

to prevent them from invoking more "legal maneuvers." These "legal maneuvers" happen to be the legal rights of Americans—properly exercised in the middle of an appeals process. These "legal maneuvers" are tools in which all Americans are empowered to seek a fair hearing in the United States of America. I find it unconscionable that the justice department would so blatantly express their desire to dictate terms and influence the outcome of this case.

My reason for coming to the floor today is express my sheer frustration and anger in the manner in which the DOJ and the INS has handled this case. The recent acts of these two agencies demonstrate that the administration is no longer interested in resolving this case in a fair, unbiased way. The offer by the Department of Justice is a deeply flawed offer, one that no American would ever accept, one that no person in America should ever have to accept. Elian's mother sacrificed her life for the freedoms of America, freedoms she never had in Cuba, freedoms she never thought our country would deny her son in his moment of need. We should all, despite our views on this issue, be deeply ashamed at any attempt to short circuit justice in order to reach a resolution in the quickest possible way.

In the United States, we stand up to injustice in the world by zealously guarding our laws. We consistently and rightly argue that our strength and power come from our commitment to America's principles: freedom, justice, democracy and the protection of basic human rights. We are a nation founded upon these principles and we remain strong because we defend them. Mr. President, today and throughout the course of Elian's stay in the United States the INS and our Attorney General have not stood up for the one thing they are supposed to defend—justice for all.

Mr. President, I yield the floor.

Mr. JEFFORDS. Mr. President, I ask unanimous consent to proceed as in morning business for a period not to exceed 5 minutes.

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

The remarks of Mr. JEFFORDS pertaining to the introduction of S. 2311 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

#### FLAG DESECRATION CONSTITUTIONAL AMENDMENT—Continued

The PRESIDING OFFICER. Who yields time?

Mr. DASCHLE. Mr. President, I will take whatever time may be required and use my leader time.

Mr. President, the debate over the last two days has been deeply moving. When we began this debate, I thought to myself how much I would prefer it if we were talking about veterans' health care, prescription drugs, or raising the minimum wage.

But, I stand corrected. This debate has proved meaningful and proved that our reputation as the deliberative body is earned.

I thank especially the distinguished Senior Senator from Vermont, the Ranking Member of the Judiciary Committee, Senator LEAHY for his fine stewardship of this debate. As always Senator LEAHY has offered much wisdom and demonstrated much skill as he managed this amendment.

This afternoon, as we close this debate I want to draw my colleagues' attention to the statements of Senator ROBERT BYRD and Senator CHUCK ROBB. Both men gave eloquent statements about how they came to their decision to oppose this constitutional amendment. These statements moved me and I dwell on them because they represent my views so well. For neither of these men, was their decision easy. I have come to believe, however, that it is not in easy decisions that you find the measure of a Senator—it is the hard decisions that distinguish the men and women we remember long after they leave this place.

Senator BYRD, in his usual way, reminded us why the Bill of Rights has never been amended in our history. Why? Because it was our founders' design. They set the bar for passage of a constitutional amendment high because they strongly believed that the Constitution should be amended in only the rarest of circumstances. And that has been the case. As Senator BYRD points out, setting aside the amendments involving prohibition, the Constitution has been amended only 15 times in 209 years.

As Senator BYRD noted, "In the final analysis, it is the Constitution—not the flag—that is the foundation and guarantor of the people's liberties." Thus, Senator BYRD conceded that, as much as he loves the flag, and as much as he salutes the patriotism of those who support this measure, he must oppose the amendment. His sentiments reflect so well the struggle I have felt over the years when we have considered this amendment in the past.

I, like other veterans, love the flag that has united us at so many critical times. I cannot understand why anyone would burn the flag simply to call attention to a cause. But as Senator ROBB reminded me—it was to protect the rights of such an unpopular dissenter that I once wore a military uniform. Senator ROBB noted that there will always be another flag to hold high, when one is defiled, but there will be no other Constitution—should we defile it.

Senator ROBB held dying men in his arms in Southeast Asia. He understands the sacrifices men and women will make to save this democracy. This afternoon, as we cast this vote, I am proud to stand with him, to stand with Senator BYRD, to stand with Senators BOB KERREY and JOHN KERRY, and others, to fight here—today—to preserve the principals and ideals these patriots fought for.

As Senator BYRD said today: "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." By honoring and preserving the Constitution, we ensure that this symbol—our flag—continues to represent a country devoted to democracy and free speech.

I yield the floor.

The PRESIDING OFFICER. The majority leader is recognized.

Mr. LOTT. Mr. President, could I inquire about the time remaining?

The PRESIDING OFFICER. The majority leader has 15 minutes.

Mr. LOTT. Is that the only time left before the vote?

The PRESIDING OFFICER. No. Senator LEAHY has 21 minutes. Senator HATCH has 31 minutes.

