The Senate met at 9 a.m. on the expiration of the recess, and was called to order by the Honorable Harry Reid, a Senator from the State of Nevada.

PRAYER

The Chaplain, the Reverend Richard C. Halverson, D.D., offered the following prayer:

Let us pray:

Thus saith the Lord. Let not the wise man glory in his wisdom, neither let the mighty man glory in his might, let not the rich man glory in his riches: But let him that glorieth glory in this, that he understandeth and knoweth me, that I am the Lord which exercise lovingkindness, judgment, and righteousness, in the earth: for in these things I delight, saith the Lord.—Jeremiah 9:23, 24.

God of all comfort who knows when a sparrow falls to the ground, Thou knowest those in this large Senate family who have needs today. Wherever there is hurt or discouragement or frustration, wherever there is alienation between husband and wife, parent and child, wherever there is physical suffering or emotional trauma, we commend to Thy loving care all who need healing and renewal. Touch each life with Thy love and grace today so that any who have need may know that God is near, that He loves unconditionally. Comfort and may know that God is near, that He loves unconditionally. Comfort and

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. Breaux).

The legislative clerk read the following letter:

U.S. SENATE,
President pro tempore,

To the Senate:

Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable Harry Reid, a Senator from the State of Nevada, to perform the duties of the Chair.

Robert C. Byrd,
President pro tempore.

Mr. REID thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF THE ACTING MAJORITY LEADER

The ACTING PRESIDENT pro tempore. Under the standing order, the acting majority leader is now recognized.

Mr. BRYAN. Thank you very much, Mr. President.

SCHEDULE

Mr. BRYAN. Mr. President, this morning, following the time for the two leaders, there will be a period for morning business not to extend beyond 10:40 a.m. with Senators permitted to speak therein for up to 10 minutes each. The Senate will recess at 10:40 and remain in recess until 2:15 p.m.

At 10:40 this morning the Senate will assemble as a body and proceed to the House Chamber for a joint meeting to hear an address by Mr. Nelson Mandela. Following the joint meeting, each party will hold their respective conference lunches.

Upon reconvening at 2:15 p.m. this afternoon, the Senate will resume consideration of Senate Joint Resolution 322, a proposed constitutional amendment on flag desecration, with 40 minutes for debate on each of the four amendments in order to the joint resolution, and 40 minutes equally divided between the two leaders prior to final passage of the joint resolution.

RESERVATION OF LEADER TIME

Mr. BRYAN. Mr. President, I ask unanimous consent that the time for the majority and minority leaders be reserved for their use later in the day. The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, there will now be a period for transaction of morning business not to extend beyond the hour of 10:40 a.m. with statements therein limited to 10 minutes each.

The Senator from Idaho is recognized.

Mr. SYMMS. I thank the Chair. (The remarks of Mr. Symms pertaining to the introduction of S. 2783 are located in today's Record under "Statements on Introduced Bills and Joint Resolutions.")

TEST PROGRAM FOR COMPANY-WIDE SUBCONTRACT PLANS: ENHANCING SMALL DISADVANTAGED BUSINESS PARTICIPATION IN DOD SUBCONTRACTING

Mr. NUNN. Mr. President, as part of the National Defense Authorization Act for fiscal years 1990 and 1991, Congress established a test program to determine if we can streamline the defense acquisition process by authorizing negotiation of subcontracting plans on a companywide, rather than on a contract-by-contract, basis. The test is authorized to begin on October 1, 1990, and will run through September 30, 1993. Because the Department of Defense is developing implementation rules, I would like to take this opportunity to review the background for this test program and to suggest factors to be considered in administering and evaluating its implementation.

BACKGROUND

Under section 8(d) of the Small Business Act, which applies to all Federal agencies, small businesses and small disadvantaged businesses must be afforded the "maximum practicable opportunity" to participate as subcontractors and suppliers to firms awarded contracts by the Federal Government. To implement this policy, section 8(d) requires the negotiation of subcontracting plans with specific goals for small business and small disadvantaged business participation if the value of a contract or a subcontract for construction exceeds $1 million, or $500,000 for other procurements. The law requires that goals be negotiated on a contract-by-contract basis, and that contractors make a good faith effort toward meeting their goals.

Under current law, the prime contractor must set separate goals for subcontract participation by small businesses and small disadvantaged businesses. In 1989, small businesses received 30.3 percent or $22 billion of all DOD subcontract dollars awarded in fiscal year 1989, and small disadvantaged businesses received 2.3 percent or $1.3 billion. The test program has the potential to enhance those figures, especially the participation of small disadvantaged businesses in defense subcontracting.

STREAMLINING THE ACQUISITION SYSTEM

In general, the law has required negotiation of subcontracting plans on a contract-by-contract basis. In 1988, the Department of Defense expressed con-
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Mr. KOHL. Mr. President, I rise today to commend our friend and distinguished businessman, Mr. Helms, for his leadership in securing the enactment of the Small Business Act of 1958, which has been so beneficial to the small business community and especially to the small disadvantaged businesses that have been able to expand their opportunities and compete more effectively in the defense industry.

The Small Business Act of 1958 authorized the President to set goals for prime contractors to subcontract with small businesses and small disadvantaged businesses. The Act also provided for the establishment of companywide subcontracting plans, which are intended to help streamline the acquisition process and ensure that small and small disadvantaged businesses are given a fair opportunity to participate in defense-related activities.

However, the Act also recognized that small businesses and small disadvantaged businesses may face significant challenges in competing for contracts with prime contractors. The Act therefore authorized the Department of Defense to negotiate subcontracting plans with small businesses and small disadvantaged businesses to ensure that they are able to participate in the defense industry.

The Department of Defense has developed a test program to determine whether the use of companywide subcontracting plans would streamline the acquisition process without adversely affecting the contractor's ability to meet its subcontracting goals. The test program has been used to negotiate subcontracting plans with small businesses and small disadvantaged businesses, and the results have been mixed.

In 1982, the Senate Armed Services Committee developed a test program to determine whether the use of companywide subcontracting plans would allow small businesses and small disadvantaged businesses to participate in defense-related activities. The test program was intended to help streamline the acquisition process and ensure that small businesses and small disadvantaged businesses are given a fair opportunity to compete for contracts with prime contractors.

The test program was successful in increasing the number of small businesses and small disadvantaged businesses that were able to participate in defense-related activities. The program also helped to reduce the administrative burden on prime contractors and streamlined the acquisition process.

The Department of Defense has continued to use the test program to negotiate subcontracting plans with small businesses and small disadvantaged businesses. The results of the test program have been mixed, but overall, the program has been successful in increasing the number of small businesses and small disadvantaged businesses that are able to participate in defense-related activities.

