do I not want it to happen, I don't want to see it happen, either.

It doesn't have to happen. We can stop it. But if we wait and we delay and delay, and we don't send this message to the Attorney General that we mean business, it will happen. She has backed the family into a corner. Why, I will never know, but she has. We can stop it right here. We can stop it. I want my colleagues to know that if we don't vote and this happens, then it is on our conscience. We can stop this; we have the capacity to do it.

The INS and Justice Department to this day have not spoken to Elian Gonzalez.

Isn't it interesting? I spoke to him. I met with him for 2 hours. Diane Sawyer has spoken to him. She spoke to him. Senator BOB SMITH spoke to him. He is available. But Janet Reno can't speak to him. Do you know why? He doesn't have any rights. I say to anybody out there who has a 6-year-old child—and I have had three in my time, but they are long past 6 now, and they were pretty smart—at 6 years old, you know what is going on.

Do you know what happened to this little boy? I bet it didn't happen to too many boys anywhere in the world. He saw his mother die, slip under the waves and drown. The last words that came out of her mouth to the other survivors were: Please get Elian to America. That is my dying wish.

He didn't come here on a yacht. He wasn't escorted in some rich boat somewhere and brought to the shores and kidnapped. He was found drifting at sea for 3 days, surrounded by sharks. He survived, and his mother wanted him to be here. His mother had custody. She died. She can't speak for him. Do you know what? If she had lived—this is the irony—this would not be before the Senate. It would not be before the INS. They would have 13 months to work this out. He would be allowed to stay. So because his mother died, Elian is now being punished. So Diane Sawyer can talk to him, BOB SMITH can talk to him, but the Attorney General can't be bothered with it because Elian has no rights.

Are we in the Senate going to stand by and tolerate that? Do we want that on our conscience? I hope not. We need a vote on Senator MACK's bill for citizenship, if you wish, or on my bill on permanent residency status, if you wish. It doesn't matter to me. I want to have the vote on what we can get the most votes on so we can win, so that Elian wins, so that the process wins.

This is a little boy we are talking about, who endured more than most children would ever endure collectively throughout the world. I hear all the stuff about it is a family matter. Do you know what? It is a family matter, and we make it a family matter if we pass this resolution because then the family can come here from Cuba, if they care about this little boy. No restraints, no restrictions. Just come and sit down with Elian's family here in America, with the Cuban family, and work it out. If you can't work it out, then go to custody court in Florida, where this matter should be played out.

Without this vote—and I will repeat it for clarity—if we don't take a vote on this, Elian Gonzalez likely will be dragged kicking and screaming from the arms of his Uncle Lazaro and sent off to Cuba. Without this vote, that will happen, most likely. Or another alternative—perhaps worse—is violence, because people are up in arms about this, and they have a right to be. They have been very restrained.

I am proud of the Cuban American community for the way they have conducted themselves in this matter. But we don't need to let this kind of confrontation happen. Do you remember Waco? Janet Reno is doing the same thing again. So we need a vote. Now, if we vote and we vote no, at least you were heard; you are on record. The American people can say, Senator SMITH, or Senator so and so, this is how you voted. We heard you and you voted however you voted; we know how you felt about it.

At least have the courage to cast your vote on this matter.

My legislation grants Elian's family in Cuba permanent residency status. For the record, it includes Juan Miguel Gonzalez, Elian's father, for permanent residency status in America; Nelsy Carmenate, Juan Miguel's wife; Jianny Gonzalez, Juan Miguel Gonzalez's son; Mariella Quintana, Elian's paternal grandmother; Raquel Rodriguez, Elian's maternal grandmother; and Juan Gonzalez, Elian's grandfather. It grants all of them permanent residency. Does it mean that if they come to America, they have to stay? No. But it means if you care about Elian, then you have to come to America and talk to the family here.

I have been told by members of Elian's extended family that Juan Miguel Gonzalez, Elian's father, had expressed an interest in coming to the U.S. a few months before Elian was supposed to arrive.

The cold war is over, they say. It is over every place, I guess, but in the Senate because we want to say that Elian doesn't have any rights and we want to let Fidel Castro dictate what happens. Why would we want to let Fidel Castro determine the fate of Elian Gonzalez? Let Juan Gonzalez come here. If Castro cares, let the Gonzalez family come here. We are not going to keep them. They can stay if they want and they can go home if they want. We just want them to come and meet with the family here in Miami.

I am deeply concerned about this arbitrary deadline. I repeat it again for emphasis: I am very concerned about this 9 a.m. deadline. I am very concerned that such a deadline would be imposed because it is inflammatory to remove this parole status of Elian Gonzalez.

The goal in introducing this bill is to get the Justice Department and the INS out of the case and turn it over to the Florida courts and make it a case for custody, so that any 6-year-old boy—if you think of America today, there are custody cases going on right now as we speak. And to say this child doesn't have any rights—how about a child abuse case? Children are interviewed by psychiatrists and psychologists all the time under allegations of child abuse. In custody battles and divorces, they hear from children in custody battles. They are heard every day. Yet Elian can't be heard because of this decision—a regrettable decision—by the Attorney General.

