'' has been chosen because it goes further than both legal or moral obligation—while eccompassing both. It also connotes the idea of being ''committed'' to a great cause at a higher level of obligation, as well as a preparedness to take steps to promote and further that cause, without interrogating the legal necessity or obligation to do so. In the area of human rights one can find no greater elucidation of the meaning of ''commitment'' than in the Preamble to the Universal Declaration of Human Rights. Lastly, I am conscious that our human rights commitments are dynamic and not static. They are constantly evolving and developing. At the end of this millennium the honouring of developing human rights commitments, to the best of our abilities and resources, is a first order principle of national and international life.

Yet we are all aware that major problems persist. Torture, inhuman prison conditions, unfair trials, and famine have not been eradicated although we take a certain pride in the institutions and procedures that we have set up to deal with them. Ethnic cleansing and the daily spectacle of civilian casualties in Sarajevo remind us that the evils of the past cast a long shadow. In a real sense the World Conference on Womens' Rights in Beijing was all about the failure to honour our commitments to women, particularly in the areas of protection against violence and sexual abuse.

We do not have cause for satisfaction. The essential theme of my remarks, having returned a few days ago from Rwanda, is that we should reflect even more on our political commitment to invest our human rights mission with the resources that match the strength of our beliefs, and that our failure to do so—when confronted with situations such as that in Rwanda which cry out for a more committed, more integrated and more resourced response—compromises our achievements, blunts our sensitivities to situations where gross violations are taking place and diminishes our capacity to transmit these values meaningfully to succeeding generations. In other words, acquiescence to a low level of response is an affront to the principle of the universality of human rights.

As you will have gathered, I have chosen this title with great anxiety—the anxiety, firstly, of a lawyer confronted by the contradictions between promise and performance. The anxiety, secondly, of a Head of State returning from a visit to Rwanda and Zaire, who has been exposed in the literal sense of that term, and for the second time, to the terrible humanitarian aftermath of genocide and its accompanying social, political and economic disintegration. A witness also to the continued inability of the international community to rouse itself sufficiently to bring greater hope and promise to that land of despair and tragedy. The anxiety, lastly, of a witness left speechless and fumbling for the correct and appropriate response in the face of our own inadequacies as a community of human beings when faced, eyeball to eyeball, with human disaster on such an overwhelming scale.

The contradiction, witnessed painfully in Rwanda, between, our lofty human rights values on the one hand, and the pressure of reality on the other, provokes a natural and human response. I hear the words ''Never again''—the call that became the 'leitmotif' for the development of human rights this century—and am deeply dismayed and angered at the human capacity for self-delusion.

But this despair should not lead us to be distracted from the real advances that have been made, at both the regional and the universal level, in the protection and promotion of human rights and in the central position that the concept of human rights now occupies in the world stage.

In a very short space of time three key ideas which underpin the entire international human rights movement have come to be accepted universally. They are all connected to what can be called the principle of universality.

First, that countries can no longer say that how they treat their inhabitants is solely their own business. The concept of human rights has torn down (though not completely destroyed) the sometimes oppressive veil of domestic jurisdiction. The role of the media in showing us the dramatic pictures of civilians being cut down in Sarajevo, of the famine in Somalia or of the genocide in Rwanda, has contributed immeasurably to strengthening this development. The global village has highlighted our global responsibilities.

Second, that the effective protection of human rights is indissociably linked to international peace and security. Internal disorder, civil war, heightened regional and international tension can in our recent history, be causally related to violations of human or minority rights. Respect for human rights is thus essential for genuine peace.

Third, that human rights are universal and indivisible. The principle of universality of human rights was asserted by the Universal Declaration of Human Rights. It is the central pillar on which all else rests and has come under increasing attack over the last decade under the guise of ''regional particularities''. To the great credit of the World Conference on Human Rights, the principle that the protection of human rights is a duty for all states, irrespective of their political, economical or cultural system, was emphatically re-affirmed. Let me quote from Paragraph 3 of the *Vienna Declaration and Programme of Action*, adopted by consensus by the member states of the United Nations:

''All human rights are universal, indivisible and interdependent and inter-related. The international community must treat human rights globally in a fair and equal manner, on the same footing and with the same emphasis.''

Side by side with the development of what I have called the principle of universality stand the vital standard-setting activities of the United Nations and regional bodies such as the Council of Europe, the Organisation of American States and the Organisation of African Unity. The catalogue of human rights and freedoms set out *inter alia* in the United Nations Covenants, the European Convention on Human Rights, the American Convention on Human Rights, the African Charter of Human and People's Rights and other major human rights treaties form the central core of a corpus of universal human rights standards encompassing both civil and political as well as social, economic and cultural rights.

There are several remarkable features about standard-setting activities which merit being highlighted in an era where the emphasis—quite properly—is on enforcement and effectiveness.

The first is that the relevant treaty standards not only define the States' international obligations to its inhabitants and to the international community at large but also directly impact on the content and quality of national law. In many countries these standards have the force of law and can be enforced directly through local courts. Indeed, some of the most important principles, for example the prohibition against torture and slavery, have become part of the customary law of nations. International norms have also become an essential vade-mecum for NGO's, providing them with a focused set of standards to guide them in their work and judgment. In these different ways, the specificity of international human rights law can exercise a vitally important influence on national arrangements and can lead to an improvement in people's lives. I believe that the role human rights law has played, and continues to play, in shaping the legislative agendas of the new democracies in eastern and central Europe, not to mention the new South Africa, cannot be underestimated. The authoritative interpretation of these standards by the European and American Courts of Human Rights and by other treaty bodies, adds a further important dimension to the effectiveness of this process.