Mr. LOTT. Thank you, Mr. President. Mr. President, I yield to Senator HATCH for a request.

Mr. HATCH. Mr. President, I am prepared to yield the remainder of our time, if the minority will yield the remainder of its time. Senator LOTT will be the last speaker.

Mr. LOTT. Mr. President, I believe it was the plan for the leaders to yield the remainder of time. I believe Senator DASCHLE did that. After all time had been used on both sides, I would be the final speaker, and then we would go to a recorded vote. We indicated we would vote sometime around 4:30.

I ask Senator LEAHY, are we prepared to yield back time on both sides at the conclusion of my remarks?

Mr. LEAHY. Mr. President, it is my understanding that the Senator from Utah was going to yield back his time.

Mr. LOTT. That is correct.

Mr. LEAHY. Has the Democratic leader yielded his time?

Mr. LOTT. He completed his remarks and has yielded the remainder of his time.

Mr. LEAHY. Of course, I understand that in the normal course the distinguished leader would be given the right to make final remarks.

I yield my time.

Mr. LOTT. Thank you very much.

Mr. HATCH. I yield the remainder of my time.

The PRESIDING OFFICER. All time is yielded.

The majority leader is recognized.

Mr. LOTT. Thank you, Mr. President.

Mr. President, I commend those who have been involved in the debate on this very important issue over the past 3 days. It is occasions such as this when I think the Senate quite often rises to the greatest height, but it should, because we are debating very important issues here, symbols of our freedom and our democracy, the Constitution, the flag.

I am pleased we have had this discussion. I think the American people want the Senate to act in this area. Now we are prepared to vote.

I rise in support of Senate Joint Resolution 14, the constitutional amendment to protect the flag of the United

States. What we have before the Senate today is a very simple measure. I have had some discussion with some individuals from outside Washington who asked, how long and how complicated is it? It is not long. It is very simple.

It reads in full:

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

That is the entire amendment.

During most of the history of our Republic, the provision expressed in this amendment would have been non-controversial. Indeed, prior to the Supreme Court's 5-4 decision in *Texas v. Johnson* in 1989, 48 States and the Federal Government had laws protecting our most basic national symbol, the flag. The Supreme Court's decision in 1989 reflected a fundamental misunderstanding, a misunderstanding of the law, of our history, and of basic common sense.

Those who oppose this amendment argue that defacing the flag somehow represents speech that must be protected under the first amendment of the Constitution. I think people have a pretty good understanding of what speech is—at least outside of Washington—and what type of activity is protected under our Constitution. I imagine there are some close situations where there is room for disagreement, obviously, but I don't think that is the case here.

We live in a free society where individuals are free to express their views. People can express dissatisfaction with their government, and they do; with the laws, and they do; and even with the flag. They can express those disagreements. While the speech in which some of our fellow citizens choose to engage can at times be repulsive and offensive or even dangerous, we do respect the fundamental right of individuals to express their ideas. No one is suggesting it should be otherwise.

In my opinion, burning the flag is not speech, it is conduct of the most offensive kind. Protecting the right of individuals to destroy property has no relation to the question of whether people are free to speak or to write or to campaign or to petition against the leaders of their government. I strongly reject the notion that those who support this amendment lack concern or respect for our traditions of free speech or for the notion that people should be free to criticize their government. This amendment simply will not hinder those basic freedoms.

Certainly, Senator HATCH, who has led the debate on this side, and many other Senators who will vote for this have great respect for our traditions of free speech and for the Constitution. But they think this is an issue that rises to the level of being considered as an amendment.

This measure does not change the first amendment nor does it alter our historical respect of free speech. It merely restores the original understanding of our Constitution, an under-

standing that led nearly every State and the Federal Government to maintain for decades laws protecting the flag.

As we consider this amendment, it is essential to remind ourselves that our rights, our constitutional guarantees, do not exist in a vacuum. They exist for a reason—namely, to further our great experiment in self-government and a constitutional republic. They exist to help us thrive as individuals and as a nation.

The American flag is a sacred, basic, fundamental symbol of our Nation's ideals—the symbol of those goals and values for which we have asked our young men and women to fight and die. It is a symbol that causes citizens to rise in pride and to salute. It is a symbol men and women have followed. It is a symbol men have carried into battle. It does represent those basic tenets in which we believe in this country.

Some argue that allowing the desecration of this most vital symbol somehow shows our strength and self-assurance as a nation. I disagree. I think it reflects a perversion of liberty and a misunderstanding of our system of government. Allowing the desecration of our national symbol is not a sign of strength, it is a sign of self-indulgence, as we have in so many areas of our society today, of a nation that does not take seriously the obvious point that our rights coexist with responsibilities and limitations.

