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Senate

The Senate met at 9:30 a.m. and was called to order by the President pro tempore [Mr. THURMOND].

PRAYER

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

Gracious God, You have called the men and women of this Senate to glorify You by being servant-leaders. The calling is shared by the officers of the Senate, the Senators' staffs, and all who enable the work done in this Chamber. Keep us focused on the liberating truth that we are here to serve You by serving our Nation. Our sole purpose is to accept Your absolute lordship over our lives and give ourselves totally to the work of this day. Give us the enthusiasm that comes from knowing the high calling of serving in government. Grant us the holy esteem of knowing that You seek to accomplish Your plans for America through the legislation of this Senate. Free us from secondary, self-serving goals. Help us to humble ourselves and ask how we may serve today. We know that happiness comes not from having things nor getting recognition, but from serving in the great cause of implementing Your righteousness, justice, and mercy for every person and in every circumstance in this Nation. We take delight in the ultimate paradox of life: The more we give ourselves away, the more we can receive of Your love. In our Lord's name. Amen.

PLEDGE OF ALLEGIANCE

The Honorable GEORGE V. VOINOVICH, a Senator from the State of Ohio, led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

RECOGNITION OF THE ACTING MAJORITY LEADER

The PRESIDING OFFICER (Mr. VOINOVICH). The acting majority leader is recognized.

SCHEDULE

Mr. HATCH. Mr. President, today the Senate will resume consideration of the pending flag desecration resolution. Under the order, there are 2 hours of debate remaining on the Hollings amendment, to be followed by an additional hour for general debate.

At 2:15, following the party caucus luncheons, the Senate will proceed to two consecutive votes on the pending amendments to the flag desecration resolution. Cloture was filed on the resolution during yesterday's session; therefore, under the provisions of rule XXII, a cloture vote will occur on Wednesday. However, it is hoped that an agreement can be reached with regard to a vote on final passage of the resolution and that the cloture vote will not be necessary.

I thank all Members for their attention.

MEASURE PLACED ON THE CALENDAR—H.R. 2366

Mr. HATCH. Mr. President, I understand there is a bill at the desk due for its second reading.

The PRESIDING OFFICER. The clerk will report the bill by title.

The bill clerk read as follows:

A bill (H.R. 2366) to provide small businesses certain protections from litigation excesses and to limit the product liability of nonmanufacturer product sellers.

Mr. HATCH. Mr. President, I object to further proceedings on this bill at this time.

The PRESIDING OFFICER. Under the rules, the bill will be placed on the calendar.

RESERVATION OF LEADER TIME

The PRESIDING OFFICER. Under the previous order, the leadership time is reserved.

FLAG DESECRATION CONSTITUTIONAL AMENDMENT

The PRESIDING OFFICER. Under the previous order, the Senate will now resume consideration of S.J. Res. 14, which the clerk will report by title.

The legislative clerk read as follows:

A joint resolution (S.J. Res. 14) proposing an amendment to the Constitution of the United States authorizing Congress to prohibit the physical desecration of the flag of the United States.

Pending:

McConnell amendment No. 2889, in the nature of a substitute.

Hollings amendment No. 2890, to propose an amendment to the Constitution of the United States relating to contributions and expenditures intended to affect elections.

Mr. ASHCROFT. Mr. President, I rise today in support of the proposed amendment to the United States Constitution to permit Congress to prevent the desecration of our greatest national symbol: the American flag. I want to thank Chairman HATCH for his leadership on this important issue. Last year, Senator HATCH, on behalf of myself and many others, introduced S.J. Res. 14, a constitutional amendment to authorize Congress to protect the flag through appropriate legislation. Since 1998, the Judiciary Committee has held four hearings on this issue. I am pleased that this resolution now has 58 Senate sponsors. In addition, the House of Representatives has already passed an identical resolution, H.J. Res. 33, on June 24, 1999, by a vote of 305 to 124.

Throughout our history, the flag has held a special place in the hearts and minds of Americans. Even as the appearance of the flag has changed with the addition of new stars to reflect our

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

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growing nation, its meaning to the American people has remained constant. The American flag symbolizes an ideal for Americans, and or all those who honor the great American experiment. It represents freedom, sacrifice, and unity. It is a symbol of patriotism, of loved ones lost, and of the American way of life. The flag stands in this Chamber, in our court rooms, and in front of our houses; it is draped over our honored dead; and it flies at half-mast to mourn our heroes. It is the subject of our national anthem, our national march and our Pledge of Allegiance. In short, the flag embodies America itself. I believe that our nation's symbol is a unique and important part of our heritage and culture, a symbol worthy of respect and protection.

This is not a new perspective. The American flag has enjoyed a long history of protection from desecration. Chief Justice Harlan, upholding a 1903 Nebraska statute proscribing use of the Flag in advertisements states,

> [To] every true American the Flag is a symbol of the nation's power—the emblem of freedom in its truest, best sense. It is not extravagant to say that to all lovers of the country it signifies government resting on the consent of the governed; liberty regulated by law; the protection of the weak against the strong; security against the exercise of arbitrary power; and absolute safety for free institutions against foreign aggression. *Halter* v. *Nebraska*, 205 U.S. 34, 41 (1907).

It is for these reasons that Americans overwhelmingly support preserving and protecting the American flag. During a hearing I chaired in March 1998, entitled ''The Tradition and Importance of Protecting the United States Flag,'' the witnesses noted that an unprecedented 80 percent of the American people supported a constitutional amendment to protect the flag. Recent polls show that support unchanged. In addition, the people's elected representatives reflected that vast public support by enacting flag protection statutes at both the State and Federal levels. In fact, 49 State legislatures have passed resolutions asking Congress to send a constitutional amendment to the States for ratification.

Regrettably, the Supreme Court has chosen instead to impose the academic and elitist values of Washington, DC, on the people, instead of permitting and upholding the values that people attempted to demand of their government. In 1989, the Supreme Court ignored almost a century of history and thwarted the people's will in the case of Texas v. Johnson by holding that the American flag is just another piece of cloth for which no minimum of respect may be demanded.

In response, the Congress swiftly attempted to protect the flag by means of a statue, the Flag Protection Act of 1989, only to have that statute also struck down by the Supreme Court in United States v. Eichman. In 1989, 1990 and 1995 the Senate voted on proposed constitutional amendments to allow protection of the flag—and each time the proposal gained a majority of votes, but not the necessary two-thirds super-majority needed to send the amendment to the States for ratification. And so we are here today to try again.

Critics of this measure urge that it will somehow weaken the rights protected by the first amendment. I would draw their attention to the long standing interpretation of the first amendment prior to Texas v. Johnson. At the time of the Supreme Court's decision, the tradition of protecting the flag was too firmly established to suggest that such laws are inconsistent with our constitutional traditions. Many of the state laws were based on the Uniform Flag Act of 1917. No one at that time, or for 70 years afterwards, felt that these laws ran afoul of the first amendment. Indeed, the Supreme Court itself upheld a Nebraska statute preventing commercial use of the flag in 1907 in Halter v. Nebraska. As Chief Justice Rhenquist noted in his dissent in Texas v. Johnson, ''I cannot agree that the First Amendment invalidates the Act of Congress, and the laws of 48 of the 50 States which make criminal the public burning of the flag.''

Mr. President, I also reject the notion that amending the Constitution to overrule the Supreme court's decisions in the specific context of desecration of the flag will somehow undermine the first amendment as it is applied in other contexts. This amendment does not create a slippery slope which will lead to the erosion of Americans' right to free speech. The flag is wholly unique. It has no rightful comparison. An amendment protecting the flag from desecration will provide no aid or comfort in any future campaigns to restrict speech.

Moreover, an amendment banning the desecration of the flag does not limit the content of any true speech. As Justice Stevens noted in his dissent in Texas v. Johnson, ''[t]he concept of 'desecration' does not turn on the substance of the message the actor intends to convey, but rather on whether those who view the act will take serious offense.'' Likewise, the act of desecrating the flag does not have any content in and of itself. The act takes meaning and expresses conduct only in the context of the true speech which accompanies the act. And that speech remains unregulated. As the Chief Justice noted, ''flag burning is the equivalent of an inarticulate grunt or roar that, it seems fair to say, is most likely to be indulged in not to express any particular idea, but to antagonize others.''

But what if we fail to act? What is the legacy we are leaving our children? At a time when our nation's virtues are too rarely extolled by our national leaders, and national pride is dismissed by many as arrogance, America needs, more than ever, something to celebrate. At a time when too many Americans have lost respect because of disrespectful actions of elected leaders, we need a national symbol that is beyond reproach. At a time when Hollywood, which once inspired Americans with Capra-esque tales of heroism, integrity, and national pride, now bestows its highest honors on works that glorify the dysfunctional, the miserable, the materialistic, and the amoral. America needs its flag untainted, representing more than some flawed agenda, but this extraordinary nation. The flag, and the freedom for which it stands, has a unique ability to unite us as Americans.

In sum, there is no principal or fear that should stand as an obstacle to our protection of the flag. The American people are seeking a renewed sense of purpose and patriotism. They want to protect the uniquely American symbol of sacrifice, honor and freedom. The genius of our democracy is not that the values of Washington would be imposed on the people, but that the values of the people would be imposed on Washington. I urge my colleagues to join me in letting the values of the American people affect the work we do here. It is my earnest hope that by amending the Constitution to prohibit its desecration, this body will protect the heritage, sacrifice, ideals, freedom, and honor that the flag uniquely represents.

Mr. HAGEL. Mr. President, I rise today to speak I support of the joint resolution, introduced by my distinguished colleague from Utah, Senator ORRIN HATCH, proposing an amendment to the Constitution authorizing Congress to prohibit physical desecration of the American flag.

From the birth of our nation, the flag has represented all that is good and decent about our country. On countless occasions, on battlefields across the world, the Stars and Stripes led young Americans into battle. For those who paid the ultimate price for our nation, the flag blanketed their journey and graced their final resting place.

Mr. President, the Flag is not just a piece of cloth. It is a symbol so sacred to our nation that we teach our children not to let it touch the ground. It flies over our schools, our churches and synagogues, our courts, our seats of government, and homes across America. It unites all Americans regardless of race, creed or color. The flag is not just a symbol of America, it is America.

Those who oppose this constitutional amendment say it impinges on freedom of speech and violates our Constitution. As a veteran who was wounded twice in Vietnam protecting the principles of freedoms that Americans hold sacred, I am a strong supporter of the first amendment. However, I believe this is a hollow argument. There are many limits placed on ''free speech,'' including limiting yelling ''fire'' in a crowded theater. Other freedoms of speech and expression are limited by our slander and libel laws.

In 1989 and 1990 the Supreme Court struck down flag protection laws by

narrow votes. The Court has an obligation to protect and preserve our fundamental rights as citizens. But the American people understand the difference between freedom of speech and ''anything goes.''

When citizens disagree with our national policy, there are a number of options available to them other than destroying the American Flag to make their point. Let them protest, let them write to their newspaper, let them organize, let them march, let them shout to the rooftops—but we should not let them burn the flag. Too many have died defending the flag for us to allow it be used in any way that does not honor their sacrifice.

Mr. President, in a day where too often we lament what has gone wrong with America, it's time to make a stand for decency, for honor and for pride in our nation. I urge my colleagues to support the flag amendment. Mr. President, I yield the floor.

Mr. GORTON. Mr. President, with some hesitancy I will vote in favor of the flag protection constitutional amendment. My hesitancy stems not from any doubt that our Nation should provide specially protected status to our flag—I firmly believe the flag should be protected from desecration. I am hesitant because we are voting to amend our Nation's Constitution and every Senator should exercise extreme caution when considering such changes.

I have given careful consideration on the important amendment currently before the Senate. A decade ago, when the Supreme Court issued its 5-to-4 decision invalidating flag desecration statutes, I read each of the three opinions filed by Justices of the Court. I was convinced then, and remain convinced now, that the Court erred in its decision and that such statutes, if properly written, are constitutional. For this reason, I shall vote in favor of both the constitutional amendment to protect our flag and the proposed amendment to substitute a flag protection statute for the constitutional amendment.

Mr. JEFFORDS. Mr. President, I rise today to discuss my thoughts on a constitutional amendment to ban flag burning and other acts of desecration.

As a veteran of 30 years in the United States Navy and United States Naval Reserve, I know the pride members of the Armed Forces have in seeing the United States flag wherever they may be in the world. I share the great respect most Vermonters and Americans have for this symbol.

I personally abhor the notion that anyone would choose to desecrate or burn the flag as a form of self-expression. Members of the Armed Services place their lives at risk to defend the rights guaranteed by the United States Constitution, including the First Amendment freedom of speech. It is disrespectful of these past and present sacrifices to desecrate this symbol.

It seems highly ironic to me that an individual would desecrate the symbol of the country that provides freedoms such as the first amendment freedom of speech. However, in my opinion the first amendment means nothing if it is not strong enough to protect the rights of those who express unpopular ideas or choose a distasteful means of this expression.

I have given this issue a great deal of thought. I must continue to oppose this amendment since I do not think that a valid constitutional amendment, one that does not infringe on the first amendment, can be crafted. The first amendment right of freedom of speech is not an absolute right though as we have in the past recognized the legitimacy of some limits on free speech.

I do not think, however, that we should open the Bill of Rights to amendment for the first time in our history unless our basic values as a nation are seriously threatened. In this case, in recent years there have not been a significant number of incidents of this misbehavior.

In my view, a few flag desecrations or burnings around the Nation by media-seeking malcontents does not meet this high standard and I therefore cannot support the adoption of this amendment.

Mr. HUTCHINSON. Mr. President, as an original cosponsor, I rise today in support of S.J. Res. 14, which would amend the United States Constitution to prohibit the desecration of our flag. Opponents to this measure contend that the right to desecrate the flag is the ultimate expression of speech and freedom. I reject the proposition as I believe that the desecration of our flag is a reprehensible act which should be prohibited. It is an affront to the brave and terrible scarifies made by millions of American men and women who willingly left their limbs, lives, and loved ones on battlefields around the world.

It is an affront to these Americans who have given the greatest sacrifices because of what the flag symbolizes. To explain what our flag represents, former United States Supreme Court Chief Justice Charles Evans Hughes in his work, ''National Symbol,'' said.

> The Flag is the symbol of our national unity, our national endeavor, our national aspiration.
> The flag tells of the struggle for independence, of union preserved, of liberty and union one and inseparable, of the sacrifices of brave men and women to whom the ideals and honor of this nation have been dearer than life.
> It means America first; it means an undivided allegiance.
> It means America united, strong and efficient, equal to her tasks.
> It means that you cannot be saved by the valor and devotion of your ancestors, that to each generation comes it patriotic duty; and that upon your willingness to sacrifice and endure as those before you have sacrificed and endured rests the national hope.
> It speaks of equal rights, of the inspiration of free institutions exemplified and vindicated, of liberty under law intelligently conceived and impartially administered. There is not a thread in it but scorns self-indulgence, weakness, and rapacity.
> It is eloquent of our community interests, outweighting all divergencies of opinion, and of our common destiny.

Former President Calvin Coolidge, echoed Chief Justice Hughes in ''Rights and Duties.''

> We do honor to the stars and stripes as the emblem of our country and the symbol of all that our patriotism means.
> We identify the flag with almost everything we hold dear on earth.
> It represents our peace and security, our civil and political liberty, our freedom of religious worship, our family, our friends, our home.
> We see it in the great multitude of blessings, of rights and privileges that make up our country.
> But when we look at our flag and behold it emblazoned with all our rights, we must remember that it is equally a symbol of our duties.
> Every glory that we associate with it is the result of duty done. A yearly contemplation of our flag strengthens and purifies the national conscience.

Given what our flag symbolizes, I find that incomprehensible that anyone would desecrate the flag and inexplicable that our Supreme Court would hold that burning a flag is protected speech rather than conduct which may be prohibited. I find it odd that one can be imprisoned for destroying a bald eagle's egg, but may freely burn our nation's greatest symbol. Accordingly, I urge my colleagues to pass S.J. Res. 14 so that our flag and all that it symbolizes may be forever protected.

Ms. SNOWE. Mr. President, as an original cosponsor of S.J. Res. 14, I am proud to rise in support of the proposed constitutional amendment granting Congress the power to prohibit the physical desecration of the flag of the United States. Last June, the House of Representatives passed an identical resolution by the requisite two-thirds vote margin, so I urge that my colleagues in the Senate also pass this resolution with similar bipartisan support and send the proposed amendment to the states for ratification.

Our flag occupies a truly unique place in the hearts of millions of citizens as a cherished symbol of freedom and democracy. As a national emblem of the world's greatest democracy, the American flag should be treated with respect and care. Our free speech rights do not entitle us to simply consider the flag as ''personal property'', which can be treated any way we see fit including physically desecrating it as a legitimate form of political protest.

We debate this issue at a very special and important time in our nation's history.

This year marks the 55th anniversary of the allies' victory in the Second World War. And, fifty-nine years ago, Japanese planes launched an attack on Pearl Harbor that would begin American participation in the Second World War.

During that conflict, our proud marines climbed to the top of Mount Suribachi in one of the most bloody battles of the war. No less than 6,855 men died to put our American flag on

the mountain. The sacrifice of the brave American soldiers who gave their life on behalf of their country can never be forgotten. This honor and dedication to country, duty, freedom and justice is enshrined in the symbol of our Nation—the American flag.

The flag is not just a visual symbol to us—it is a symbol whose pattern and colors tell a story that rings true for each and every American.

The 50 stars and 13 stripes on the flag are a reminder that our nation is built on the unity and harmony of 50 states. And the colors of our flag were not chosen randomly: red was selected because it represents courage, bravery, and the willingness of the American people to give their life for their country and its principles of freedom and democracy; white was selected because it represents integrity and purity; and blue because it represents vigilance, perseverance, and justice.

Thus, this flag has become a source of inspiration to every American wherever it is displayed.

For these reasons and many others, a great majority of Americans believe—as I strongly do—that the American flag should be treated with dignity, respect and care—and nothing less.

Unfortunately, not everyone shares this view.

In June of 1990, the Supreme Court ruled that the Flag Protection Act of 1989, legislation adopted by the Congress in 1989 generally prohibiting physical defilement or desecration of the flag, was unconstitutional. This decision, a 5–4 ruling in U.S. v. Eichman, held that burning the flag as a political protest was constitutionally-protected free speech.

The Flag Protection Act had originally been adopted by the 101st Congress after the Supreme Court ruled in Texas v. Johnson that existing Federal and state laws prohibiting flag-burning were unconstitutional because they violated the first amendment's provisions regarding free speech.

I profoundly disagreed with both rulings the Supreme Court made on this issue. In our modern society, there are still many different forums in our mass media, television, newspapers and radio and the like, through which citizens can freely and fully exercise their legitimate, constitutional right to free speech, even if what they have to say is overwhelmingly unpopular with a majority of American citizens.

Accordingly, in 1995, I also joined as an original cosponsor of a proposed constitutional amendment granting Congress the power to prohibit the physical desecration of the flag of the United States. Although the House of Representatives easily passed that resolution by the necessary two-thirds vote margin, the Senate fell a mere three votes short.

I am hopeful that today's effort will deliver the three additional votes that are needed to send this proposed amendment to the states for ratification. Of note, prior to the Supreme Court's 1989 Texas v. Johnson ruling, 48 states, including my own state of Maine, and the Federal government, had anti-flag burning laws on their books for years—so it's time the Congress gave the states the opportunity to speak on this issue directly.

Mr. President, whether our flag is flying over a ball park, a military base, a school or on a flag pole on Main Street, our national standard has always represented the ideals and values that are the foundation this great nation was built on. And our flag has come not only to represent the glories of our nation's past, but it has also come to stand as a symbol for hope for our nation's future.

Let me just state that I am extremely committed to defending and protecting our Constitution—from the first amendment in the Bill of Rights to the 27th amendment. I do not believe that this amendment would be a departure from first amendment doctrine.

I strongly urge my colleagues to uphold the great symbol of our nationhood by supporting the flag amendment.

Thank you, Mr. President. I yield the floor.

Mr. WARNER. Mr. President, I rise today in support of S.J. Res. 14. This important joint resolution calls for an amendment to the United States Constitution that would allow the United States Congress to prohibit the physical desecration of the flag of the United States.

For years now I have been among the strongest supporters in the United States Senate of amending the United States Constitution to allow Congress to prohibit physical desecration of the United States flag. I was pleased the House of Representatives overwhelmingly passed a resolution identical to S.J. Res. 14 on June 24, 1999, by a vote of 305–124, and I look forward to voting for S.J. Res. 14 in the near future.

In 1989, the United States Supreme Court, in a 5–4 decision in the case of Texas v. Johnson, stated that the First Amendment prevented a state from protecting the American flag from acts of physical desecration. Since that time, a number of individuals have sought to seize on this misguided Supreme Court decision to justify flag burning. Mr. President, why would any citizen, who wishes to continue enjoying the great privileges of being an American, need a legal right to burn our Nation's flag in public?

No amount of tortured legal argumentation can overcome common sense and the plain meaning of the First Amendment. The first amendment to the Constitution states that no law shall abridge the ''freedom of speech.'' The key word in this portion of the amendment is ''speech.'' Laws that do not abridge ''speech'' are not prohibited by this section of the amendment. Simply put, burning the United States flag is not speech. A flag is not burned with words. Rather, a flag is burned with fire. As such, burning a flag is more appropriately classified as conduct, which is not protected by the first amendment.

The proposition that our greatness as a nation rests on whether or not an individual is permitted to burn Old Glory simply does not add up. At a time in our national history when disparate influences appear to be dividing people, the American flag represents unity. During the American Revolution, and subsequent conflicts, the flag has unified our diverse nation. Our flag symbolizes the freedoms we enjoy everyday. Generations of Americans have gone forth from our shores to stop enemies abroad from taking away these freedoms.

In addition, our great nation has always used the flag to honor those who, proudly in the uniform of our military, made great sacrifices. These are startling statistics that tend to be forgotten with the passage of time: World War II, 406,000 U.S. service members killed; Korea 55,000 U.S. service members killed; Vietnam, 58,100 U.S. service members killed, and Persian Gulf, 147 U.S. service members killed. For all those who gave their life, let us not forget that their caskets were draped in our flag as the final expression of our nation's thankfulness.

The memory and honor of those who have fought under our flag demands that our flag be protected against reckless conduct presenting itself as ''free speech.''

AMENDMENT NO. 2890

The PRESIDING OFFICER. Under the previous order, there will now be up to 2 hours of debate on the Hollings amendment No. 2890, to be equally divided in the usual form between the Senator from Kentucky, Mr. MCCONNELL, and the Senator from South Carolina, Mr. HOLLINGS.

The Senator from South Carolina, Mr. THURMOND, is recognized.

Mr. THURMOND. Mr. President, I rise today to express my strong support for Senate Joint Resolution 14, the constitutional amendment to protect the flag of the United States. I believe it is vital that we enact this amendment without further delay.

We have considered this issue in the Judiciary Committee and on the Senate Floor many times in the past decade. I have fought to achieve protection for the flag ever since the Supreme Court first legitimized flag burning in the case of Texas v. Johnson in 1989.

The American flag is much more than a piece of cloth. During moments of despair and crisis throughout the history of our great Nation, the American people have turned to the flag as a symbol of national unity. It represents our values, ideals, and proud heritage. There is no better symbol of freedom and democracy in the world than our flag. As former Senator Bob Dole said a few years ago, it is the one symbol that brings to life the Latin phrase that appears in front of me in

the Senate Chamber, *e pluribus unum*, which means, ''out of many, one.''

Ever since the American Revolution, our soldiers have put their lives on the line to defend what the flag represents. We have a duty to honor their sacrifices by giving the flag the protection it once had, and clearly deserves today.

In our history, the Congress has been very reluctant to amend the Constitution, and I agree with this approach. However, the Constitution provides for a method of amendment, and there are a few situations where an amendment is warranted. This is one of them.