My second observation is central to the theme of developing human rights commitments. Standard-setting, regionally and universally, is a continuous on-going process. The UN Torture Convention and the Convention on the Rights of the Child are examples of the developing nature of the law. But regard must also be had to the numerous and increasingly influential non-treaty standards embodied in instruments such as the Standard Minimum Rules for the Treatment of Prisoners, the Body of Principles for the Protection of All Persons under any form of Detention or Imprisonment or the Declaration on the Elimination of Violence against Women.

However it seems clear that it is in responding to the most severe and pressing human rights problems that much progress needs to be made. Can there be any doubt that the credibility of the international community's attachment to the cause of human rights is intimately bound up with its ability to respond effectively to situations where human rights are being grossly violated? The Secretary-General of the United Nations recognized this in his 1992 report on the work of the UN when he observed that while the UN was responding adequately to ''normal situations'' it had not been able to act effectively in the area of massive human rights violations.

We seem to have created for ourselves the following paradox. The human rights developments that have taken place since the end of the Second World War have led to the creation of international courts of human rights to enforce state obligations, to important standard-setting activities by the UN and regional organisations, to the creation of teams of special rapporteurs to examine disappearances, torture, political executions or situations in particular countries. We have recently created a High Commissioner for Human Rights to be the focal point for human rights action in the UN system. All these positive advancements are in a sense, directly related to the political commitments made following upon gross violations of human rights earlier this century.

Yet the institutions we have created appear to be stricken with inertia and paralysis when confronted with the reoccurrence of the very evils that have led to their foundation. Of course, we cannot stop wars and we may be unable to foresee or forestall outbreaks of violence on a massive scale. And there will always be countries in the world where human rights are trampled underfoot. But doesn't honouring the commitment require us to respond to this unacceptable paradox and to the deep international concern about gross violations? Does it not require us to assume collective responsibility and to develop institutions and processes to anticipate, deter, prevent and terminate gross human rights violations?

It is in our response to these questions that future generations will determine whether our great treaties were merely splendid baubles, worthless pieces of paper or genuine commitments that we sought valiantly to honour.

Central to this concern is the possibility of taking preventive action through the effective operation of early-warning devices. But alarm bells must be listened to. In the case of Rwanda they were loudly rung by the NGO community and by the Special Rapporteur for Extrajudicial, Summary or Arbitrary Executions in his reports prior to the Rwanda genocide in April 1994.

It is difficult to speak of the situation in Rwanda today with restraint and without anger—the more so against a background of what happened there and how the world responded. Could the international community not have done more? Could we not do more today? Has the United Nations honoured its human rights vocation? Has the international community, behind the persona of the United Nations, honoured its human rights commitments?

I ask these questions because my own sense of justice has been outraged by what I have witnessed there in a manner which defies my powers of articulation and explanation. The facts plead for themselves.

A year ago I visited this small country in the aftermath of the genocide of up to a million people and the breakdown of civil society. The structures of government had been destroyed by the killings and the massive exodus which followed. In the capital, Kigali, I saw appalling evidence of that genocide. In many churches thousands who had fled for sanctuary were slaughtered.

Returning a year later I noted courageous progress by the Rwandan Government in rebuilding their society, and appreciated the access they gave me to the places I felt I must see. On this visit I travelled to Nyarabuye, near the Tanzanian border, where a hilltop church and school complex have become a national place of commemoration. The bodies of several thousand men are in mass graves outside, where they had tried to defend the women, the children, the old people. Inside I was shown the heaped, rotted bodies and decayed clothes of those women and children in room after room of dark school buildings.

In witnessing these conditions my mind has been drawn back inexorably to the Irish famine of the last century. I recalled the images given voice by the Irish poet and Nobel Laureate, Seamus Heaney, in his poem ''For the Commander of the Eliza''. A routine boat patrol off the coast of West Mayo tacks and hails a row boat crew in Gaelic:

''. . . O my sweet Christ,
we saw piled in the bottom of their craft
six grown men with gaping mouths and eyes
bursting the sockets like spring onions in drills
six wrecks of bone and pallid, tautened skin,''

On my first visit a year ago the prison population was under 9,000. Now it is over 53,000, in conditions which have been described by NGO's as a humanitarian nightmare. I visited one of the prisons, in the southern city of Butare. It was built for 1,500 inmates, but was home to 6,276 men, 216 women, and 102 youths. Nearly all—except the 56 infants imprisoned with their mothers—are awaiting trial on charges of complicity in last year's genocide. Flying in by helicopter we saw prisoners perched on the tin roofs surrounding a central courtyard. They live there day and night. The courtyard is full. Every building is jammed with inmates, so that there is no room to lie down. Walking through the prison with the Director and a Red Cross official there was no sign of serious malnourishment or dehydration, but the overcrowding is so severe—in some prisons four per square meter—that some suffer from oedema and gangrene. Although there are no exact figures, it has been estimated that there are three hundred deaths every week. In Rwanda, there is a sense among some that only death can bring release from captivity. No trials, national or international, have yet taken place. A Commission set up to screen detainees has led to an insignificant number of releases. The International Committee of the Red Cross—to whom I pay warm tribute—are simply overwhelmed. Its field workers provide food, water, and some health care to these 53,000 detainees held in numerous detention centres.

The human rights situation in Rwanda today is a complex and inter-related one. The principal human rights problems are: arbitrary arrest on the basis of accusation, arbitrary detention with no court process, inhumane conditions of detention, and impunity for past human rights violations. Other violations occur on a lesser scale; they include torture and arbitrary killings.