In conclusion, the Small Business Act of 1958 and the Department of Defense's test program have been successful in increasing the number of small businesses and small disadvantaged businesses that are able to participate in defense-related activities. The program has helped to streamline the acquisition process and ensure that small businesses and small disadvantaged businesses are given a fair opportunity to compete for contracts with prime contractors. The Department of Defense should continue to use the test program to negotiate subcontracting plans with small businesses and small disadvantaged businesses in order to ensure that they are able to participate in defense-related activities.
There being no objection, the editorial was ordered to be printed in the Record, as follows:

(From the Addison County Independent, May 17, 1990)

COL. JOE WHITEHORN: AN ASTONISHING LIFE; A FASCINATING MAN

Col. Joseph Whitehorn III, a Middlebury resident since his retirement in 1987, was a remarkable man because of his absolute integrity, his absolute commitment to others, his absolute dedication, his absolute love of country and his absolute love of humanity. He died Monday at Porter Medical Center. He was 73.

A brief resume hints of his astonishing life.

After a distinguished military career in the Army, during which he commanded a company of the 118th infantry and served in the Philippines and Okinawa campaigns in WWII, he served as an exchange officer with the British Army in London on the general staff at the Pentagon. He later served as a battalion and regiment commander of infantry units in Alaska and Port Washington, Wisconsin. He was an advisor to the Saudi Arabian Army in Saudi Arabia, and a professor of military science at Dartmouth College. Before retiring he served in the office of the Secretary of Defense.

Upon retiring, he didn't. Instead he substituted his devotion to country to his devotion to Middlebury. He served as town grand juror, planning commission member, and member and chairman of the board of civil authority—a post he held for many years. He was honored in the Middlebury Town Report in 1987 for his exemplary community service.

He also worked on special projects not associated with government. He was a founding member of the Festival on the Green committee and was active year after year. He served on the Addison County Humane Society board, the Sheldon Museum board, and an active promoter and official of Green Up. In June 1986, he was awarded the Freeman Rotary Distinguished Citizen Award presented by the Middlebury Rotary Club.

What was extraordinary about Colonel Whitehorn was not only the number of activities in which he was involved, but the enthusiasm, energy and commitment he gave to each. He was a fascinating person and he brought a sense of fascination and interest to each endeavor he undertook.

He was a true patriot, and a companion of those he worked with in Middlebury. He represents those leaders of others who work mightily to hold the spiritual fabric of a vibrant community together. He, and those few like him, are the chorus that make community life sing.

The rewards were always ample for him. He gave his love to Middlebury and the country, and his love was returned many fold in respect and admiration. That's as good a model as any to live by.

BIG BROTHERS-BIG SISTERS OF AMERICA

Mr. DIXON. Mr. President, I believe most of my colleagues would agree that it is harder to be a kid today than it was in our past. Children today are confronted with a variety of problems unique to this day and age. Fortunately, volunteer organizations in this country provide some relief to the youth of America.

Since 1967, the Big Brothers-Big Sisters of America have lent a guiding hand to children between the ages of 7 and 15 years from single parent families. The adult volunteers who serve as Big Brothers and Big Sisters provide an invaluable assistance to young Americans facing the everyday problems of the world today. Whether they are taking youngsters to ballgames, parks, or the movies, these volunteers give their charges the adult guidance they need while assisting parents faced with the task of raising children on their own.

In a day and age where the number of single parent families has increased markedly, the role of the Big Brothers-Big Sisters is more important than ever in molding the futures of young Americans.

For all their achievements, I am proud to honor the Big Brothers-Big Sisters of metropolitan Chicago on the occasion of their “Party at the Pier” charity benefit. They have made a tremendous difference in thousands of youngsters’ lives, helping them to make the right decisions in a difficult world. I salute them and all Big Brothers-Big Sisters volunteers across the country.

MRS. CHRISTINA FEWELL, SKOKIE, IL. MOTHER OF THE YEAR

Mr. DIXON. Mr. President, the National Multiple Sclerosis Society recently announced the results of its 39th annual Mother of the Year contest. Each of the society’s 85 chapters made its nominations, and the national selection committee picked the winner.

I am proud to report that the winner chosen is Mrs. Christina Fewell, of Skokie, IL. This mother of two was first diagnosed with multiple sclerosis (MS) in 1985.

At first, Christina went through a period of denial, but a hospitalization in 1987 brought her face to face with her disease. She soon discovered that the hardest part about having MS was trying to explain the disease, and the unique problems it causes, to her children. She contacted the National Multiple Sclerosis Society for help, which provided her and her family with support and information.

Christina, a clinical social worker, wanted to give something in turn to the children of others stricken with this disease, to help both victims and their children learn to cope with MS. In coordination with the Chicago-Northern Illinois Chapter of the Society, she organized and led a family awareness day for parents with MS and their children. She plans to visit other society chapters and to hold...
more family oriented programs. Christina is also active, despite her illnesses and disabilities, in Boy Scout and Girl Scout activities with her children.

Violence against women in this country has been rising at an alarming rate. Increases in the rate of rape, assault, and murder of women are significantly higher than increases in the national crime rate or the rates of assault and murder of men. Nationally, a woman is raped every 6 minutes and every 18 seconds a woman is beaten. In my own State of Maine a woman is raped every 38 hours and a domestic assault occurs every 3 hours. While the statistics are shocking, the reality is even worse. It is estimated that less than half of all rapes and even fewer domestic assaults are ever reported. These crimes are not limited to the streets of our inner cities or to those few highly publicized cases that we read about in the newspapers or see on the evening news.

Women throughout the country, in our Nation's urban areas and rural communities, are being beaten and brutalized in the streets and in their homes. It is our mothers, wives, daughters, sisters, friends, neighbors, and coworkers who are being victimized; and, in many cases, they are being victimized by family members, friends, and acquaintances.

Even those women who have not been touched directly by violent crimes are not unaffected. How many women can walk home at night from the bus or subway without some thought of what is the safest route to take, or without pausing when they hear footsteps behind them? Regrettably, all women are victims of fear—the fear generated by the pervasiveness of violence directed against women not because of who they are or what they are doing or where they live but simply because they are women.

The Violence Against Women Act is not a cure to the growing incidence of violence but it is an important step in the right direction. The bill has three major titles: Safe Streets for Women; Safe Homes for Women; and Civil Rights for Women. I ask unanimous consent that a copy of an outline of the bill be included in the Record. I urge my colleagues to join in supporting this important legislation.

There being no objection, the outline was ordered to be printed in the Record, as follows:

VIOLANCE AGAINST WOMEN—BILL OUTLINE

TITLE I—SAFE STREETS FOR WOMEN

Federal sex crime legislation

1. Doubles penalties for rape and aggravated rape.
2. Creates new penalties for repeat sex offenders.
3. Requires and expands victim restitution in sex crime cases.

B. High intensity violence areas

1. Authorizes $300 million in law enforcement grants—$200 million to the 40 most dangerous areas in the country for women and $100 million to all 50 states.
2. Grants include funds to increase prosecution rates (notoriously low) by training police and prosecutors in setting up special units of police prosecutors; and victim advocates to target violent crimes against women.

C. Public transit: Lights & cameras

Emphasizes capital improvement grants from mass transit funding to increase lighting and camera surveillance at bus stops, stations, and adjacent parking lots.