The only real argument against this amendment is that it interferes with an absolute interpretation of the free speech clause of the first amendment. However, restrictions on speech already exist through constitutional interpretation. In fact, before the Supreme Court ruled on this issue, the Federal government and the States believed that flag burning was not constitutionally protected speech. The Federal government and almost every state had laws prohibiting desecration that were thought to be valid before the Supreme Court ruled otherwise in 1989.

Passing this amendment would once again give the Congress the authority to protect the flag from physical desecration. It would not reduce the Bill of Rights. It would simply overturn a few very recent judicial decisions that rejected America's traditional approach to the flag under the law.

Flag burning is intolerable. We have no obligation to permit this nonsense. Have we focused so much on the rights of the individual that we have forgotten the rights of the people?

I strongly urge all my colleagues to join with us today and support this amendment. We are on the side of the American people, and I am firmly convinced that we are on the side of what is right. Once and for all, we should pass this constitutional amendment and give the flag of the United States of America the protection it deserves.

The PRESIDING OFFICER. The Senator from Utah is recognized.

Mr. HATCH. Mr. President, I want to make remarks generally on the flag amendment. Frankly, I think it is a travesty on this constitutional amendment to bring up campaign finance reform as a constitutional amendment to this amendment. But be that as it may, any Senator has a right to do that.

I hope my colleagues will vote down the Hollings amendment, as it should be voted down. That is a serious debate that has to take place, and it should not take place as a constitutional amendment. Having said that, let me comment about why we are here.

The Senate began today's session with the Pledge of Allegiance to our American flag. Today, we resume debate over a proposal that will test whether the pledge we make—with our hands over our hearts—is one of consequence or just a hollow gesture. We resume debate over S.J. Res. 14, a constitutional amendment to permit Congress to enact legislation prohibiting the desecration of the American flag. Now all we are asking, since the Court has twice rejected congressional statutes, is to give Congress the power to protect our flag from physical desecration. It seems to me that is not much of a request.

It should be a slam dunk. But, unfortunately, politics is being played with this amendment. Congress would not have to act on it if it didn't want to, but it would have the power to do so. It also involves the separation of powers doctrine.

The Supreme Court, in its infinite wisdom, has indicated that flag burning, defecating on the flag, or urinating on the flag is a form of free speech.

I don't see how anybody in his right mind can conclude that. There is no question that is offensive conduct and it ought to be stamped out. On the other hand, all we are doing is giving Congress the power to enact legislation that would prohibit physical desecration of the flag. Congress doesn't have to, if it doesn't want to; it can, if it wants to.

When we enacted those prior statutes to protect the flag, they passed overwhelmingly. It was also under the guise that we were trying to protect the flag through statutory protection, which I of course pointed out very unfailingly in both cases was unconstitutional. Of course, the Supreme Court upheld what I said they would uphold.

Symbols are important. The American flag represents, in a way that nothing else does, the common bond shared by the people of this nation, one of the most diverse in the world. It is our one overriding symbol of unity. We have no king; we won our independence from him over 200 years ago. We have no state religion. What we do have is the American flag.

Whatever our differences of party, politics, philosophy, race, religion, ethnic background, economic status, social status, or geographic region, we are united as Americans in peace and in war. That unity is symbolized by a unique emblem, the American flag. Its stars and stripes and rich colors are the visible embodiment of our Nation and its principles and values and ideals.

The American flag has come to symbolize hope, opportunity, justice, and freedom—not just to the people of this Nation but to people all over the world. Failure to protect the flag would lessen the bond among us as Americans and weaken the symbolism of our sovereignty as a nation.

This proposed amendment recognizes and ratifies James Madison's view—and the constitutional law that existed for centuries—that the American flag is an important and unique incident of our national sovereignty. As Americans, we display the flag in order to signify national ownership and protection. The Founding Fathers made clear that the flag reflects the existence and sovereignty of the United States, and that desecration of the flag was a matter of national—I repeat—national concern that warranted government action. This same sovereignty interest does not exist for our national monuments or our other symbols. While they are important to us all, the flag is unique. It is flown over our ships. We carry it into battle. We salute it and pledge allegiance to it. We do these things because the flag is the unique symbol unity and sovereignty.

The proposed amendment reads simply: ''The Congress shall have the power to prohibit the physical desecration of the flag of the United States.'' S.J. Res. 14 is not an amendment to ban flag desecration, but an amendment to allow Congress to make the decision on whether to prohibit it. It is not self-executing, so a statute defining the terms and penalties for the proscribed conduct will need to be enacted, should this amendment be approved by two-thirds of the Senate today, or whenever.

While it would be preferable to enact a statute, and not take the rare and sober step of amendment the Constitution, our amendment is necessary because the Supreme Court has given us no choice in the matter.

I understand there is some lack of knowledge in this body where people have not realized that for 200 years we have protected the flag and that 49 States have anti-flag-desecration language. But in two narrow 5–4 decisions, breaking from over 200 years of precedent—Texas v. Johnson and United States v. Eichman—the Court overturned prior State statutes prohibiting the desecration of the flag.

Make no mistake about it: The United States Senate is the forum of last resort to ensure that our flag is protected. H.J. Res. 33—an identical measure—has already won the necessary two-thirds vote in the House of Representatives by a vote of 305 to 124, with overwhelming bipartisan support. In fact, nearly 50 percent of the Democrats in the House voted for the measure.

In addition, the people, expressing themselves through 49 State legislatures, have expressed their readiness to ratify the measure by calling upon Congress to pass this constitutional amendment to protect the flag. Protecting the flag is not a partisan gesture, nor should it be. Especially at a time of election-year partisan rhetoric, this amendment to protect our flag is an opportunity for all Americans to come together as a country and honor the symbol of what we all are. This effort will not only reaffirm our allegiance to the flag, it will reestablish our national unity.

The American people revere the flag of the United States as the unique symbol of our Nation and the freedom we enjoy as Americans. As Supreme Court Justice John Paul Stevens said in his dissent in Texas v. Johnson:

[A] country's flag is a symbol of more than ''nationhood and national unity.'' It also signifies the ideas that characterize the society that has chosen that emblem as well as the special history that has animated the growth and power of those ideas. . . . So it is with the American flag. It is more than a proud symbol of the courage, the determination, and the gifts of a nation that transformed 13 fledgling colonies into a world power. It is a symbol of freedom, of equal opportunity, of religious tolerance, and of goodwill for other peoples who share our aspirations.'' [491 U.S. at 437 (dissenting)]

In the long process of bringing this amendment to the floor, we have gone more than half way to address the concerns of critics. I think it is time for opponents of the amendment to join with us in offering the protection of law to our beloved American flag.

Justice John Paul Stevens, in his dissent in the Texas v. Johnson decision, said it best:

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 Philippine 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]

I want to talk a little bit about the arguments that I have heard over the past several years, and again this week, from some of my colleagues who oppose this amendment. Opponents contend that preventing the physical desecration of the flag actually tramples on the sacred right of Americans to speak freely. Although I respect many people who have this view, I strongly disagree with it. I hope that, as I have come to understand their perspective, they too will be open to mine and, together, we will be able to achieve consensus on the most important issue of all—protecting and preserving the American flag.

Restoring legal protection to the American flag would not infringe on free speech. If burning the flag were the only means of expressing dissatisfaction with the nation's policies, then I imagine that I, too, might oppose this amendment. But we live in a free and open society. Those who wish to express their political opinions—including any opinion about the flag—may do so in public, private, the media, newspaper editorials, peaceful demonstrations, and through their power to vote.

Certainly, destroying property might be seen as a clever way of expressing one's dissatisfaction. But such action is conduct, not speech. Law can be, and are, enacted to prevent such actions, in large part because there are peaceful alternatives equally expressive. After all, right here in the United States Senate, we prohibit speeches or demonstrations of any kind in the public galleries, even the silent display of signs or banners. As a society, we can, and do, place limitations on both speech and conduct.

Mutilating our Nation's great symbol of national unity is simply not necessary to express an opinion. Those individuals who have a message to the country should not confuse their right to speak with a supposed ''conduct right,'' which allows one to desecrate a symbol that embodies the ideals of a Nation that Americans have given their lives to protect.

For this reason, I must reiterate strongly that the flag protection amendment does not effectively amend the first amendment. It merely reverses two erroneous decisions of the Supreme Court and restores to the people the right to choose what law, if any, should protect the American flag.

I have heard some of my colleagues miss this point and talk about how we cannot amend the Bill of Rights or infringe on free speech, and I was struck by how many of them voted for the flag protection statute in 1989. Think about that. They cannot have it both ways. How can they argue that a statute that bans flag burning does not infringe on free speech, and yet say that an amendment that authorizes Congress to enact such a statute banning flag burning does infringe on free speech?

Moreover, the argument that a statute will suffice is an illusion. We have been down this road before, and it is an absolute dead end, having been rejected by the Supreme Court less than 30 days after oral argument, in a decision of fewer than 8 pages. They will do the same to any other statute of general applicability to the flag. A constitutional amendment is necessary because the Supreme Court has given us no choice in this matter.

We all understand the game that is being played. We have people who changed their vote at the last minute to prevent the flag amendment from passing, as they did on the balanced budget amendment. The same people who voted for the statute are claiming their free speech rights would be violated by this amendment, but I guess not by the statute that allows them to ban desecration of the flag—a statute that I think they all know would be automatically held unconstitutional by the Supreme Court. It is a game. It is time for people to stand up for this flag.

Some of my colleagues argue that because the Supreme Court has spoken we can do little to override this newly minted, so-called ''constitutional right.'' In my view, this concedes far too much to the judiciary.

No human institution, including the Supreme Court, is infallible. Suppose that the year is 1900 and we are debating the passage of an amendment to override the Plessy versus Ferguson decision. That was the decision in which the Supreme Court rules that separate-but-equal is equal, and that the Constitution requires only separate-but-equal public transportation and public education. The Plessy decisions was almost unanimous, 8–1 in contrast to the Johnson and Eichman decisions, which were 5–4. Would any of my colleagues be arguing that we could not pass an amendment to provide that no state may deny equal access to the same transportation, public education, and other public benefits because of race or color simply because the Court had spoken the final word? Would any one of my colleagues argue that the Plessy decision had to stand because an amendment might change the 14th amendment? Of course not.

The suggestion by some 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. In fact, I think it is phony. These 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 then? Of course not.

It goes without saying that among the most precious rights we enjoy as Americans is the right to govern ourselves. It was to gain this right that our ancestors fought and died at Concord and Bunker Hill, Saratoga, Trenton, and Yorktown. And it was to preserve that right that our fathers, brothers, and sons bravely gave their lives at New Orleans, Flanders, the Bulge, and Mt. Suribachi. The Constitution exists for no other purpose than to vindicate this right of self-government by the people. The Framers of the Constitution did not expect the people to meekly surrender their right to self-government, or their judgment on constitutional issues, just because the Supreme Court decides a case a particular way. Nor, when they gave Congress a role in the amendment process, did the Framers expect us to surrender our judgment on constitutional issues just because another, equal and co-ordinate branch of government, rules a particular way. The amendment process is the people's check on the Supreme Court. If it were not for the right of the people to amendment the Constitution, set out in Article 5, we would not even have a Bill of Rights in the first place. It was the people through their elected representatives—not the courts—who enshrined the freedom of speech in the Constitution.

The Framers did not expect the Constitution to be routinely amended, and it has not been. The amendment process is difficult and exceptional. But it should not be viewed as an unworthy or unrighteous process either. The amendment process exists to vindicate the most precious right of the people to determine under what laws they will be governed. It is there to be used when the overwhelming majority of voters decide that they should make a decision rather than the Supreme Court.

In Texas versus Johnson and United States versus Eichman the Supreme Court decided for Americans that a

statute singling out the flag for special protection is based on the communicative value of the flag and therefore violates the first amendment. The Court decided that what 48 states and the federal government had prohibited for decades was now wrong. Since the Johnson and Eichman decisions, several challenges have been brought against the state statutes prohibiting flag desecration. State courts considering these types of statutes have uniformly held these statutes unconstitutional.

One recent case, Wisconsin versus Janssen, involved a defendant who confessed to, among other things, defecating on the United States flag. Relying on the Supreme Court's Johnson decision, the Wisconsin high court invalidated a state statute prohibiting flag desecration on the ground that the statute was overbroad and unconstitutional on its face.

In reaching that decision, the court noted that it was deeply offended by Janssen's conduct, and stated that ''[t]o many, particularly those who have fought for our country, it is a slap in the face.'' The court further explained that ''[t]hough our disquieted emotions will eventually subside, the facts of this case will remain a glowing ember of frustration in our hearts and minds. That an individual or individuals might conceivably repeat such conduct in the future is a fact which we acknowledge only with deep regret.'' What was particularly distressing about this decision is that the court found the statute constitutionally invalid even though the state was trying to punish an individual whose vile and senseless act was devoid of any significant political message, as so many of them are.

The court noted ''the clear intent of the legislature is to proscribe all speech or conduct which is grossly offensive and contemptuous of the United States flag. Therefore, any version of the current statute would violate fundamental principles of first amendment law both in explicit wording and intent.'' Under prevailing Supreme Court precedent, then, the Court found that the proscribed conducted was protected ''speech.'' The Wisconsin decision, like those before it, demonstrates that, because of the narrow Johnson and Eichman decisions of the U.S. Supreme Court, any statute, state or federal, that seeks to prohibit flag desecration will be struck down.

The Wisconsin Supreme Court, however, noted that all was not lost. The Court opined that ''[i]f it is the will of the people in the country to amend the United States Constitution in order to protect our nation's symbol, it must be done through normal political channels,'' and noted that the Wisconsin legislature recently adopted a resolution urging Congress to amend the Constitution to prohibit flag desecration.

Clearly, with the House having already sent us the amendment on a strong, bipartisan vote, the ball is firmly here in the Senate's court. If we are serious about protecting the American flag, it is up to this body, at this time, to take action and to send this proposed amendment to the people of the United States.

After all the legal talk and handwringing on both sides of this issue, what is comes down to is this: Will the Senate of the United States confuse liberty with license? Will the Senate of the United States deprive the people of the United States the right to decide whether they wish to protect their beloved national symbol, Old Glory? Forty-nine state legislatures have called for a flag protection amendment. By an overwhelming and bipartisan vote, the House of Representatives has passed the amendment. Now it is up to the Senate to do its job. Let us join together and send this amendment to the people.

This resolution should be adopted, and the flag amendment sent to the states for their approval. Our fellow Americans overwhelmingly want to see us take action that really protects the flag and this, my friends, can do just that. I urge you to support the flag protection amendment and, by doing so, preserve the integrity and symbolic value of the American flag.

It is now time for the Senate to heed the will of the people by voting for the flag protection constitutional amendment. Doing so will advance our common morality and the system of ordered liberty encompassed in our history, laws and traditions. We must restore the Constitution and the first amendment, send the flag amendment to the States that have requested it with near unanimity, and return to the American people the right to protect the United States flag. It is time to let the people decide.

Again, I come back do that major point. All this amendment does is recognize that there are three separated powers in this country—the legislative, executive, and judicial branches of Government. When the judicial branch says we can no longer enact by statute the protection of the flag and suggests we have to pass a constitutional amendment if we want to protect the flag, then this amendment gives the Congress the right to be coequal with the other branches of Government. It gives us the right to protect the flag through a constitutional amendment and it gives us the right, if we so choose, to pass legislation similar to the legislation that a vast majority of Members of this body voted for back in 1989.

Last but not least, in this day and age, many of our young people don't even have a clue to what happened back between 1941 and 1945. They don't even realize what happened in the Second World War.

Sending this amendment to the 50 States would create a debate on values, which is necessary in this country, like we have never had before. It will be up to the people to decide. That is all we are asking. Let the people, through their State legislatures, decide whether or not we should protect the flag. That is not a bad request. It is something that needs to be done. Above all, it restores to the Congress the coequal power as a coequal branch of Government that is gone because of the very narrow set of 4–5 Supreme Court decisions. I reserve the remainder of my time.

The PRESIDING OFFICER (Mr. CRAPO). Who yields time?

Mr. HATCH. How much time does our side have?

The PRESIDING OFFICER. The Senator from Kentucky has 1 hour, the Senator from South Carolina has 1 hour, and the Senator from Vermont has a half hour.

Mr. HATCH. I 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. Without objection, it is so ordered.

Mr. HATCH. Mr. President, I ask unanimous consent that I control the time on our side.

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

Mr. HATCH. I yield 5 minutes to the distinguished Senator from Wyoming.

The PRESIDING OFFICER. The Senator from Wyoming is recognized for 5 minutes.

Mr. THOMAS. I thank the Chair. Mr. President, I will take a very short time. I speak in favor of the flag protection amendment to the Constitution. It is an honor for me to be a cosponsor of this constitutional amendment, 1 of 58. Most everything has been said, I suppose, that needs to be said about it. Of course, no one here is in favor of desecration of the flag. What we have is a difference of view as to how to deal with that issue.

This constitutional amendment has been around for a very long time and has been considered several times. Certainly, this symbol of the flag is one that should be held in the highest regard. Most everyone agrees with that.

This measure states:

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

That should be the case. It seems to me what that does is helps to define freedom of speech. We can do that.

What we are saying is it is illegal to physically desecrate the flag of the United States. I cannot imagine how people can disagree with that. The Senate has voted on this matter in the past in 1989, 1990, and 1995, and each time a majority was in favor. The House passed an identical measure in June of 1999 by a vote of 305–124 with a sufficient majority. Each year we get a little closer to passing it.

Why do we need a flag protection amendment? Forty-nine State legislatures have already passed resolutions urging this constitutional amendment. The flag, obviously, is a sacred symbol and deserves protection from desecration. It is a symbol of national unity and identification. We all know of the sacrifices that have been made, and this flag typifies that; this flag is symbolic of that. It is an inspiration for people.

The attempts in the past have failed in terms of statutory issues. The Supreme Court struck down the Texas v. Johnson in 1989 in a 5–4 decision. In 1990, there was another 5–4 decision.

This is a reasonable request to accommodate and I believe most Americans want to protect this flag. If this is the necessary way to do it, then I am for that.

I am very pleased to be a cosponsor, and I urge this be passed in the Senate. I yield the floor.

Mr. HATCH. Mr. President, I reserve the remainder of my time.

The PRESIDING OFFICER. If neither side yields time, time runs equally.

Mr. HOLLINGS. Mr. President, I understand we are on the flag amendment. That is why I waited for them to complete their hour and I begin mine.

Mr. HATCH. My understanding is, it is the Hollings amendment that is being debated.

Mr. HOLLINGS. That is what Senator HATCH says, but that is not what the Chair says.

The PRESIDING OFFICER. The Senate currently has under consideration the Hollings amendment No. 2890.

Mr. HOLLINGS. All this time has been taken off the Hollings amendment? Come on. We have been talking about the flag. I approached the Chair when we started. Right to the point, the Parliamentarian said they are arguing the flag amendment. Senator THURMOND started, and then Senator HATCH talked on the flag amendment. The others have been talking on the flag amendment.

Mr. HATCH. Will the Senator yield?

The PRESIDING OFFICER. It is the Chair's understanding the Hollings amendment is an amendment to the flag amendment.

Mr. HATCH. We can use our time any way we want to on our side. The amount of time is still remaining for Senator HOLLINGS on his side. As I understand it, we are debating the Hollings amendment, but I talked generally about the flag amendment.

The PRESIDING OFFICER. The Hollings amendment is an amendment to the flag amendment and is under consideration.

Mr. HOLLINGS. How much time do I have?

The PRESIDING OFFICER. The Senator from South Carolina has 1 hour.

Mr. HOLLINGS. I thank the Chair.

Mr. HOLLINGS. Mr. President, I'm addressing the so-called freedom of speech with respect to campaign financing. I explained yesterday afternoon how we, in the 1974 act, tried to clean up the corruption. Cash was being given, all kinds of favors and demands were being made on members of the Government, as well as in the private sector. Numerous people were convicted. We enacted the 1974 act after the Maurice Stans matter in the Nixon campaign.

We debated one particular point—that you could not buy the office. Now the contention is that you can buy the office because under the first amendment protecting freedom of speech, and money being speech, there is no way under the Constitution that it can be controlled. Of course, that is a distortion by the Buckley v. Valeo decision for the simple reason that we finally have Justice Stevens saying that ''money is property.'' Justice Kennedy goes right into the distortion. I quote from the case of Nixon v. Shrink Missouri Government PAC:

> The plain fact is that the compromise the Court invented——

I emphasize the word ''invented''——

> in Buckley set the stage for a new kind of speech to enter the political system. It is covert speech. The Court has forced a substantial amount of political speech underground, as contributors and candidates devise ever more elaborate methods of avoiding contribution limits, limits which take no account of rising campaign costs. The preferred method has been to conceal the real purpose of the speech.

Then further:

> Issue advocacy, like soft money, is unrestricted . . . while straightforward speech in the form of financial contributions paid to a candidate . . . is not. Thus has the Court's decision given us covert speech. This mocks the First Amendment.

I hope everybody, particularly the other side of the aisle, understands that I am reading from Justice Kennedy:

> This mocks the First Amendment.

He goes on to say:

> Soft money must be raised to attack the problem of soft money. In effect, the Court immunizes its own erroneous ruling from change.

We have it foursquare. There is no question that the majority in Buckley has mocked the first amendment. Four Justices in Buckley v. Valeo found that you could control spending. They treated money as it has been treated in the Congress—as property and not speech.

Let's look, for example, at the hearing we had. When the Senate is asked to consider contributions, they consider them property. So we had the Thompson investigation. Seventy witnesses testified in public over a total of 33 days; 200 witness interviews were conducted; 196 depositions were conducted under oath; 418 subpoenas were issued for hearings, depositions, and documents; and more than 1.5 million pages of documents were received.

They did not say that Charlie Trie, Johnny Huang and others had free speech. The lawyers in those particular cases would be delighted to hear a Congressman who now takes the position that: Oh, it is all free speech. Don't worry about any violations because the first amendment protects this money. The first amendment protects it as free speech. That is out of the whole cloth. They have been singsonging because they enjoy this particular corruption.

What corruption? As I pointed out yesterday, we used to come in here and work. Thirty years ago, under Senator Mansfield, we would come in at 9 o'clock Monday morning and we would have a vote. The distinguished leader at that time usually had a vote to make sure we got here and started our week's work—and I emphasize ''week's work.'' We worked throughout Monday, Tuesday, Wednesday, Thursday, Friday, and we were lucky to complete our work by Friday evening at 5 o'clock.

Now: Monday is gone. Tuesday morning is gone. We don't really work here. We are waiting and not having any votes. People are coming back into town. Nobody is here to listen. On Wednesday and Thursday we have to have windows so we can go fundraise. Can you imagine that? That ought to embarrass somebody. But I have asked for windows, too, because that is the way it is.

The money chase—the amount of money that must be chased—has corrupted this Congress. Everybody knows it. The people's business is set aside. On Friday, we go back home. What do we do? We have fund-raisers. We don't have free-speech raisers, like they are talking about on the floor of the Senate now.

They get all pontifical and stand up and talk oh so eruditely about the Constitution and the first amendment. They know better than anyone that this is property. But as long as they can sell everybody that there are no limits, there are no restrictions on money because it is free speech, then it is ''Katie bar the door'' and we have really gone down the tube.

It is not that bad; it is worse. We used to have a break, I think it was on February 12, for Lincoln's birthday. It might have been a long weekend, but it was not a 10-day break. Now, January is gone. Then we had a 10-day break in February. We had a 10-day break again in March. We will have another 10-day break in April. We will have another 10-day break in May and at the beginning of June. Then we will have the Fourth of July break. Then we will have the month of August off—all of this keeping us from doing the people's business.