There have been two particular human rights initiatives in response to the scale of this problem: an International Tribunal to try the main perpetrators of the genocide and a human rights field operation under the High Commissioner for Human Rights. The inadequacies of both initiatives show all too clearly our failure to understand the fundamental necessity to integrate a resourced human rights response with the peacekeeping role and the humanitarian relief.

Following my visit last year I urged upon all Heads of State the importance of establishing the International Tribunal without delay and beginning the healing process through prosecutions of the ringleaders. It was approved by Security Council resolution last November but one year later there has not been a single indictment, although it is hoped to have the first prosecutions before the end of this year or early next year. When I met the Deputy Prosecutor in Kigali last week he confirmed that the problem was lack of resources.

The Human Rights Field Operation in Rwanda was entrusted by the UN system and by the Government of Rwanda with the following integrated mandate: (a) to carry out investigations into violations of human rights and humanitarian law; (b) to monitor the ongoing human rights situation and through its presence, prevent future violations; (c) to co-operate with other international agencies in re-establishing confidence, and thus, to facilitate the return of refugees and displaced persons and the rebuilding of civic society; and (d) to implement programmes of technical co-operation in the field of human rights, particularly in the area of administration of justice as well as of human rights education.

This is a uniquely proactive mandate. But speaking to field officers on the ground I learned of their great frustration in seeking to implement it. Lack of financial resources means that there has been inadequacy in the logistics, in the planning, in the administrative and operational professionalism. Those who know about human rights, who have creative ideas about addressing them, are without a budget for such projects. I am told that what UNAMIR spends in a week, or what is spent in the refugee camps in a week, is more than the human rights budget for a year. The development of a human rights culture is a complex undertaking, especially in post human rights disaster situations. The UN took an important step by creating the human rights field operation. But it needs to go further to build up a corps of professional and creative agents of social change, properly deployed and supported, who have access to the funds and flexibility needed to address effectively human rights problems.

In the context of Rwanda I can see more clearly now how broad based and varied the needs are: whether it is resources to develop an infrastructure for the supreme court judges who have been appointed there within the last few days, or the provision of human rights materials and training for local soldiers and police, or the production of public information campaigns relative to human rights in co-operation with local human rights N.G.O.'s and womens groups, there is above all the challenge to react in a timely and effective fashion to support movement in the direction of compliance with human rights.

I am convinced we have the legal standards, the expertise, the necessary experience and the resources to draw upon in order to honour our commitments. The peace-building operations in Namibia, El Salvador,

Cambodia and Haiti and the deployment of trained human rights monitors there have shown this to be the case. Can we justify the lack of commitment to play an active and properly resourced role in helping to reconstruct and redevelop Rwanda?

Tragically the same questions arise when we consider the fate of up to two million refugees, many of whom had participated in acts of genocide, living outside Rwanda's borders in camps in Zaire and Tanzania, of whom more than 50,000 died last year of cholera, dysentery and dehydration. Their continued presence in these countries has transformed the Rwandan problem into a regional crisis which could deteriorate, with unthinkable consequences, at any moment. Yet, apart from bouts of forced repatriation in August 1995, voluntary repatriation has been limited and vulnerable to events in Rwanda. Refugees are afraid to return, many of them fear being accused of having participated in genocide by those who have recently occupied their properties. The apprehension of reprisal killings, the massacre in Kibeho in which thousands of internally displaced persons were killed, the mass arrests, inhuman prison conditions, the lack of an effective judicial system and the control exercised by camp leaders though intimidation and hate propaganda—are all factors which have effectively impeded the process of voluntary repatriation.

An added and poisonous complication is that mixed in which the civilian refugee population are some 20,000 Hutu soldiers and 50,000 militia who are believed to have regrouped and rebuilt their military infrastructure. They have been accused by NGO's of diverting humanitarian aid and effectively holding the refugees hostage. Calls have been made, in an effort to break in logjam, to remove weapons from the camps and to isolate those responsible for incitement to violence and hatred.

The refugee situation is intimately bound up with developments inside Rwanda. The policy of voluntary repatriation can only be implemented when conditions inside Rwanda have sufficiently improved. In a climate where detention, on the basis of finger-pointing only, is perceived as the equivalent of a death sentence, deadlock is inevitable. We should understand therefore that assistance given in helping Rwanda to rebuild its institutions and restore justice and the rule of law is a humanitarian investment which will contribute to break the refugee deadlock, rescue the children from the shadow of the machette and the horrors of genocide. In doing so, to lessen regional tensions and lay the basis for the future.

Should we not listen carefully to those members of the NGO community on the ground who have been telling us, patiently but persistently for many months now, that if more assistance is not given by the international community to managing the refugee crisis by taking appropriate measures, both within and beyond Rwanda's frontiers, a further human disaster will ensue?

I have mentioned earlier that the Vienna Declaration has re-affirmed the vital principle of universality. At the World Conference we had an extraordinary opportunity to evaluate the legal and political structures underpinning our human rights commitments. Rwanda has put to the test our capacity to honour those commitments with the structures and processes we have developed. I fear that we are floundering. Universality has been described as an unblinkered view with no dead angles. But in failing to honour our commitments are we not damaging the very principle of universality? Are we not permitting ourselves a dead angle? And if we so permit, what is the value and worth the principle afterwards? And how will we be judged by succeeding generations if we stand idly by?

In his address on the occasion of the opening of the new Human Rights Building in Strasbourg, Václaving Havel referred to the war that was raging in Bosnia. He made the point—uncomfortably on such a festive occasion—that while we were all watching helplessly, waiting to see who would win, we had completely forgotten that what was happening just a few hundred miles away from the peaceful plains of Alsace was not just a war between the Serbs and others. It was a war for our own future—it was a war that was being waged against us all, against human rights and against the coexistence of people of different nationalities or religious beliefs. It was a war against meaningful human coexistence based on the universality of human rights. As he put it, it was an attack of the darkest past on a decent future, an attack of evil on the moral order.