D. National Commission on Violent Crime Against Women

Modeled on the AIDS Commission, this group will help focus attention on increasing crime rates against women.

TITLE II—SAFE HOMES FOR WOMEN

A. Interstate enforcement

1. Creates federal penalties for spouse abusers who cross state lines to continue abuse or to violate an existing "stay away" order.
2. Requires states to enforce the "stay away" orders that other states issue, as long as the order meets a certain minimum criteria.

B. Arrest

1. Bars grants to states and localities that discriminate against spouse abuse by having a policy that discourages or prohibits arrest of abusing spouses.
2. Provides grants to states and localities, encouraging arrests of abusing spouses.

C. Funding/grants

1. Doubles funding for battered women's shelters.
2. Authorizes $25 million in law enforcement grants including funds for prosecutors and courts to develop special units devoted to spouse abuse.

TITLE III—CIVIL RIGHTS FOR WOMEN

A. Sex crimes as "bias" or "hate" crimes
1. Defines gender-motivated crimes, like rape, as "bias" crimes, depriving victims of equal rights.
TRIBUTE TO ELLIOTT GALKIN
Mr. SARBANES. Mr. President, I join in with the family and many friends of Dr. Elliott Galkin in mourning his recent death. Dr. Galkin moved to Baltimore in 1956 and immediately began to change profoundly the music and academic life of Maryland. As a conductor, educator, administrator, author and critic, Dr. Galkin strove to promote high standards of musical training and performance. His energy and passion for musical excellence will be missed.

Dr. Galkin began his musical education under the tutelage of his great-uncle Rudolph Heifetz, father of violinist Jascha Heifetz. After graduating from Brooklyn College, he attended the Paris Conservatory on a grant from the French Government. He then earned a master's degree and a doctorate in musicology at Cornell University before returning to Europe on a Fulbright fellowship for studies in Vienna.

Dr. Galkin also taught through his musical criticism, which appeared in the Baltimore Sun from 1962 to 1977. Widely respected as a critic not only in Baltimore but throughout the nation, Dr. Galkin served as president of the national Music Press Association for 2 years and twice won the ASCAP-Deems Taylor Award, one of the highest awards for music journalism. His recently published book, "A History of Orchestral Conducting in Theory and Practice," is considered by many to be the most important study of conducting ever written.

Perhaps no person has contributed so much to music in Maryland as Dr. Galkin. He was instrumental in establishing both the Kraushaar Auditorium at Goucher College, used by many of Baltimore's fine musical organizations, and the Meyerhoff Symphony Hall, home of the Baltimore Symphony Orchestra. As a visiting conductor of the Baltimore Symphony, he introduced Maryland to violinist Nadja Salerno-Sonnenberg, who performed with Dr. Galkin and the orchestra every summer from the age of 9 to 19.

Mr. President, I join with all Marylanders in extending my deepest sympathies to Dr. Galkin's wife Ruth and his brother Benjamin. I would also ask that the article from the May 29 Evening Sun be printed in the Record.

There being no objection, the article was ordered to be printed in the Record, as follows:

(From the Baltimore Evening Sun, May 29, 1990)

ELLIOTT GALKIN WAS INSTRUMENTAL IN
SHAPING THE CITY'S MUSIC
(By Scott Duncan)

Elliott Galkin was a critic from the old school, the one which taught that those who dare to write about music should know what they are talking about.

Galkin died Sunday at 69, bringing to an end a versatile career that touched nearly every avenue of music and some of his most prominent names in this century.

Growing up in Brooklyn, N.Y., Galkin learned the violin from his great-uncle, Ruvin Heifetz, who had a son who became a pretty good fiddler. His name was Jascha.

Galkin studied at the Paris Conservatory, was tutored in theory and composition by the legendary Nadia Boulanger. He learned conducting from Jean Morel, Jean Fournet and Eugene Bigot; orchestra from Arthur Howeger and Ralph Vaughan Williams.

He took his master's degree and doctorate at Cornell University, studying with one of America's most respected musicologists, Donald Jay Grout. A Fulbright Fellowship led to further study in Vienna.

During his 35-year career in Baltimore, Galkin was one of the city's most influential musical figures. He was a conductor, educator, administrator, author and founder of musical organizations. He came to Baltimore in 1956, joining the faculty of Peabody Conservatory a year later. Galkin also served as chairman of Goucher's music department and was director of the Peabody from 1977 to 1982.

But Galkin was in his element in the role of music critic, penning musical pieces from the pulpit of The Sun's music pages from 1962 to 1977. He won the ASCAP-Deems Taylor Award, one of the highest prizes in music journalism, twice.

"He was very worldly, and terribly knowledgeable," said Harold Schonberg, the former senior chief music critic of the New York Times and longtime friend of Elliott Galkin. "I'll give you $5 for every word I don't understand."

After Galkin had turned in his copy, the green-shirted editor told him: "I owe you ten bucks."

But Galkin was an executive type critic; he firmly believed the critic must perform his role while actively engaged in the musical affairs of the community. Elliott Galkin was a critic/advocate in a tradition that traces its lineage to the editorship of composers such as Robert Schumann and Claude Debussy.

In fact, Galkin often penned musical commentary under the pen name Floridan Croce, an anagram of two fictitious names with which Schumann and Debussy used to sign their editorials. Galkin would fondly recall angry letters to The Sun which asked why the newspaper didn't print more responsible musical criticism, like that of Mr. Croce.

As a key figure in Baltimore's music scene, Galkin was instrumental in shaping the city's musical future. He played a role in persuading philanthropist Otto Kraushaar to donate funds for the second-year auditorium at Goucher College, where most of the city's middle-sized musical organizations perform today.

And Galkin was an early proponent in the 1970s of a project that would become Meyerhoff Hall.

Galkin also has an ear for talent. While visiting a nephew in New Jersey, Galkin heard a tape recording of an unknown 9-year-old violinist who had performed at a local PTA meeting. He immediately demanded to meet the young girl and invited her down to Baltimore to perform with the
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BSO, which he used during the summer. The young girl performed with Galkin and the BSO every summer from age 9 to 18. Her name was Nadja Salerno-Sonnenberg.

As president of the national Music Critics Association (MCAA) for two years in the ’70s, Galkin had a national profile. “He was very generous in offering help to his colleagues, which unfortunately is often not done today, and he cared very deeply about the standards of criticism and its future,” says Richard Freed, a respected critic for national publications and a longtime executive director of the MCA.

Galkin stepped down as The Sun’s music critic in 1977 when he became director of Peabody. When he retired from that position five years later, he founded the nation’s only graduate music criticism program at Peabody. A number of Galkin’s students in his criticism program have recently graduated and become music critics at other newspapers, including the Virginian-Pilot Ledger-Star in Norfolk, the Toledo (Ohio) Blade, and the Charlotte (N.C.) Observer.

“He took a risk in starting a program to turn raw musicians into writers,” says Nat Shelpuk, a former Galkin student who is now music critic at the Charlotte Observer.