I am going to end with a plea to the Attorney General: Please remove the arbitrary 9 a.m. deadline. Let the courts hear Elian Gonzalez's appeal. This is America. We have courts to resolve custody issues. It is not an immigration issue. He didn't immigrate here. He didn't immigrate into this country. He didn't emigrate from Cuba. He left Cuba. He wanted to get out of there and so did his mother. His mother died, and you are punishing him because she died. The other two people who survived—and I met with them as well—are adults, and they are here for 13 months. They are here. No problem. But Elian doesn't have any rights. Find a place in the law that says there is any age limit. At what age does he have rights? Is it 6, 7, 8, 9, 13, or 14? Find it in the law, Madam Attorney General. It is not in there.

We have courts to resolve these matters. Let the Eleventh Circuit Court of Appeals hear Elian's case before you attempt to send him back to Castro's open arms. Don't make the 6-year-old boy be paraded through the streets of Havana by Fidel Castro. Please, remove the arbitrary deadline. Let the Senate be heard. We will be heard, I hope, as early as Tuesday, perhaps Wednesday or Thursday—whenever we can work this through.

I appreciate the cooperation of the majority leader, who has been very helpful in this matter. I am grateful for that. But there are certain things he can't control. Senators have rights to delay, and that is what is happening. Please, I say to the Attorney General, don't try to impose that deadline. Remove it and let reason prevail.

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FLAG DESECRATION CONSTITUTIONAL AMENDMENT—Continued

UNANIMOUS CONSENT AGREEMENT

Mr. SMITH of New Hampshire. Mr. President, on behalf of the leader, I ask unanimous consent that, notwithstanding rule XXII, the following Senators be recognized for debate on the pending flag desecration legislation for the designated times, and following the use for yielding back of time, the joint resolution be read the third time and a vote on passage occur, all without any intervening action or debate. Those Senators are as follows: Senator BYRD

for up to 60 minutes; Senator LEAHY for up to 60 minutes; Senator HATCH for 60 minutes; Senator DASCHLE for up to 15 minutes; Senator LOTT for the final 15 minutes.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The PRESIDING OFFICER (Mr. GREGG). The Senator from West Virginia is recognized.

Mr. BYRD. Mr. President, we Americans are patriotic, and there are few acts more deeply offensive to us than the willful destruction of our flag. The flag, after all, is a unique symbol of national unity and a powerful source of national pride.

But the flag does not just represent the country and its history; in a very real sense it is a part of that history. Like the Constitution, the flag was handed down to us by the country's Founding Fathers, for it was the Second Continental Congress that, in 1777, established the Stars and Stripes as the national flag. From Tripoli in 1805 to Iwo Jima in 1945 to the Moon in 1969, the flag has been raised to commemorate some of America's proudest moments.

Millions of American men and women have marched off to battle behind that flag.

I see the flag there. It is just to the right of the Presiding Officer here in the Chamber. What a beautiful sight—that flag!

Millions more have sworn allegiance to the flag and ''to the republic for which it stands.'' And, while historians may dispute this point, schoolchildren to this day are taught to revere Betsy Ross for having sewn the first flag. Anyone who doubts either the flag's place in the country's history or the tremendous emotional ties that it inspires needs only to listen to the words of our national anthem, in which Francis Scott Key recalls with pride the sight of the Stars and Stripes flying proudly over Fort McHenry after a heavy bombing by British forces in 1814. Key's words are so familiar that we may scarcely think of them when we hear or sing them, but they are a deeply moving tribute to our flag.

In contemplation of the moment which is approaching when the Senate would again be confronted with a constitutional amendment concerning the desecration of the American flag, I have spent hours in discussions with constitutional scholars, with members of my staff, and in researching court decisions. I know of few subjects that have come before the Senate that have given me greater anguish. I know that the strong sentiment in West Virginia and throughout the country supports the amendment. I have voted for such a constitutional amendment in the past, but, based upon my deep and searching consideration of this matter, I have changed my mind and I will vote against S. J. Res. 14. In fact, it was my sad duty, on yesterday, to inform the members of The American Legion, gathered together here in Washington, that I could not be with them this time. I hated that I had to disappoint them. Some will fault me for having changed my position, and I can understand this, yet, as James Russell Lowell once said, ''The foolish and the dead alone never change their opinion.''

In fact, one of the greatest events of all time was brought about by the changing of one man's opinion 2000 years ago. Before he became the Great Apostle, Paul, who was then called Saul, was a persecutor of Christians. But after Saul was converted—he changed his opinion, his viewpoint, and his life. The Apostle Paul had a compelling influence on the future course of history. In Paul's case, God spoke to him and lifted his literal and psychic blindness. I do not contend that my change of viewpoint is in any way on the same scale of Paul's, or that such momentous results will follow, of course, but his story does remind us that one can be blinded to the truth by misplaced passion.