I thought once our campaigns were over we would come up here and go to work on behalf of the people's business. Instead, we work on behalf of our own business: reelection. All in the name of this tremendous volume of money, money, money everywhere. They are trying to defend it on the premise of: Give me the ACLU and the Washington Post. Then they put up a sandwich

board about newspapers: If the Hollings amendment is passed, the newspapers can't write editorials. I never heard of such nonsense.

This does not have to do with anybody's freedom of speech. We cannot, should not and would not ever take away anybody's speech. But we can take away the money used in campaigns and limit it just like every other country does. In England, they limit the amount of time in which you can actually conduct the campaign. They do not talk about campaigns in reference to the Magna Carta: Wait a minute, you have taken away my speech here in the Parliament. There is none of that kind of nonsense. But here, it is the kind of thing we are having to put up with.

The question is, Can this problem be solved another way?

That is exactly what the Senator from North Dakota, Mr. CONRAD, says: We have a problem. Let's solve it in another way. He puts in a statutory amendment with respect to the flag.

With respect to campaign financing, give me a break. We have tried for 25 years—everything from public finance to free TV time, to soft money, to hard money limitations, to any and every idea.

Now we have the Vice President proposing an endowment to finance federal campaigns. They think all you have to do is come up with a new idea and then you are really serious about this. If you are going to get serious, vote for this amendment. Then, by gosh, we are playing for keeps.

There are a lot of people on McCain-Feingold getting a free ride voting for it, knowing it is never going anywhere because the Senator from Kentucky is manifestly correct, it is patently unconstitutional. There is no question that this Court would find McCain-Feingold unconstitutional. Everybody knows that. This is one grand charade, as the corruption continues.

I emphasize that this amendment does not take a side with McCain-Feingold, with hard money, with soft money, with the Vice President's endowment, with anything else or any idea one may have about controlling spending in Federal elections. It is not pro, it is not con, it is not for, it is not against. It merely gives authority to the Congress to do what we intended back in 1974 with the amended version of the Federal Election Campaign Act of 1971; and that is, to stop people from buying the office.

The corruption is such that you have to buy the office. We are required to buy it. I can tell you, because two years ago I spent more of my time raising $5.5 million for my seventh reelection to the Senate than I did campaigning. So I speak advisedly. I have asked for windows. I have asked for parts of this corruption that we are all involved in. The only way it is going to be cleaned up is a constitutional amendment.

What does Justice Kennedy say? He says: Buckley mocks the first amendment. Mind you, there was only one Justice who called money property, but another said it mocked the first amendment. Then I read from the decision:

> Soft money must be raised to attack the problem of soft money. In effect, the Court immunizes its own erroneous ruling from change.

Imagine that. The Court has immunized the ruling from change; namely, you cannot change it by statute. Listen Senator CONRAD, and any other Senator interested in playing games with this corruption, saying we will put in a little statute. There have been 2,000 or 20,000 amendments to the Constitution. Give me a break. The last five or seven amendments had to do with elections. None of them is as important as this particular national corruption of Congress. We all know about it. We all participate in it. We have no time to be a Congress. We are just a dignified bunch of money raisers for each other and for ourselves.

It is sad to have to say that on the floor of the Senate, but it is time we give the people a chance. This does not legislate or provide anything. It just says, come November, as a joint resolution, let the people decide. I think the people have decided. That is why my amendment is timely. During this year's presidential primaries everyone was talking about campaign finance reform—reform, reform, reform. Candidates were saying, I am the reform candidate.

The one thing they are trying to reform is campaign financing, this corruption. Now even the Vice President has come out and said: The first day I am your President, I will submit McCain-Feingold—knowing it is an act in futility. Let's pass McCain-Feingold unanimously. The Court throws it out later this year. It is not going anywhere. The Court has time and again said soft money is speech. That is the majority of this crowd. But I admonish the four Justices in Buckley v. Valeo who said they could do it. Now we have two other Justices talking sense. We know good and well that the people want a chance to talk on this, to vote on this.

I had no sooner put this up years ago, back in the 1980s, and the States' Governors came and, by resolution, asked that we amend the Hollings amendment so as to include the States. So that now the Hollings amendment reads that Congress is hereby empowered to regulate or control spending in Federal elections, and the States are hereby allowed to regulate or control spending in State elections.

It should be remembered that the last, I think, six out of seven amendments, took an average of 17 or 18 months. This is very timely for the people to vote on in November, when the issue has already been discussed and debated throughout the primaries. The people are ready to vote on campaign finance reform. And both presidential candidates, Bush and GORE, are now trying to position themselves as reformers on campaign finance. We can solve that by having the people vote on the issue in and of itself. Within 17 months, on average, we can have the people vote and by this time next year have it confirmed by the Congress and this mess will cleaned up. Then we can go back to work for the people of America and cut out this money machine operation that we call a Congress.

We not only have to go out during breaks and raise money, we now have ''power hours.'' We have the ''united fund,'' your fair share allocation that you are supposed to raise and contribute to the committee. It becomes more and more and more. Every time I turn around, instead of trying to get some work done, we have more money demands.

So if you want to stop the corruption and stop the charade of calling campaign contributions free speech, this amendment is the solution. We are not taking away anybody's speech. We in Congress don't call it speech when we conduct these hearings, year-long hearings with hundreds of witnesses and millions of pages of testimony to get the scoundrels. For what? Not for exercising their free speech but for violating limitations on money contributions. We treat money as property when we have these fund raisers. We don't call them free-speech raisers. We treat it as property, except when we try to really stop the corruption.

I hope we will stop it today and vote affirmatively on the Hollings-Specter amendment so that we can move on and get back to our work.

Go up to the majority leader and ask him: Mr. Leader, I would like you to bring up TV violence. He will say: Well, that will take 3 or 4 days. We don't have time.

Why don't we have time? We don't work on Monday. We don't work on Friday, just the afternoons on Tuesday and Wednesday and Thursday. We can't even allow amendments.

We are going in this afternoon at 3:30 to the Budget Committee, but we have been putting that off again and again. I just checked an hour ago and it was said: We really don't know whether the vote is fixed. They try to fix the jury, fix the vote so there are no amendments to be accepted. The vote is fixed. It is an exercise—if you don't go along with their fix—in futility. Yet Members go around and say: I am a Member of the most deliberative body in the United States, most deliberative body in the world. The money chase has corrupted us so that we are fixed in a position where we can't deliberate. We don't deliberate. We have forgotten about that entirely and, in fact, rather enjoy it. So long as nobody raises any questions and we all can go back home and continue to raise money, we think we are doing a good job.

It is a sad situation. I hope we can address it in an up-front manner and support the amendment.

I retain the remainder of my time and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. HOLLINGS. I ask unanimous consent that time under the quorum call not be charged.

The PRESIDING OFFICER. Is there objection?

Mr. HATCH. Reserving the right to object, is the time going to be divided equally?

The PRESIDING OFFICER. The time would ordinarily be divided equally. Under this request, if I understand the request of the Senator from South Carolina, the time will be divided equally. As the time runs, it will be subtracted equally from both sides.

There is a deadline of 12:30, which the Senator's unanimous consent request would violate if time was not charged. Is there objection?

Mr. HATCH. Parliamentary inquiry. Is the time to be charged against this amendment equally referring to the amendment of the Senator from South Carolina?

The PRESIDING OFFICER. Yes. The Senator from South Carolina asked that the time not be charged while the Senate is in a quorum call. However, the Senate is under a previous order of a deadline of 12:30. Therefore, the time would have to be charged one way or another. The time expires at 12:30.

Mr. HATCH. I have no objection to the request as long as the time is divided equally on his amendment to my constitutional amendment.

Mr. HOLLINGS. That is my request, Mr. President.

The PRESIDING OFFICER. Without objection, the time will be divided equally between now and 12:30.

Mr. MCCONNELL. Mr. President, on the matter of the Hollings amendment, we——

Mr. HATCH. If the Senator will yield, as I understand it there is an hour for debate on the underlying constitutional amendment between 11:30 and 12:30 against which this time will not be charged.

The PRESIDING OFFICER. That is correct—just a second.

Mr. HATCH. Mr. President, I ask unanimous consent that the time be charged equally only against the amendment of the distinguished Senator from South Carolina and that the hour for debate between 11:30 and 12:30 remain the same.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. MCCONNELL addressed the Chair.

The PRESIDING OFFICER. The Senator from Kentucky is recognized.

Mr. MCCONNELL. Mr. President, we had extensive debate yesterday on the Hollings amendment. Let me repeat some of that for the record today.

The Hollings amendment is at least very straightforward. As I understand what the Senator from South Carolina is saying, in order to enact the various campaign finance schemes that have been promoted around the Senate over the last decade or so, you have to, in fact, amend the first amendment to the U.S. Constitution. I think he is correct in that. I happen to think, however, that is a terrible idea.

His amendment would essentially eviscerate the first amendment to the U.S. Constitution, change it dramatically for the first time in 200 years, to allow the Government—that is us here in the Congress—to determine who may speak, when they may speak and, conceivably, even what they may speak. Of course, under this amendment, the press would not be exempt. So everyone who had anything to say about American political matters in support of or in opposition to a candidate would fall under the regulatory rubric of the Congress. The American Civil Liberties Union called this a ''recipe for repression.'' It is the kind of power the Founding Fathers clearly did not want to reside in elected officials.

So this is a step we should not take. The good news is the last time we voted on the Hollings amendment in 1997, it only got 38 votes. I am confident this will not come anywhere near the 67 votes it would need to clear the Senate.

I am rarely aligned with either Common Cause or the Washington Post on the campaign finance issue. They oppose the Hollings amendment. Senator FEINGOLD, of McCain-Feingold fame, also opposes the Hollings amendment.

This would be a big step in the wrong direction. I am confident the Senate will not take that step when the vote occurs sometime early this afternoon.

Now, some random observations on the subject of campaign finance reform. There has been a suggestion that this has become a leading issue nationally and will determine the outcome of the Presidential election. I think, first, it is important to kind of look back over the last few months at how this issue has fared with the American people, since it has been discussed so much by the press. There was an ABC-Washington Post poll right after the New Hampshire primary among both Republicans and Democrats, weighting the importance of issues. Among Republicans, only 1 percent—this was a national poll—thought campaign finance reform was an important issue and, among Democrats, only 2 percent.

Earlier this year, in January, another poll—a national poll—asked: What is the single most important issue to you in deciding whom you will support for President? Campaign finance was down around only 1 percent of the people nationally who thought that was an important issue in deciding how to vote for President. Further, a more recent CNN-Gallup-USA Today poll, in March—essentially after the two nominations for President for both parties had been wrapped up, after Super Tuesday—asked: What do you think is the most important problem facing this country today? It was open-ended. American citizens could pick any issue they wanted to as the most important problem facing this country today.

In this poll of the American public, over 1,000 adults all across America, 32 different issues were mentioned. It was an open-ended poll among American citizens as to what they thought was the most important issue. Not a single person mentioned campaign finance reform in this open-ended survey after Super Tuesday, after this issue had been much discussed in the course of the nomination fights for both the Democrats and the Republicans. Of course, in California, on the very same day as the Super Tuesday vote, there was, in fact, a referendum on the ballot in California providing for taxpayer funding of elections and all of the various schemes promoted by the reformers here in the Senate in recent years. It was defeated 2–1.

So we have substantial evidence among the American people as to what they feel about this issue in terms of its importance in casting votes for the President of the United States or, for that matter, for Members of Congress as well.

It has been suggested by the reformers on this issue over the years that if we will just pass various forms of campaign finance reform, the public will feel better about us, their skepticism about us will be reduced, and their cynicism about politics will subside. A number of other countries have passed the kind of legislation that has been proposed here over the last 15 or 20 years. Most of those—or all of those countries don't have a first amendment, so they don't have that impeding legislative activity. I think it is interesting to look at these other countries and what the results have been in terms of public attitudes about government that have come after they have passed the kinds of legislation that has been advocated around here in one form or another over the years.

Let's look at some industrialized democracies. Our neighbor to the north, Canada, has passed many of the types of regulations supported by the reformers in the Senate over the years. They have passed spending limits for all national candidates. All national candidates must abide by these to be eligible to receive taxpayer matching funds. The Vice President just yesterday came out with a taxpayer-funded scheme for congressional elections. I have seen survey data on that. It would be more popular to vote for a congressional pay raise than to vote to spend tax money on buttons and balloons and commercials. That is what the Vice President came out for yesterday. We look forward to debating, in the course

of the fall election, how the American people feel about having their tax dollars go to pay for political campaigns.

Nevertheless, other countries have done that. I was talking about Canada. Candidates can spend $2 per voter for the first 15,000 votes they get, a dollar per voter for all votes up to 25,000, and 50 cents per voter beyond 25,000. They have spending limits on parties that restrict parties to spending the product of a multiple used to account for the cost of living. This is an incredibly complex scheme they have in Canada—a product of a multiple used to account for cost of living times the number of registered voters in each electoral district in which that party has a candidate running for office.

It almost makes you laugh just talking about this.

Right now, in Canada, it comes out to about $1 per voter. They have indirect funding via media subsidies. The Canadian Government requires that radio and TV networks provide all parties with a specified amount of free air time during the month prior to an election. The Government also provides subsidies to defray the cost of political publishing and gives tax credits to individuals and corporations which donate to candidates and/or parties. It sounds similar to the Gore proposal of yesterday.

They have this draconian scheme up in Canada in which nobody gets to speak beyond the Government's specified amount. The Government's subsidies are put into both campaigns and parties and media subsidies.

What has been the reaction of the Canadian people in terms of their confidence expressed toward their Government?

The most recent political science studies of Canada demonstrate that despite all of this regulation of political speech by candidates and parties, the number of Canadians who believe that ''the Government doesn't care what people like me think'' has grown from roughly 45 percent to approximately 67 percent.

The Canadians put in this system presumably to improve the attitude of Canadians about their Government, and it has declined dramatically since the imposition of this kind of control over political speech. Confidence in the national legislature in Canada declined from 49 percent to 21 percent, and the number of Canadians satisfied with the system of government has declined from 51 percent to 34 percent.

Here we have in our neighbor to the north, Canada, an example of a country responding to concerns about cynicism about politics in government put in all of these speech controls, and the people in Canada have dramatically less confidence in the Government now than they did before all of this was enacted.

Let's take a look at Japan.

According to the Congressional Research Service, ''Japanese election campaigns, including campaign financing, are governed by a set of comprehensive laws that are the most restrictive among democratic nations.''

After forming a seven-party coalition government in August, 1993 Prime Minister Hosokawa—this sounds like the Vice President—placed campaign finance reform at the top of his agenda, just as Vice President GORE did yesterday. He asserted that his reforms would restore democracy in Japan. In November 1994, his legislation passed. After this legislation, the Japanese Government imposed the following restrictions on political speech. Listen to this. This is the law in Japan:

Candidates are forbidden from donating to their own campaigns.

Any corporation that is a party to a Government contract, grant, loan, or subsidy is prohibited from making or receiving any political contributions for 1 year after they receive such a contract, grant, loan, or subsidy.

In addition, there are strict limits on what corporations and unions and individuals may give to candidates and parties.

There are limits on how much candidates may spend on their campaigns.

Candidates are prohibited from buying any advertisements.

Listen to this: Candidates are prohibited from buying any advertisements in magazines and newspapers beyond the five print media ads of a specified length that the Government purchases for each candidate.

Parties are allotted a specific number of Government-purchased ads of a specified length.

The number of ads a party gets is based on the number of candidates they have running.

It is illegal for these party ads to discuss individual candidates in Japan. It is illegal.

In Japan, candidates and parties spend nothing on media advertising because not only are they prohibited from purchasing print media ads, they are also prohibited from buying time on television and radio.

Talk about speech controls—in Japan, candidates can't buy any time on television and radio.

The Government requires TV stations to permit parties and each candidate a set number of television and radio ads during the 12 days prior to the election. Each candidate gets to make one Government-subsidized television broadcast.

The Government's Election Management Committee—that is a nice title—provides each candidate with a set number of sideboards and posters that subscribe to a standard Government-mandated format.

The Election Management Committee also designates the places and times that candidates may give speeches.

In Japan, the Government designates the times and places candidates may give speeches.

This is the most extraordinary control over political discussion imaginable. All of this campaign finance reform in Japan was enacted earlier in the 1990s.

What makes it even more laughable is, after all of this happened, all of these regulations on political speech that amount to a reformers wish list were imposed, you have to ask the question: Did cynicism decline? Did trust in government increase? ''Not so should be noted,'' as we say down in Kentucky. Following the disposition of these regulations, the number of Japanese who said they had ''no confidence in legislators''—the Japanese passed campaign finance reform that Common Cause could only drool over. They did it in Japan. And after they did it, following the imposition of these regulations, the number of Japanese who said they had ''no confidence in legislators'' rose to 70 percent.

Following the enactment of this draconian control of political discourse that I just outlined, in Japan only 12 percent of Japanese believe the Government is responsive to the people's opinions and wishes.

After the enactment of all of this control over political discussion in Japan, the percentage of Japanese ''satisfied'' with the nation's political system fell to a mere 5 percent and voter turnout continued to decline.

Let's take a look at France.

In France, there is significant regulation of political activity:

Government funding of candidates;

Government funding of parties;

Free radio and television time, reimbursement for printing posters and for campaign-related transportation;

They banned contributions to candidates by any entity except parties and PACs;

Individual contributors to parties are limited;

Strict expenditure limits are set for each electoral district;

And every single candidate's finances are audited by a national commission to ensure compliance with the rules.

Despite these regulations, the latest political science studies in France demonstrate that the French people's confidence in their Government and political institutions has continued to decline, and voter turnout has continued to decline.

Let's take a look at Sweden.

Sweden has imposed the following regulations on political speech:

In Sweden, there is no fundraising—none at all—or spending for individual candidates. Citizens merely vote for parties and assign seats on proportion of votes they receive.

The Government subsidizes print ads by parties.

Despite the fact that Sweden has no fundraising or spending for individual candidates since these requirements have been in force, the number of Swedes disagreeing with the statement that ''parties are only interested in people's votes, not in their opinions'' has declined from 51 percent to 28 percent.

The number of people expressing confidence in the Swedish Parliament has declined from 51 percent to 19 percent.

So we could follow the rest of the world and trash the first amendment and enact all of these draconian controls over political discussion, and there is no evidence anywhere in the world that produces greater faith in government or greater confidence in the process. In fact, there is every bit of evidence that it declines dramatically after the enactment of these kinds of reforms.

I am confident we will not start repealing the first amendment today through the passage of the Hollings amendment. Only 38 Senators voted for this in 1997 when it was last before us, and I am certain there won't be many more than that today.

Mr. President, how much time remains in opposition to the Hollings amendment?

The PRESIDING OFFICER (Mr. ENZI). Three minutes.

Mr. MCCONNELL. The Senator from Wisconsin is here to speak in opposition to the Hollings amendment.

Mr. FEINGOLD. Mr. President, I ask unanimous consent if I could speak for 15 minutes in opposition.

The PRESIDING OFFICER. The time is under the control of the Senator from Utah.

Mr. MCCONNELL. Since there are 3 minutes more in opposition to the Hollings amendment, I am happy to give the Senator from Wisconsin my 3 minutes and hope he might be accommodated for a few more minutes to complete his statement.

Mr. HATCH. I am happy to give the Senator 3 minutes, and I ask the distinguished Senator from South Carolina if he would give some time.

Mr. HOLLINGS. We have no time. I have the Senator from Pennsylvania coming. I want to be accommodating but time is limited.

Mr. FEINGOLD. Obviously, both sides have the same amount of time. I ask unanimous consent I be allowed to speak for 15 minutes, if necessary adding on to the time. Obviously, if the opponents were to feel the same, I have no opposition.

The PRESIDING OFFICER. The Senator is advised we have a deadline of 12:30. Therefore, the Senator's unanimous consent request would necessarily have to come out of Senator HOLLINGS' time, after the 3 minutes have been used from the opposition.

Mr. HATCH. Mr. President, I ask unanimous consent the debate on the Judiciary Committee amendment to the Constitution be moved to 11:45 to accommodate the distinguished Senator, with the time divided equally.

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

The Senator from Wisconsin is recognized for 15 minutes.

Mr. FEINGOLD. I certainly thank the Senator from Utah.

Mr. President, I rise today to oppose the proposed constitutional amendment offered by the junior Senator from South Carolina, Senator HOLLINGS.

First I would like to say a few words about the Senator from South Carolina. Our colleague Senator HOLLINGS has been calling for meaningful campaign finance reform for perhaps longer than any other Member of the U.S. Senate. I disagree with this particular approach. But I certainly do not question his sincerity or commitment to reform.

Back in 1993, my first year in the Senate, Senator HOLLINGS offered a sense-of-the-Senate amendment to take up a constitutional amendment very similar to the one that is before us today. I remember we had a very short period of time before that vote came up, and I decided to vote with the Senator from South Carolina on that day. I did so because I believed that other than balancing the Federal budget, there was perhaps no more fundamental issue facing our country than the need to reform our election laws.

Such a serious topic I believed at the time merited at least a consideration of a constitutional amendment. And I will certainly confess to a certain level of frustration at that time with the fact that the Senate and other body had not yet acted to pass meaningful campaign finance reform in that Congress.

To be candid, I immediately realized, even as I was walking back to my office from this Chamber, that I had made a mistake. I started rethinking right away whether I really wanted the U.S. Senate to consider amending the first amendment, even to address the extremely important subject of campaign finance reform.

Then, 18 months later, my perspective on this question began to change even more as I was presented with two new development here in the Senate.

First I was given the privilege of serving on the Senate Judiciary Committee, and, second, I learned that the 104th Congress, newly under the control of what remains the majority party, was to become the engine for a trainload of proposed amendments to the U.S. Constitution. As a member of the Judiciary Committee, I had a very good seat to witness first hand the surgery that some wanted to perform on the basic governing document of our country, the Constitution.

It started with a proposal right away for a balanced budget constitutional amendment. Soon we were considering a term limits constitutional amendment, and then a flag desecration constitutional amendment, then a school prayer amendment, then a super majority tax increase amendment, and then a victims rights amendment. In all over 100 constitutional amendments were introduced in the 104th Congress. A similar number were introduced in the last Congress as well. And in this Congress already we have seen over 60 constitutional amendments introduced.

As I saw legislator after legislator suggest that every sort of social, economic, and political problem we have in this country could be solved merely with enactment of a constitutional amendment, I chose to oppose strongly not only this constitutional amendment but others that also sought to undermine our most treasured founding principle. I firmly believe we must curb this reflexive practice of attempting to cure each and every political and social ill of our Nation by tampering with the U.S. Constitution. The Constitution of this country was not a rough draft. We must stop treating it as such.

We must also understand that even if we were to adopt this constitutional amendment, and the states were to ratify it, which we all know is not going to happen, it will not take us one single, solitary step closer to campaign finance reform. It is not a silver bullet. This constitutional amendment empowers the Congress to set mandatory spending limits on congressional candidates. Those are the kind of mandatory limits that were struck down in the landmark Buckley v. Valeo decision.

Here is the question I pose for supporters of this amendment: If this constitutional amendment were to pass the Congress and be ratified by the States, would campaign finance reformers have the necessary 51 votes—or more likely the necessary 60 votes—to pass legislation that includes mandatory spending limits? I don't think so.

We do not even have 60 votes to pass a ban on soft money at this point. And we probably don't even have a bare majority of the Senate who support spending limits, much less mandatory spending limits.

I have been working for many years with the senior Senator from Arizona, Senator MCCAIN, on a bipartisan campaign finance proposal. While our proposal has changed over the years, we have consistently been guided by a desire to work within the guidelines established by the Supreme Court. Although our opponents disagree, we are confident that the McCain-Feingold bill is constitutional and will be upheld by the courts.