The flag is unique. When we went to the Moon, we didn't take some other sign of military might, some billboard, some expression of our great wealth. No, instead we planted the flag, the same flag that was raised over Iwo Jima, the same flag we lower to half mast at times of national tragedy, the same flag we drape over the coffin of our American heroes and our veterans. Surely protecting such a symbol is not only consistent with our deepest traditions but essential to preserve the society that has developed and fostered those traditions.

I sympathize with those who express concern that a constitutional amendment is an extraordinary event and should not be taken lightly. It never is. We have had some tremendous debates over the years on constitutional amendments. Most of them were defeated, but, on occasion, some have passed and they have proven to be good for the advancement of our country.

Had the Supreme Court interpreted the Constitution appropriately, we would not be forced to take this serious and unusual step. However, the Supreme Court's failure to act responsibly on this issue leaves us no other means to protect this symbol for which so many Americans have sacrificed their lives and to which they have pledged their sacred honor.

Some Members of this body claim that these goals can be accomplished through statute. I can say frankly that I wish it would be so but I don't believe it can be so. Make no mistake, the Su-

preme Court has stated over and over and over again that its interpretation of the first amendment trumps any statute Congress may pass.

If we truly wish to protect the flag—and I know an overwhelming number of Americans do—we have no choice but to vote for a constitutional amendment.

There are those who belittle this amendment and our effort to protect the flag. They claim it is too narrow an issue, too small a problem, and that this is an issue not worthy of Congress' attention. I believe this issue is more important than any appropriation or any new set of regulations for it goes to the heart of who we are as a people and what we are as a nation.

The United States is different from almost every other nation on Earth. Those who come to America don't share the same language, the same religion, the same ethnicity, the same history, or the same geography. Instead of those tangible similarities, Americans are united by intangibles—by our commitment to certain ideals. One of those ideals is the principle of free speech. But another is the devotion to our country and a commitment to work for its success. By asking Americans to respect the flag, we simply ask them to demonstrate that any protest, criticism, or complaint they may have is made with the best interests of the Nation at heart. The measure before the Senate today furthers that basic and essential principle upon which our Nation was founded.

Once again, we are being told that the Senate should reject this, that we know better. Yet look at what has happened. The States have voted overwhelmingly to protect the flag. Forty-eight States had laws protecting it before the Supreme Court decision.

Many State legislatures have called upon the Congress to send this amendment to the States. In fact, I think every State legislature has done that. The House of Representatives has passed a flag amendment by a large, overwhelmingly bipartisan vote. Now it is up to the Senate to do what we should. Are we saying we know better than the American people? That we know better than every State legislature in the Nation? That we know better than the House of Representatives? We know better? Why not allow the people, through their State legislatures, to have the final say? Why not pass this amendment, send it to the people, and let them make the final determination? I think they will make the right decision.

I think we should work together today on both sides of the aisle to pass this amendment and send it to the people.

I yield the floor.

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

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. All time having expired, the question is on the engrossment and third reading of the joint resolution.

The joint resolution was ordered to be engrossed for a third reading, and was read the third time.

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

The clerk will call the roll.

The assistant legislative clerk called the roll.

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

The yeas and nays resulted—yeas 63, nays 37, as follows:

[Rollcall Vote No. 48 Leg.]

YEAS—63

Abraham	Fitzgerald	Mack
Allard	Frist	McCain
Ashcroft	Gorton	Murkowski
Baucus	Graham	Nickles
Bayh	Gramm	Reid
Bond	Grams	Roberts
Breaux	Grassley	Rockefeller
Brownback	Gregg	Roth
Bunning	Hagel	Santorum
Burns	Hatch	Sessions
Campbell	Helms	Shelby
Cleland	Hollings	Smith (NH)
Cochran	Hutchinson	Smith (OR)
Collins	Hutchison	Snowe
Coverdell	Inhofe	Specter
Craig	Johnson	Stevens
Crapo	Kyl	Thomas
DeWine	Landrieu	Thompson
Domenici	Lincoln	Thurmond
Enzi	Lott	Voinovich
Feinstein	Lugar	Warner

NAYS—37

Akaka	Edwards	McConnell
Bennett	Feingold	Mikulski
Biden	Harkin	Moynihan
Bingaman	Inouye	Murray
Boxer	Jeffords	Reed
Bryan	Kennedy	Robb
Byrd	Kerrey	Sarbanes
Chafee, L.	Kerry	Schumer
Conrad	Kohl	Torricelli
Daschle	Lautenberg	Wellstone
Dodd	Leahy	Wyden
Dorgan	Levin	
Durbin	Lieberman	

The PRESIDING OFFICER. On this vote, the yeas are 63, the nays are 37.

Two-thirds of the Senators duly chosen and sworn not having voted in the affirmative, the resolution is rejected.

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

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, last fall I became the 21st or 22nd person in the history of this body to cast 10,000 votes. When somebody asked me about those votes, whether they were all important, I said: No, a lot of them were merely procedural votes that we all cast, but some were important. Some of those 10,000 were.