As usual his perception is unerring. What happened in Bosnia was a conscious assault on the universal human rights ideal. Rwanda is the same type of assault because the genocide was targeted at destroying the agreed political accommodation of the Arusha Accord. We must not think of it as just another tribal war. We cannot distance ourselves from what is happening in the prisons in Rwanda or in the refugee camps. We have stood by and witnessed a genocide of a million people followed by the fastest refugee exodus in recent history. What is happening today in Rwanda is our problem because it interrogates and tests the mettle of our strongest-held convictions. Our capacity to react to this human tragedy is a significant challenge to our commitments to human rights at the end of the century. It is not too late to honour them.●

SECRETARY JESSE BROWN

● Mr. ROBB. Mr. President, I rise today to express my admiration and respect for Secretary Jesse Brown and my appreciation for his achievements on behalf of our Nation's veterans.

In choosing Jesse Brown as Secretary of Veterans Affairs, President Clinton couldn't have made a better choice from the standpoint of America's veterans. A combat-wounded Marine veteran of Vietnam, a former executive director of the Disabled American Veterans, Jesse Brown is a strong and aggressive advocate for the men and women who have served our country.

During his tenure in the Cabinet, Jesse Brown has compiled a truly outstanding record of success. To cite just a few accomplishments, Jesse Brown has:

Expanded the list of Vietnam veterans' diseases for which service-connected compensation is paid based on exposure to agent orange;

Expanded and improved health care services for combat veterans suffering from post-traumatic stress disorder;

Created a presumption of service-connection for ex-prisoners of war who contracted wet beri-beri and later suffered ischemic heart disease;

Established a host of new clinics offering veterans more convenient access to VA health care;

Expanded and improved services for women veterans, which include mammography quality controls and counseling and medical programs for women veterans suffering the after-effects of service-related sexual trauma;

Successfully fought for a law allowing the VA to pay compensation benefits to chronically disabled Persian Gulf veterans with undiagnosed illnesses;

Established environmental research centers focused on the environmental exposures of Persian Gulf veterans and launched extensive epidemiological and other research efforts aimed at identifying the causes of illnesses from which these veterans and their families are suffering;

Made programs for homeless veterans a high priority—more than doubling the budget for specialized programs for homeless veterans, conducting the first National Summit on Homelessness Among Veterans, and carrying out a new program of grants to assist public and non-profit groups to develop new programs assisting homeless veterans;

Established a presumption of service-connection for veterans who experienced full-body exposure to mustard gas or Lewisite as part of our military's testing of these substances;

Conducted an outreach campaign through which 602,000 veterans' home loans were refinanced at lower interest rates, saving these veterans an average of $1,500 per year; and

Wrote to 44,000 Persian Gulf veterans and 47,000 Vietnam veterans notifying them of their potential entitlement to benefits and encouraging them to file claims.

In addition to these efforts, Mr. President, Secretary Brown is working to improve the VA's benefits and health care systems, restructuring both its headquarters and field operations to enhance efficiency.

There's no question Jesse Brown is an untiring and outspoken advocate—both within the administration and on Capitol Hill—for adequate funding for VA medical programs and benefits processing. But as one who strongly supports a balanced budget, Mr. President, I admire those who make us think hard about prioritizing scarce Federal dollars, who help us understand the consequences of the policy decisions we make, and who force us to defend our actions.

Recently, Secretary Brown has been harshly criticized for speaking out on behalf of adequate budgets for the Veterans Administration. But characterizing his support as partisan—as some have done—ignores Jesse Brown's nearly 3 decades of steadfast commitment to our Nation's veterans and their families and his strong personal beliefs in our country's responsibilities to them. It also fails to recognize his own personal experiences as a combat veteran in Vietnam.

Jesse Brown reminds us all that, even in these tight budget times, our Nation has an obligation to its warriors and their survivors that we simply cannot ignore.

And that is why, Mr. President, that I am proud to call Jesse Brown my

friend—and why I appreciate his strong support for the veterans of our Nation.●

PAST POLITENESS

Mr. SIMON. Mr. President, Colbert King, a member of the editorial page staff of the Washington Post, recently wrote an op-ed piece about a group of young people who are meeting to establish greater understanding.

It may seem like a small thing to many people, but it is precisely what needs to happen in our country.

I remember many years ago speaking to the Hillel Foundation at the University of Illinois. This is the Jewish student organization there.

It was an anniversary of some sort, and I suggested, among other things, that since at the University of Illinois there were people of both Jewish and Arab backgrounds that a few students getting together regularly might really contribute something. One of the students present said that would be meaningless but, interestingly, a few of the students got together and, for at least a short period of time, held some regular meetings between American Jews, Israeli Jews, and students from Arab countries. These were simply informal discussions long before President Sadat made his dramatic visit to the Knesset in Israel.

I wish I could report to you that something dramatic came out of these student meetings. I do not know that anything came out of them, other than one extremely important thing—greater understanding.

We are in a world that needs that, and I would like more people to read the op-ed by Colbert King, which I ask to be printed in the RECORD.

The op-ed follows:

[From the Washington Post, Dec. 2, 1995]

PAST POLITENESS AND INTO HONESTY

(By Colbert I. King)

While countless adults have been living out the year clenching their teeth by day and hyperventilating at home by night over one racially tinged issue or another, a small group of youngsters have been quietly making sure they don't end up leading the same kind of lives. Seventeen area high school students—nine African American and eight Jewish—have been meeting since January to build a future in which their generation will live without alienation and bitterness. What they have achieved in 12 months should put us to shame.