I am mystified by the comments of the Senator from South Carolina who stated pointblank: Everyone knows the McCain-Feingold bill is unconstitutional. In fact, the recent Missouri Shrink case said by a 6–3 margin such limitations on contributions are constitutional. It was a supermajority of the Supreme Court. It is not credible, I believe, for anyone to argue at this point that a ban on soft money is unconstitutional.

Our original proposal, unlike the law that was considered in Buckley v. Valeo, included voluntary spending limits. We offered incentives in the form of free and discounted television time to encourage but not require candidates to limit their campaign spending. That kind of reform is patterned on the Presidential public funding system that was specifically upheld in Buckley.

Later versions of our bill have focused on abolishing soft money, the unlimited contributions from corporations, unions, and wealthy individuals to political parties. Very few constitutional scholars, other than a current nominee to the FEC, Brad Smith, believe that the Constitution prevents us from banning soft money. As I indicated, the Missouri Shrink case makes that clear.

The key point is this: We don't need to amend the Constitution to do what needs to be done. Of course, when we bring a campaign finance bill to the floor we are met with strong resistance. In fact, so far we have been stopped by a filibuster. The notion that this constitutional amendment will somehow magically pave the way for legislation that includes mandatory spending limits simply ignores the reality of the opposition that campaign finance reformers face in the Senate, and I think we face in the Senate even after a ratification of the Hollings amendment.

This amendment, if ratified, would remove the obstacle of the Supreme Court from mandatory spending limit legislation, but it will not remove the obstacle of those Senators such as the Senator from Kentucky, who believe we need more money, not less, in our political system.

Most disconcerting to me is what this proposed constitutional amendment would mean to the first amendment. I find nothing more sacred and treasured in our Nation's history than the first amendment. It is perhaps the one tenet of our Constitution that sets our country apart from every type of government formed and tested by mankind throughout history. No other country has a provision quite like our first amendment.

The first amendment is the bedrock of the Bill of Rights. It has as its underpinning the notion that every citizen has a fundamental right to disagree with his or her government. It says that a newspaper has an unfettered right to publish expressions of political or moral thought. It says that the Government may not establish a State-based religion that would infringe on the rights of those individuals who seek to be freed from such a religious environment.

I have stood on the floor of the Senate to oppose the proposed constitutional amendment that would allow Congress to prohibit the desecration of the U.S. flag, and I do so again this week. I do so because that amendment, for the first time in our history, would take a chisel to the first amendment. It would say that individuals have a constitutional right to express themselves—unless they are expressing themselves by burning a flag.

Just as I deplore as much as anyone in this body any individual who would take a match to the flag of the United States, I am firmly convinced that unrestrained spending on congressional campaigns has eroded the confidence of the American people in their government and their leaders. I believe we should speak out against those who desecrate the flag. I believe we should take immediate steps to fundamentally overhaul our system of financing campaigns. But I do not believe, as the supporters of this constitutional amendment and other amendments believe, that we need to amend the U.S. Constitution to accomplish our goals.

Nothing in this constitutional amendment before the Senate today would prevent what we witnessed in the last election. Allegations of illegality and improprieties, accusations of abuse, and the selling of access to high-ranking Government officials would continue no matter what the outcome of the vote on this constitutional amendment. Only the enactment of legislation that bans soft money contributions will make a meaningful difference.

I see Members of the Senate as having three choices. First, they can vote for constitutional amendments and one-sided reform proposals that basically have predetermined fates of never becoming law. That allows you to say you voted for something and put the matter aside. Second, they can stand with the Senator from Kentucky and others who tell us ''all is well'' with our campaign finance system and we should not be disturbed that so much money is pouring into the campaign coffers of candidates and parties.

A third option is that Senators can join with the Senator from Arizona and myself and others who have tried to approach this problem from a bipartisan perspective and have tried to craft a reform proposal that is fair to all, and constitutional.

Without meaningful bipartisan campaign finance reform, the American people will continue to perceive their elected leaders as being for sale. They will continue to distrust and doubt the integrity of their own Government. And they will have good reason for that distrust and doubt. This system of legalized bribery threatens the very foundations of our democracy.

Senator MCCAIN and I intend to make sure that the Senate will have another opportunity to address this issue. We have had many debates on campaign finance reform, and we will have many more until we pass it. I understand and share the frustration of those who support reform and are tired of seeing our efforts fail. I want to finish this job too. But the way to address the campaign finance problem is to pass constitutional legislation, not a constitutional amendment. We must redouble our efforts to break the deadlock and give the people real reform this year, not 7 or more years from now.

I urge the Members of the Senate to reject this amendment. It is not necessary to tinker with the first amendment in order to accomplish campaign finance reform. I greatly admire the sincerity and commitment of the Senator from South Carolina, but I do not think his amendment will bring us any closer to passing campaign finance reform.

I thank the Senator from Utah, again, for his courtesy in allowing me to address this issue. I yield the floor.

The PRESIDING OFFICER. The Chair recognizes the Senator from South Carolina.

Mr. HOLLINGS. Mr. President, I thank my distinguished colleague from Wisconsin. I only hasten to add that this particular amendment has nothing to do with favoring or opposing the McCain-Feingold amendment. I have voted for that at least four or five times already.

Read the Nixon v. Shrink decision when they say money is speech, and in the Colorado v. FEC decision when they allowed soft money. One can tell a majority of the Court has no idea. Money talks; money is speech—that is the way the Court is going. I reiterate, McCain-Feingold is an act in futility.

Mr. President, I ask unanimous consent that an article by Jonathan Bingham, ''Democracy or Plutocracy? The Case for a Constitutional Amendment to Overturn Buckley v. Valeo'' be printed in the RECORD.

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

[From the Annals of the American Academy, Jul., 1986]

DEMOCRACY OR PLUTOCRACY? THE CASE FOR A CONSTITUTIONAL AMENDMENT TO OVERTURN BUCKLEY V. VALEO

(By Jonathan Bingham)

Abstract: In the early 1970s the U.S. Congress made a serious effort to stop the abuses of campaign financing by setting limits on contributions and also on campaign spending. In the 1976 case of Buckley v. Valeo, the Supreme Court upheld the regulation of contributions, but invalidated the regulation of campaign spending as a violation of the First Amendment. Since then, lavish campaigns, with their attendant evils, have become an ever more serious problem. Multimillion-dollar campaigns for the Senate, and even for the House of Representatives, have become commonplace. Various statutory solutions to the problem have been proposed, but these will not be adequate unless the Congress—and the states—are permitted to stop the escalation by setting limits. What is needed is a constitutional amendment to reverse the Buckley holding, as proposed by several members of Congress. This would not mean a weakening of the Bill of Rights, since the Buckley ruling was a distortion of the First Amendment. Within reasonable financial limits there is ample opportunity for that ''uninhibited, robust and wide-open'' debate of the issues that the Supreme Court correctly wants to protect.

The First Amendment is not a vehicle for turning this country into a plutocracy,'' says Joseph L. Rauh, the distinguished civil rights lawyer, deploring the ruling in Buckley v. Valeo.[1] It is the thesis of this article that the Supreme Court in Buckley was wrong in nullifying certain congressional efforts to limit campaign spending and that the decision must not be allowed to stand. While statutory remedies may mitigate the evil of excessive money in politics and are worth pursuing, they will not stop the feverish escalation of campaign spending. They

[1] Footnotes at end of article.

will also have no effect whatever on the spreading phenomenon of very wealthy people's spending millions of dollars of their own money to get elected to Congress and to state office.

When the Supreme Court held a national income tax unconstitutional, the Sixteenth Amendment reversed that decision. Buckley should be treated the same way.

BACKGROUND

The Federal Election Campaign Act of 1971 was the first comprehensive effort by the U.S. Congress to regulate the financing of federal election campaigns. In 1974, following the scandals of the Watergate era, the Congress greatly strengthened the 1971 act. As amended, the new law combined far-reaching requirements for disclosure with restrictions on the amount of contributions, expenditures from a candidate's personal funds, total campaign expenditures, and independent expenditures on behalf of identified candidates.

The report of the House Administration Committee recommending the 1974 legislation to the House explained the underlying philosophy:

''The unchecked rise in campaign expenditures, coupled with the absence of limitations on contributions and expenditures, has increased the dependence of candidates on special interest groups and large contributors. Under the present law the impression persists that a candidate can buy an election by simply spending large sums in a campaign.

''Such a system is not only unfair to candidates in general, but even more so to the electorate. The electorate is entitled to base its judgment on a straightforward presentation of a candidate's qualifications for public office and his programs for the Nation rather than on a sophisticated advertising program which is encouraged by the infusion of vast amounts of money.

''The Committee on House Administration is of the opinion that there is a definite need for effective and comprehensive legislation in this area to restore and strengthen public confidence in the integrity of the political process.''[2]

The 1974 act included a provision, added pursuant to an amendment offered by then Senator James Buckley, for expedited review of the law's constitutionality. In January 1976 the Supreme Court invalidated those portions that imposed limits on campaign spending as violative of the First Amendment's guarantee of free speech.

In his powerful dissent, Justice White said, ''Without limits on total expenditures, campaign costs will inevitably and endlessly escalate.''[3] His prediction was promptly borne out. Multimillion-dollar campaigns for the Senate have become the rule, with the 1984 Helms-Hunt race in North Carolina setting astonishing new records. It is no longer unusual for expenditures in contested House campaigns to go over the million-dollar mark; in 1982 one House candidate reportedly spent over $2 million of his own funds.

In 1982 a number of representatives came to the conclusion that the Buckley ruling should not be allowed to stand and that a constitutional amendment was imperative. In June Congressman Henry Reuss of Wisconsin introduced a resolution calling for an amendment to give Congress the authority to regulate campaign spending in federal elections. In December, with the cosponsorship of Mr. Reuss and 11 others,[4] I introduced a broader resolution authorizing the states, as well as the Congress, to impose limits on campaign spending. The text of the proposed amendment was:

Section 1. The Congress may enact laws regulating the amounts of contributions and expenditures intended to affect elections to federal office.

Section 2. The several states may enact laws regulating the amounts of contributions and expenditures intended to affect elections to state and local offices.[5]

In the Ninety-eighth Congress, the same resolution was reintroduced by Mr. Vento and Mr. Donnelly and by Mr. Brown, Democrat of California, and Mr. Rinaldo, Republican of New Jersey. A similar resolution was introduced in the Senate by Senator Stevens, Republican of Alaska. As of the present writing, the resolution has been reintroduced in the Ninety-ninth Congress by Mr. Vento.[6]

No hearings have been held on these proposals, and they have attracted little attention. Even organizations and commentators deeply concerned with the problem of money in politics and runaway campaign spending have focused exclusively on statutory remedies. Common Cause, in spite of my pleading, has declined to add a proposal for a constitutional amendment to its agenda for campaign reform or even to hear arguments in support of the proposal. A constituency for the idea has yet to be developed.

THE NATURE OF THE PROBLEM

This article proceeds on the assumption that escalating campaign costs pose a serious threat to the quality of government in this country. There are those who argue the contrary, but their view of the nature of the problem is narrow. They focus on the facts that the amounts of money involved are not large relative to the gross national product and that the number of votes on Capitol Hill that can be shown to have been affected by campaign contributions is not overwhelming.

The curse of money in politics, however, is by no means limited to the influencing of votes. There are at least two other problems that are, if anything, even more serious. One is the eroding of the present nonsystem on the public's confidence in our form of democracy. If public office and votes on issues are perceived to be for sale, the harm is done, whether or not the facts justify that conclusion. In *Buckley* the Supreme Court itself, in sustaining the limitations on the size of political contributions, stressed the importance of avoiding ''the appearance of improper influence'' as '''critical . . . if confidence in the system of representative government is not to be eroded to a disastrous extent.''''[7] What the Supreme Court failed to recognize was that ''[6]confidence in the system of the representative government'' could likewise be '''eroded to a disastrous extent'''' by the spectacle of lavish spending, whether the source of the funds is the candidate's own wealth or the result of high-pressure fund-raising from contributors with an ax to grind.

The other problem is that excellent people are discouraged from running for office, or, once in, are unwilling to continue wrestling with the unpleasant and degrading task of raising huge sums of money year after year. There is no doubt that every two years valuable members of Congress decide to retire because they are fed up with having constantly to beg. For example, former Congressmen Charles Vanik of Ohio and Richard Ottinger of New York, both outstanding legislators, were clearly influenced by such considerations when they decided to retire, Vanik in 1980 and Ottinger in 1984. Vanik said, among other things, ''I feel every contribution carries some sort of lien which is an encumbrance on the legislative process. . . . I'm terribly upset by the huge amounts that candidates have to raise.''[8] Probably an even greater number of men and women who would make stellar legislators are discouraged from competing because they cannot face the prospect of constant fundraising or because they see a wealthy person, who can pay for a lavish campaign, already in the race.

In ''Politics and Money,'' Elizabeth Drew has well described the poisonous effect of escalating campaign costs on our political system:

''Until the problem of money is dealt with, it is unrealistic to expect the political process to improve in any other respect. It is not relevant whether every candidate who spends more than this opponent wins—though in races that are otherwise close, this tends to be the case. What matters is what the chasing of money does to the candidates, and to the victors' subsequent behavior. The candidates' desperation for money and the interests' desire to affect public policy provide a mutual opportunity. The issue is not how much is spent on elections but the way the money is obtained. The point is what raising money, not simply spending it, does to the political process. It is not just that the legislative product is bent or stymied. It is not just that well-armed interests have a head start over the rest of the citizenry—or that often it is not even a contest. . . . It is not even relevant which interest happens to be winning. What is relevant is what the whole thing is doing to the democratic process. What is at stake is the idea of representative government, the soul of this country.''[9]

Focusing on the different phenomenon of wealthy candidates' being able to finance their own, often successful, campaigns, the late columnist Joseph Kraft commented that ''affinity between personal riches and public office challenges a fundamental principle of American life.''[10]

SHORTCOMING OF STATUTORY PROPOSALS

In spite of the wide agreement on the seriousness of the problems, there is no agreement on the solution. Many different proposals have been made by legislators, academicians, commentators, and public interest organizations, notably Common Cause.

One of the most frequently discussed is to follow for congressional elections the pattern adopted for presidential campaigns: a system of public funding, coupled with limits on spending.[11] Starting in 1955, bills along these lines have been introduced on Capitol Hill, but none has been adopted. Understandably, such proposals are not popular with incumbents, most of whom believe that challengers would gain more from public financing than they would.

Even assuming that the political obstacles could be overcome and that some sort of public financing for congressional candidates might be adopted, this financing would suffer from serious weaknesses. No system of public financing could solve the problem of the very wealthy candidate. Since such candidates do not need public funding, they would not subject themselves to the spending limits. The same difficulty would arise when aggressive candidates, believing they could raise more from private sources, rejected the government funds. This result is to be expected if the level of public funding is set too low, that is, at a level that the constant escalation of campaign costs is in the process of outrunning. According to Congressman Bruce Vento, an author of the proposed constitutional amendment to overturn Buckley, this has tended to happen in Minnesota, where very low levels of public funding are provided to candidates for state office.

To ameliorate these difficulties, some proponents of public financing suggest that the spending limits that a candidate who takes government funding must accept should be waived for that candidate to the extent an opponent reports expenses in excess of those

limits. Unfortunately, in such a case one of the main purposes of public funding would be frustrated and the escalation of campaign spending would continue. The candidate who is not wealthy is left with the fearsome task of quickly having to raise additional hundreds of thousands, or even millions, of dollars.

Another suggested approach would be to require television stations, as a condition of their licenses, to provide free air time to congressional candidates in segments of not less than, for instance, five minutes. A candidate's acceptance of such time would commit the candidate to the acceptance of spending limits. While such a scheme would be impractical for primary contests—which in many areas are the crucial ones—the idea is attractive for general election campaigns in mixed urban-rural states and districts. It would be unworkable, however, in the big metropolitan areas, where the main stations reach into scores of congressional districts and, in some cases, into several states. Not only would broadcasters resist the idea, but the television-viewing public would be furious at being virtually compelled during preelection weeks to watch a series of talking-head shows featuring all the area's campaigning senators and representatives and their challengers. The offer of such unpopular television time would hardly tempt serious candidates to accept limits on their spending.

Proponents of free television time, recognizing the limited usefulness of the idea in metropolitan areas, have suggested that candidates could be provided with free mailings instead. While mailings can be pinpointed and are an essential part of urban campaigning, they account for only a fraction of campaign costs, even where television is not widely used; accordingly, the prospect of free mailings would not be likely to win the acceptance of unwelcome campaign limits on total expenses.[12]

Yet another method of persuading candidates to accept spending limits would be to allow 100 percent tax credits for contributions of up to, say, $100 made to authorized campaigns, that is, those campaigns where the candidate has agreed to abide by certain regulations, including limits on total spending.[13] It is difficult to predict how effective such a system would be, and a pilot project to find out would not be feasible, since the tax laws cannot be changed for just one area. For candidates who raise most of their funds from contributors in the $50-to-$100 range, the incentive to accept spending limits would be strong, but for those—and they are many—who rely principally on contributors in the $500-to-$1000 range, the incentive would be much weaker. This problem could be partially solved by allowing tax credits for contributions of up to $100 and tax deductions for contributions in excess of $100 up to the permitted limit. Such proposals, of course, amount to a form of public financing and hence would encounter formidable political obstacles, especially at a time when budgetary restraint and tax simplification are considered of top priority.

Some of the most vocal critics of the present anarchy in campaign financing focus their wrath and legislative efforts on the political action committees (PACs) spawned in great numbers under the Federal Election Campaign Act of 1974. Although many PACs are truly serving the public interest, others have made it easier for special interests, especially professional and trade associations, to funnel funds into the campaign treasuries of legislators or challengers who will predictably vote for those interests. Restrictions, such as limiting the total amount legislative candidates could accept from PACs, would be salutary[14] but no legislation aimed primarily at the PAC phenomenon—not even legislation to eliminate PACs altogether—would solve the problem so well summarized by Elizabeth Drew. The special interests and favor-seeking individual givers would find other ways of funneling their dollars into politically useful channels, and the harassed members of Congress would have to continue to demean themselves by constant begging.

PAC regulation and all the other forms of statutory regulation suffer from one fundamental weakness: none of them would affect the multimillion-dollar self-financed campaign. Yet it is this type of campaign that does more than any other to confirm the widely held view that high office in the United States can be bought.

Short of a constitutional amendment, there is only one kind of proposal, so far as I know, that would curb the super-rich candidate, as well as setting limits for others. Lloyd N. Cutler, counsel to the president in the Carter White House, has suggested that the political parties undertake the task of campaign finance regulation.[15] Theoretically, the parties could withhold endorsement from candidates who refuse to abide by the party-prescribed limits and other regulations. But the chances of this happening seem just about nil. Conceivably a national party convention might establish such regulations for its presidential primaries, but to date most contenders have accepted the limits imposed under the matching system of public funding; John Connally of Texas was the exception in 1980. For congressional races, however, it is not at all clear what body or bodies could make such rules and enforce them. Claimants to such authority would include the national conventions, national committees, congressional party caucuses, various state committees, and, in some cases, country committees. Perhaps our national parties should be more hierarchically structured, but the fact is that they are not.

On top of all this, the system would work for general election campaigns only if both major parties took parallel action. If by some miracle they did so, the end result might be to encourage third-party and independent candidacies.

Let me make clear that I am not opposed to any of the proposals briefly summarized earlier. To the extent I had the opportunity to vote for any of the statutory proposals during my years in the House, I did so. Nor am I arguing that a constitutional amendment by itself would solve the problem; it would only be the beginning of a very difficult task. What I am saying is that, short of effective action by the parties, any system to reverse the present lethal trends in campaign financing must have as a basic element the restoration to the Congress of the authority to regulate the process.

THE MERITS OF THE BUCKLEY RULING

The justices of the Supreme Court were all over the lot in the *Buckley* case, with numerous dissents from the majority opinion. The most significant dissent, in my view, was entered by Justice White, who, alone among the justices, had had extensive experience in federal campaigns. White's position was that the Congress, and not the Court, was the proper body to decide whether the slight interference with First Amendment freedoms in the Federal Election Campaign Act was warranted. Justice White reasoned as follows:

''The judgment of Congress was that reasonably effective campaigns could be conducted within the limits established by the Act. . . . In this posture of the case, there is no sound basis for invalidating the expenditure limitations, so long as the purposes they serve are legitimate and sufficiently substantial, which in my view they are . . .

''. . . expenditure ceilings reinforce the contribution limits and help eradicate the hazard of corruption. . . .

''Besides backing up the contribution provisions, . . . expenditure limits have their own potential for preventing the corruption of federal elections themselves.[16]''

Justice White further concluded that

''limiting the total that can be spent will ease the candidate's understandable obsession with fundraising, and so free him and his staff to communicate in more places and ways unconnected with the fundraising function.

''It is also important to restore and maintain public confidence in federal elections. It is critical to obviate and dispel the impression that federal elections are purely and simply a function of money, that federal offices are bought and sold or that political races are reserved for those who have the facility—and the stomach—for doing whatever it takes to bring together those interests, groups, and individuals that can raise or contribute large fortunes in order to prevail at the polls.[17]''

Two of the judges of the District of Columbia Circuit Court, which upheld the 1974 act—judges widely respected, especially for their human rights concerns—later wrote law journal articles criticizing in stinging terms the Supreme Court's holding that the spending limits were invalid. For example, the late Judge Harold Leventhal said in the Columbia Law Review: ''The central question is what is the interest underlying regulation of campaign expenses and is it substantial? The critical interest, in my view, is the same as that accepted by the [Supreme] Court in upholding limits on contributions. It is the need to maintain confidence in self-government, and to prevent the erosion of democracy which comes from a popular view of government as responsive only or mainly to special interests.[18]

''A court that is concerned with public alienation and distrust of the political process cannot fairly deny to the people the power to tell the legislators to implement this one-word principle: Enough![19]''

Here are excerpts from what Judge J. Skelly Wright had to say in the Yale Law Journal:

''The Court told us, in effect, that money is speech.

''. . . [This view] accepts without question elaborate mass media campaigns that have made political communication expensive, but at the same time remote, disembodied, occasionally . . . manipulative. Nothing in the First Amendment . . . commits us to the dogma that money is speech.[20]

''. . . far from stifling First Amendment values, [the 1974 act] actually promotes them. . . . In place of unlimited spending, the law encourages all to emphasize less expensive face-to-face communications efforts, exactly the kind of activities that promote real dialogue on the merits and leave much less room for manipulation and avoidance of the issues.[21]''

The Supreme Court was apparently blind to these considerations. Its treatment was almost entirely doctrinaire. In holding unconstitutional the limits set by Congress on total expenditures for congressional campaigns and on spending by individual candidates, the Court did not claim that the dollar limits set were unreasonably low. In the view taken by the Court, such limits were beyond the power of the Congress to set, no matter how high.

Only in the case of the $1000 limit set for spending by independent individuals or groups ''relative to a clearly identified candidate'' did the Court focus on the level set in the law. The Court said that such a limit ''would appear to exclude all citizens and

groups except candidates, political parties and the institutional press from any significant use of the most effective modes of communication.''[22] In a footnote, the Court noted:

''The record indicates that, as of January 1, 1975, one full-page advertisement in a daily edition of a certain metropolitan newspaper cost $6,971.04—almost seven times the annual limit on expenditures ''relative to'' a particular candidate imposed on the vast majority of individual citizens and associations.''[23]

The Court devoted far more space to arguing the unconstitutionality of this provision than to any of the other limits, presumably because of this point it had the strongest case. Judge Leventhal, too, thought the $1000 figure for independent spending was unduly restrictive and might properly have been struck down. As one who supported the 1974 act while in the House, I believe, with the benefit of hindsight, that the imposition of this low limit on independent expenditures was a grave mistake.