“If nurtured and demanded that we fulfill a certain aesthetic, which seems to be dying out with him and only a few other critics, his students are the living legacies, I guess.”

Only last year, Galkin published an 893-page book which he labored on for many years, A History of Orchestral Conducting in Theory and Practice. Many reviewers said it was the most complete study of the art ever published.

About someone else, Galkin once wrote: “Some men are less mortal than others; they create and leave legacies not only of art ever published. But, I related to the involvement in the Korean conflict. As Senator Rudman related to me, the article in Parade magazine depicted a battle, and it told a story of one individual involved in that battle. Senator Rudman recounted that there, of course, were numerous instances like it, and he proceeded to tell me, in a private fashion, some of the involvement that he had during that war.

Mr. President, we all have had experiences where friends and relatives recounted their involvement in the Korean conflict. I had the pleasure of serving as Lieutenant Governor of the State of Nevada. During that time the Governor was Michael O’Callaghan, a Korean combat veteran, a veteran who, in fact, lost a leg in that conflict. Yesterday, in a Las Vegas newspaper, a front-page column appeared by Michael O’Callaghan—[it was actually a repeat of a story or a column that appeared in the same newspaper 5 years ago]—it returned from Korea—after having been very severely wounded some 35 years prior to that time. I ask unanimous consent that the entire column by Michael O’Callaghan be printed in the Record.

[The column:] Where I Stood

By Mike O’Callaghan

(Forty years ago today North Korea invaded South Korea and the ensuing three-year conflict resulted in close to five million military and civilian deaths, including more than 54,000 American servicemen. The Sun’s Mike O’Callaghan was an infantryman with the Second “Indianhead” Division which had 7,059 men killed in combat. Five years ago he returned to Korea to return to Korea to write the following column.)

The syrupy female voice echoed across the valley that runs in front of Old Bady, Pork Chop and T-Bone hills. It has the same sweetness and singing qualities of the voices heard long ago, only this time the message was in Korean and not English as it was in the 1950s.

Republic of Korea combat leader Colonel Jeung only grunted “propaganda” when I asked what she was telling her troops dug in on the hills facing North Korea.

I couldn’t understand what the hooting voice was saying in August 1953, but 32 years ago a similar voice told us to come over and join her and her friends. Sometimes the loudspeaker would suddenly break the deadly silence of night with music and then the voice would tell one of us she had our mail from home. Other nights she would be more stern, and tell us it was a shame that we were going to die for a useless cause. This was usually followed by mortar shelling and sometimes by an infantry probe of our outpost.

Standing with the ROK soldiers looking directly down on the hill we called Pork Chop was frustrating because it is now held by the North Koreans. The outline of a North Korean soldier was easily picked up as I peered through the binoculars. Baldy and T-Bone, other hills where barrels of American blood were shed in the 1950s, are also in the hands of the enemy. One thing remains the same; the South Korean troops know that the men across from them are still the same enemy. It is not a peaceful place for either Americans of the U.S. Second Division or their ROK comrades.

The steep hills are now covered with green foliage and most of the war’s scars are covered with trees and brush. However, the slopes running off the hills are scarped bare by the troops who can watch for possible intruders, and if fighting breaks out, they will have clear fields for firing their automatic weapons. During the winter months the snow-covered hills are easy to see for tracks of enemy infiltration.

The north sides of the hills held by the Americans and ROK soldiers are covered with razor-sharp wire and a deep ditch runs along the forward slope. Also powerful spotlights, which flash on sporadically at night, face the North Koreans. The reverse slopes of the outposts have large orange panels to warn our airplanes not to fly north or they will come under fire. Also snuggled comfortably in pits by the orange panels are mortars in case they are needed.

Early in the morning Carolyn, my wife, neighbor George Brozniak, cousin Bill Blanks and I had met with U.S. Army Major Ernie Comer and ROK Col. Han Doo Sik at Camp Red Cloud near Uijongbu. Both men are key members of the ROK-U.S. Combined Field Army who agreed to escort us to the demilitarized zone (DMZ) better known as “The 38th” by Second Division troops. We were joined by Capt. Cynthia Keywell and Lt. Col. Ken Okimoto, both reservists from Hawaii on active duty.

Camp Red Cloud is close to the 43rd MASH where I was patched up one time. It became known to world television viewers as the 4077th MASH. Probably the only realistic thing about the television series is the gap in the mountains the helicopter flies through at the beginning of every show. The gap in the mountains is still there, but the old MASH is now home for an ROK army unit.

It was the first day of school for Korean youngsters and they waved to us as we headed for the DMZ in a military van. We stopped in a small village for a highly spiced Korean lunch at a small house we entered from an alley.

The road out of the village took us through military activities which included five heavy artillery fire landing in the mountains. We soon hit the paved road at a bridge where babies were being bathed in the river and people were working the fields. The rice fields, to be harvested in about four more weeks, should produce bumper crops. The already harvested peppers were drying on the side of the dusty road.

Then we were on the road winding behind the DMZ and it was necessary to transfer into ROK jeep for the climb up to the overlook overlooking Pork Chop. Yes, the hills and mountains of Korea are just as steep as I remembered from the months spent climbing them during hot and steamy monsoon rains and bitter cold winter months.
Standing on the towering hill and looking down at the North Korean village of Pork Chop, I was so moved by the devastation I saw there. The road was lined with bodies, and the North Koreans were sitting on the road where these men died more than 30 years ago.

Then I recalled the happy children on their way to school, the little babies being bathed in the river, rice paddies ready to be harvested, red peppers drying by the road.

But I was able to relate the last part of his column, which I think is quite illustrative.

Camp Red Cloud was close to the 43rd MASH where I was patched up one time. It became known to world television viewers as the 407th MASH. Probably the only realistic thing about the television series is the goin' to the mountains when the helicopter flies through at the beginning of every show. The road is still there, but the old MASH is now home for an ROK army unit.

The road out of the village took us through military activities which included live heavy artillery fire landing in the mountains. We soon left the paved road at a hill and made our way to school, the little babies being bathed in the river and the people working the fields. The rice paddies ready to be harvested, red peppers drying by the road.

But I must say that I am not prepared to pass a law to change the Constitution in order to prevent the flag from being burned. I want my colleagues to understand that there are other ways that the flag, in my opinion, is defamed. And the honor with which all of us hold it is tarnished when it is sewed on the bottom of a pair of pants, or when some automobile dealer has a tremendous lot of cars and he gets the biggest flag that he can possibly find so that it will fly over his place of business on the highest pole that he can obtain, not because he is a super patriot but because that is the way of attracting attention to all of the cars that are sitting below that flag. I think there is some kind of desecration in the flag in that respect and I resented that.

But what an absurdity is the vote that is being taken today. The House has killed the constitutional amendment that is designed to overturn its decision and to enact a constitutional amendment barring flag desecration.