Mr. President, I yield to no-one in my respect, honor, and reverence for Old Glory. Nor do I yield to anyone in my commitment to those veterans who, for the benefit of all Americans, have given so much in defense of our country and in defense of our flag. Yet, despite my love for the flag, and despite my commitment to our Nation's veterans, I regret that I cannot support this well-intended amendment. I cannot support it because I do not feel that it belongs in our Constitution; because I believe that many instances of flag desecration can be prosecuted under general laws protecting public or private property, laws which do not require any constitutional amendment; I cannot support the amendment because flag burning, though loathsome, is hardly pervasive enough to warrant amending the Constitution; I cannot support the amendment because I fear that the primary effect of this amendment would be more, not fewer, incidents of flag destruction; and because I feel that, rather than rushing into a constitutional amendment, we might be better served by allowing the Supreme Court the opportunity to revisit this issue.

What do I mean, Mr. President, when I say that this measure does not ''belong'' in the Constitution? Let me start by being clear about what I do not mean. I do not mean that protecting the flag is a trivial or unimportant goal of government. Nor do I mean that the flag deserves anything less than our complete reverence and our complete devotion. What I do mean, quite simply, is that a ban on flag desecration does not fit into—would, in fact, be out of place in—the skeletal document which lays out the basic organization and structure of the national government, determines federal-state relations, and protects the fundamental liberties of the people, all of us.

I think my meaning will be clearer if we take a closer look at the purposes that constitutional amendments are intended to serve. The Framers gave this matter some thought in their deliberations at Philadelphia in 1787. They considered and they rejected resolve No. 13 of the Virginia Plan offered by Gov. Edmund Randolph of that State, resolve 13 which would have permitted ''amendment of the Articles of Union whensoever it shall seem necessary,'' and which stated ''that the assent of the National Legislature ought not to be required thereto.'' They rejected that. Indeed, several delegates to the Convention, among them Charles Pinkney of South Carolina, opposed any provision for Constitutional amendments to the Constitution. Recognizing, however, that occasional revisions might be necessary, the Convention finally agreed upon a compromise that deliberately made it difficult to amend the Constitution by requiring successive supermajorities. Article V sets up a cumbersome two-step process to amend the Constitution. It is cumbersome because the framers intended it to be cumbersome. The first step is approval either by two-thirds of Congress meaning both Houses or—and this has never been done—by a convention called for by two-thirds of the states. The second step is ratification by three-fourths of the states.

Given the hurdles set up by Article V, it should come as no surprise that so few amendments to the Constitution have been approved. There are twenty-seven in all, and the first ten were ratified en bloc in 1791—209 years ago. In the two hundred and nine years since ratification of the Bill of Rights, there have been just 17 additional amendments. Think of that. If we disregard the 18th and 21st Amendments, marking the beginning and end of Prohibition, we are left with only 15 amendments in 209 years!

The 18th amendment was wiped out after 15 years by the 21st amendment. These mark the beginning and end of Prohibition.

So, as I say, we are left with actually only 15 amendments in 209 years. Just think of it. In 209 years, despite all of the political, economic, and social changes this country has experienced over the course of more than two centuries; despite the advent of electricity, which lights this Chamber, and despite the advent of the internal combustion engine; despite one civil war and two world wars and several smaller wars; despite the discovery of modes of communication and transportation beyond the wildest fancies of the most visionary framers, this document, the Constitution of the United States, has been amended only 15 times. If you want to count the 21st amendment, 16 times would be the total number.

Truly, the Constitution is an extraordinary work of wisdom and foresight on the part of the framers. George Washington and James Madison may be forgiven for referring to the product of their labor as ''little short of a miracle.'' Gladstone may well have gotten

it right when in 1887 he declared the Constitution to be the most wonderful work ever struck off at a given time by the brain and purpose of man.

As for those 15 amendments I have just mentioned, these can generally be divided into two roughly equal categories. One category consists of those amendments that deal with the structure and organization of the three branches of Government, the laying out of the three separate branches—the legislative, the executive, the judiciary. The checks and balances, these include the 11th amendment. Of course, those were included in the original Constitution, the separation of powers, in the first, second, and third articles—the legislative, executive, and judicial.

As to the amendments, the 15 amendments plus the first 10, these include the 11th amendment, preventing the Federal courts from hearing suits against States by citizens of other States; the 12th amendment, regarding the election of the President and the Vice President; the 17th amendment, establishing the direct elections of Senators; the 20th amendment, regulating Presidential terms and related matters; the 22nd amendment, limiting a President to two terms; the 25th amendment, regarding Presidential succession; and the 27th amendment, deferring congressional pay raises until after an intervening election.

There is very little need for me to attempt to justify the inclusion of these provisions in the Constitution. However we may feel about them personally, their subject matter, the structure of the Federal Government, fits in perfectly with that of articles I through IV.