Let us look for a moment at the question of whether reasonable limits on total spending in campaigns and on spending by wealthy candidates really do interfere with the ''unfettered interchange of ideas,'' ''the free discussion of governmental affairs,'' and the ''uninhibited, robust and wide-open'' debate on public issues that the Supreme Court has rightly said the First Amendment is designed to protect.[24] In *Buckley* the Supreme Court has answered that question in the affirmative when the limits are imposed by law under Congress' conceded power to regulate federal elections. The Court answered the same question negatively, however, when the limits were imposed as a condition of public financing. In narrow legalistic terms the distinction is perhaps justified, but, in terms of what is desirable or undesirable under our form of government, I submit that the setting of such limits is either desirable or it is not.

Various of the solutions proposed to deal with the campaign-financing problem, statutory and nonstatutory, raise the same question—for example, the proposal to allow tax credits only for contributions to candidates who have accepted spending limits, and the proposal that political parties should impose limits. All such proposals assume that it is good public policy to have such limits in place. They simply seek to avoid the inhibition of the *Buckley* case by arranging for some carrot-type motivation for the observance of limits, instead of the stick-type motivation of compliance with a law.

I am not, of course, suggesting that those who make these proposals are wrong to do so. What I am suggesting is that they should support the idea of undoing the damage done by *Buckley* by way of a constitutional amendment.

Summing up the reason for such an amendment, Congressman Henry Reuss said, ''Freedom of speech is a precious thing. But protecting it does not permit someone to shout 'fire' in a crowded theater. Equally, freedom of speech must not be stressed so as to compel democracy to commit suicide by allowing money to govern elections.[25]

INDEPENDENT EXPENDITURES IN PRESIDENTIAL CAMPAIGNS

Until now the system of public financing for presidential campaigns, coupled with limits on private financing, has worked reasonably well. Accordingly, most of the proposals mentioned previously for the amelioration of the campaign-financing problem have been concerned with campaigns for the Senate and the House.

In 1980 and 1984, however, a veritable explosion occurred in the spending for the presidential candidates by allegedly independent committees—spending that is said not to be authorized by, or coordinated with, the campaign committees. In both years, the Republican candidates benefited far more from this type of spending than the Democratic: In 1980, the respective amounts were $12.2 million and $45,000; in 1984, $15.3 million and $621,000.[26]

This spending violated section 9012(f) of the Presidential Campaign Fund Act, which prohibited independent committees from spending more than $1000 to further a presidential candidate's election if that candidate had elected to take public financing under the terms of the act. In 1983 various Democratic Party entities and the Federal Election Commission, with Common Cause as a supporting amicus curiac, sued to have section 9012(f) declared constitutional, so as to lay the groundwork for enforcement of the act. These efforts failed. Applying the *Buckley* precedent, the three-judge district court that first heard the case denied the relief sought, and this ruling was affirmed in a 7-to-2 decision by the Supreme Court in *FEC* v. *NCPAC* in March 1985.[27]

The *NCPAC* decision clearly strengthens the case for a constitutional amendment to permit Congress to regulate campaign spending. For none of the statutory or party-action remedies summarized earlier would touch this new eruption of the money-in-politics volcano.

True, even with a constitutional amendment in place, it would still be possible for the National Conservative Political Action Committee or other committees to spend unlimited amounts for media programs on one side of an issue or another, and these would undoubtedly have some impact on presidential—and other—campaigns. However, the straight-out campaigning for an individual or a ticket, which tends to be far more effective than focusing on issues alone, could be brought within reasonable limits.

LOOKING AHEAD

The obstacles in the way of achieving a reversal of Buckley by constitutional amendment are, of course, formidable. This is especially true today when the House Judiciary Committee is resolutely sitting on other amendments affecting the Bill of Rights and is not disposed to report out any such amendments.

In addition to the practical political hurdles to be overcome, there are drafting problems to solve. The simple form so far proposed[28]—and quoted previously—needs refinement.

For example, if an amendment were adopted simply giving to the Congress and the states the authority to ''enact laws regulating the amount of contributions and expenditures intended to affect elections,[29] the First Amendment question would not necessarily be answered. The argument could still be made, and not without reason, that such regulatory laws, like other powers of the Congress and the states, must not offend the First Amendment. I asked an expert in constitutional law how this problem might be dealt with, and he said the only sure way would be to add the words ''notwithstanding the First Amendment.'' But such an addition is not a viable solution. The political obstacles in the way of an amendment overturning Buckley in its interpretation of the First Amendment with respect to campaign spending are grievous enough; to ask the Congress—and the state legislatures—to create a major exception to the First Amendment would assure defeat.

The answer has to be to find a form of wording that says, in effect, that the First Amendment can properly be interpreted so as to permit reasonable regulation of campaign spending. In my view, it would be sufficient to insert in the proposed amendment,[30] after ''The Congress,'' the words ''having due regard for the need to facilitate full and free discussion and debate.'' Section 1 of the amendment would then read, ''The Congress, having due regard for the need to facilitate full and free discussion and debate, may enact laws regulating the amounts of contributions and expenditures intended to affect elections to federal office.'' Other ways of dealing with this problem could no doubt be devised.

Another drafting difficulty arises from the modification in the proposed amendment of the words ''contributions and expenditures'' by ''intended to affect elections.'' This language is appropriate with respect to money raised or spent by candidates and their committees, but it does present a problem in its application to money raised and spent by allegedly independent committees, groups, or individuals. It could hardly be argued that communications referring solely to issues, with no mention of candidates, could, consistent with the First Amendment, be made subject to spending limits, even if they were quite obviously ''intended to affect'' an election. Accordingly, a proper amendment should include language limiting the regulation of ''independent'' expenditures to those relative to ''clearly identified'' candidates, language that would parallel the provisions of the 1971 Federal Election Campaign Act, as amended.[31]

These are essentially technical problems that could be solved with the assistance of experts in constitutional law if the Judiciary Committee of either house should decide to hold hearings on the idea of a constitutional amendment and proceed to draft and report out an appropriate resolution.

Many of those in and out of Congress who are genuinely concerned with political money brush aside the notion of a constitutional amendment and focus entirely on remedies that seem less drastic. They appear to assume that Congress is more likely to adopt a statutory remedy, such as public financing, than go for an enabling constitutional amendment that could be tagged as tampering with the Bill of Rights. I disagree with that assumption.

Incumbents generally resist proposals such as public financing because challengers might be the major beneficiaries, but most incumbents tend to favor the idea of spending limits. The Congress is not by its nature averse to being given greater authority; that would be especially true in this case, where until 1976 the Congress always thought it had such authority. I venture to say that if a carefully drawn constitutional amendment were reported out of one of the Judiciary Committees, it might secure the necessary two-thirds majorities in both houses, with surprising ease.

The various state legislatures might well react in similar fashion. A power they thought they had would be restored to them.

The big difficulty is to get the process started, whether it be for a constitutional amendment or a statutory remedy or both. Here, the villain, I am afraid, is public apathy. Unfortunately, the voters seem to take excessive campaign spending as a given—a phenomenon they can do nothing about—and there is no substantial consistency for reform. The House Administration Committee, which in the early 1970s was the spark plug for legislation, has recently shown little interest in pressing for any of the legislative proposals that have been put forward.

The 1974 act itself emerged as a reaction to the scandals of the Watergate era, and it may well be that major action, whether statutory or constitutional, will not be a practical possibility until a new set of scandals bursts into the open. Meanwhile, the situation will only get worse.

FOOTNOTES

[1] Personal communication with Joseph L. Rauh, Mar, 1985; *Buckley* v. *Valeo,* 424 U.S. (1976).

[2] U.S., Congress, House, Committee on House Administration, *Federal Election Campaign Act, Amendments of 1974; Report to Accompany H.R. 16090,* 93rd Cong., 2d sess., 1974, H. Rept. 93–1239, pp. 3–4.

[3] 424 U.S., p. 264.

[4] The other representatives were Mrs. Fenwick, Republican of New Jersey; Ms. Mikulski, Democrat of Maryland; and Messrs. Bevil, Democrat of Alabama; Donnelly, Democrat of Massachusetts; D'Amours, Democrat of New Hampshire; Edgar, Democrat of Pennsylvania; LaFalce, Democrat of New York; and Wolpe, Democrat of Michigan.

[5] U.S., Congress, House, *Proposing an Amendment to the Constitution of the United States Relative to Contributions and Expenditures Intended to Affect Congressional, Presidential and State Elections,* 97th Cong., 2d. sess., 1982, H.J. Res. 628, p. 2.

[6] Ibid., 99th Cong., 1st sess., 1985, H.J. Res. 88.

[7] 424 U.S., p. 27, quoting *CSC* v. *Letter Carriers,* 413 U.S. 548, 565 (1973); see also 424 U.S., p. 30.

[8] Quoted by Congressman Henry Reuss, in U.S., Congress, House, *Congressional Record,* daily ed., 97th Cong., 2d sess., 1982, 128(81):H3900.

[9] *New Yorker,* 6 Dec. 1982, pp. 55–56.

[10] *Washington Post,* 2 Nov. 1982.

[11] In the *Buckley* case the Supreme Court simply assumed that limits on spending were not a violation of free speech when acceptance of such limits was made the condition for receiving public funds. 424 U.S., pp. 85–110. See also Charles McC. Mathias, Jr., ''Should There Be Public Financing of Congressional Campaigns?'' this issue of *The Annals* of the American Academy of Political and Social Science.

[12] A variation of the idea of free television and/or mail, proposed by Common Cause and others, would provide for such privileges as a means of answering attacks made on candidates by allegedly independent organizations or individuals. See Fred Wertheimer, ''Campaign Finance Reform: The Unfinished Agenda,'' this issue of *The Annals* of the American Academy of Political and Social Science.

[13] See ibid.

[14] The Obey-Railsback Act, which contained such restrictions, actually passed the House in 1979, but got no further. See ibid.

[15] See Lloyd N. Cutler, ''Can the Parties Regulate Campaign Financing?'' this issue of *The Annals* of the American Academy of Political and Social Science.

[16] 424 U.S., pp. 263–64.

[17] Ibid., p. 265.

[18] Leventhal, ''Courts and Political Thickets,'' *Columbia Law Review,* 77:362 (1977).

[19] Ibid., p. 368.

[20] Wright, ''Politics and the Constitution: Is Money Speech?'' *Yale Law Journal,* 85:1005 (1979).

[21] Ibid., p. 1019.

[22] 424 U.S., pp. 20–21.

[23] Ibid., p. 21.

[24] *Roth* v. *United States,* 354 U.S. 476, 484 (1957); *Mills* v. *Alabama,* 384 U.S. 214, 218 (1966); *New York Times* v. *Sullivan,* 376 U.S. 254, 270 (1964).

[25] U.S., Congress, House, *Congressional Record,* 97th Cong., 2d sess., daily ed., 128(81):H3901.

[26] *New York Times,* 19 Mar. 1985.

[27] *FEC* v. *NCPAC,* 105 S. Ct. 1459 (1985).

[28] U.S. Congress, House, *Contributions and Expenditures;* H.J. Res. 628.

[29] Ibid.

[30] Ibid.

[31] 2 U.S. C.A. §431(17).

Mr. HOLLINGS. Mr. President, that article was 10 years after Buckley v. Valeo. I am constantly reminded by the opposition that I only got 38 votes in 1997 for my amendment. There is a pleasure, an enjoyment to this wonderful corruption. There is not any question we used to have a better conscience. This article shows how even the Senator from Alaska, Mr. STEVENS, and others cosponsored it. I had a dozen Republican cosponsors.

Now the Senator from Kentucky, Mr. MCCONNELL, and the Senator from Texas, Mr. GRAMM, have it down to a Republican article of faith: We have the money and they, the Democrats, have the unions, and so we are not going to limit the money.

Governor George W. Bush has already raised $74 million and spent all but $8 million of it. He spent $64 million by March. The very idea of buying the office is a disgrace. It is a disgrace. As Senator Long of Louisiana said when we passed the Federal Election Campaign Act of 1971, we want to make sure everyone can participate.

Buckley v. Valeo has stood the first amendment on its head. It has taken it away. That is what the Senator from Wisconsin, the Senator from Kentucky, and others do not understand.

The Court, in Buckley v. Valeo, amended the first amendment to take away the speech of the ordinary American in important Federal elections. There is no question when one has to raise 5.5 million bucks in a little State like South Carolina—I looked around for somebody else to run last time. We could not get them to run for Congress because it cost too much. We could not even get a candidate on our side in the First District, in the Third District, and all around. It has gotten to where people say: Look, this thing costs too much; I don't have the time, I don't have the money.

That is a part of the corruption.

Look at the considerations of Justice White 25 years ago, and I read from his opinion. I remind everybody that four of the Justices found money as property and not speech; it could be controlled. It was only by a 1-vote margin that we are into this 25-year dilemma, like a dog chasing its tail around and around and the corruption growing and growing.

I quote from Justice White:

> It is accepted that Congress has power under the Constitution to regulate the election of Federal officers, including the President and Vice President. This includes the authority to protect the elective processes against the two great natural and historical enemies of all republics—open violence and insidious corruption.

Then talking about the insidious corruption:

> Pursuant to this undoubted power of Congress to vindicate the strong public interest in controlling corruption and other undesirable uses of money in connection with election campaigns, the Federal Election Campaign Act substantially broadened the reporting and disclosure requirements that so long have been a part of the Federal law. Congress also concluded that limitations on contributions and expenditures were essential if the aims of the act were to be achieved fully.

Buckley v. Valeo limited contributions. It took away freedom of speech under the premise here—what a terrible thing. I have the quotes from the distinguished Senator from Kentucky that ''we eviscerate the first amendment with this Hollings-Specter amendment that limits who may speak, when they may speak, what they may speak''—by the way, this applies to the press—''what they may report, when they may report and who may report.''

Actually, there is no question that the decision in Buckley amended the first amendment. What we are trying to do is complete a uniformity where everybody is treated equally, the speech of the contributor as well as the speech of the candidate.

Going on, I quote from Justice White:

> The congressional judgment which was ours to accept was that other steps must be taken to counter the corrosive effects of money in Federal election campaigns.

This is 25 years ago:

> One of these steps is 608(e), which aside from those funds that are given to the candidate or spent at his request or with his approval or cooperation, limits what a contributor may independently spend in support or denigration of one running for Federal office.

That is the soft money about which we are talking. Moving on, I quote:

> Congress was plainly of the view that these expenditures also have the potential for corruption. But the Court claimed more insight as to what may improperly influence candidates than is possessed by the majority of Congress that passed this bill, and the President who signed it. Those supporting the bill undeniably include many seasoned professionals who have been deeply involved in elective processes and have viewed them at close range over many years.

Then he goes on:

> I have little doubt, in addition, that limiting the total that can be spent will ease the candidate's understandable obsession with fundraising and so free him and his staff to communicate in more places and ways unconnected with the fundraising function.

Actually talking about freedom of speech, you have time to talk to constituents. I remember after the last campaign, I went around the State, county to county, and they said: Fritz, why in the world are you coming around? You just won. I said: Yeah, but I really didn't get to talk to the voters. I had to talk to contributors. I didn't have time for the voters other than during the scheduled debates. I would like to meet the voters and talk to them in a more intimate way. That is quoted in the press.

This is 25 years ago, foreseeing the corruption.

I quote from Justice White:

> There is nothing objectionable, indeed, it seems to me a weighty interest in favor of the provision in the attempt to insulate the political expression of Federal candidates from the influence inevitably exerted by the endless job of raising increasingly large sums of money. I regret that the Court has returned them all to the treadmill.
>
> It is also important to restore and maintain public confidence in Federal elections. It is critical to obviate or dispel the impression that Federal elections are purely and simply a function of money, that Federal officers are bought and sold, or that political races are reserved for those who have the facility and the stomach for doing whatever it takes to bring together those interest groups and individuals who can raise or contribute large fortunes in order to prevail at the polls.

I could go on and on. There is no question that we had a very erudite observation here by Justice White, very visionary. Everybody says: You have to have somebody who has vision. That is a visionary statement in Buckley v.

Valeo. Even though it was in a dissenting opinion, it foretold what we were going to run into.

Once the campaign was over, I thought we would come up here and work for the people of the United States, not for ourselves. We could give all the time to our treadmill here, as Justice White says, but we raise the money, raise the money, raise the money, raise the money. It goes on and on and it takes away from our actual function as the most deliberative body.

Yes, we got only 38 votes the last time. The conscience is diminishing. We got a majority vote back in the 1980s back when we had a conscience.

We also once had a conscience on the budget. Now we hold the totally false premise that a deficit is a surplus. I do not have today's data, but I have the day before yesterday's. We have The Public Debt To the Penny. I ask unanimous consent to have that printed in the RECORD.

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

The Public Debt to the Penny

[Current 03/24/2000—$5,730,876,091,058.27]

Current month:	Amount
03/23/2000	$5,729,458,665,582.66
03/22/2000	5,727,734,275,348.06
03/21/2000	5,728,846,067,846.82
03/20/2000	5,728,253,942,273.38
03/17/2000	5,728,671,330,064.36
03/16/2000	5,724,694,663,639.63
03/15/2000	5,747,793,381,625.76
03/14/2000	5,748,566,517,856.04
03/13/2000	5,745,831,852,208.71
03/10/2000	5,745,712,662,449.10
03/09/2000	5,744,560,824,206.30
03/08/2000	5,745,125,070,490.06
03/07/2000	5,747,932,431,376.73
03/06/2000	5,745,099,557,759.64
03/03/2000	5,742,858,530,572.10
03/02/2000	5,732,418,769,036.22
03/01/2000	5,725,649,856,797.45
Prior months:	
02/29/2000	5,735,333,348,132.58
01/31/2000	5,711,285,168,951.46
12/31/1999	5,776,091,314,225.33
11/30/1999	5,693,600,157,029.08
10/29/1999	5,679,726,662,904.06
Prior fiscal years:	
09/30/1999	5,656,270,901,615.43
09/30/1998	5,526,193,008,897.62
09/30/1997	5,413,146,011,397.34
09/30/1996	5,224,810,939,135.73
09/29/1995	4,973,982,900,709.39
09/30/1994	4,692,749,910,013.32
09/30/1993	4,411,488,883,139.38
09/30/1992	4,064,620,655,521.66
09/30/1991	3,665,303,351,697.03
09/28/1990	3,233,313,451,777.25
09/29/1989	2,857,430,960,187.32
09/30/1988	2,602,337,712,041.16
09/30/1987	2,350,276,890,953.00

Note.—Looking for more historic information? Visit the Public Debt Historical Information archives.

Source: Bureau of the Public Debt.

Mr. HOLLINGS. This is the conscience of this crowd here. When you can't get votes—it is amazing I get any kind of votes because the overwhelming majority calls this deficit a surplus. You can find out that on 9–30–99, the debt was $5.656 trillion. It has now grown to $5.730 trillion.

I just got back from London. I had lunch there with Parliament, and I asked the Presiding Officer: Do you all have a deficit or a surplus? He said: Oh, we have a surplus. We have a balanced budget. I said: How do you measure it? He said: By the amount of money you have to borrow.

The distinguished Presiding Officer is an eminent certified public accountant. He knows how to keep the books. He would not go along with the kinds of books we keep here, showing that we're borrowing money and calling it a surplus. It's a deficit. It is an increase in the debt.

In addition, the interest expense on the public debt outstanding is $158,799,000,000. That is what we have spent just on interest costs since the beginning of the fiscal year. That is the real waste. We had a conscience under President Reagan; now it's waste, fraud, and abuse. I served on the Grace Commission. Surely, we could get votes in those days because we had a conscience.

We don't have a conscience anymore. Thirty-eight votes; I am lucky to get 18. I don't mind. Somehow, somewhere, some time, this has to be exposed. It is one grand corruption of the Congress itself. We know it. Everybody else knows it. The public showed that they know it, too, during the primaries.

If we do not get a hold of ourselves and do something about it in this particular session, we are gone goslings. That is all I have to say.

It is a tragic thing when you have to stand up here and defend the right of the people to vote on controlling spending in elections. They have it at city hall with the constable. They have it in the State capitals with the Governor. Now we have it with the national Congress. Everybody wants to try to control spending.

We go along with this farce of free speech and that we are amending the Constitution, really, the first amendment. In reality we are amending the Constitution to give the first amendment its freedom of speech. The first amendment gave that freedom of speech, but once money is attached to the speech, you take it away from those who do not have money. That is exactly what has occurred.

Buckley v. Valeo has amended the first amendment. They are all so excited and alarmed about it and laugh as they go back into the Cloakroom because they know exactly what we are talking about on the floor. Nobody is here. It is a Tuesday morning and nobody has to vote until 2:15. We will have a caucus and we will go in and talk about how we have been doing on fundraising. Then when we get through talking about doing the fundraising, we will go ahead and vote this down, according to the Senator from Kentucky. But there will come another day. I am glad for the 6-year term. We have a little time left. I have been at it some 20 years now. We will continue. It takes a little time. But what Justice White stated back in Buckley v. Valeo has come to pass. It has brought us to where the most deliberative body can't deliberate.

I retain the remainder of my time and suggest the absence of a quorum. Does the other side have any time? Both sides?

The PRESIDING OFFICER. The other side has 3 minutes.

Mr. HOLLINGS. Well, I think we will allocate the time to both sides.

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

Mr. HATCH. Mr. President, there is a right way and a wrong way of reforming our system of campaign finance. The Hollings proposal to amend our Constitution is simply the wrong way. It would, in effect, amend the first amendment to our Constitution to allow any ''reasonable'' restrictions to be placed on independent campaign expenditures and contributions. Why does he propose that we amend the first amendment? Because the Supreme Court of the United States has held that restrictions on independent expenditures violate the first amendment's free speech protection and that such restrictions could only be justified upon a showing of a compelling—as opposed to any reasonable—reason.

The Hollings amendment would gut the free speech protections of the first amendment. It would allow the curtailing of independent campaign expenditures that could overcome the natural advantage that incumbents have. It would, thus, limit free speech and virtually guarantee that incumbents be reelected. Thus, the Hollings amendment could change the very nature of our constitutional democratic form of government by establishing what the Founders of the Republic feared most: a permanent elite or ruling oligarchy. Let me explain.

The very purpose of the first amendment's free speech clause is to ensure that the people's elected officials effectively and genuinely represent the public. For elections to be a real check on government, free speech must be guaranteed—both to educate the public about the issues, and to allow differing view points to compete in what Oliver Wendell Holmes called ''the market place of ideas.''

Simply put, without free speech, government cannot be predicated upon, what Thomas Jefferson termed, ''the consent of the governed.'' Without free speech, there can be no government based on consent because consent can never be informed.

The Supreme Court of the United States recognized this fundamental principle of democracy in the 1976 case of *Buckley* v. *Valeo,* 424 U.S. 1 (1976). The Court in *Buckley* recognized that free speech is meaningless unless it is

effective. In the words of Justice White, ''money talks.'' Unless you can get your ideas into the public domain, all the homilies and hosannas to freedom of speech are just plain talk. Thus, the Supreme Court held that campaign contributions and expenditures are speech—or intrinsically related to speech—and that the regulating of such funds must be restrained by the prohibitions of the first amendment.

The *Buckley* Court made a distinction between campaign contributions and campaign expenditures. The Court found that free speech interests in campaign contributions are marginal at best because they convey only a generalized expression of support. But independent expenditures are another matter. These are given higher first amendment protection because they are direct expressions of speech. The Court reaffirmed the principles it outlined in *Buckley* just a few months ago in *Nixon* v. *Shrink Missouri Gov't.*

Consequently, because contributions are tangential to free speech, Congress has a sizeable latitude to regulate them in order to prevent fraud and corruption. But not so with independent expenditures. In the words of the Court:

> A restriction on the amount of money a person or group can spend necessarily reduces the quantity of expression by restricting the number of issues discussed, the depth of their exploration, and the size of the audience reached. This is because virtually every means of communicating in today's mass society requires the expenditure of money. [424 U.S. at 19–20].