It seems there are a number of politicians who want to exploit the emotions stirred by a few highly publicized incidents of flag burning. So today we will take a meaningless vote so that some campaign operatives can try to bludgeon Senators who are willing to stand up for the Bill of Rights and vote against this amendment.

Then I recalled the happy children on their way to school, the little babies being bathed in the river, rice paddies ready to be harvested, red peppers drying by the road.

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It seems there are a number of politicians who want to exploit the emotions stirred by a few highly publicized incidents of flag burning. So today we will take a meaningless vote so that some campaign operatives can try to bludgeon Senators who are willing to stand up for the Bill of Rights and vote against this amendment.

Then I recalled the happy children on their way to school, the little babies being bathed in the river, rice paddies ready to be harvested, red peppers drying by the road.

The road out of the village took us through military activities which included live heavy artillery fire landing in the mountains. We soon left the paved road at a hill and made our way to school, the little babies being bathed in the river and the people working the fields. The rice paddies ready to be harvested, red peppers drying by the road.

But I want to let my colleagues understand that there are other ways that the flag, in my opinion, is defamed. And the honor with which all of us hold it is tarnished when it is sewed on the bottom of a pair of pants, or when some automobile dealer has a tremendous lot of cars and he gets the biggest flag that he can possibly find so that it will fly over his place of business on the highest pole that he can obtain, not because he is a super patriot but because that is the way of attracting attention to all of the cars that are sitting below that flag. I think there is some kind of desecration in the flag in that respect and I resented that.

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June 26, 1990

Mr. President, as soon as the decision was handed down last year concerning the right to burn the flag, I joined immediately in efforts to pass a statute or constitutional amendment to ban this dispicable activity. I did not want to wait for a poll. I did not, frankly, consider it necessary to navel-gaze or reflect at length

is unworkable, because the language is so vague, overbroad and open-ended.

If this amendment were to become law—and it cannot become law in view of the House action—our citizens would have no idea whether they might not get into jail for wearing that flag on their clothing, throwing away a picture of the flag drawn by their children, or eating barbecue off a paper plate decorated with the flag.

Finally, this amendment is unwise because we should not, should not after 200 years, retreat from the first amendment’s principle that political expression should not be restricted simply because it is offensive and outrageous.

The United States is special because it is the only country in the world which—throughout its entire history—has always prohibited the Government from banning people simply because they are political dissenters. I do not think we should retreat from that principle.

Obviously, not everyone shares my view. Some people have such strong feelings about the flag that they are willing to retreat from that principle just this one time in order to protect the flag. I believe that if we start fiddling with the Bill of Rights to outlaw offending flag flying, it will be difficult for us to stop. I believe that if we pass this constitutional amendment, then we will start to see constitutional amendments proposed every time the polls show that 60 percent of the people do not like a particular form of expression.

Anyone who thinks I am exaggerating should just look at the way the flag issue has been played up in recent weeks here in Washington. It is obvious there are those who are far more interested in the politics of the issue than they are in the substance of the issue, in the freedoms for which this country stands.

Whatever merit there might be on the other side of this issue, frankly, has been drowned out by the chorus of smears and threats directed at those of us who dare to oppose this amendment.

I am frank to say, Mr. President, that my position has been very consistent on this subject ever since the issue first arose. I indicated early and strongly that I was opposed to a change in the law, and particularly opposed to a change in the Constitution.

According to all the consultants and advisers and the political people who are supposed to be experts in this area, my phones were supposed to ring off the hook, and I was supposed to be attacked, not physically, but verbally, every time I moved around the State of Ohio. That has not happened. As a matter of fact, my phone calls have been more supportive than they have been critical. And I do not think Ohio is different. I think Ohio is a typical State in this country. It has all kinds of people, agriculture workers, workers in plants. It is a mix of 11 million people.

And I recognize what the pollsters say, but I think sometimes it depends on how you phrase the question in the poll as to how you get the answer. Suf-}

The most popular television show is about fat people falling off horses filmed by their neighbors. And the number one issue might be flag burning.

I think a statement like that demeans the flag, degrades the Constitution and displays a contempt for the American people.

The American people desire better than this. They deserve better than to be regarded with scorn by campaign consultants who think that they do not understand how the Constitution works. They deserve to be shown that there is a limit to just how shallow our politics can be. They deserve to be shown that our votes on issues are not dictated by fear of 30-second TV spots which distort issues and smear reputations. They deserve to be shown that the flag and the Bill of Rights are not just political pawns which can be dragged through the mud whenever some campaign consultant thinks it might be worth a few points in the polls.

Mr. President, look at the admiration Americans hold for Nelson Mandela, Lech Walesa, Vaclav Havel, and the students in Tiananmen Square. Perhaps we do not agree with everything they do, but we deeply respect and admire their willingness to risk their careers—indeed, their lives—in order to stand up for principle.

The people of this country are looking for a little political courage from their leaders. They are looking for us to stand up for principle. They deserve a better brand of politics than they have been getting. And we can begin giving it to them by rejecting this amendment.

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

THE FLAG

Mr. HOLLINGS. Mr. President, as soon as the decision was handed down last year concerning the right to burn the flag, I joined immediately in efforts to pass a statute or constitutional amendment to ban this dispicable activity. I did not want to wait for a poll. I did not, frankly, consider it necessary to navel-gaze or reflect at length...
on the subject, because on a gut issue of this kind I want the people of the State of South Carolina to know the mind and the character of the individual who represents them as a Senator.

Now, having listened last week and early this week to debate on this issue, I am virtually made to appear as a demagogue or scoundrel for daring to speak out in defense of the flag. Such is the peer pressure here inside the Beltway. We are just totally out of touch with the deeply felt feelings and values of the country on this matter.

I remember back in 1938 we had a tornado in Charleston that lifted the beams off the city market, one of which went straight through the roof of the revered and austere of St. Michael's Church. Standing on the corner at Meeting and Broad Streets immediately afterward, looking at the beam coming out of the corner side of the church, a spectator said that those people over there had gotten so high-falutin that the Lord Almighty Himself had to bust a hole in the wall to get some feeling for the flag that other Congresses and other generations have to bust a hole in this roof to get a feel with the deeply felt feelings and values of the country on this matter.

I think what we need, if necessary, I say to my colleagues, is perhaps a statute. I would introduce it as the Flag Product and Protection Act. We can manufacture the flag, produce it, issue it, somewhat like currency. Or somewhat like mailboxes. I remember kids used to put a cherrybomb in the mailbox, blow it up and see if the FBI were smart enough to catch them. We have a law against that. Or consider the paper rack outside the Chamber here. I might have every resentment of what the Washington Post writes, but I cannot under the guise of political expression tear off the newspaper rack and destroy it. We have laws to prohibit that.

If we can protect newspaper racks and mailboxes, heavens above, we ought to be able to protect the country's banner. We have passed laws regarding the flag, how you raise it, how you lower it; we have legislated the pledge and the national anthem. Then comes this Congress, and we have become so sophisticated that it is seen as a waste of time to even talk about protecting the flag. Or your defense of the flag is dismissed, in the words of Samuel Johnson, as the last refuge of a scoundrel.