In a town that worships influence and power, these young people have neither. But when it comes to tolerance, trust, and having friendships that cut across racial and religious lines, they're up there with the best of their elders. Not that they started out that way.

When they joined the first class of Operation Understanding, D.C.—a fledgling nonprofit organization out to revive the historical relationship between Jews and African Americans through young peopel—many carried the same heavy baggage that adults well into their autumn years still lug around. To be sure, they were bright, curious, committed to their community, and loaded with leadership potential—all the things Operation Understanding, D.C., was seeking. But they also tracked in a fair amount of ignorance, suspicion and prejudice—some of which they acted out through words and song during an Operation Understanding reception for parents and guests a few weeks ago. A small sample:

Jamie: ''I know what it means to be black. How come it seems that the Jews don't know what it means to be Jewish in America?''

Andrew S.: ''How come blacks are so lazy? And how come so many are on welfare?

Johnathan: ''Isn't there a Jewish Yellow Pages where they can use their own lawyers and doctors and accountants and only go to stores owned by Jews?''

Emily: ''Why are black men so scary?''

Atiba: ''How come Jews have all that money? They live the good life. How'd they get all that money anyway?''

Mimi: ''How come blacks are such great dancers?''

You get the picture: mistrust, misconceptions, misunderstanding. These youngsters stand out, however, because they chose not to remain smug and comfortable with their hangups. They began meeting several times a month to get to know one another, to talk about each other's culture and history, to learn more about their own. They didn't do it through touchy-feely gab sessions. They got into each other's lives.

They went to Daniela's sister's bat mitzvah; it was Tiba's first time in a synagogue, Mimi went to Tiba's church on Palm Sunday—her first time in a black church. Everyone went to Muhammad's mosque in March.

They called on Capitol Hill and heard D.C. Del. Eleanor Holmes Norton and other black and Jewish members of Congress discuss how they coalesced on legislation. They met with a range of local speakers—as a sign they were long-suffering and up for just about anything, they even endured part of an evening with me. But they also got out of Washington and into communities that would give them a deeper understanding of African American and Jewish cultures and collaborative history.

Before their trip, however, they made a Shabbat dinner together. As youngsters of the '90s, they did it their way: a soul food Shabbat—fully equipped with fried chicken, biscuits, greens, sweet potatoes, and challah, backed by lit candles, recitation of the Motzi and prayer over the wine. What can I say?

And off they went to Crown Heights in Brooklyn—both the Lubavitcher and African American sides—Ellis Island and the Jewish Museum, and places that resonate with civil rights history such as Selma, Montgomery, Birmingham and Charleston.

They had hoped to go to Sengal and Israel, but despite the plate-passing at black churches and donations from foundations, corporations, congregations and individuals, they couldn't raise enough money. Maybe next year in Jerusalem and Dakar.

But a lot was learned at home. Jamie could hardly believe what he heard from Holocaust survivors in Atlanta and New Orleans. The visit to the Charleston plantation made Simone cry uncontrollably. ''It was as if all the slaves who lived there came to me all at once,'' she said. They walked across the Edmund Pettus Bridge and spontaneously began singing ''We Shall Overcome.''

The Class of 1995 ends in April; a new group of high school juniors begins next month. Class No. 1 still meets monthly, but unlike most of us older folks, they're long past being polite with each other; now they're just honest. That's because after all they've gone through, they know respect and trust each other.

Black nationalists and Jewish chauvinists out there, have no fear: Operation Understanding is a life-changing experience, but racial and religious identities don't get lost. If anything, these young people now have a stronger sense of themselves and their own history. They cherish both their similarities and differences. It's America's cultural and racial divides they will abide no longer. And no one's going to tell them who can be their friend. These are strong kids. They even think they can change the world.

This is what Operation Understanding's kinetic (no other word for it) president, Karen Kalish, hoped to achieve when she started the D.C. program. The idea came from United Negro College Fund president and former U.S. representative William Gray III; who started Operation Understanding in Philadelphia with George Ross of the American Jewish Committee 10 years ago. The Class of 1995 is the new generation of bridge builders they had in mind.

As the program ended, Jessica, who is Jewish, began singing ''Lift Every Voice and Sing.'' She was joined by the group—as the eyes of many African American parents and guests began to glisten. Then Bridgette, an African American, began ''Oseh Shalom''—and Jewish eyes were full. Those tears tell us a lot about our times.

Schmaltzy? Perhaps. But maybe if a few more Operation Understandings had been at work around the globe long ago, President Clinton wouldn't have had to visit Belfast this week, and 20,000 American troops wouldn't be gearing up for Bosnia. We're leaving our youth a pretty scratchy world. But rest assured, as far as Operation Understanding's graduates are concerned. America is going to be okay in their hands.●

RETIREMENT OF JULIAN GRAYSON

● Mr. BINGAMAN. Mr. President, Julian Grayson has retired from service to the Senate. He worked here longer than most of us ever will, and, unlike many of us, he is universally admired and appreciated.

Mr. Grayson was a waiter for the Senate restaurants, and worked on the caucus lunches as well as in the Senators' private dining room. He started here in 1950, but left in 1964 to devote his full time to the Methodist ministry. After a successful career in that calling, he returned to the Senate in 1983 at age 67.