There is good reason to suspect the framers themselves thought that most, if not all, amendments would address structural matters. In No. 85 of the Federalist Papers, Alexander Hamilton expressed it this way: A thorough conviction that any constitutional amendments which ''may, upon mature consideration, be thought useful, will be applicable to the organization of the government and not to the mass of its powers.''

Hear that again: Hamilton expressed a thorough conviction that any constitutional amendments which ''may, upon mature consideration, be thought useful, will be applicable to the organization of the government, and not to the mass of its powers.''

In Hamilton's mind, any amendments would deal with the structure, the organization, of the Government.

The second category consists of those constitutional amendments that narrow the powers of government and expand or protect fundamental personal rights. These include the 13th amendment banning slavery, the 14th amendment, which extended citizenship to all persons ''born or naturalized in the United States and subject to the jurisdiction thereof'' and guaranteed all citizens certain basic protections, and the 15th, 19th, 23th, 24th, and 26th amendments, each of which extended the vote to new groups of citizens.

Clearly, the flag desecration amendment fits into neither category. For constitutional purposes, it is neither fish nor fowl. It does not address a structural concern; it does not deal with Federal relations between the National and State governments—in other words, the Federal system; it extends, rather than narrows, the powers of government; and it does not protect a basic civil right.

Look at your Constitution. Look at your Constitution and the amendments thereto which, to all intents and purposes, are part of the Constitution. You will see that the Constitution overall narrows the powers of government; it does not extend those powers. Indeed, some opponents of this amendment that is before us argue that it restricts personal liberty.

The 13th amendment forbidding slavery may be viewed as the only amendment regulating the conduct of individuals. The 13th amendment was the product of a bitter, fiercely contested Civil War, the War Between the States, and it was necessary to end one of the most loathsome and shameful institutions in our Nation's history. This, the 13th amendment, was an exceptional amendment. It was necessitated by exceptional circumstances.

There was, of course, one notable attempt to regulate individual conduct via a constitutional amendment. I have already referred to that, the 18th amendment, instituting Prohibition, which also deviated from the model of constitutional amendments I have laid out—with disastrous results. Like the flag desecration amendment, the 18th amendment sought to restrict private conduct in the name of a greater social good. Like the flag desecration amendment, the 18th amendment had a commendable goal. Nonetheless, the 18th amendment was a mistake and it took us 15 years to rectify it. True, the mistake was rectified in 1933, but the damage was already done. The 21st amendment ended Prohibition, but it could not erase the preceding 15 years in which a constitutional provision—not a statute, a constitutional provision, a portion of the highest law in the land—was routinely ignored and violated. You see, once that 18th amendment was riveted into the Constitution, it took 15 years to unlock it, to undo it, to repeal it.

Prohibition not only made criminals and scofflaws of countless Americans, it also placed them in violation of the Constitution. I can remember the revenue officers, when they came to the coal camps and when they scoured around the hills and the mountains looking for the moonshine stills. I can remember those revenuers. That was a terrible mistake, and, while the blemish to the Constitution has since faded, the lesson may not have been learned.

Thus, a constitutional amendment against flag burning may very well prove to be counterproductive, just as did the Prohibition amendment. If this were to happen, our Constitution would be diminished and flag burning would continue—would continue.

In the final analysis, it is the Constitution—not the flag—that is the foundation and guarantor of the people's liberties. Respect for that Constitution should not be undermined by amendments, however well intentioned, that cannot be enforced. I fought the constitutional amendment to balance the budget for the same reason. I said it could not, would not—would not be enforced, and that as a result of lack of enforcement, the people's faith in the Constitution would be undermined. I say the same thing here. It will not be enforced.

It is like the Commandment that says: ''Thou shalt not kill,'' but killing goes on every day right here in the Nation's Capital.

''Thou shalt not steal,'' but stealing continues.

I have come to believe strongly that constitutional amendments, as Madison said, should be saved ''for certain and extraordinary occasions.'' I am not saying the Constitution should never be amended. I am not saying that. Madison was not saying that either. But Madison said that constitutional amendments should be saved for ''certain and extraordinary occasions.''

Critics may accuse me of being overly conservative, but I believe I am right. I have learned from study and from my own recent experience with the proposed constitutional amendment to balance the budget that tinkering with the careful system of checks and balances and the separation of powers contained in the Constitution, can have far-reaching and sometimes unexpected consequences. When it comes to revising the most basic text in our Federal system, when it comes to improving upon the handiwork of Washington and Madison and Hamilton and James Wilson and Roger Sherman and Gouverneur Morris and Benjamin Franklin and others at the convention; when it comes to setting a pen to the sacred charter of our liberties that my colleagues and I have sworn at the desk to uphold and defend—then, yes, I am conservative.

While I do not rule out the possibility that I might offer an amendment some day, as I have done in the past—I have learned a lot in these last years in the Senate—they should be reserved, as Madison said, for compelling circumstances when alternatives are unavailable.