The Hollings amendment's allowance of restrictions on expenditures by Congress and state legislatures would impose direct and substantial restraints on the quantity of political speech. It would permit placing drastic limitations on both individuals and groups from spending money to disseminate their own ideas as to which candidate should be supported and what cause is just. The Supreme Court noted that such restrictions on expenditures, even if ''neutral as to the ideas expressed, limit political expression at the core of our electoral process and of the First Amendment freedoms.'' [*Buckley* at 39].

Indeed, even candidates under the Hollings proposal could be restricted in engaging in protected first amendment expression. Justice Brandeis observed, in *Whitney* v. *California*, 274 U.S. 357, 375 (1927), that in our republic, ''public discussion is a political duty,'' and that duty will be circumscribed where a candidate is prevented from spending his or her own money to spread the electoral message. That a candidate has a first amendment right to engage in public issues and advocate particular positions was considered by the *Buckley* Court to be of:

> . . . particular importance . . . candidates [must] have the unfettered opportunity to make their views known so that the electorate may intelligently evaluate the candidates' personal qualities and their positions on vital public issues before choosing among them on election day. 424 U.S. at 53.

Campaign finance reform should not be at the expense of free speech. This amendment—in trying to reduce the costs of political campaigns—could cost us so much more: our heritage of political liberty. Without free speech our Republic would become a tyranny. Even the liberal American Civil Liberties Union opposes Hollings-type approaches to campaign reform and called such approaches a ''recipe for repression.''

The simple truth is that there are just too many on the other side of the aisle that believe that the first amendment is inconsistent with campaign finance reform. That is why they are pushing the Hollings proposal. To quote House Minority Leader RICHARD GEPHARDT, ''[w]hat we have is two important values in direct conflict: freedom of speech and our desire for a healthy campaign in a healthy democracy. You can't have both.''

I strongly disagree. You can have both. We have to have both. For without both, the very idea of representative democracy is imperiled. That is why I oppose the Hollings amendment.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. LEAHY. Mr. President, what is the parliamentary situation?

The PRESIDING OFFICER. Senator HOLLINGS controls the time until 11:45 a.m.

Mr. LEAHY. Mr. President, does the Senator from Vermont have 30 minutes under a previous order?

The PRESIDING OFFICER. The Senator from Vermont has 22 and a half minutes.

Mr. LEAHY. Mr. President, my understanding was that the Senator from Vermont had 30 minutes in the order entered into last week.

The PRESIDING OFFICER. The Senator is correct, but the UC was amended by a subsequent UC that moved the time from the beginning time to 11:45.

Mr. LEAHY. Mr. President, I ask unanimous consent that the Senator from Vermont be restored to his full 30 minutes, following the time of the Senator from South Carolina.

Mr. HOLLINGS. If the Senator will yield, I am trying to retain some time for my cosponsor, Senator SPECTER from Pennsylvania. I heard 10 minutes ago he was on his way to the floor. I would be glad for the Senator to proceed if we could reserve 10 minutes of time when Senator SPECTER gets here at 11:45.

Mr. LEAHY. Mr. President, I tell the Senator that my only concern—and I am perfectly willing to make sure he is protected, however the time works. I think by mistake somebody on the other side of the aisle yielded some of my time without my permission.

I ask unanimous consent that I be restored to a full 30 minutes, without in any way interfering with the time of the Senator.

The PRESIDING OFFICER. Was that starting time 30 minutes from this moment and then to reserve the 10 minutes for Senator SPECTER?

Mr. LEAHY. Yes, I will start now. But the distinguished Senator from South Carolina will not lose any of the time reserved for him.

The PRESIDING OFFICER. He will retain his 10 minutes, that is correct. Without objection, it is so ordered.

Mr. LEAHY. Mr. President, on April 20, 1999, 14 young students and a teacher lost their lives at Columbine High School in Littleton, CO. That was one of a series of deadly incidents of school violence over the last 2 years. The day that happened, the Senate Judiciary Committee was not engaged in working on crime proposals or public safety issues. That day, like today, we were devoting our attention to the symbolism of this proposed amendment to the Constitution, which would weaken the first amendment for the first time in history, so that we might make criminal the burning of the American flag.

Scores of our Nation's children have been killed and wounded over the last 2 years. They haven't been killed or wounded by burning flags. They have been killed and wounded by firearm violence. Our loss has been from school violence that has shaken communities across this country.

Unfortunately, the Republican leadership in the Senate and the House have not found time to have the juvenile crime bill conference meet and resolve the differences. So even though we have passed a juvenile crime bill, one that has modest gun control in it, the gun lobby said we can't meet on that. We cannot have meetings on it. We cannot resolve those differences. Instead, we step forward and say to the American people: We will protect your children, we will protect your schools, we will make sure we have a constitutional amendment banning the burning of flags.

Like all Americans, all parents, I abhor the burning of flags. But like American parents, especially those with children in school, I know the danger to those children of gun violence and other criminal activity in this country is far more of a danger than the burning of a flag.

The Republican majority has not moved the emergency supplemental appropriations bill that is needed to provide Federal assistance to victims of Hurricane Floyd, or to help those who need fuel assistance, or to fund our men and women engaged in international peacekeeping efforts in Kosovo. Nor has the Republican majority moved responsibly to help fill the 77 judicial vacancies plaguing the Federal courts around the Nation. Nor has the majority yet moved a budget resolution to meet the April 1 and April 15

deadlines of the Budget Act. I recall that 2 years ago no final budget resolution passed the Congress, and I hope that experience of congressional inattention will not be repeated. We need to raise the minimum wage, pass a Patients' Bill of Rights, approve prescription drug benefits, and authorize the FDA to help stem the public health hazard of tobacco products. There is a lot to be done, and very little is being done.

I came to the Senate again last week to urge action on the juvenile crime conference. This Congress has kept the country waiting too long for action on juvenile crime legislation and sensible gun safety laws. We are fast approaching a first-year anniversary of the shooting at Columbine High School in Littleton, CO, without any response from Congress except for a bill that passed the Senate 3-to-1, a bill that we all praised and took credit for, a bill that, unfortunately, didn't go anywhere. It sat in a closed conference, behind a door that says: Parents of America cannot be admitted.

If we did all our work, if we did something about gun violence, if we did something about our children who are dying in the streets of America, if we did something about school safety and something about juvenile justice, if we passed our budget on time, as the law requires, if we did something on medical privacy, if we did those things, fine, set aside a couple of weeks for symbolic actions. But let's do our work first. Let's do the things that should be done first.

Next month, Americans have to have their tax returns in, by April 15, because it is the law. It is also the law that says we are supposed to get our budget done. But we won't. The Congress of the United States has shown 2 years ago that we have not followed the law.

For some time I have been urging the Senate to rededicate itself to the work of helping parents, teachers, police and others to curb school violence. On May 11 last year, the Republican majority in the Senate allowed us to turn our attention to the important problems of school violence and juvenile crime. Over the ensuing two weeks the Senate worked its way through scores of amendments. The Hatch-Leahy juvenile justice legislation that passed the Senate last May 20, received a strong bipartisan majority of 73 votes. Under the plan put forward by the Republican leader, this juvenile justice legislation had become the vehicle for the anti-violence amendments adopted by the Senate last May.

I urged a prompt conference. When things bogged down, I took the unusual step of coming to the Senate to offer a unanimous consent request to move to conference on the legislation, which eventually provided the blueprint for finally agreeing to conference on July 28.

Unfortunately, the conference was convened for a single afternoon of speeches. Democrats from the House and Senate tried to proceed, to offer motions about how to proceed, and to begin substantive discussion, but we were ruled out of order by the Republican majority.

Since that time I have returned to the Senate a number of times to speak to these important issues and to urge the Republican to reconvene the juvenile crime conference. I have joined with fellow Democrats to request both in writing and on the floor that the majority let us finish our work on the conference and send a good bill to the President. On October 20, 1999, all the House and Senate Democratic conferees sent a letter to Senator HATCH and Congressman HYDE calling for an open meeting of the juvenile crime conference. On March 3, 2000, after yet another shocking school shooting involving 6-year-old classmates in Michigan, Representative CONYERS and I wrote again to Senator HATCH and Congressman HYDE requesting an immediate meeting of the conference. The response has been resounding silence.

I worry that after a major debate on the floor, one in which we have both Republicans and Democrats bring up amendments and pass some and vote down others, we then let the subject of juvenile justice languish. We have seen press releases, but the families of America have yet to see a bill.

Three weeks ago, I was honored to be invited to a White House summit by the President of the United States. He had three other Members of Congress—the distinguished chairman of the House Judiciary Committee, HENRY HYDE; the distinguished chairman of our Judiciary Committee, Senator HATCH; and the distinguished ranking member of the House Judiciary Committee, Congressman CONYERS. We met in the Oval Office in a rather extraordinary meeting. I have been to many over 25 years, and I do not remember one where the President stayed so engaged for such a long period of time in such a frank and open exchange.

The President concurs with the reconvening of the conference and action by the Congress to send him a comprehensive bill before the 1-year anniversary of the Columbine tragedy. But all of his entreaties have been rebuffed as well. We have been in recess more than we have been in session since that time. Take a couple of days and wrap this up, and send it to the President.

Democrats have been ready for months to reconvene the juvenile crime conference and put together an effective juvenile justice conference report that would include reasonable gun safety provisions. It bothers me that this Senate, under its majority leadership, cannot find the time nor the will to pass balanced, comprehensive juvenile justice legislation.

With respect to juvenile crime, I hope the majority will heed the call of our Nation's law enforcement officers to act now to pass a strong and effective juvenile justice conference report. Ten national law enforcement organizations representing thousands of law enforcement officers have endorsed the Senate-passed gun safety amendment. They support loophole-free firearm laws.

These are the ones who do:

International Association of Chiefs of Police;

International Brotherhood of Police Officers;

Police Executive Research Forum;

Police Foundation;

Major Cities Chiefs;

Federal Law Enforcement Officers Association;

National Sheriffs Association;

National Association of School Resource Officers;

National Organization of Black Law Enforcement Executives; and

Hispanic American Police Command Officers Association.

Should we not at least listen to the law enforcement people who are asked every day to put their lives on the line to protect all of us, and should we not at least listen to them when they say, Pass this modest bill? But no. We see the gun lobbies run all kinds of ads basically telling the Congress, Don't do it; we will not allow you to do it. The Congress meekly says, Yes, sir; yes, sir; we will let the gun lobby run our schedule—not those of us who are elected to do it.

I was in law enforcement. I spent 8 years in law enforcement. I know law enforcement officers in this country need help in keeping guns out of the hands of people who should not have them.

I am not talking about people who use guns for hunting or for sport, as my neighbors and I do in Vermont, but about criminals and unsupervised children. The thousands of law enforcement officers represented by these organizations are demanding the Congress act now to pass a strong and effective juvenile justice conference. As leader of the Democrats on this side, I am willing to meet on a moment's notice to do that.

Every parent, teacher and student in this country is concerned about school violence over the last two years and worried about when the next shooting may occur. They pray it does not happen at their school or involve their children.

We all recognize that there is no single cause and no single legislative solution that will cure the epidemic of youth violence in our schools or in our streets. But we have an opportunity before us to do our part. We should seize this opportunity to act on balanced, effective juvenile crime legislation, and measures to keep guns out of the hands of children and away from criminals. It is well past the time for Congress to act.

Instead, the Senate will be called upon to devote several more days this week to debating this proposal to amend the Constitution to restrict the First Amendment's fundamental protection of political expression for the

first time in our nation's history in order to criminalize flag burning as a form of political protest. We can debate that. But can't we take at least as much time to debate things that will actually involve the safety of our children?

I am prepared to debate the merits of the proposed constitutional amendment to restrict political speech. I contributed to an extensive set of minority views in the Committee's report that lay out the flaws in the proponents' arguments and the case for protecting the Constitution and our Bill of Rights. We have debated this before and must do so, again.

I treat proposals to amend the Constitution with utmost seriousness. Our role in the process is a solemn responsibility. But when we have concluded this debate, as we will in the next few days, I hope that the juvenile crime bill conference committee will complete its work. I hope that we will move the emergency supplemental appropriations needed to help our citizens hurt by Hurricane Floyd and by high fuel prices. I hope that we will vote to increase the minimum wage without further delay; I hope that we will enact a real patients' bill of rights, and that we will approve a meaningful prescription drug benefit, and that we will pass the statutory authority now needed by the FDA to regulate tobacco products. I hope that we will vote on the scores of judicial nominations sent to us by the President to fill the 77 vacancies plaguing the federal courts and our system of justice; and I hope that we will make progress on the many other matters that have been sidetracked by the majority.

My friends on the Republican side of the Senate control the schedule. They set the priorities. But I hope they realize that these are priorities of the American people and will allow us to vote on them.

Mr. President, on the proposed constitutional amendment we are debating, I note that the minority views in the committee report extend over 30 pages, yet we are asked to limit the debate on the proposal to 2 hours. Nobody wants to filibuster a proposal. But if we are going to amend the Constitution, especially if we are going to amend the first amendment, and especially if we are going to amend the Bill of Rights for the first time in over 200 years, I think the American people deserve more than a couple of hours of chitchat and quorum calls to discuss what we are going to do.

I look forward to hearing from Senator FEINGOLD, the ranking member of the Constitution Subcommittee. I look forward to hearing from Senator BOB KERREY, the only Congressional Medal of Honor recipient among us; or Senator ROBB, of Virginia, who is a decorated veteran and distinguished Senator; and, of course, the constitutional sage of the Senate, the senior Senator from West Virginia, Mr. ROBERT C. BYRD.

The Senate was intended to be a place for thoughtful debate, for the offering of amendments and for votes on amendments. We should not shortchange this debate. Let us do justice to the task of considering this constitutional amendment before we are called upon to vote, again.

This afternoon we will first vote on the Flag Protection Act amendment offered by Senators MCCONNELL, BENNETT, DORGAN and CONRAD with the support of Senators DODD, TORRICELLI, BINGAMAN, LIEBERMAN and BYRD. Having reviewed that proposal, I intend to support it as well. It is a statutory alternative to the proposed constitutional amendment.

Now, let us remember one thing. No matter how Senators vote on the proposed amendment, either for or against it, there is one thing that unites every single Member of this body. We all agree that flag burning is a despicable and reprehensible act. It is usually done to show great disrespect to our country and our institutions and all it stands for. It has to be especially offensive to those who put their lives on the line for this country, whether in the Armed Forces, law enforcement, or elsewhere.

But the ultimate question before us is not whether we agree that flag burning is a despicable and reprehensible act. We all agree that it is. The issue is whether we should amend the Constitution of the United States, with all the risks that entails, and narrow the precious freedoms ensured by the First Amendment for the first time in our history, so that the Federal Government can prosecute the tiny handful of Americans who show contempt for the flag. Such a monumental step is unwarranted and unwise.

Proponents of the constitutional amendment note the views of distinguished American veterans and war heroes who have expressed their love of the flag and support for the amendment. Those who fought and sacrificed for our country deserve our respect and admiration. I remember very much the letters that came back from my uncle in World War II, and other friends and neighbors in subsequent wars.

They know the costs as well as the joys of freedom and democracy. Their sacrifices are lessons for us all in what it means to love and honor our flag and the country and the principles for which our flag stands. On this question of amending our Constitution, some would like to portray the views of veterans as being monolithic, when in fact many outstanding veterans oppose the amendment.

Above all, these veterans believe that they fought for the freedoms and principles that make this country great, not just the symbols of those freedoms. To weaken the nation's freedoms in order to protect a particular symbol would trivialize and minimize their service.

Last year, we were honored to have former Senator John Glenn, my dear friend, who served this nation with special distinction in war and in peace and in the far reaches of space, come back to the Senate to testify before the Judiciary Committee. This is a veteran of both World War II and the Korean conflict.

He told us:

> It would be a hollow victory indeed if we preserved the symbol of our freedoms by chipping away at those fundamental freedoms themselves. Let the flag fully represent all the freedoms spelled out in the Bill of Rights, not a partial, watered-down version that has altered its protections.
>
> The flag is the nation's most powerful and emotional symbol. It is our most sacred symbol. And it is our most revered symbol. But it is a symbol. It symbolizes the freedoms that we have in this country, but it is not the freedoms themselves. . . .
>
> Those who have made the ultimate sacrifice, who died following that banner, did not give up their lives for a red, white and blue piece of cloth. They died because they went into harm's way, representing this country and because of their allegiance to the values, the rights and principles represented by that flag and to the Republic for which it stands.

These are powerful words from our former colleague, John Glenn, a man we all agree is a true American hero.

Last spring I wrote to General Colin L. Powell, our Chairman of the Joint Chiefs of Staff during the Persian Gulf War, about this proposed constitutional amendment. I thank him for having answered the call and for adding his powerful voice to this debate. He wrote me the following:

> We are rightfully outraged when anyone attacks or desecrates our flag. Few Americans do such things and when they do they are subject to the rightful condemnation of their fellow citizens. They may be destroying a piece of cloth, but they do no damage to our system of freedom which tolerates such desecration.
>
> If they are destroying a flag that belongs to someone else, that's a prosecutable crime. If it is a flag they own, I really don't want to amend the Constitution to prosecute someone for foolishly desecrating their own property. We should condemn them and pity them instead.
>
> I understand how strongly so many of my fellow veterans and citizens feel about the flag and I understand the powerful sentiment in state legislatures for such an amendment. I feel the same sense of outrage. But I step back from amending the Constitution to relieve that outrage. The First Amendment exists to insure that freedom of speech and expression applies not just to that with which we agree or disagree, but also that which we find outrageous.
>
> I would not amend that great shield of democracy to hammer a few miscreants. The flag will still be flying proudly long after they have slunk away.

Mr. President, I ask for unanimous consent to have the full text of General Powell's letter printed in the RECORD.

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

GEN. COLIN L. POWELL, USA (RET),
Alexandria, VA, May 18, 1999.

Hon. PATRICK LEAHY,
U.S. Senate,
Washington, DC.

DEAR SENATOR LEAHY: Thank you for your recent letter asking my views on the proposed flag protection amendment.

I love our flag, our Constitution and our country with a love that has no bounds. I defended all three for 35 years as a soldier and was willing to give my life in their defense.

Americans revere their flag as a symbol of the Nation. Indeed, it is because of that reverence that the amendment is under consideration. Few countries in the world would think of amending their Constitution for the purpose of protecting such a symbol.

We are rightfully outraged when anyone attacks or desecrates our flag. Few Americans do such things and when they do they are subject to the rightful condemnation of their fellow citizens. They may be destroying a piece of cloth, but they do no damage to our system of freedom which tolerates such desecration.

If they are destroying a flag that belongs to someone else, that's a prosecutable crime. If it is a flag they own, I really don't want to amend the Constitution to prosecute someone for foolishly desecrating their own property. We should condemn them and pity them instead.

I understand how strongly so many of my fellow veterans and citizens feel about the flag and I understand the powerful sentiment in state legislatures for such an amendment. I feel the same sense of outrage. But I step back from amending the Constitution to relieve that outrage. The First Amendment exists to insure that freedom of speech and expression applies not just to that with which we agree or disagree, but also that which we find outrageous.

I would not amend that great shield of democracy to hammer a few miscreants. The flag will still be flying proudly long after they have slunk away.

Finally, I shudder to think of the legal morass we will create trying to implement the body of law that will emerge from such an amendment.

If I were a Member of Congress, I would not vote for the proposed amendment and would fully understand and respect the views of those who would. For or against, we all love our flag with equal devotion.

Sincerely,

COLIN L. POWELL.

Mr. LEAHY. Gary May lost both his legs while serving this country in Vietnam. He spoke about how he felt and why he did not feel that we should amend the Constitution on this point:

I am offended when I see the flag burned or treated disrespectfully. As offensive and painful as this is, I still believe that those dissenting voices need to be heard. This country is unique and special because the minority, the unpopular, the dissenters and the downtrodden, also have a voice and are allowed to be heard in whatever way they choose to express themselves that does not harm others. The freedom of expression, even when it hurts, is the truest test of our dedication to the belief that we have that right . . .

Freedom is what makes the United States of America strong and great, and freedom, including the right to dissent, is what has kept our democracy going for more than 200 years. And it is freedom that will continue to keep it strong for my children and the children of all the people like my father, late father in law, grandfather, brother, me, and others like us who served honorably and proudly for freedom.

The pride and honor we feel is not in the flag per se. It's in the principles that it stands for and the people who have defended them. My pride and admiration is in our country, its people and its fundamental principles. I am grateful for the many heroes of our country and especially those in my family. All the sacrifices of those who went before me would be for naught, if an amendment were added to the Constitution that cut back on our First Amendment rights for the first time in the history of our great nation.

I love this country, its people and what it stands for. The last thing I want to give the future generations are fewer rights than I was privileged to have. My family and I served and fought for others to have such freedoms and I am opposed to any actions which would restrict my children and their children from having the same freedoms I enjoy.

Many thoughtful and patriotic veterans object to this attempt to legislate patriotism. Those who testified before the Committee did not have to prove their patriotism. They are automatically, by their service to this country, true patriots. They spoke in eloquent terms about the importance of respect and love for country coming from the heart of a citizen or a soldier, not being imposed from without by the government.

I have thought so many times when I have been in countries where dictators rule to be able to say to them, do you have laws that require everybody to respect the symbols of your country, and they say, of course we have laws and we will prosecute anybody who doesn't obey the laws and respect the symbols of our country.

I say, we are better in our country. We don't need the laws. We are a nation of a quarter of a billion people and our people respect the symbols of this great nation and what it stands for, without having to have the ''flag police'' on the corner, without having to have laws passed by Congress. They do it because they honor those symbols.

For the same reason, my family and I fly the flag proudly at our home in Vermont. We know it is protected by the people of Vermont. We also know that it would probably be a very foolish thing for anybody to step foot on the property to do any damage to that flag. But we don't have to worry about it. People drive by, smile and wave. They know what a proud symbol it is and how proudly we fly the flag.

I remember what Senator BOB KERREY, the only recipient of the Congressional Medal of Honor currently serving in the United States Congress, said last year: ''Real patriotism cannot be coerced. It must be a voluntary, unselfish, brave act to sacrifice for others.'' Senator KERREY reminded us that in this country we believe that ''it is the right to speak the unpopular and objectionable that needs the most protecting by our government.'' Speaking specifically of the act of flag burning, he added: ''Patriotism calls upon us to be brave enough to endure and withstand such an act—to tolerate the intolerable.''

The late John Chafee, a distinguished member of this body and a highly decorated veteran of World War II and Korea, pointed out that just as forced patriotism is far less significant than voluntary patriotism, a symbol of that patriotism that is protected by law will be not more, but less worthy of respect and love. He said: ''We cannot mandate respect and pride in the flag. In fact, in my view taking steps to require citizens to respect the flag, sullies its significance and symbolism.''

James Warner, a decorated Marine flyer who was a prisoner of war of the North Vietnamese for six years, has made this point in graphic terms. He wrote:

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 . . .

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? . . . Don't be afraid of freedom, it is the best weapon we have.

Mr. President, I ask for unanimous consent to have the James Warner editorial printed in the RECORD.

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

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 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 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 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 that I am right. In my country we are not afraid of freedom, even if it means that people disagree with us.'' The office 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 Sparatans, 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. 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. LEAHY. Those of us who oppose the constitutional amendment concerning flag protests understand that the political pressure for this amendment is strong, but our hope is that the Senate will in the end heed the wisdom of John Glenn, when he urged us to reject the amendment:

There is only one way to weaken the fabric of our country, and it is not through a few misguided souls burning our flag. It is by retreating from the principles that the flag stands for. And that will do more damage to the fabric of our nation than 1,000 torched flags could ever do. . . . History and future generations will judge us harshly, as they should, if we permit those who would defile our flag to hoodwink us into also defiling our Constitution.