He is a man of great dignity and spirit, and all of us who are fortunate enough to know him know that he is a man of many parts. I will miss our frequent conversations, and hope that he will, too.●

SENATE QUARTERLY MAIL COSTS

● Mr. WARNER. Mr. President, in accordance with section 318 of Public Law 101–520 as amended by Public Law 103–283, I am submitting the frank mail allocations made to each Senator from the appropriation for official mail expenses and a summary tabulation of Senate mass mail costs for the fourth quarter of fiscal year 1995 to be printed in the RECORD. The fourth quarter of fiscal year 1995 covers the period of July 1, 1995, through September 30, 1995. The official mail allocations are available for frank mail costs, as stipulated in Public Law 103–283, the Legislative Branch Appropriations Act for fiscal year 1995.

The material follows:

SENATE QUARTERLY MASS MAIL VOLUMES AND COSTS FOR THE QUARTER ENDING SEPT. 30, 1995

Senators	Total pieces	Pieces per capita	Total cost	Cost per capita	FY 95 Official Mail Allocation
Abraham	0	0.00000	$0.00	$0.00000	$140,289
Akaka	0	0.00000	0.00	0.00000	29,867
Ashcroft	0	0.00000	0.00	0.00000	83,043
Baucus	63,594	0.07718	15,888.68	0.01928	34,694
Bennett	152,600	0.08417	27,117.17	0.01496	30,689
Biden	0	0.00000	0.00	0.00000	28,591
Bingaman	0	0.00000	0.00	0.00000	30,834
Bond	0	0.00000	0.00	0.00000	108,312
Boxer	0	0.00000	0.00	0.00000	582,722
Bradley	0	0.00000	0.00	0.00000	151,392
Breaux	0	0.00000	0.00	0.00000	82,088
Brown	0	0.00000	0.00	0.00000	74,406
Bryan	32,110	0.02420	7,767.39	0.00585	45,030
Bumpers	2,000	0.00083	494.05	0.00021	48,743
Burns	0	0.00000	0.00	0.00000	34,694
Byrd	0	0.00000	0.00	0.00000	34,593
Campbell	0	0.00000	0.00	0.00000	74,406
Chafee	0	0.00000	0.00	0.00000	30,524
Coats	0	0.00000	0.00	0.00000	111,738
Cochran	0	0.00000	0.00	0.00000	48,596
Cohen	0	0.00000	0.00	0.00000	37,937
Conrad	182,300	0.28664	34,705.41	0.05457	25,438
Coverdell	0	0.00000	0.00	0.00000	137,674
Craig	58,100	0.05445	11,452.34	0.01073	31,846
D'Amato	0	0.00000	0.00	0.00000	335,341
Daschle	0	0.00000	0.00	0.00000	27,650
DeWine	931	0.00008	276.72	0.00003	168,128
Dodd	2,458	0.00075	2,003.22	0.00061	66,615
Dole	0	0.00000	0.00	0.00000	51,907
Domenici	1,050	0.00066	262.16	0.00017	30,834
Dorgan	33,050	0.05197	6,086.40	0.00957	25,438
Exon	0	0.00000	0.00	0.00000	32,516
Faircloth	0	0.00000	0.00	0.00000	140,612
Feingold	0	0.00000	0.00	0.00000	97,556
Feinstein	0	0.00000	0.00	0.00000	582,722
Ford	0	0.00000	0.00	0.00000	74,054
Frist	2,400	0.00048	611.18	0.00012	78,686
Glenn	0	0.00000	0.00	0.00000	219,288
Gorton	825	0.00016	214.82	0.00004	106,532
Graham	0	0.00000	0.00	0.00000	323,488
Gramm	0	0.00000	0.00	0.00000	352,339
Grams	166,200	0.03710	35,554.99	0.00794	67,423
Grassley	239,500	0.08517	50,567.26	0.01798	56,381
Gregg	0	0.00000	0.00	0.00000	34,552
Harkin	0	0.00000	0.00	0.00000	56,381
Hatch	0	0.00000	0.00	0.00000	30,689
Hatfield	0	0.00000	0.00	0.00000	62,019
Heflin	213,000	0.05150	40,579.96	0.00981	81,113
Helms	0	0.00000	0.00	0.00000	140,612
Hollings	0	0.00000	0.00	0.00000	72,302
Hutchison	0	0.00000	0.00	0.00000	352,339
Inhofe	0	0.00000	0.00	0.00000	52,475
Inouye	0	0.00000	0.00	0.00000	29,867
Jeffords	14,050	0.02465	3,114.49	0.00546	28,830
Johnston	0	0.00000	0.00	0.00000	82,088
Kassebaum	0	0.00000	0.00	0.00000	51,907
Kempthorne	0	0.00000	0.00	0.00000	31,846
Kennedy	0	0.00000	0.00	0.00000	121,391
Kerrey	0	0.00000	0.00	0.00000	32,516
Kerry	0	0.00000	0.00	0.00000	121,391
Kohl	0	0.00000	0.00	0.00000	97,556
Kyl	0	0.00000	0.00	0.00000	63,581
Lautenberg	0	0.00000	0.00	0.00000	151,392
Leahy	5,349	0.00938	4,339.02	0.00761	23,830
Levin	0	0.00000	0.00	0.00000	182,978
Lieberman	0	0.00000	0.00	0.00000	66,615
Lott	0	0.00000	0.00	0.00000	48,596
Lugar	0	0.00000	0.00	0.00000	111,738
Mack	0	0.00000	0.00	0.00000	323,488
McCain	0	0.00000	0.00	0.00000	82,928
McConnell	0	0.00000	0.00	0.00000	74,054
Mikulski	0	0.00000	0.00	0.00000	91,956
Moseley-Braun	0	0.00000	0.00	0.00000	216,454
Moynihan	0	0.00000	0.00	0.00000	335,341
Murkowski	283,000	0.48211	52,852.73	0.09004	23,179
Murray	136,100	0.02650	29,554.72	0.00575	106,532
Nickles	0	0.00000	0.00	0.00000	68,442
Nunn	0	0.00000	0.00	0.00000	137,674
Packwood	1,600	0.00054	344.71	0.00012	62,019
Pell	0	0.00000	0.00	0.00000	30,524
Pressler	0	0.00000	0.00	0.00000	27,650
Pryor	0	0.00000	0.00	0.00000	48,743
Reid	32,110	0.02420	7,767.39	0.00585	45,030
Robb	0	0.00000	0.00	0.00000	124,766
Rockefeller	50,080	0.02764	17,570.31	0.00970	34,593
Roth	0	0.00000	0.00	0.00000	28,591
Santorum	0	0.00000	0.00	0.00000	182,834
Sarbanes	0	0.00000	0.00	0.00000	91,956
Shelby	0	0.00000	0.00	0.00000	81,113
Simon	0	0.00000	0.00	0.00000	216,454
Simpson	0	0.00000	0.00	0.00000	19,826
Smith	0	0.00000	0.00	0.00000	34,552
Snowe	0	0.00000	0.00	0.00000	29,086
Specter	0	0.00000	0.00	0.00000	238,468
Stevens	3,550	0.00605	1,061.46	0.00181	23,179
Thomas	0	0.00000	0.00	0.00000	15,200
Thompson	0	0.00000	0.00	0.00000	94,111
Thurmond	0	0.00000	0.00	0.00000	72,302
Warner	254,000	0.03983	47,900.03	0.00751	124,766
Wellstone	0	0.00000	0.00	0.00000	87,939•