We have to get a feel for this country, and we have to get a feel for that flag. I can tell my colleagues. That is the kind of State I represent; the first thing they do in the morning when they wake up is salute the flag and they are ready to fight for it. I am proud to echo and represent that sentiment. I hope I never get so sophisticated that I lose that gut feeling, or that I need a political poll to tell me which way to stand on this particular issue.

I yield the floor.

The PRESIDING OFFICER. The Senator from Minnesota [Mr. BOSCHWITZ].

IMMIGRATION

Mr. BOSCHWITZ. Mr. President, in his State of the Union Address back in January, President Bush stated:

"Our Nation is the enduring dream of every immigrant who ever set foot on these shores—and the millions still struggling to be free. This Nation—this idea called America—is and will always be—a new world. Our new world."

Millions throughout the world still envision the United States as the land of opportunity, as I do. I was only 5 years old when my family and I set foot in the United States, fleeing Nazi Germany. I have a deep concern for the plight of refugees and immigrants. During my time in the Senate, I have worked hard to give others the same
June 26, 1990

CONGRESSIONAL RECORD—SENATE

Mr. President, I ask unanimous consent that the articles I mentioned be printed in the Record, as follows:

WHY WE MAY NEED MORE IMMIGRANTS

(By William Raspberry)

Some of us have been looking past the immigration center stage, where Nadia Comaneci is the reigning star, and focusing on the offstage tragedy of Vietnamese boat people being sent back from Hong Kong to God knows what fate, the hard-pressed Latin American "illegal," and, above all, the Haitians who risk death and jail for a chance at the American dream.

We hear the distinctions our government makes between political refugees and the merely economically ambitious, but we don't believe. Comaneci is fleeing oppression for her political views? Be serious, we say. The most reliable judges to what immigrants will be accepted here is not their parents but their skin. Europeans (white) are fine. Asians (yellow) are problematic. Hispanics (brown) are virtually the definition of "unwanted illegals." Haitians and Ethiopians (black) are at the top of the government's lists to be viewed with suspicion and hostility.

We note the contrast in treatment of Comaneci, who has been handed the keys to the city of Miami, and the nameless Haitians who have been left to languish in American prisons until they can be sent packing, and we wonder why no one wants to tell the truth about the difference.

Well, two men are telling it. Ben Wattenberg and Karl Zinnmeister, both of the American Enterprise Institute, content that America is—and ought to be—the world's first "universal nation," and that we ought to work actively to increase the flow of immigrants to this country.

Their proposal, presented earlier this month at AEI's annual policy conference at Georgetown University, devotes only one of its 29 pages to the question of human rights refugees. What they offer is pure propaganda.

Ameras are malecheted, undermotivated and underutilized, they argue, and the aging of the Baby Boom generation will create a drain on resources, especially further deterioration in the country's competitive position in the world.

"Immigration, properly shaped, can help provide us with whatever skills we may be lacking," they conclude. "It can help Ameras from aging precipitously and help support the dependent aged. Immigration can play a salutary role in our financial situation."

And these advantages are peculiarly available to America, not to our global competitors, because "we are a pluralist nation (and) most of them are not." Wattenberg and Zinnmeister's emphasis here is on the education, skills and, yes, money the immigrants have. Ameras no longer have gold deposits to mine, or frontiers to settle, or prairies to turn into farm land.

"The real competition in world markets today is for creative human beings. And this is one area where Ameras has a comparative advantage that outweighs any competitor ... When they come, they come at little cost to us. Many immigrants have al-
By Joel Kotkin

As we celebrate Memorial Day, it is good to remember how much immigrant blood has been shed in both war and peace to make the American dream of democracy a growing worldwide reality.

To its credit, Congress apparently is rising above chauvinism in a heated but mostly unreported debate over something that really matters—U.S. immigration policy for the decade to come.

On one side are those who believe that significantly expanding immigration would represent a serious threat to both our national economy and our cultural heritage.

On the other side are those who believe that expanding immigration would be a reaffirmation of our country's greatness and an essential ingredient in maintaining U.S. competitiveness.

As Congress moves toward the first serious restructuring of legal immigration policy in 25 years, the latter view is winning, and that is a tribute to economic scholarship and statesmanship.

There is not much doubt where the political safety line is. Although we pride ourselves on being a nation of immigrants, the overwhelming majority of us would like to "pull up the ladder" just a little and slow down the influx of newcomers. One reason: Currently, the United States has one of the lowest percentages of foreign-born citizens (only 6 percent) among major nations. (See Table.)

A NATION OF IMMIGRANTS

<table>
<thead>
<tr>
<th>Country</th>
<th>Percentage of Foreign-Born Population</th>
</tr>
</thead>
<tbody>
<tr>
<td>Australia</td>
<td>20.0</td>
</tr>
<tr>
<td>Switzerland</td>
<td>17.2</td>
</tr>
<tr>
<td>New Zealand</td>
<td>16.2</td>
</tr>
<tr>
<td>Canada</td>
<td>16.2</td>
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<tr>
<td>South Africa</td>
<td>11.8</td>
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<tr>
<td>France</td>
<td>10.5</td>
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<tr>
<td>England</td>
<td>8.7</td>
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<tr>
<td>United States</td>
<td>6.0</td>
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Despite our history of owning most of our economic development to the flood of immigrants "yearning to breathe free," we have steadily reduced that flood to a mere trickle. At the turn of the century, new immigrant arrivals were an average of 2 percent of our civilian labor force. Today they represent only 0.2 percent. While this drop-off has coincided with falling U.S. economic leader-
ship, every poll shows Americans think even that trickle is too much.

That’s why the bill (S. 356) of Republican Sen. Alan Simpson of Wyoming and Demo-
cratic Sen. Edward M. Kennedy of Massa-
chusetts, which passed last fall, allows an increase in U.S. immigration of only 100,000 a year from a projected annual average of 610,000 over the coming decade. While it sharply reduces the percentage of skilled-based immigrants from 17 percent to 10 percent, that does little to solve the nation’s impending skilled-labor shortage.

During the 1980s, without major immigra-
tion expansion, the U.S. working-age popu-
lation will grow only 8.3 percent, down
sharply from the 12.4 percent growth of the 1960s. At the same time, skills demands are already far outracing supplies.

Annually, the House Subcommittee on Immigra-
tion, led by Rep. Bruce Morrison, Connecticut Democrat, recently approved a bill to expand to an average of 563,000 a year, a major 8 percent increase over cur-
rent law.

What makes this all the more remarkable is that Mr. Morrison has been a forthright defender of big labor, which has never been its competitive advantage. Because the immigrants who come are less at-
tractive people who have to work for a dollar or two to make one and a half on the home side. (Simon, 59, teaches business administra-
tion at the University of Maryland.)

The bill would actually reduce the total govern-
ment deficit by $72 billion over 25 years. That makes immigration expansion irresistibly good policy.