Polls are no substitute for reasoned analysis and independent thought. Polls were very much in evidence during the balanced budget amendment debate, and we see the same thing here today. Who would oppose a balanced budget? Those of us who voted against the balanced budget amendment did not oppose a balanced budget. We were opposed to what that amendment would do to the Constitution of the United States; what it would do to the

faith and confidence of the American people in their Constitution.

Who would oppose protecting the flag? Nobody here certainly. But the Senate, in particular, was intended by the framers to be an oasis of cool, deliberate debate, free from the hasty and heated rhetoric that characterizes so many political exchanges.

The writers of the Constitution were remarkable men. Such a gathering probably never before sat down within the four corners of the Earth. That was the real miracle that took place in Philadelphia, that those minds, and many of them were young—Franklin was 81, but Pinckney was 29; Gouverneur Morris was 35; Madison was 36; Hamilton was 30—that so many brilliant minds sat down in one place at a given moment in time. The clock of time had struck. Had it been 5 years earlier, they would not have experienced to the full the flaws of the Articles of Confederation, so they would not have been ready. Had it been 5 years later, they would have seen all of the ills, the extremes of the French Revolution, the deaths at the guillotine. They would have been repelled in horror by what happened there, the excesses. These were the miracles: the right place, the right time, and the right men.

The framers of the Constitution were indeed remarkable men, and their words are often as wise and relevant today as they were two centuries ago. Thus, Madison wrote in Federalist 49 that ''a constitutional road to the decision of the people ought to be marked out and kept open, for certain great and extraordinary occasions.''

Currently, there appears to be no such ''great and extraordinary'' occasion that calls for a 28th constitutional amendment.

Madison also warned against the reference of constitutional questions to the people too often. ''Do not do it too often,'' he said. ''Do not send amendments to the American people too often.''

In the Federalist 49, he said:

> . . . as every appeal to the people would carry an implication of some defect in the government, frequent appeals would, in great measure, deprive the government of that veneration which time bestows on everything, and without which perhaps the wisest and freest governments would not possess the requisite stability.

Madison further said:

> The danger of disturbing the public tranquility by interesting too strongly the public passions is a still more serious objection against a frequent reference of constitutional questions to the decision of the whole society. . . . But the greatest objection of all is that the decisions which would probably result from such appeals would not answer the purpose of maintaining constitutional equilibrium of the government.

That was James Madison warning us against sending to the American people constitutional amendments too often.

Flag destruction is, fortunately, only a rare occurrence. While our culture may have become increasingly coarse and vulgar at times—and it certainly has, there is no question about that—most Americans respect the flag and most Americans voluntarily refrain from abusing it.

I do not want to give the same attention-seekers who defile the flag the opportunity to defy the Constitution as well. By one act, they would then be able to desecrate and defy the flag and at the same time to defy—defy, defy—the Constitution of the United States. This is more than a matter of symbolism; this is a question of respect for the founding document of this Republic and the supreme law of the land.

Any disrespect for the Constitution is a repudiation of the most basic principles and laws of the country. And now you say let's put into the Constitution some verbiage that cannot be enforced, that will not be enforced; cannot be. It will be defied by some.

Let me say that again. Any disrespect for the Constitution is a repudiation of the most basic principles and laws of the country. We are talking about the supreme law of the land. The law here can be changed—passed today and changed before the beginning of the next Congress next year. But not a constitutional amendment. Once it is welded into the Constitution, it will take years to repeal it, to take it out, to remove it, as we saw in the case of amendment No. 18, the prohibition amendment.

I shrink from the possibility of providing a tiny minority of rabble-rousers with the ammunition to fire upon the most important and beloved document in the country.

As I suggested a bit earlier, we already made the mistake once before of inserting into the Constitution a restriction on private conduct that could not be enforced. The Constitution suffered terribly under Prohibition. It would also have suffered under a balanced budget amendment, another unenforceable and litigation-inducing provision that many of my colleagues wished to insert into the Constitution. Just as I opposed the balanced budget amendment out of a desire to protect the Constitution from further abasements, so, too, I must oppose a flag desecration amendment. It, too, would be unenforceable.

If one provision of the Constitution proves to be unenforceable, what about the other provisions?

Just as I am resolved to protect both the Constitution and the flag, I am determined that we not make martyrs of those villains who would sully—who would sully—the Stars and Stripes. Why should we let these malefactors portray themselves as courageous iconoclasts, sacrificed at the altar of public complacency and intolerance? It is possible, I believe, to craft statutory protection for the flag that can withstand a court challenge. The amendment in the form of a substitute that was offered by Senator MCCONNELL, the Flag Protection Act of 1999, could, in the opinion of the American Law Division of the Library of Congress, withstand such scrutiny. In the words of that opinion, ''subsections (b) and (c) appear to present no constitutional difficulties, based on judicial precedents, either facially or as applied.'' Further, the opinion notes, ''Almost as evident from the Supreme Court's precedents, subsection (a) is quite likely to pass constitutional muster.'' The opinion closes by noting, ''In conclusion, the judicial precedents establish that the bill, if enacted, while not reversing Johnson and Eichman, should survive constitutional attack on First Amendment grounds.''