TOMMY WYCHE: FATHER OF SOUTH CAROLINA'S MOUNTAIN BRIDGE WILDERNESS

• Mr. HOLLINGS. Mr. President, I rise today to salute a native South Carolinian and the ''Father of South Carolina's Mountain Bridge Wilderness,'' C. Thomas Wyche. On December 7, 1995, here in Washington, Tommy Wyche was recognized for his outstanding contributions to environmental conservation when he was awarded one of the Nation's top environmental awards, The Alexander Calder Conservation Award.

Located just 30 miles up the road from Tommy's hometown of Greenville, the rolling red clay hills of the South Carolina piedmont suddenly springs into the foothills of the Great Smokey Mountains. The area, known as South Carolina's Blue Ridge Escarpment, is one of unusual natural beauty. Typified by high cliffs, steep terrain, rushing rivers and dense forests, it is relatively pristine despite being located within 30 miles of one of the Nation's fastest growing communities. It is for preserving this natural wonderland that Tommy Wyche was recognized.

Mr. President, the Mountain Bridge is just one of Tommy's many conservation successes. Over the last quarter century, he has almost singlehandedly led the fight to ensure that the mountains of South Carolina are preserved for the benefit of future generations. He spearheaded efforts to designate the Chattooga River as a wild and scenic river, and drafted the South Carolina Heritage Trust Act, the first in the United States. In addition, he has produced books celebrating the area, a guidebook and a photographic journal, both of which have played an important part in educating the public on the area's natural treasures.

Tommy's crowning achievement, and the basis for the Calder Award, is his work to preserve 40,000 acres along the South Carolina-North Carolina border—the Mountain Bridge Wilderness Area. Tommy began efforts to preserve the area in the early 1970's. As I mentioned earlier, this is an area of rough terrain which contains a number of natural wonders like Raven Cliff Falls, a 400 foot waterfall—one of the highest east of the Mississippi—and a monolith known as Table Rock. A recent biological assessment of just a portion of the wilderness area produced a number of astonishing finds, enormous trees, trophy-size native brook trout, and a stunning variety of birds, reptiles, amphibians and insects, many of them rare or endangered and two new to science. The scientist concluded the area was ''the most significant wilderness remaining in South Carolina.''

Tommy not only originated the idea of the Mountain Bridge but he is responsible for its success. In the beginning, he organized a nonprofit organization known as the Natureland Trust to preserve the area we now know as the Mountain Bridge. Working with the Natureland Trust, Tommy met with numerous landowners, walked their properties, and developed plans for the donation or bargain sale of their lands to the State. In many instances, he volunteered his expertise as a tax attorney to insure the most beneficial transfer for all parties. Slowly but surely, Tommy's efforts began to pay off—a hundred acres here, a thousand acres there. The wilderness acres began to take shape.

Today the Mountain Bridge is almost complete, although Tommy has recently been working on one last acquisition. Although Tommy and the Natureland Trust are closing in on their goal, I am sure he is looking for other mountains, not to climb, but to preserve—other missions, like the Mountain Bridge which will ensure future generations enjoy the natural beauty of South Carolina.

Mr. President, for a quarter century Tommy Wyche has worked tirelessly and unselfishly to coordinate efforts to preserve this piece of South Carolina's wilderness. I encourage others to follow his lead. Given the severity of the current budget deficit, the Federal Government has limited resources dedicated to preserving wild areas. I encourage others to use Tommy Wyche as a model for cooperative conservation. I commend him for a job well done, congratulate him for the Calder award and encourage him to continue his good works.•

ERNEST BOYER

• Mr. BINGAMAN. Mr. President, it was with great sadness that I learned of the death of Ernest Boyer who was president of the Carnegie Foundation for the Advancement of Teaching.

Ernie Boyer was a friend to many of us in the Senate, and to thousands who will never know his name but who will feel his influence for years to come. His contributions to education are well known. ''Ready to Learn'' and ''The Basic School,'' his excellent primers on the state of American education, both make the strong case that we can't start too soon in preparing our children—through education—for the world they will face.

It was my good fortune, Mr. President, to have Ernest Boyer as a sounding board, an ally, and a friend. We have lost a remarkable man with his death, and I hope that others of us will be able in some small measure to carry on with his ideas.