We should not adopt a proposal that will whittle away at the first amendment for the first time in our history. We act here as stewards of the Constitution, guardians and trustees of a precious legacy. The truly precious part of that legacy does not lie in outward things—in monuments or statues or flags. All that those tangible things can do is remind us of what is precious—our liberty.

Our Constitution guards our freedoms and the first amendment is the marble of our democracy; it is the bedrock of our rights and constitutional protections. It guarantees the freedom of religion—the freedom to practice a religion or not to practice a religion, as you believe. It guarantees our freedom of speech. By doing that, it guarantees diversity. If you guarantee diversity, you guarantee democracy. Our bill of rights has been doing that for over 200 years. We are the envy of the world because of the way we protect our freedoms.

Look at all the other countries, countries that have not achieved and will not achieve greatness because they stifle dissent, because they do not allow freedom of expression.

If, God forbid, some natural disaster or terrorist act swept away all the monuments of this country, the Republic would survive just as strong as ever. But if some failure of our souls were to sweep away the ideals of Washington, Jefferson and Lincoln, then not all the stone, not all the marble, not all the flags in the world would restore our greatness. Instead, they would be mocking reminders of what we had lost.

I trust this Senate will uphold the Constitution and the first amendment. I trust this Senate will uphold the lessons of history. I trust this Senate will tell the founders of this Nation, when they wrote the bill of rights, they gave us a precious gift that we would hold unchanged throughout our lives and the lives of our children and the lives of our grandchildren, because that is the way we honor our country.

That is the way we honor the sacrifices of so many millions who protected our freedoms throughout the years.

Mr. President, do I still have time?

The PRESIDING OFFICER. Twelve seconds.

The Chair recognizes the Senator from Pennsylvania.

Mr. SPECTER. I thank the Chair.

Mr. President, I have sought recognition to comment on the amendment, whose principal sponsor is the Senator from South Carolina, Mr. HOLLINGS, which would authorize the Congress and State legislatures to limit campaign contributions and campaign expenditures.

Senator HOLLINGS and I have been the principal cosponsors of this provision since 1988. It is denominated as a constitutional amendment, but, in fact, it is not a constitutional amendment, but instead it is a provision which would alter the opinion of the Supreme Court of the United States in Buckley v. Valeo which says that money was equated with speech. I believe that to be an incorrect constitutional interpretation, as do 209 professors of law who have submitted a statement urging the overruling of Buckley v. Valeo.

Since the Supreme Court of the United States is not about to do that, the only recourse is to follow the procedure today on what is denominated a constitutional amendment, but it is not a constitutional amendment because there is nothing in the first amendment which says speech is money. That is not in the first amendment. The first amendment guarantees freedom of speech, and an opinion by a majority of the Supreme Court of the United States in Buckley v. Valeo has made that interpretation.

Just as in the flag-burning case, there is nothing in the first amendment which says freedom of speech includes the right to burn an American flag. But in a 5–4 decision, the Supreme Court handed down that interpretation. It is important to note, as a matter of constitutional law, what the Supreme Court says is denominated as the opinion of the Court. If any effort were to be made to change the language of the first amendment, I would strenuously oppose any such effort. But the provision to allow Congress and State legislatures to control campaign contributions and expenditures does not do that.

On a purely personal note, this decision had special significance for me on January 30, 1976, the day it was handed down, because at that time I was in the middle of a campaign for the Republican nomination to the Senate for the Commonwealth of Pennsylvania. When the campaign started in the fall of 1975, the campaign finance law of 1974 governed, which limited the contributions of an individual for his own candidacy to $35,000, which was about the size of my bank account.

My opponent in the campaign was Congressman John Heinz. On January 30, the Supreme Court said that any individual can spend whatever he chose, millions if he chose, and John did. That was the balance of the election.

At the same time, the Supreme Court said that my brother, Morton Specter, who had the financial ability to finance my campaign—not in the Heinz style, perhaps, but adequately—was limited to $1,000 which was provided for in the law. The question, I think not illogically, came to my mind: What was the difference between John Heinz's money and Morton Specter's money? But that is what the Supreme Court said, and they said it in a very curious way.

They said:

In order to preserve the provisions against invalidation on vagueness grounds—

They cite the statute—

it must be construed to apply only to expenditures for communications that express in terms that advocate the election or defeat of a clearly identified candidate for Federal office.

They then drop to a footnote:

. . . which required language such as ''vote for,'' ''elect,'' ''support,'' ''cast your ballot for,'' ''Smith for Congress,'' ''vote against,'' ''defeat and reject.''

That has led to the very extraordinary so-called issue advertisements, which are not controllable, where they are bought by soft money. Listen to a couple of illustrative issue advertisements in the 1996 campaign for President Clinton in the summer of 1996, which ultimately tipped the scales:

''American values,'' ''do our duty to our parents,'' ''President Clinton protects Medicare,'' ''the Dole-Gingrich budget tried to cut Medicare $270 billion,'' ''protect families,'' ''President Clinton cut taxes for millions of working families,'' ''the Dole-Gingrich budget tried to raise taxes on 8 million of them,'' ''opportunity,'' ''President Clinton proposes tax breaks for tuition,'' ''the Dole-Gingrich budget tried to slash college scholarships,'' ''only President Clinton's plan meets our challenges, protects our values.''

That is curiously, insanely categorized not as an advocacy advertisement, but only an issue ad. But what quality is there in the English language which could more emphatically say: Elect President Clinton, defeat Senator Dole?

That is the consequence when millions of dollars are poured into campaigns in soft money, unregulated under the decision of the Supreme Court in Buckley v. Valeo.

I note one very important factor: That the consequence of this provision, denominated as an amendment, is not to put into effect any specific reforms, but only to give the Congress of the United States the authority constitutionally to do so. This does not say what corporations can do, what unions can do, what individuals can do. It says only that the constraint of Buckley v. Valeo, the opinion of Justices in a split Court, will not preclude Congress from acting on the very important item of having democracy prevail in elections.

It is totally antithetical, in my opinion, to have money equated with power in a democracy. It subverts the principle of one man-one woman equals to one vote if power is equal to money and the rich can dominate the electoral process.

I do not believe that Members of the House and Senate sell their votes, although there is a widespread perception of that kind of corruption.

There is a problem of access which I try to deal with by holding town meetings in the 67 counties in Pennsylvania. On recent economies where the budgets of Senators are limited as to mailing, it has not been possible for me to mail all of my constituents who attended the town meetings. But I think that is a very practical answer to those who complain about access.

If Senators go to the county seat to be in the proximity of their constituents and let their constituents know by a postcard that the Senator will be present at a given time, a given place to answer their questions, then I think that kind of a guarantee of access would answer a great many skeptical comments about fundraisers and the purchase of access.

That is why I am proposing legislation which would permit a Senator to supplement his mailing budget for one postcard, once a year, to each constituent in each county, providing the Senator personally appears at that event.

The reality is, many Senators do not undertake town meetings anymore because they are very rough, tough affairs where people come in—may the RECORD show a smile on the face of the Presiding Officer, the distinguished Senator from Wyoming—they are rough, tough affairs.

I think the cost would probably be fairly low because I think relatively few Senators would avail themselves of that opportunity.

In conclusion, let me remind my colleagues that what Senator HOLLINGS and I are proposing does not change the language of the first amendment, but instead it substitutes our judgment for the judgment of the Court on what is an opinion of the interpretation of the Constitution's first amendment.

I ask unanimous consent that a list of the 209 scholars calling for the reversal of Buckley be printed in the RECORD and that the bill for postal mailings also be printed in the RECORD.

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

STATEMENT IN SUPPORT OF OVERTURNING BUCKLEY V. VALEO

(This statement was organized jointly by: Brennan Center for Justice at NYU School of Law, National Voting Rights Institute, U.S. Public Interest Research Group)

In its 1976 decision, *Buckley v. Valeo,* the Supreme Court of the United States held that mandatory campaign spending limits are an unconstitutional denial of free speech.

We believe that the *Buckely* decision should be overturned. The decision overstated the extent to which reasonable limits on campaign expenditures impinge on free speech. The Court also underestimated the corrosive effect of unlimited campaign expenditures on the integrity of our political process.

We the undersigned call for the reconsideration and overturning of the *Buckley* decision.

209 SCHOLARS OPPOSING BUCKLEY V. VALEO

Prof. Lee A. Albert, Professor of Law, SUNY at Buffalo School of Law.

Prof. George J. Alexander, Elizabeth H. & John A. Sutro Professor & Director, Institute of International & Comparative Law, Santa Clara University School of Law.

Prof. Dean Alfange, Jr., Professor of Political Science, University of Massachusetts at Amherst, Political Science Dept.

Prof. Francis A. Allen, Huber C. Hurst Eminent Scholar Emeritus, University of Florida, College of Law.

Prof. Jose Julian Alvarez Gonzalez, Professor of Law, University of Puerto Rico School of Law.

Prof. Howard C. Anawalt, Professor of Law, Santa Clara University School of Law.

Prof. Claudia Angelos, Professor of Clinical Law, New York University School of Law.

Prof. Ellen P. April, Professor of Law, Loyola University School of Law.

Prof. Peter Arenella, Professor of Law, UCLA School of Law.

Prof. Robert Aronson, Professor of Law, University of Washington School of Law.

Prof. Gerald G. Ashdown, Professor of Law, West Virginia University College of Law.

Prof. Gordon E. Baker, Professor Emeritus of Political Science, University of California at Santa Barbara.

Prof. Thomas E. Baker, James Madison Chair in Constitutional Law and Director of the Constitutional Law Resource Center, Drake University Law School.

Prof. Fletcher N. Baldwin, Jr., S.D. Dell Research Scholar & Professor of Law, University of Florida, College of Law.

Prof. William C. Banks, Professor of Law, Syracuse University College of Law.

Prof. Loftus E. Becker, Jr., Professor of Law, University of Connecticut School of Law.

Prof. Patricia A. Behlar, Associate Professor of Social Science, Pittsburg State University.

Prof. Robert W. Benson, Professor of Law, Loyola University School of Law.

Prof. Gary L. Blasi, Professor of Law, UCLA School of Law.

Prof. Vincent A. Blasi, David Lurton Massee, Jr. Professor of Law, University of Virginia School of Law.

Prof. Henry J. Bourguignon, Professor of Law & Distinguished University Professor, University of Toledo College of Law.

Prof. Craig M. Bradley, James Louis Calamaras Professor of Law, Indiana University School of Law, Bloomington.

Prof. Mark E. Brandon, Assistant Professor of Political Science, University of Michigan.

Prof. Daan Braveman, Dean & Professor of Law, Syracuse University College of Law.

Prof. Richard A. Brisbin, Jr., Associate Professor of Political Science, West Virginia University.

Prof. Judith Olans Brown, Professor of Law, Northeastern University School of Law.

Prof. G. Sidney Buchanan, Baker & Botts Professor of Law, University of Houston Law Center.

Prof. Thomas D. Buckley, Professor of Law, Cleveland State University, Cleveland-Marshall College of Law.

Prof. Sarah E. Burns, Professor of Clinical Law, New York University School of Law.

Prof. William G. Buss, O.K. Patton Professor of Law, University of Iowa College of Law.

Prof. Richard M. Buxbaum, Jackson H. Ralston Professor & Dean, International & Area Studies, University of California at Berkeley School of Law.

Prof. Bert C. Buzan, Professor of Political Science, California State University, Fullerton.

Prof. Paulette M. Caldwell, Professor of Law, New York University School of Law.

Prof. Lief H. Carter, McHugh Family Distinguished Professor, The Colorado College.

Prof. Paul G. Chevigny, Professor of Law, New York University School of Law.

Prof. Robert N. Clinton, Wiley B. Rutledge Professor, University of Iowa College of Law.

Prof. Joshua Cohen, Arthur & Ruth Sloan Professor of Political Science & Professor of Philosophy, Massachusetts Institute of Technology.

Prof. William Cohen, C. Wendell & Edith M. Carlsmith, Professor of Law, Stanford Law School.

Prof. Charles D. Cole, Lucille Beeson Professor, Cumberland School of Law of Samford University.

Prof. C. Michael Comiskey, Associate Professor of Political Science, Penn State, Fayette Campus.

Prof. Robert A. Dahl, Sterling Professor Emeritus of Political Science, Yale University.

Prof. David J. Danelski, Mary Lou & George Boone Centennial, Professor Emeritus, Stanford University.

Prof. Perry Dane, Professor of Law, Rutgers University School of Law, Camden.

Prof. George Dargo, Professor of Law, New England School of Law.

Prof. Derek H. Davis, Director, J.M. Dawson Institute of Church-State Studies, Baylor University School of Law.

Prof. Howard E. David, Professor of Political Science, Randolph-Macon College.

Prof. John A. Davis, Professor Emeritus of Political Science, City College of the City University of New York.

Prof. John Denvir, Professor of Law, University of San Francisco School of Law.

Prof. David F. Dickson, Professor of Law, Florida State University College of Law.

Prof. Victoria J. Dodd, Professor of Law, Suffolk University Law School.

Prof. Jameson W. Doig, Professor, Department of Politics & Woodrow Wilson School, Princeton University.

Prof. Dennis D. Dorin, Professor of Political Science, University of North Carolina at Charlotte.

Prof. Norman Dorsen, Stokes Professor of Law, New York University School of Law.

Prof. Donald W. Dowd, Professor of Law, Villanova University School of Law.

Prof. Rochelle C. Dreyfuss, Professor of Law & Director of the Engelberg Center on Innovation Law & Policy, New York University School of Law.

Prof. J.D. Droddy, Assistant Professor of Government, Western Kentucky University.

Prof. Melvyn R. Durchslag, Professor of Law, Case Western Reserve University Law School.

Prof. Ronald M. Dworkin, Frank H. Sommer Professor of Law, New York University School of Law.

Prof. Peter D. Enrich, Professor of Law, Northeastern University School of Law.

Prof. Michael Esler, Assistant Professor of Political Science, Ohio Wesleyan University.

Prof. Daryl R. Fair, Professor of Political Science, The College of New Jersey.

Prof. Antonio Fernos, Professor of Law, Inter American University Law School.

Prof. Nancy H. Fink, Professor of Law, Brooklyn Law School.

Prof. Edwin B. Firmage, Samuel D. Thurman Professor of Law, University of Utah College of Law.

Prof. James E. Fleming, Associate Professor of Law, Fordham University School of Law.

Prof. Edward B. Foley, Associate Professor of Law, The Ohio State University College of Law.

Prof. W. Ray Forrester, Professor of Law, University of California, Hastings, College of Law.

Dean Arthur N. Frakt, Dean, Widener University School of Law.

Prof. Beatrice S. Frank, Clinical Associate Professor, New York University School of Law.

Prof. Paula Galowitz, Professor of Clinical Law, New York University School of Law.

Prof. Daniel G. Gibbens, Regents' Professor of Law, University of Oklahoma College of Law.

Prof. Stephen Gillers, Professor of Law, New York University School of Law.

Prof. James M. Glaser, Associate Professor of Political Science, Tufts University.

Prof. Alvin L. Goldman, Dorothy Salmon Professor, University of Kentucky College of Law.

Prof. Roger L. Goldman, Professor of Law, St. Louis University School of Law.

Prof. Sheldon Goldman, Professor of Political Science, University of Massachusetts at Amherst, Political Science Dept.

Prof. Leslie F. Goldstein, Unidel Professor of Political Science, University of Delaware.

Prof. Howard A. Gordon, Professor Emeritus, City College of Chicago.

Prof. Howard L. Greenberger, Professor of Law, New York University School of Law.

Prof. Benjamin Gregg, Assistant Professor of Government, University of Texas at Austin.

Prof. David L. Gregory, Professor of Law, St. John's University School of Law.

Prof. Martin Guggenheim, Clinical Professor & Director, Clinical & Advocacy Programs, New York University School of Law.

Prof. Lani Guinier, Professor of Law, University of Pennsylvania Law School.

Prof. Samuel O. Gyandoh, Jr., Professor of Law, Temple University School of Law.

Prof. Michael G. Hagen, Associate Professor of Government, Harvard University.

Prof. Richard L. Hasen, Associate Professor of Law, Loyola University School of Law.

Prof. Francis H. Heller, Roy A. Roberts Professor of Law & Political Science Emeritus, University of Kansas School of Law.

Prof. Helen Hershkoff, Assistant Professor of Law, New York University School of Law.

Prof. Richard A. Hesse, Professor of Law, Franklin Pierce Law Center.

Prof. Philip B. Heymann, James Barr Ames Professor of Law, Harvard Law School.

Prof. Daniel N. Hoffman, Associate Professor of Political Science, Johnson C. Smith University.

Prof. Thomas P. Huff, Lecturer in Law & Professor of Philosophy, University of Montana School of Law.

Prof. Joseph Richard Hurt, Dean & Professor of Law, Mississippi College School of Law.

Prof. Stewart M. Jay, Professor of Law, University of Washington School of Law.

Prof. John Paul Jones, Professor of Law, University of Richmond, T. C. Williams, School of Law.

Prof. Ronald Kahn, Monroe Professor of Politics & Law, Oberlin College.

Prof. Stephen Kanter, Professor of Law (Dean 1986–1994), Lewis & Clark Northwestern School of Law.

Prof. Kenneth L. Karst, David G. Price & Dallas P. Price, Professor of Law, UCLA School of Law.

Prof. Thomas A. Kazee, Professor of Political Science, Davidson College.

Prof. Edward Kearny, Professor of Government, Western Kentucky University.

Prof. Gregory C. Keating, Professor of Law, University of Southern California Law Center.

Prof. Alan Keenan, Lecturer on Social Studies, Harvard University.

Prof. Christine Hunter Kellett, Professor of Law, Pennsylvania State University, Dickinson School of Law.

Prof. Robert B. Kent, Professor of Law Emeritus, Cornell Law School.

Prof. Mark Kessler, Chair & Professor of Political Science, Bates College.

Prof. Philip C. Kissam, Professor of Law, University of Kansas School of Law.

Prof. Robert A. Kocis, Professor of Political Science, University of Scranton.

Prof. Donald P. Kommers, Joseph & Elizabeth Robbie Professor of Government & International Studies & Professor of Law, Notre Dame Law School.

Prof. Milton R. Konvitz, Professor Emeritus of Law, Cornell Law School.

Prof. J. Morgan Kousser, Professor of History & Social Science, Caltech—Division of the Humanities & Social Sciences.

Prof. Paul M. Kurtz, J. Alton Hosch Professor & Associate Dean, University of Georgia School of Law.

Prof. James A. Kushner, Professor of Law, Southwestern University School of Law.

Prof. Robert W. Langran, Professor of Political Science, Villanova University.

Prof. Lewis Henry LaRue, Alumni Professor of Law, Washington & Lee University School of Law.

Prof. Sylvia Ann Law, Elizabeth K. Dollard Professor of Law, Medicine & Psychology & Co-Director, Arthur Garfield Hays Civil Liberties Memorial Program, New York University School of Law.

Prof. Timothy O. Lenz, Associate Professor of Political Science, Florida Atlantic University.

Prof. Frederick P. Lewis, Professor of Political Science, University of Massachusetts at Lowell.

Prof. Peter Linzer, Law Foundation Professor of Law, University of Houston Law Center.

Prof. Robert Justin Lipkin, Professor of Law, Widener University School of Law.

Prof. Stephen Loffredo, Associate Professor of Law, CUNY School of Law.

Prof. Jim Macdonald, Professor of Law, University of Idaho College of Law.

Hugh C. Macgill, Dean, University of Connecticut School of Law.

Prof. Holly Maguigan, Professor of Clinical Law, New York University School of Law.

Prof. Joan Mahoney, Professor of Law & Dean Emeritus, Western New England College School of Law.

Prof. Karl M. Manheim, Professor of Law, Loyola University School of Law.

Prof. Clair W. Matz, Professor of Political Science, Marshall University.

Prof. Christopher N. May, James P. Bradley Chair in Constitutional Law, Loyola University School of Law.

Prof. William Shepard McAninch, Solomon Blatt Professor, University of South Carolina School of Law.

Prof. Wayne McCormack, Professor of Law, University of Utah College of Law.

Prof. W. Joseph McCoy, Associate Professor of Public Administration, Marshall University.

Prof. Patrick C. McGinley, Professor of Law, West Virginia University College of Law.

Prof. Wayne V. McIntosh, Associate Professor of Political Science, Dept. of Government & Politics, University of Maryland.

Prof. Evan McKenzie, Assistant Professor of Political Science, University of Illinois at Chicago, Political Science Dept.

Prof. Edward A. Mearns, Jr., Professor of Law, Case Western Reserve University Law School.

Prof. Frank I Michelman, Harvard Law School.

Hon. Abner J. Mikva, Walter V. Schaefer Fellow in Public Policy & Visiting Professor of Law, University of Chicago Law School.

Prof. Mark C. Miller, Associate Professor of American Government, Clark University.

Prof. Arval A. Morris, Professor of Law, University of Washington School of Law.

Prof. Kenneth M. Murchison, James E. & Betty M. Phillips Professor, Louisiana State University Law Center.

Prof. Carol Nackenoff, Chair, Department of Political Science, Swarthmore College.

Prof. James A. R. Nafziger, Thomas B. Stoel Professor of Law, Willamette University College of Law.

Prof. Thomas Nagel, Professor of Philosophy & Law, New York University School of Law.

Prof. Sheldon Nahmod, Distinguished Professor of Law, Chicago-Kent College of Law.

Prof. John B. Neibel, Professor & John B. Neiber Chair, University of Houston Law Center.

Prof. Burt Neuborne, John Norton Pomeroy Professor of Law & Legal Director, Brennan Center for Justice, New York University School of Law.

Prof. Michael DeHaven Newsom, Associate Dean for Academic Affairs, Howard University School of Law.

Prof. Nell Jessup Newton, Professor of Law, American University, Washington, College of Law.

Prof. Gene R. Nichol, Dean Emeritus & Professor of Law, University of Colorado School of Law.

Prof. Harold Norris, Distinguished Professor Emeritus, Detroit College of Law at Michigan State University.

Prof. John E. Nowak, David C. Baum Professor of Law, University of Illinois College of Law.

Prof. James M. O'Fallon, Frank Nash Professor of Law, University of Oregon School of Law.

Prof. Marcia O'Kelly, Professor of Law, University of North Dakota School of Law.

Prof. Daniel R. Ortiz, Professor of Law, University of Virginia School of Law.

Prof. Vernon Valentine Palmer, Thomas Pickles Professor of Law, Tulane University School of Law.

Prof. Simon D. Perry, Professor of Political Science, Marshall University.

Prof. Daniel H. Pollitt, Kenan Professor Emeritus of Law, University of North Carolina School of Law.

Prof. H. Jefferson Powell, Professor of Law, Duke University School of Law.

Prof. Albert T. Quick, Dean & Professor of Law, University of Toledo College of Law.

Prof. Jamin Ben Raskin, Professor of Law & Pauline Ruyle, Moore Scholar, American University, Washington College of Law.

Prof. John Rawls, Professor of Philosophy, Harvard University.

Prof. Clifford Rechtschaffen, Associate Professor of Law, Golden Gate University School of Law.

Prof. David A. J. Richards, Edwin D. Webb Professor of Law, New York University School of Law.

Prof. Daniel C. Richman, Associate Professor of Law, Fordham University School of Law.

Prof. Cary Rickabaugh, Associate Professor of Political Science, Rhode Island College.

Prof. Joel E. Rogers, Professor of Law & Sociology, University of Wisconsin Law School.

Prof. Rand E. Rosenblatt, Professor of Law & Associate Dean, Academic Affairs, Rutgers University School of Law, Camden.

Prof. Victor G. Rosenblum, Nathaniel L. Nathanson Professor, Northwestern University School of Law.

Prof. Albert J. Rosenthal, Dean Emeritus & Maurice T. Moore, Professor Emeritus of Law, Columbia University School of Law.

Prof. Gregory D. Russell, Director, Criminal Justice Program & Associate Professor, Washington State University.