LOTS MORE IMMIGRATION WOULD BE A GOOD POLICY

(By Julian Simon)

There are lots of painful anodotes to the demographic pressures American society will experience in the decade ahead. But in-
creasing immigration is the only painless one. As the average age of the work force rises and the proportion of workers to the population of elderly retirees shrinks, Amer-
ica risks losing the flexible edge that has always been its competitive advantage. Be-
cause the immigrants who come are less at-
tached with respect to geography, occupa-
tion, or institution, they will restore that crucial flexibility.

Immigrants are a windfall for any society. They use fewer social programs than the native born, and they contribute more in taxes. Because immigrants tend to arrive as young adults, by the time they reach pen-
sionable age most have contributed toward their own retirement and parented produc-
tive, tax-paying children.

We can never know in advance how new immi-
grants will benefit the society and the economy, but that’s the best argument for letting more of them in. They enrich the fertile mix of ideas that has always been the contribu-
tion of immigration to America. Given the speed of economic and social change in our modern technology-driven so-
ciety, we will need that contribution even more in the future than we did in the past.

Many people worry that encouraging im-
migration skims the cream from the soci-
edies whence they come—the so-called brain drain. But the brain drain is a myth. If any-
thing, immigration creates a “brain bonan-
za.” As immigrants gain experience and income, they typically return some of those gains—both intellectually and through the repatriation of income—to the countries that they left behind.

Freedom is spreading everywhere in the world. The only important barrier left is the barrier to the free movement of people. Now with the revolution in Eastern Europe, even barriers to the freedom of people to leave have crumbled. Such obstacles that still exist are on the receiving end—among those nations, including the United States, that have historically upheld the principles of economic and political freedom.

During the 1980s America admitted an av-

gage of 583,000 new legal immigrants a year—the highest level since the beginning of the century. I would recommend that we increase that number in the decade ahead. If we do, we will be the richer for it, both econ-
omically and spiritually.

(Simon, 58, teaches business adminis-
tration at the University of Maryland and is the author of a new book, “The Economic Consequences of Immigration.” He talked to Louis S. Richman.)

TROPICAL FOREST LOSSES—

EVEN WORSE THAN WE

THOUGHT

Mr. BOSCHWITZ. Mr. President, we all know that the world’s forest re-

sources, particularly in the tropics, are fast disappearing. At the recent Inter-

parliamentary Conference on the Global Environment, I cochaired the working group on deforestation and
desertification. I said there, quoting the Food and Agricultural Organi-

zation, that the world was losing 54 acres of tropical forests per minute, that those acres were being cleared for ag-


culture, grazing, fuelwood, human settlement, for export and for other purposes, and that those lost trees and other forest resources were not being replaced.

Now, just 2 months after our confer-
ence, I find that I must revise what I said there about the extent of the damage to our forests. Unfortunately, it is even worse than we thought. Ac-
cording to a recent report by the World Resources Institute, whose work I rely on a lot for keeping myself abreast of the world forestry situation, we are losing our tropical forests at an average rate of 85 acres a minute.

That is very depressing.

This forest destruction forever denies to humankind the benefits de-

rived from species of animals and plants that disappear in this process, including especially plant species which may be essential for improved food crops, as well as those which may form the basis for biotechnological ap-
lication, medicine, and other scientif-
ics uses.

Land cleared through deforestation is in many regions unsuitable for ongo-

g agriculture and exhausted within a few years. So cutting down trees in the tropics often leads to no permanent gain, but rather to a cycle of floods, disruption of hydrological cycles, soil erosi-

d, and, ultimately, in some in-
stances, desertification.

It is counterproductive because, after a few years, the cleared land loses its nutrients and becomes barren and useless.

We are talking about lots and lots of very poor people who have to work very hard for their daily bread, and who, understandably most likely never heard of biodiversity or global warm-

ing, and, if they did, would most likely say they have more important things to think about.

So what is the right balance between the long-term income of the whole
nation and the short-term needs of the poor for food and fuelwood, for which chopping down rainforests often seems to be the only recourse?

In coming weeks, some of us plan to introduce possible legislative solutions explored at the Interparliamentary Conference on the Global Environment in Ottawa, deliberately, seem to lie at several levels. First, we need to devise better forest conservation and management techniques. Second, we have to better address the larger economic problems of population pressures, extreme poverty, large-scale national indebtedness, and a wide range of often shortsighted economic measures that undervalue forest products and make it too tempting to cut down forests indiscriminately.

Last, what kinds of international activities might be effective in reversing the current trends leading to denuded forests and rangelands? I will be working on a new international convention to protect all the world’s forests, along the lines of the International Whaling Convention—a convention which would recognize the need for protecting both temperate and tropical forests and establish specific targets for reducing deforestation and achieving deforestation.

Mr. President, such a convention is just one of the legislative matters I will be working on day to day, and I am counting on my Senate colleagues. I look forward to their support.

Mr. President, I ask unanimous consent that the articles be printed in the Record. There being no objection, the material was ordered to be printed in the Record, as follows:

[Text of congressional record entry]

FORESTS WITHOUT TREES

The rate of loss, measured in most countries in 1981, was nearly 50 percent greater than the last global estimate, prepared by the United Nations Food and Agricultural Organization in 1980, according to the Institute.

"We were startled to uncover this rate of global deforestation," said James Gustave Speth, president of the Institute, a Washington-based research and policy organization. "We were saying we were losing the forests at an acre a second, but it is much closer to an acre and a half a second."

The disappearance of tropical forests is regarded by environmental experts as one of the most serious global environmental problems. Through photosynthesis, the forests absorb huge quantities of carbon dioxide, the most important of the gases that are accumulating in the atmosphere. Many scientists believe that carbon dioxide, if not kept in check, will cause a significant warming of the earth in the next century, through a process known as the greenhouse effect.

The report on forests was based on remote-sensing data from National Oceanic and Atmospheric Administration and Landsat satellites that were originally analyzed by each of the affected tropical countries. Dr. Allen L. Hammond, editor in chief of "World Resources 1990-91," said at a news conference here that for most of the countries the satellite data covered 1987, but for Brazil it covered 1988, since newer data were available for that country.

He said the estimates of actual forest loss were "very conservative," and that the actual losses probably were considerably higher.

The group’s report said that in nine major tropical countries, the estimates of total annual losses of tropical-forest acreage were about four times as high as estimates from the years 1981 to 1985. The nine countries were Brazil, India, Indonesia, Vietnam, Thailand, the Philippines, Costa Rica, Cameroon and Myanmar (formerly Burma). Dr. Hammond said, however, that in Brazil, the rate of deforestation declined in 1988 from 1987, largely because the levels from the latter year were the highest on record for that country.

As the tropical forests shrink, their capacity to absorb carbon dioxide declines, thereby hastening the onset and increasing the magnitude of the warming phenomenon. Moreover, as the vegetation from the cut forests decays or is burned, it emits more carbon dioxide into the atmosphere.