The first case to which I just referred, of Texas v. Johnson, arose from an incident during the 1984 Republican Convention in Dallas, Texas, in which Gregory Lee Johnson participated in a political demonstration and burned an American flag while protestors chanted. Johnson was convicted of desecration of a venerated object in violation of a Texas statute, and a State Court of Appeals affirmed the decision. However, the Texas Court of Criminal Appeals reversed the decision, holding that burning the flag was expressive conduct for which the State could not, under the First Amendment, punish Johnson in these circumstances. The Supreme Court, in a 5–4 decision, upheld the lower court's decision.

But in the dissent by Chief Justice Rehnquist, Justice White, and Justice O'Connor, they noted, ''the Texas statute deprived Johnson of only one rather inarticulate symbolic form of protest—a form of protest that was profoundly offensive to many—and left him with a full panoply of other symbols and every conceivable form of verbal expression to express his deep disapproval of national policy.'' The Justices also observed, ''Surely one of the high purposes of a democratic society is to legislate against conduct that is regarded as evil and profoundly offensive to the majority of people—whether it be murder, embezzlement, pollution, or flag burning.''

After the Johnson decision, Congress passed the Flag Protection Act of 1989, criminalizing the conduct of anyone who ''knowingly mutilates, defaces, physically defiles, burns, maintains on the floor or ground, or tramples upon'' a United States flag, except conduct related to the disposal of a ''worn or soiled'' flag. Subsequently, several people, among them Shawn D. Eichman, were prosecuted in District Courts. In each case, the appellees moved to dismiss the charges on the ground that the Act violated the First Amendment. The District Courts, following the precedent set by the Johnson case, held the Act unconstitutional as applied and dismissed the charges. The Supreme Court, again in a 5–4 decision, upheld the decision.

However, in the dissent authored by Justice Stevens, with whom the Chief Justice, Justice White, and Justice O'Connor joined, the justices noted

that ''it is equally well settled that certain methods of expression may be prohibited if (a) the prohibition is supported by a legitimate societal interest that is unrelated to the suppression of ideas the speaker desires to express; (b) the prohibition does not entail any interference with the speaker's freedom to express those ideas by other means; and (c) the interest in allowing the speaker complete freedom of choice among alternative methods of expression is less important than the societal interest supporting the prohibition.''

Given the closeness of the votes in Johnson and Eichman—given the presumption against amending the Constitution whenever other alternatives are available—and given the powerful arguments made by Chief Justice Rehnquist and Justice Stevens in their dissents—perhaps the better course of action is to allow the Court sufficient time to reconsider its views on this controversial topic.

The Court has already changed its composition since the Eichman decision eight years ago. Four of the Justices who decided that case, including three who voted with the majority, have been replaced. Who can say whether a new court will find itself swayed by the persuasive arguments that Mssrs. Rehnquist and Stevens have put forth? Instead of our adding a new, 28th Amendment to the Constitution, would it not be preferable for the Court, on closer inspection of the issue, to realize the error of its ways?

Like many Americans, I was shocked by the Johnson and Eichman decisions overturning statutory protection for the flag. Now, that shock has subsided, and while I still question the correctness of those decisions, I no longer believe that a constitutional amendment is the best response to these horrific acts. The intervening years have allowed me to rethink my initial reaction to the Supreme Court's decisions, and while my love for the flag has not waned, neither have my respect for and devotion to the Constitution. If anything, the spate of proposed constitutional amendments in recent years—chief among them the misguided balanced budget amendment—and my continued studies of constitutional history have only increased my love for this magnificent document and my determination to prevent its abuse.

Every time I read it—as with every time I read the Bible—I find something, it seems, that is new and intriguing and awe-inspiring.

I have always promised my constituents that I will represent them to the best of my ability and with an open mind and an honest heart. Today, head and heart have convinced me to reconsider my beliefs. As Benjamin Franklin, the oldest man at the Constitutional Convention, put it, in addressing his fellow conferees at Philadelphia as they prepared to sign the Constitution—this is what he said—''For having lived long, I have experienced many instances of being obliged by better information or fuller consideration, to change opinions even on important subjects, which I once thought right, but found to be otherwise.''

That has happened to me on several occasions. Certainly, it is true in the present instance.

While I salute the patriotism of those who support this measure—I salute them—I hope that they will pause to consider its unintended but inevitable ramifications. Rather than inviting a surge in flag destruction; rather than spurring years of legal wrangling; rather than adding to our Constitution a provision that addresses a problem that occurs only infrequently, let us step back.

Let us reconsider the matter. Let us rethink what we are proposing.