Ralph Waldo Emerson wrote about ''sensible men and conscientious men all over the world [who] were of one religion of well-doing and daring.'' I believe, Mr. President, that Ernest Boyer's well-doing and daring sprang from his sensible view and his conscientious approach. He was very fine, and I will miss his counsel and friendship.•

AUTHORIZING APPOINTMENT OF COMMITTEE ON PART OF THE SENATE

Mr. HATCH. Mr. President, I ask unanimous consent that the President of the Senate be authorized to appoint a committee on the part of the Senate to join with a like committee on the part of the House of Representatives to escort His Excellency, Shimon Peres, Prime Minister of Israel, into the House Chamber for a joint meeting tomorrow.

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

ORDERS FOR TUESDAY, DECEMBER 12, 1995

Mr. HATCH. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until the hour of 9 a.m. on Tuesday, December 12; that following the prayer, the Journal of proceedings be deemed approved to date, no resolutions come over under the rule, the call of the calendar be dispensed with, the morning hour be deemed to have expired, the time for the two leaders be reserved for their use later in the day, and the Senate immediately resume consideration of Senate Joint Resolution 31, a joint resolution regarding a constitutional amendment on flag desecration.

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

Mr. HATCH. Under the previous order, there will be a period for closing debate on Senate Joint Resolution of 1 hour and 40 minutes equally divided.

Mr. President, I ask unanimous consent that at 10:40 a.m. Tuesday morning, following debate on Senate Joint Resolution 31, the Senate recess until the hour of 2:15 p.m.

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

UNANIMOUS-CONSENT AGREEMENT—ORDER OF VOTES ON SENATE JOINT RESOLUTION 31

Mr. HATCH. Mr. President, when the Senate reconvenes at 2:15 p.m., there will be 2 minutes of debate, followed by up to five consecutive rollcall votes relating to Senate Joint Resolution 31.

I ask unanimous consent that those votes occur in the order in which they were offered.

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

PROGRAM

Mr. HATCH. Mr. President, for the information of all Senators, at 10:40 a.m. tomorrow, the Senate will proceed to the House Chamber to hear an address by Israeli prime minister Shimon Peres to a joint meeting of Congress. When the Senate reconvenes following party conferences at 2:15, under a previous order, the Senate will begin a series of votes on amendments and passage of Senate Joint Resolution 31. Each vote will be preceded by 2 minutes of debate, equally divided. Therefore, the first vote will occur at 2:17 p.m. and will be 15 minutes in length. Each subsequent vote will be 10 minutes each.

Following disposition of Senate Joint Resolution 31, it will be the majority leader's intention to turn to the consideration of Bosnia legislation. Senators are urged to debate the Bosnia legislation on Tuesday into the evening, if necessary.

It is the hope of the majority leader to pass the Bosnia legislation before Wednesday, December 13, at noon. Therefore, further votes are possible on Tuesday.

ADJOURNMENT UNTIL 9 A.M. TOMORROW

Mr. HATCH. Mr. President, if there is no further business to come before the Senate, I now ask that the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 6:31, adjourned until Tuesday, December 12, 1995, at 9 a.m.

NOMINATIONS

Executive nominations received by the Senate December 11, 1995:

DEPARTMENT OF STATE

PRINCETON NATHAN LYMAN, OF MARYLAND, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF CAREER MINISTER, TO BE AN ASSISTANT SECRETARY OF STATE, VICE DOUGLAS JOSEPH BENNET, JR., RESIGNED.

ALFRED C. DECOTIIS, OF NEW JERSEY, TO BE A REPRESENTATIVE OF THE UNITED STATES OF AMERICA TO THE FIFTIETH SESSION OF THE GENERAL ASSEMBLY OF THE UNITED NATIONS.

JOSEPH LANE KIRKLAND, OF THE DISTRICT OF COLUMBIA, TO BE AN ALTERNATE REPRESENTATIVE OF THE UNITED STATES OF AMERICA TO THE FIFTIETH SESSION OF THE GENERAL ASSEMBLY OF THE UNITED NATIONS.

TOM LANTOS, OF CALIFORNIA, TO BE AN ALTERNATE REPRESENTATIVE OF THE UNITED STATES OF AMERICA TO THE FIFTIETH SESSION OF THE GENERAL ASSEMBLY OF THE UNITED NATIONS.

JEANNE MOUTOUSSAMY-ASHE, OF NEW YORK, TO BE AN ALTERNATE REPRESENTATIVE OF THE UNITED STATES OF AMERICA TO THE FIFTIETH SESSION OF THE GENERAL ASSEMBLY OF THE UNITED NATIONS.

TOBY ROTH OF WISCONSIN, TO BE AN ALTERNATE REPRESENTATIVE OF THE UNITED STATES OF AMERICA TO THE FIFTIETH SESSION OF THE GENERAL ASSEMBLY OF THE UNITED NATIONS.

IN THE NAVY

THE FOLLOWING-NAMED OFFICERS IN THE LINE OF THE NAVY FOR PERMANENT PROMOTION, PURSUANT TO TITLE 10, UNITED STATES CODE, SECTION 624, SUBJECT TO QUALIFICATIONS THEREFORE AS PROVIDED BY LAW:

UNRESTRICTED LINE OFFICERS

To be lieutenant commander

JEFFRY L. BENNETT, 000–00–0000
AARON C. FLANNERY, 000–00–0000
JAMES M. INGALLS, 000–00–0000
JOHN D. KLAS, 000–00–0000
MARK D. LANE, 000–00–0000
STEVEN A. SWITTEL, 000–00–0000