Certainly this vote, whatever number of votes I might be privileged to cast on the floor of the Senate, will go down as one of the most important votes, as it will for all Senators. Whether they voted for or against the amendment, it

will be one of the most important votes they will cast in their career.

I take a moment to commend the Senate for its actions this afternoon. It protected the Constitution, the Bill of Rights, in particular our first amendment freedoms. This has been an emotional debate, as one would expect, about a highly charged political issue. I believe the Senate fulfilled its constitutional responsibility to both debate and then vote on this proposed 28th amendment to the Constitution.

I thank Senators on both sides of the aisle, Democrats and Republicans, and on both sides of this issue—those who voted, in my estimation, to protect the Constitution as it presently stands and those who used their constitutional right to vote to amend the Constitution. There were thoughtful and heartfelt statements on both sides.

The distinguished Senator from Wisconsin, Mr. FEINGOLD, who is ranking Democrat on the Constitution subcommittee, spoke eloquently on the floor, as he has in committee. He has been a leader on constitutional issues since he arrived in the Senate. I thank him for all he has done.

We heard from Senator KENNEDY. We heard from Senator MOYNIHAN, one of 11 Senators in this body who fought in World War II. We heard from Senator DODD, Senator DORGAN, Senator CONRAD, Senator DURBIN, Senator WELLSTONE, and so many others. All were thoughtful and constructive contributors to the debate.

In particular, I commend my dear and very special friend, TOM DASCHLE, Democratic leader, for his remarks closing this debate and also for his leadership throughout this debate.

Over the last 24 hours, we heard compelling statements—if I may single out a couple—from Senator BOB KERREY, Senator CHUCK ROBB, and Senator JOHN KERRY. Each of these men was an heroic veteran of the Vietnam war. Each was decorated for his bravery, and one had the highest decoration of this country, the Congressional Medal of Honor. Each of them rose to the defense of our freedoms. We have heeded their counsel. We have heeded their service, as we have our former colleague, Senator John Glenn, another American hero; Gen. Colin Powell, another American hero; our late colleague, Senator JOHN CHAFEE; and the many veterans who testified and contacted us urging that we preserve, protect, and defend the Constitution by not amending the first amendment to the Bill of Rights for the first time in the history of our great Nation.

I recognize the courage shown by the distinguished senior Senator from West Virginia, Mr. BYRD—Senator BYRD gave us a history lesson which will be studied long after all of us are gone—and the distinguished Senator from Nevada, Mr. BRYAN, who, during the course of consideration of this proposal, looked inside themselves, looked to the principles of this country and changed the position they had held be-

fore. I commend them for that. I thank them. Their legacy will include their dedication to the Constitution and their vote to uphold, protect, and defend it.

I thank Prof. Gary May, Keith Krueel, James Warner, Rev. Nathan Wilson, Prof. Robert Cole, the American Bar Association, People for the American Way, and the ACLU for their views.

I thank Maj. Gen. Patrick Brady and Lt. Gen. Edward Baca for their testimony opposed to the position I have taken today.

I commend Senate staff on both sides of the aisle, those for the amendment and those opposed. I think in this case I may be allowed to thank Bruce Cohen and Julie Katzman of my staff, who spent far more hours than this Senator had any right to ask them to spend on this in answering every question I ever asked, anticipating those I was not wise enough to ask, and always giving me good counsel. Bob Schiff, Andrea LaRue, Michaela Sims, and Barbara Riehle, they should be proud of their work and of the Senate's action today.

I would also like to thank my friend and Chairman, Orrin HATCH, who has fought so hard for this amendment over the years.

Mr. President, I see other Senators seeking recognition. I will yield the floor in one moment. Again, I thank all Senators on both sides of the issue for their dedication to this issue.

I yield the floor.

Mr. WARNER. Mr. President, we respect the comments of our colleague from Vermont. Recognition should also go to Senator HATCH. I realize Senator LEAHY also was about to speak on behalf of Senator HATCH. I want to recognize his efforts in working with the Senator from Vermont on this issue. The final vote was 63, and that is well beyond 50 percent of the Senate by which most issues are decided.

Mr. President, at this time, I notice the senior Senator from South Carolina on the floor. I ask unanimous consent that I be recognized following his presentation.

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

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MORNING BUSINESS

Mr. THURMOND. Mr. President, I ask unanimous consent that there now be a period for the transaction of routine morning business, with Senators permitted to speak therein for up to 10 minutes each.

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

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THE PLIGHT OF ANDREI BABITSKY

Mr. KENNEDY. Mr. President, I welcome this opportunity to express my concern about Andrei Babitsky, the accomplished Russian journalist who still faces serious charges in Russia after being held captive first by Russian authorities, then by Chechens, and now again by Russian authorities.