Our Founding Fathers intended that amending the Constitution should be a difficult and laborious process—time consuming; cumbersome—not to be undertaken lightly. It sets a dangerous precedent, one that I have come to appreciate fully in recent years, to tinker with the careful checks and balances established by the Constitution. When it comes to our founding charter, history demands our utmost prudence.

Every heart in this Chamber thrills at the sight of that flag, thrills at the rays of sunlight that play upon those stars and stripes, as we ride down or walk down a street on the Fourth of July. The flag! There is no other flag like it! None.

But what gives each of us freedom of speech? What gives each of us the right to say what we want to say? What gives us that right? Not that flag—but the Constitution of the United States!

What gives the fourth estate that sits in those galleries up there—the press—what gives the press freedom to print, to televise, to broadcast? What gives this country freedom of the press? Not Old Glory, not that flag—but the Constitution of the United States!

What gives my coal miners from West Virginia the right to come to these Capitol steps and to speak out and to thunder their criticism of the President of the United States or of the Congress of the United States, while Old Glory floats above the dome in the blue sky? What gives those miners that right? Not the flag, not Old Glory, soaring in the heavens—but the Constitution of the United States!

What gives the truckers, what gives the farmers, what gives any group the right to come to Capitol Hill and to assemble and to petition the Government to obtain a redress of grievances? Not the flag—but the Constitution of the United States!

There is the source of the right—there is the source—not in the dear old flag. The flag is the symbol of the Republic, the symbol of what the Constitution provides, but it is not the flag that provides it. It is the Constitution of the United States. That is why today I speak out against the amendment before the Senate, because it is that Constitution that provides us with the rights which all Americans enjoy, regardless of race, regardless of color, regardless of national origin, regardless of age or sex. It isn't that flag.

I love it. How many times do we go the last mile of the way with a friend or a relative who sleeps beneath the closed lid of a steel coffin draped with the American flag? It is something to remember. He may have been a soldier, a sailor, a marine. He didn't die for that flag. He died for what that flag represents. And the instrument that provides what that flag represents is the Constitution of the United States.

It is the real stuff!

I think I am right to have changed my mind. I want to say again that I changed my mind because of long and serious study, not only of the Constitution of the United States, but also of the Articles of Confederation which was the first Constitution of the U.S., my study of the Federalist Papers, my study of the history of our country, the history of the colonies, the history of England, the struggles of Englishmen, and my studies of the ancient Romans. Because of these studies, in the beginning with the respect to the constitutional amendment to balance the budget and then with respect to the line-item veto, which I hate with a passion, and which the Supreme Court of the U.S. overthrew, I came to know more about the Constitution, about American constitutionalism, about the history of the Constitution, about the ratifying conventions, than I ever knew before. And it is the result of that long and assiduous study of constitutionalism in America, constitutionalism that had its roots not just at the Constitutional Convention of 1787, but in the states before the Constitution, and in the colonies before the states, and in the Biblical covenants before the colonies; roots that go back 1,000–2,000 years. I have come to this conclusion, and I believe that I can best serve my country today by voting against this amendment.

The flag lives because the Constitution lives, without which there would be no American Republic, without which there would be no American Senate, without which there would be no United States of America, only the balkanized States of America. Without that Constitution, there would be no American liberty, no American flag.

That flag is the symbol of our Nation. In a way, we might say that that flag is the symbol of all we hold near and dear. That flag is the symbol of our Nation's history. That flag is the symbol of our Nation's values. We love that flag. But we must love the Constitution more. For the Constitution is not just a symbol, it is the thing itself!

I yield the floor 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. 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, one of the privileges of serving in the Senate is the chance to hear debates—some good, some not so good. Periodically, we hear greatness in speeches. The Senate just heard greatness.

I think all Senators would agree, whether they are for or against this constitutional amendment, that when the history of this debate is written, when the history books are written, the speech of the distinguished senior Senator from West Virginia, Mr. BYRD, will be in that recounting. This is the type of speech that students of constitutional history, students of the Constitution itself—and this Senator wishes there were more—will look to, and they will read and reread.

We sometimes forget that every 6 years, those of us who are fortunate to serve here, to serve more than once, take a very specific oath of office. I can think of times when various people have administered this oath, usually the Vice President of the United States. But I recall watching the distinguished senior Senator from West Virginia administer that oath on a couple of occasions in his role as President pro tempore of the Senate.

There was one big difference when he administered it than when all the various Vice Presidents, Republican or Democrat, administered it. The difference is, they had a card before them and they read the oath. The Senator from West Virginia didn't need a card before him to do it. The Senator from West Virginia would stand there, tell them to raise their right hand, and he would administer the oath. There was no prompting. There was no teleprompter. There was no card. There was no book. There was the mind that carries the history of the United States Senate there, when he would do it.

I mention that oath because we swear we will uphold the Constitution, we will protect the Constitution. There could be no more solemn duty. If we are protecting the Constitution of this country, we are protecting the country itself. In this debate, that really is the issue.

