

the American people the opportunity to decide if the Constitution should be amended. It is time to let the people decide.

I yield the floor.

I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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 President, I ask unanimous consent that the order for the quorum call be rescinded.

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

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

FLAG DESECRATION AMENDMENT

The PRESIDING OFFICER. Under the previous order, the Senate will resume consideration of S.J. Res. 12, which the clerk will report.

The assistant legislative clerk read as follows:

A resolution (S.J. Res. 12) proposing an amendment to the Constitution of the United States authorizing Congress to prohibit physical desecration of the flag of the United States.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I would like to say a few words about this amendment this morning because there seems to be a lot of misunderstanding about it. There are those who believe this amendment interferes with First Amendment rights and privileges. It does not. The media has largely portrayed this amendment as a ban on flag desecration. It is not. This amendment is, pure and simple, a restoration of the Constitution to what it was before unelected jurists, in a 5 to 4 decision, changed it. In 1989, five justices ruled that flag desecration, including burning the flag or any number of similar offensive acts, is speech. Four of them, led by the opinion of Justice Stevens, one of the most liberal members of the Court, found that such conduct does not constitute speech.

Fifty State legislatures, both red States and blue States, have called on us to pass this amendment. There are 60 up-front primary cosponsors of this amendment. There are at least six others who have said that they will vote for it. If that is all true, we are 1 vote short of having 67, with just a few who may still be undecided. We are hopeful that they will understand that this amendment simply says that "Congress shall have power to prohibit the physical desecration of the flag of the United States." In other words, in passing this amendment, we would give to Congress the power that the Supreme Court took away from it when they decided the Johnson case in 1989. That is very important to understand.

Today, the distinguished chairman of the Judiciary Committee, Senator SPECTER, is holding a hearing on Presidential signing statements, which he and some others believe actually take away power from the Congress of the United States.

We have heard various Members on both sides of the aisle get up and say that they are tired of the other branches of Government, meaning the executive and judicial branches, taking away powers from the Congress. This amendment would restore power to Congress. That is its importance.

The amendment does not ban anything. It does not require the creation of a statute. It does not say what is and what is not desecration of the flag. That would have to be defined later, assuming that the Congress decides, under its own power, through its own Representatives, to try to pass a statute that would define physical desecration of the flag. And if Congress did, at some point in the future, decide to exercise this power, then I believe that the good Members of Congress would very narrowly construe in a statute what is and what is not desecration of the flag.

Once again, fifty States, 50 State legislatures, every State in the Union has called for this amendment. Sixty-six Senators, both Democrats and Republicans, support this amendment. We are hopeful that there will be one or two others who will vote with us, and I believe if we get that 67th vote we will have 75.

In addition, anyone who tries to say that this proposed amendment interferes with First Amendment rights has not read it, as many in the media have not. This amendment would have no effect on the First Amendment. It merely returns the power to protect the flag back to the Congress of the United States.

In his speech yesterday, Senator DURBIN, my dear colleague from Illinois, who is the Democratic whip, suggested that this amendment is unnecessary. He based his assertion on the supposition that there are relatively few incidents of flag desecration. So why bother, was basically his argument. Why should we address what appears to be a matter of minor significance?

I will tell you why. As I stated, this amendment does not ban anything. But let me assume, as Senator DURBIN did, that it does. Just one incident, just one, is enough to justify action. One flag burning is enough, I think, for most people in this country. Principles are not creatures of convenience, despite assertions to the contrary.

As my colleagues know, 48 States, plus the District of Columbia, had anti-desecration measures on the books before 1989. It was then that five unelected judges told those 48 sovereign entities that they were wrong.

Do my colleagues know the basis for the ruling? Five lawyers decided that all of these 48 State legislatures, as

well as the District of Columbia, were wrong and that their measures were unconstitutional. But I ask, where does the Constitution say these measures are unconstitutional? Where in the text of the Constitution does it say this? The silence is deafening. We all know the Constitution does not say these measures are unconstitutional. Five lawyers came to this conclusion on the basis of a legal seance.

Now, I wonder, why did 48 States act in this area if anti-desecration laws are unnecessary? I will tell you why. Incidents of flag desecration are much more frequent than many of my colleagues have suggested.

The Citizens' Flag Alliance has been cataloguing reported incidents of flag desecration since 1994. Now, these are the incidents that are made public generally in the media. Their list is by no means comprehensive. There are many, many incidents of flag desecration, even some that are extremely offensive or even obscene, that are just not reported.

I know these people in the Flag Alliance. They are true citizen activists. They do not have high-priced lobbyists and \$500-an-hour attorneys working for them. Many of them are working individuals who are simply committed to the values and ideals the flag represents. These hard-working individuals have devoted their time and energy fighting for the right to protect these values.

The Citizens' Flag Alliance has kept an eye on the news throughout the country to watch for reports of flag desecration. But with over 1,450 newspapers in this country it is no small feat to maintain a comprehensive list. Despite the difficulties in tracking these occurrences, the information that the Citizens' Flag Alliance has gathered appears to counter my colleagues' suggestion that there were not many incidents of flag desecration at all.

Since the Citizens' Flag Alliance began keeping count in 1994, there have been over 130 recorded incidents of flag desecration. In small rural areas as well as cities like Cincinnati, OH and Washington, DC, some of these people have defiled the very meaning of the flag by desecrating it, and, in many of those cases, more than one flag was desecrated.

For example, 10 flags were vandalized at the American Legion building on the Veterans of Foreign Wars post in New Hampshire just a few months ago. And, just last week in New York, there was an incident in which seven flags displayed on citizens' private property were desecrated and burned.

These reported occurrences of flag desecration are simply the tip of the iceberg. Besides the difficulties in monitoring the news for flag desecration incidents, there are many other acts of flag desecration that go unreported either because citizens know that the individual responsible cannot be prosecuted thanks to the Supreme Court