Prof. Rosemary C. Salomone, Professor of Law, St. John's University School of Law.

Prof. Thomas O. Sargentich, Professor of Law, American University, Washington College of Law.

Prof. Thomas M. Scanlon, Harvard University Philosophy Department.

Prof. Douglas D. Scherer, Professor of Law, Touro College, Jacob D. Fuchsberg Law Center.

Prof. Lawrence Schlam, Professor of Law, Northern Illinois University College of Law.

Prof. Leo L. Schmolka, Professor of Law, New York University School of Law.

Prof. Jeffrey M. Shaman, Professor of Law, De Paul University College of Law.

Prof. Peter M. Shane, Dean & Professor of Law, University of Pittsburgh School of Law.

Prof. Sidney A. Shapiro, John M. Rounds Professor, University of Kansas School of Law.

Prof. Stephen Kent Shaw, Professor of Political Science, Northwest Nazarene College.

Prof. Steven H. Shiffrin, Professor of Law, Cornell Law School.

Prof. David M. Skover, Professor of Law, Seattle University School of Law.

Prof. W. David Slawson, Torrey H. Webb Professor, University of Southern California Law Center.

Prof. Rogers M. Smith, Professor of Political Science, Yale University.

Prof. Barbara R. Snyder, Professor of Law, The Ohio State University College of Law.

Dean Aviam Soifer, Dean & Professor of Law, Boston College Law School.

Prof. Rayman L. Solomon, Associate Dean, Northwestern University School of Law.

Prof. Frank J. Sorauf, Regents' Professor Emeritus of Political Science, University of Minnesota.

Prof. Troy M. Stewart, Chair & Professor of Political Science, Marshall University.

Prof. Marc Stickgold, Professor of Law, Golden Gate University School of Law.

Prof. Peter L. Strauss, Betts Professor of Law, Columbia University School of Law.

Prof. Kenneth W. Street, Professor of Political Science, Austin College.

Prof. Frank R. Strong, Cary Boshamer Distinguished Professor Emeritus of Law, University of North Carolina School of Law.

Prof. Allen N. Sultan, Professor of Law, University of Dayton School of Law.

Prof. Cass R. Sunstein, Karl N. Llewellyn Distinguished Professor of Law, University of Chicago Law School.

Prof. Mary Thornberry, Professor of Political Science, Davidson College.

Prof. Michael C. Tolley, Associate Professor of Political Science, Northeastern University.

Prof. James W. Torke, Professor of Law, Indiana University School of Law, Indianapolis.

Prof. Jon M. Van Dyke, Professor of Law, University of Hawaii, William S. Richardson School of Law.

Prof. Kenneth Vinson, Professor of Law, Florida State University College of Law.

Prof. Burton D. Wechsler, Alumni Distinguished Teacher & Professor, American University, Washington College of Law.

Prof. Eldon D. Wedlock, Jr., David H. Means Professor of Law, University of South Carolina School of Law.

Prof. Philip Weinberg, Professor of Law, St. John's University School of Law.

Prof. Brian A. Weiner, Assistant Professor of Politics, University of San Francisco.

Prof. Harry H. Wellington, Dean & Professor, New York Law School.

Prof. William E. Westerbeke, Professor of Law, University of Kansas School of Law.

Prof. James G. Wilson, Professor of Law, Cleveland State University, Cleveland-Marshall College of Law.

Prof. Louis E. Wolcher, Professor of Law, University of Washington School of Law.

Prof. Raymond L. Yasser, Professor of Law, University of Tulsa College of Law.

Prof. Steven Zeidman, Associate Professor of Law, New York University School of Law.

S. —

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. MAIL ALLOWANCES FOR SENATORS.

Section 506 of the Supplemental Appropriations Act, 1973 (2 U.S.C. 58) is amended by inserting after subsection (b) the following:

''(c) In addition to the funds provided for in subsection (b), the amount available to a Member under subsection (b)(3)(A)(iii) shall include an additional amount sufficient to pay the expenses that would be incurred mailing 1 letter to each postal address in each county in the State of that Member where the Member holds and personally attends a town meeting (not to exceed 1 town meeting per county per year).''.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. HOLLINGS. Mr. President, I think we have 5 more minutes. I yield the time to the distinguished Senator from Pennsylvania.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. I thank my distinguished colleague from South Carolina. I think brevity is ideal, and I have said what I have to say. I would not oppose a constitutional amendment to limit Senators' speeches to 10 minutes generally. But I thank my colleague from South Carolina.

I thank the Chair and yield the floor.

The PRESIDING OFFICER. The Chair recognizes the Senator from Vermont.

Mr. LEAHY. I wish to commend the Senator from Pennsylvania for his comments about town meetings. But I hope there are Senators in this body who will do town meetings. I expect there probably are some. I think they are the most advantageous thing we could possibly do in rural States like mine and, I think, like the distinguished Presiding Officer's State. I do not think either one of us would ever come back here if we were not willing to do them. I think that is the experience of most Senators.

I yield the floor.

The PRESIDING OFFICER. The Chair recognizes the Senator from Illinois.

Mr. DURBIN. Mr. President, I ask unanimous consent to speak on the amendment related to flag burning.

The PRESIDING OFFICER. We have a unanimous consent agreement that actually runs over on the time we are allocated. Is the Senator asking unanimous consent to extend the time?

Mr. DURBIN. I ask unanimous consent to speak for 10 minutes on the flag burning amendment.

Mr. HOLLINGS. Mr. President, I have time left. I would be glad to yield it to the distinguished Senator from Illinois. I have no objection to the 10-minute request.

The PRESIDING OFFICER. The Senator has 3½ minutes left. There are meetings we have to get to.

Mr. DURBIN. Mr. President, it is my understanding we will now go to a quorum call rather than to have me speak for 10 minutes?

The PRESIDING OFFICER. The quorum call will be charged against allocated time.

Mr. HATCH. Mr. President, I ask unanimous consent that we be permitted, on our time, to go up to as long as 12:45.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. HATCH. Mr. President, even though he is on the other side of this issue, I yield 10 minutes to the distinguished Senator from Illinois.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. I thank my friend and colleague from the State of Utah for yielding. I am aware of the fact we disagree on this issue. We have been friends and are adversaries only on issues without any personal basis.

Mr. President, this has become a perennial issue before the Senate—the question of whether we will amend the Constitution of the United States to, in fact, somehow ban the desecration of the American flag.

Make no mistake about it, flag burning is an insensitive and shameful act. But the issue before us is not whether we support flag burning but whether we should amend the Constitution, whether we should amend the Bill of Rights for the first time in the history of the United States of America, whether we should narrow the precious freedoms ensured by the first amendment for the very first time in our Nation's history.

When we trace back the origin of this flag burning amendment, we find that it came about as a result of an act by an individual during the 1984 Presidential election campaign in the State of Texas during the Republican National Convention. A person went down there and ignited an American flag, and ignited the passions of many people who feel very strongly about that symbol of our Nation. It gave rise to an effort on the floor of the Congress to pass a law which would ban this sort of activity. Efforts were made, overturned by the Supreme Court, and then finally a constitutional amendment was offered.

It is interesting, to me, to put this in some context because we are talking about first amendment rights—rights of expression, rights of speech—which, in fact, are envied around the world.

As nations came out from under the yoke of communism and were finally given an opportunity to write their own future, they looked to the United States, not to our flag—they had their own flag—but to our values. They said: The United States is different. The United States respects the rights of individuals to express themselves, even when it is unpopular.

In many of these same countries, it had been against the law, punishable by imprisonment, to even question the Government, let alone to burn the flag of the country. But they said: We are going to walk away from that totalitarian view of the world. We are going to stand for freedom, just like the United States of America.

One after another, the leaders of these new democracies came here to the U.S. Capitol to appear before a joint session of Congress and really said, in so many words, their model, their ideal, their goal, was to follow our 200-plus year history of the Bill of Rights.

Those of us who want to stand in defense of the Bill of Rights understand that sometimes our positions are unpopular and sometimes uncomfortable. I think back a year ago. Remember, it was just a year ago the Columbine High School massacre shocked America. It stunned us to believe this could happen in a school, that innocent children could be mowed down with guns.

If the epicenter of this shock was at Columbine, it was certainly in the State of Colorado, as well, as they reflected on this violence.

Do you recall a few days after the Columbine shootings, the National Rifle Association held its convention in Denver, CO? Those in the surrounding areas came out to peacefully protest and demonstrate against the National Rifle Association and its agenda and its insensitivity to the Columbine High School shootings.

As much as I might disagree with the agenda of the National Rifle Association, I will have to stand here and say they had a right to meet. They had a right to meet in Denver, CO, and to express their points of view. As reprehensible and shameful as some might have found it, that is a right guaranteed by the first amendment to the Constitution.

In 1998, in Idaho, white supremacists obtained a permit for a ''100-man flag parade,'' and they marched, carrying American flags alongside Nazi banners. The owner of a local bookstore in Coeur D'Alene made a point of keeping his store opened. He observed: ''Nazis were burning books in the 1930s, and I don't want them closing stores in the 90s.''

To think of it—Old Glory side by side with the Nazi banner.

I am not certain this amendment would even touch that activity. I find that reprehensible; I find that disgusting. Yet I understand it. That is what America is all about. The real test of our belief in the Bill of Rights, the real test of our belief in freedom of expression is we stand back and say, as much as we disagree and despise every word you are saying, you have a right as an American to say it. That is a core principle of this democracy. That is a principle that is at issue with the offering of this amendment, this amendment which says: We will separate out one group of Americans who engage in this despised conduct of burning flags, and we will say, we will amend the Bill of Rights for the first time in our history to stop that activity.

Senator HATCH, last year, before the Senate Judiciary Committee, invited a man I respect very much, Tommy Lasorda, who was a former manager of the Los Angeles Dodgers, who came and talked about his strong feelings in support of this amendment. He talked about a day in the baseball park when someone jumped out of the stands, started to burn a flag, and one of the other players raced over to grab the flag and put out the fire, how proud he was that this player—Rick Monday—would put out the fire of this flag.

I asked Mr. Lasorda a question when it came my turn. I said: As I understand it, most of the people who jump out of the stands and run onto the field are not televised. A decision is made by the television stations and the management not to put the television cameras on these people who race around the field whenever they do. He said: That is correct. I said: Why is that? He said: Because if you give them attention, it just encourages that kind of activity. I said to Mr. Lasorda—and say today in debate—what more attention could we give to these dim-witted clods who would burn the flag but to amend the Bill of Rights for the first time in history? How seldom this occurs, how reprehensible it is, how awful it would be for us to respond to this terrible conduct by saying: You have our attention. We are going to amend the Bill of Rights. We will show you. Then we will see a flood of this kind of activity, I am afraid.

Some of the people I respect from both sides of the aisle have been quoted during the course of this debate. Gen. Colin Powell, former Chairman of the Joint Chiefs of Staff, no one would question his patriotism, whether they belong to the American Legion or the VFW, AMVETS, or any veterans group. He opposes this amendment. He wrote a letter to Senator LEAHY in 1999 and said:

> We are rightfully outraged when anyone attacks or desecrates our flag. Few Americans do such things and when they do they are subject to the rightful condemnation of their fellow citizens. They may be destroying a piece of cloth, but they do no damage to our system of freedom which tolerates such desecration. * * * I would not amend that great shield of democracy to hammer a few miscreants. The flag will still be flying proudly long after they have slunk away.

General Powell got it right, a man who has served our country, has put his life on the line in combat like so many other veterans who are quoted in the minority views and who understand they were fighting for something more than a piece of cloth. They were fighting for a piece of history, a piece of history that goes back over 200 years, when men—and they were all men—came forward to write this document, the Constitution of the United States and said: We will make certain that no matter what any State or Federal Government should try to do, we will hold sacred the rights of an individual for freedom of expression and freedom of speech no matter how unpopular it may be.

I ask my colleagues in the Senate to join us in condemning the action but not in desecrating our Bill of Rights. It is a document which has been a source of pride for many generations. It will continue to be.

Some people say even the word ''desecration'' in this amendment is a little hard to follow. What is a physical desecration of the flag? Well, burning it is one illustration, but is it the only one? For example, I raised this in committee about 2 years ago. Would we

consider it a desecration of the flag for someone to use an American flag as a seat cover in their automobile? Some might say that is a desecration, sitting on the flag. I would ask them to think twice. Take a trip down to the Lincoln Memorial in Washington, DC. Get up close and see Abraham Lincoln, that son of Illinois of whom we are so proud. Look very closely at what he is sitting on. He is sitting on an American flag. I don't think that is a desecration. I think we understand the context is trying to indicate the importance of this President.

I urge my colleagues in the Senate to oppose this amendment and yield the floor.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I am intrigued by the comments of my colleague from Illinois. I would like to focus all the attention in the world on those who desecrate the American flag. I think it would be a great thing. It would help everybody in this country to know how distasteful it is and how denigrating to our country it is and how denigrating it is for all those who have died for this country following the flag, how denigrating it is to everybody who served in the military, how denigrating it is to every schoolchild, how denigrating it is to people who believe in values and things that are right. I have no trouble focusing on somebody who runs on the field burning a flag. I would like to focus on that creep as much as I could. I think if we did a little bit more of that, we might find a renewed resurgence of feelings about our country out there.

To be honest with you, if I interpret what the Senator said, he basically said that people ought to be able to make their statement. I wonder if he would be happy to have anybody who wants to make a statement in our gallery make any statement they want to every day that we meet. I think he would acknowledge that would disrupt the workings of the most important legislative body in the world.

There are limitations on everything, including the first amendment. By the way, how do you call offensive conduct of defecating, urinating on the flag or burning the flag with contempt, how do you call that free speech? The Supreme Court apparently has done so, but then, again, what we are talking about here, just look at this amendment. It is a very simple amendment. It is not telling us to do anything about the flag. What it says is: The Congress shall have the power to prohibit the physical desecration of the flag of the United States. My gosh, it doesn't tell us what to do. It just says we are going to take back this power that we had before this other third of the three separate powers, the judiciary, took it away from us and took it away from 49 States, all of which have asked us to restore that right to the States and the Federal Government.

These people are arguing against an amendment that gives the Congress back the power it had before, that it had for 200 years. Where is the logic in that? Many of these folks who are going to vote against this amendment voted for an anti-flag-desecration statute back in 1989. If they believe it is free speech today to defecate on the flag, then why wasn't it in 1989 when they voted for that useless statute that I stood up and said was unconstitutional and voted against and which later was declared to be what I said it would be, unconstitutional? Why didn't they vote against it if they are so enamored with this argument on free speech?

But forget the free speech argument. What about the power of three separate branches of Government? Why should we let the judiciary tell 49 States and the Congress of the United States we don't have any power to protect the national symbol of our sovereignty, of our patriotism, of our Nation? Any self-respecting Senator would want to stand up for the rights of the Congress, especially since this amendment doesn't say what we have to do. It basically says we have the right to change things. That is what you do with a constitutional amendment.

Some opponents of the flag-protection amendment have argued that we should be passing more restrictions on gun ownership rather than debating our constitutional amendment to protect the American flag. Give me a break. Everything is gun amendments around here. We have 20,000 laws, rules, and regulations about guns in this society that aren't even being enforced by this administration. While I believe there is no shortage of important issues for the Senate to take up, I believe the flag amendment is not only vital to protect our shared values as Americans, but also that this debate is particularly timely today as we all strive to recover what is good and decent about our country.

We see evidence of moral decay and a lack of standards all around us. Our families are breaking down, our communities are being divided, and there are leaders who are not providing the appropriate moral leadership for the American public. Our popular culture, including movies, television, video games, and music, bombards our children with offensive messages of violence and selfishness. The very disturbing incidents of gun violence—particularly at our public schools—is a particular result of a culture that is afraid to teach that certain ideas are right or wrong. As the saying goes, you have to stand for something, or you will fall for anything.

Today, the Senate has a unique opportunity to say that our country, and our culture, does stand for something; that on the issue of protecting and safeguarding an incident of national sovereignty, we stand for something. Today, we can reaffirm that all Americans share certain beliefs and values and a respect for this symbol of our national sovereignty. We can give a united bedrock of principle to a generation that is increasingly floating adrift and alone. Think about it. If we pass this amendment, we will create a debate on values in this country in all 50 States. That alone justifies this amendment—although I could give many additional justifications even better than that.

The disillusioned young people in our society today learn a very negative lesson by watching our Government sit powerlessly as exhibitionists and anarchists deface the embodiment of our sovereignty and our common values. What do you think they take away from watching people who dishonor the memory of those millions of men and women who have given their lives for the future of America? Allowing desecration of the flag lowers again the standards of elemental decency that all of us must and should live by. This proposed amendment affirms that without some aspirations to national unity, there might be no law, no Constitution, no freedoms such as those guaranteed by the Bill of Rights. The Bill of Rights was never intended to be a license to engage in any kind or type of behavior that one can imagine. Don't sell this amendment, and what it stands for, short.

If we pass this amendment by the necessary two-thirds vote, the Senate will say that our symbol of sovereignty, the embodiment of so many of our hopes and dreams, can no longer be dragged through the mud, torn asunder, or defecated on. We will say to the young people of America that there are ideals worth fighting for and protecting. There is a reason we are united as Americans, and that our experiment in democracy has proven to be the most enlightened government in history.

Can anyone think of a better message to send to our young people than to begin to reclaim the values of liberty, equality, and personal responsibility that Americans have defended and debated?

The flag amendment is not a distraction from matters of violence and education and social decay; nor is it an abdication of responsibility, as it has been called by some who oppose it. If there has been an abdication of responsibility, it has been to defend the irresponsible notion that the Bill of Rights exists to allow people to engage in any type of behavior or conduct that one can imagine. We need more attention to public values and standards, not less.

I am deeply offended by those who say the Senate has more important things to do than discuss a flag-protection constitutional amendment. I urge those of my colleagues who think the Senate is too important for the American flag to listen to the American people on this issue. I just came from a press conference where seven Congressional Medal of Honor recipients were there praying that the people of this country will get the Members of the

Senate to support this flag amendment.

The vast majority of our citizens support amending the Constitution to protect our Nation's flag. Even then, this amendment just says it gives the right to the Congress to do that. To these citizens and elected officials, protecting the flag as the symbol of our national unity and community and utilizing the constitutional amendment process to do so is no trivial matter.

Sitting in our gallery today are people who put their lives on the line to defend our flag and the principles for which it stands. These are the fortunate ones who were not required to make the ultimate sacrifice like my brother was in the Second World War, and like my brother-in-law was in Vietnam. Every one of these people—like tens of thousands of American families across our country—have traded the life of a loved one for a flag, folded at a funeral. Let's think about that trade—and about the people who made it for us—before deciding whether the flag is important enough to be addressed in the Senate.

Given the great significance of the flag, it is not surprising that support for the flag amendment is without political boundaries. It is not, as some suggest, a battle between conservatives on one side and liberals on the other. Indeed, the flag amendment transcends all political, racial, religious, and socioeconomic divisions. This is consistently reflected in national polling, in resolutions to Congress from 49 State legislatures requesting Congress to send the flag amendment to the States for ratification, and in the support of a bipartisan supermajority of the House of Representatives both last year and during the 104th Congress.

Is this overwhelming support for the flag amendment, as manifested through polling and through the actions of State and national legislatures, frivolity? Are we trivializing the Constitution, when a vast majority of Americans speaking for themselves or through elected representatives seek to utilize the article V amendment process, itself constructed by our Founding Fathers to right the wrongs of constitutional misinterpretation? Are we irresponsible if we simply restore the law as it existed for two centuries prior to two Supreme Court decisions, which were 5–4 decisions, hotly contested decisions? Does the principle of ''government by the people'' end where the self-professed ''experts'' convince themselves that the concerns of the overwhelming majority of ordinary citizens and their representatives are not important?

Is the Constitution, which establishes processes for its own amendment, wrong? I say it is the Constitution which establishes processes for its own amendment, and it is right. It says that the Constitution will be amended when two-thirds of the Congress and three-fourths of the States want to do so. It does not say that this procedure is reserved for issues that some law professors think are important, or issues that would crumble the foundations of our great Republic.

If ''government by the people'' means anything, it means that the people can decide the fundamental questions concerning the checks and balances in our Government. The people can choose whether it is Congress or the Supreme Court that decides whether flag desecration is against the law.

I urge colleagues to think hard about what they consider to be ''important'' before they conclude that the Senate should ignore the people and what they think is important and what should be considered important before they conclude that the Senate should ignore the people's desire to make decisions about the Government which governs them. The flag amendment is the very essence of ''government by the people'' because it reflects the people's decision to give Congress a power that the Supreme Court has taken away. This question is very important. I urge my colleagues not to think that this body is above listening to the vast majority of citizens of this country who want to give Congress the ability to determine whether and how to protect the American flag.

People should not say that there are more important issues than this one. This issue involves the very fabric of our society, what we are all about, and what our children, we hope, will be all about. This issue is very important. Anybody who thinks otherwise is trivializing this very important issue and the 80 percent of the American people who are strongly for it. The other 20 percent are not strongly against it; only a small percentage of those are. The rest of them just don't know or don't care.

You should have been with those seven Congressional Medal of Honor recipients, Miss America, and a whole raft of other veterans outside as we talked about why this amendment is important.

Mr. President, I yield the remainder of my time.

RECESS

The PRESIDING OFFICER. Under the previous order, the Senate stands in recess until the hour of 2:16 p.m.

Thereupon, at 12:39 p.m., the Senate recessed until 2:16 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer (Mr. INHOFE).

FLAG DESECRATION CONSTITUTIONAL AMENDMENT—Resumed

AMENDMENT NO. 2889

The PRESIDING OFFICER. We now have 4 minutes equally divided under the McConnell amendment No. 2889, S.J. Res. 14.

The Senator from Kentucky.

Mr. MCCONNELL. Mr. President, we all despise those who desecrate the flag. The issue before the Senate today is how we should deal with that problem.

In the late 1980s, the Congress passed a statute designed to prohibit this vile practice. It was struck down by the Supreme Court on First Amendment grounds. For the last several years we have had proposals in the Senate to amend the Bill of Rights in order to prohibit flag desecration despite the First Amendment. However, I think we should be very reluctant about amending the Bill of Rights.

Therefore, I have offered the amendment which we will be voting on shortly. It takes a new a statutory approach that I am confident would be upheld by the Supreme Court. Simply put, my alternative approach protects the flag by prohibiting three kinds of desecration. First, desecration of the flag that incites violence or breach the peace. Second, desecration of a flag belonging to the United States government. Third, desecration of a flag stolen from someone else and destroyed on government land. Anyone who engages in any of this kind of reprehensible behavior would be subject to fines of up to $250,000 and/or imprisoned for up to 2 years. I think this is a better approach than tinkering with the Bill of Rights for the first time in 200 years.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I generally support the distinguished Senator from Kentucky on all campaign finance reform issues because I think he is one of the most learned people, if not the most learned person in this area and on many other occasions. On this issue I cannot.

I predicted back in 1989 it was unconstitutional when they passed the statute, which passed overwhelmingly by a lot of people who, today, when this amendment is finally voted upon, will vote against it. In other words, they passed the statute that would do what this amendment would allow the Congress, if it so chooses to do, to do.

It seemed illogical to me they are unwilling to do what really has to be done because we have had two statutory attempts to resolve the problem of physical desecration of our beloved American flag. Both times I predicted it was unconstitutional under the Supreme Court's decisions, and both times they were held to be unconstitutional. So a statute is not going to do the job.

In spite of good intentions, the only way we can resolve this problem and do it effectively without taking anybody's rights away is to do what we are doing—not passing a constitutional amendment that prohibits physical desecration of the flag. We are passing a constitutional amendment that gives the Congress a coequal status with the judiciary, two coequal branches of Government to have the right to determine what to do with regard to the flag. That is what we intend to do.

I hope our colleagues will vote against this amendment because it