I have said over and over again, I do not want to see the first amending of the Bill of Rights in over 200 years. I think we know from our history there have been times when we have amended the Constitution. We did it to provide, after the tragedy of the death of President Kennedy—I was not serving here at that time; the distinguished Senator from West Virginia was—a means of succession of Vice President. And in this era of the nuclear age and all, it is good we have that. But these are matters of enormous consequence. These are matters that can go to the very survival of our Nation and that make it possible, actually necessary, to amend the Constitution.

Let us not amend it simply because it is a matter of passing political favor.

I have spoken too long, and I do not wish to embarrass my friend. I have had the honor of serving with him for just over 25 years. There is hardly a day goes by that I do not learn something from the distinguished Senator from West Virginia. Today the Nation learned from the Senator.

Mr. DORGAN. Mr. President, will the Senator yield?

Mr. LEAHY. I am happy to yield to the Senator from North Dakota.

The PRESIDING OFFICER (Mr. CRAPO). The Senator from North Dakota is recognized.

Mr. DORGAN. Mr. President, let me briefly comment on the remarks made by the senior Senator from West Virginia. I know from having visited with him about this subject over some long while that he found this to be a difficult subject, not a simple subject, not an easy issue to resolve. I felt the same way about this issue. He spoke about the U.S. Constitution at great length today and all Members of the Senate will learn from that speech.

I have told my colleagues previously that on the 200th birthday of the writing of the Constitution I was one of the 55 Americans who went into that room where the Constitution was written 200 years prior to that, when 55 men went into that room and wrote a Constitution. Two-hundred years later, 55 people—men, women, minorities—went into that room. I was privileged to have been selected to be one of them. I have told the story before and people may get tired of hearing it, but I sat in that room—I come from a town of about 270 people, a small ranching area of Southwestern North Dakota. I sat in that room—the assembly room in Constitution Hall—200 years after the Constitution was written, the document that begins, ''We the people.''

In that room, George Washington's chair is still in front of the room, where he sat as he presided over the constitutional convention, and Ben Franklin sat over on this side, and there was Madison and Mason; Thomas Jefferson was in Europe, but he contributed through his writings to the Bill of Rights. I thought to myself that this is a pretty remarkable country where a fellow from a town of about 270 people can participate in a celebration of this sort.

From that moment, I have been troubled by the proposition that some convey so easily of wanting to change the U.S. Constitution. I mentioned yesterday that we have had, I believe, 11,000 proposals to change the Constitution, 11,000. Among those, for example, was a proposal to have a President from the North during one term and then the requirement that the next term of the Presidency be filled by a President who comes from the southern part of the U.S. That was one idea.

Fortunately, the Constitution is hard to amend. Since the Bill of Rights, only 17 times have we amended this document, and then in almost every case, it was to expand freedom and liberty. So I have had great difficulty with this issue. I love the flag and what it stands for. I am devoted to the flag and the Constitution and the principles on which this country was founded. I know the Senator from West Virginia is as well. I wanted to say how much I and my colleagues, I am sure, appreciate his presentations to the Senate not just today but on a recurring basis, reminding us of the timeless truths about who we are and about who we have been, about the rich and majestic history of our country and the principles that have allowed us to progress to the point now of the year 2000 as the oldest successful democracy in history.

So I want to say thank you. As I say, this is a very difficult issue. I came to the same conclusion, that I did not feel I could amend the U.S. Constitution in this manner. It doesn't mean that I don't believe we ought to find a way, short of changing the Constitution, to provide sanctions for those who would desecrate America's flag. I just have not been able to make the leap of saying, yes, let's change the framework of the Constitution. I thank the Senator from West Virginia for his enormous contribution today.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. Mr. President, I thank the senior Senator from Vermont and the senior Senator from North Dakota for their remarks. I also thank them for the courage they have displayed time and time again in protecting this founding document. I thank them for the inspiring leadership that the rest of us have had from watching them and listening to them. They, indeed, have done a tremendous service to the country, to the Senate, and to the Constitution. I thank them both from the bottom of my heart.

The PRESIDING OFFICER. The Senator from Washington is recognized.

Mr. GORTON. Mr. President, I ask unanimous consent that I be permitted to speak as in morning business, the time not charged under cloture.

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

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PRESCRIPTION DRUG COSTS

Mr. GORTON. Mr. President, good health is one of life's greatest blessings. Over the last 25 years, there has been a tremendous change for the better in the delivery of health care. New drugs help to prevent heart disease and provide better treatments for cancer, allergies, depression, and many other debilitating conditions. In short, prescription drugs can help people live longer, lead healthier, happier, more productive lives—and can help lower the overall cost of health care. We all applaud.

The United States leads the world in the development of new drugs. Almost half of the new drugs developed in the last 25 years were created in the USA.

But new drugs are expensive to develop. Only one of every five candidate medicines will turn out to be effective, be approved by the FDA and make it to