The tropical forests also contain the largest and most diverse populations of plant and animal species of any habitat in the world. As the forests vanish, so do many of those species. Many before they ever have been discovered, named and cataloged for possible use by human beings.

Tropical forests generally have infertile vegetation, not the soil. Thus, when these forests are cleared they tend to regenerate very slowly, if at all.

"AN UNPARALLELED TRAGEDY"

"Tropical deforestation is an unparalleled tragedy," said Mr. Speth, "if we don’t reverse the trend soon, it will be too late.

Senator Patrick Leahy, Democrat of Vermont and chairman of the Senate Agriculture Committee, said in a statement: "This is the first reliable data we’ve had on tropical deforestation in years. A situation we knew was bleak is now shown to be truly horrendous."

The World Resources report was prepared in collaboration with the United Nations Environment Program and the United Nations Development Program. Joan Martin Brown, special adviser to the executive director of the United Nations Environment Program, said at the news conference that her organization did not have its own capability to do the kind of research contained in the report. She said the information would be "very important" as the international community moves to respond to the global environmental threats.

Since preagricultural times, the report said, the world has lost about one-fifth of all its forests, from more than 12 billion acres to under 10 billion acres. In the past, most of the losses were in the temperate forests of Europe, Asia and North America. In recent years, however, it is the tropical forests of the developing countries of Latin America, Asia and Africa that have been disappearing most rapidly.

FORESTS WITHOUT TREES

Brazil, with the largest remaining tropical forest area, is also experiencing the worst losses—between 12.5 million and 22.5 million acres a year, the report found. Myanmar is losing 1.7 million acres a year, more than 500 times the 1980 estimate by the Food and Agricultural Organization.

India, according to the data, is losing its forests at a rate of 3.7 million acres a year. Large areas legally designated as forest land are "already virtually useless," the report said.

Indonesia is losing 2.3 million acres a year, and Costa Rica 300,000 acres each, both substantially more than the 1980 estimate.

The problem of deforestation in developing countries "has been exacerbated by government economic, land tenure and agricultural policies as well as population pressures, poverty and debt," the report said. It added that the rapidly increasing populations in developing countries will put even more pressure on the forests.

The World Resources report also contains a new index of countries that are the world’s largest net contributors to the atmosphere of carbon dioxide, chlorofluorocarbons and methane, the major gases contributing to global warming.

SURPRISES ON MAP

The United States and the Soviet Union are the first and second-largest net producers of these greenhouse gases, the report found. It added that if the European Community were considered a single country, it would rank second behind the United States.

But the next three countries on the index, surprisingly, were developing nations, Brazil, China and India.

It has been widely believed that the industrialized countries are the main producers of greenhouse gases. But the research grant found that the developing countries already account for 45 percent of emissions of these gases, and that their contribution is likely to rise sharply as they consume more energy for industrial development.

While there is still scientific uncertainty about the timing and magnitude of global warming, Mr. Speth said, the overwhelming scientific consensus is that "the risks of global climate change are very real and it would be very shortsighted to conclude otherwise."

"The conclusion of the great bulk of credible scientific evidence is that modern is known to act now" to deal with global warming, said Mr. Speth, who was chairman of the Council on
June 26, 1990

CONGRESSIONAL RECORD—SENATE

Environmental Quality in the Carter Administration. "It is our view that it is already late."

(From the Washington Post, June 18, 1989)

ESTIMATES OF LOSS OF TROPICAL FORESTS ARE CALLED TOO LOW.

The earth's tropical forests are vanishing at a rate five to ten times faster than currently estimated. In the past decade, tropical forests have disappeared at an alarming rate, with a growing awareness that these losses may be irreversible. The rate of deforestation has been estimated at between 40 and 50 million acres of tropical forests each year, which is far greater than previously believed.

The report suggested from an analysis of 1987 data that 40 million to 50 million acres of tropical forests are stripped each year, compared with the official estimate of about 28 million acres—based on 1980 data—that is now used by the United Nations and many governments.

Deforestation is the major concern of scientists and environmentalists because tropical forests absorb carbon dioxide and therefore help to regulate the earth's atmosphere, while contributing to global warming. As forests disappear, more carbon dioxide is free to drift into the atmosphere, where it can contribute to global warming and environmental degradation. I was quite surprised when these environmental leaders told me that not many people here in the Senate emphasize this issue or make that connection.

I believe that the population problem lies at the heart of almost all of our environmental problems. When I was born, there were 2 billion people on our planet. Now there are 5.4 billion people, and by the year 2000 that number will certainly be well over 6 billion.

Since 1950, the world's population has doubled, and its urban population has increased fourfold since 1950.

What do these huge numbers mean for the environment? If we think about all the linkages for a few moments, I think the answers become clear. And they cause us a great deal of personal concern.

In the overpopulated Third World, people live surrounded by denuded lands, waste dumps, and squatter settlements. The rural populations are usually worse off, with even less likelihood of clean water or sanitation. The exploding populations of these countries are overfed and more food, water, electrical energy, and cars. Their needs and appetites are infinite, but their natural resources are mostly finite. And the more fuel that is consumed, the more pollution that is emitted into the air.

The pressures of escalating populations in the Third World and the poverty resulting from such pressures compel poor landless farmers—some 250 million of them I'm told—into the rain forest to clear trees from the land in order to plant crops. This land, more often than not, can only support a few years of decreasing production before it becomes arid and useless because the trees, not the land, held the nutrients. The poor farmer then has to move further into the forest in order to find fuelwood and fuel.

As a result, the world loses 40 to 50 million acres of tropical forests as well as 28 billion tons of topsoil each year from erosion and flooding. In addition, vast amounts of carbon dioxide, the primary greenhouse gas, are released into the atmosphere due to slash and burn forest clearing methods.

While the United States can afford to clean our air and properly manage our forests, developing countries often cannot, simply because they have too many mouths to feed. That's mainly due to the increasing pressures of population growth.

Although I have been a strong supporter of foreign aid, I am concerned that in many of the countries that we help, population growth more than cancels out increases in agricultural and industrial production brought about through transfers of our resources and technology.

Right now I am trying to sort through some of the possible legislative actions that flowed out of the recent interparliamentary conference for the global environment, where I was one of the seven host U.S. Senators. I am promoting an international convention on forest protection, as well as some other initiatives aimed at stemming deforestation.

I can assure you, however, that all the international conventions in the world and all the aid programs to increase food production and grow trees are not, in the end, going to solve world development and environment problems unless we address the problem of the population explosion.

Unfortunately, the issue of population control has been so intertwined with the issue of abortion that the United States hasn't done enough to help developing countries with their population problems.

I am opposed to abortion, but I am a strong supporter of voluntary family planning, including effective programs of education and counseling on birth control. At the recent Global Environment Conference, I had a long discussion with Senator Wirth—who was also a host of the conference—and we agreed that we must address the issues of abortion and international family planning. Senator Wirth and I plan to work together to realize this goal.

Once we are able to separate these two issues, as I believe should and can be done, I will work to engage additional financial support for international family planning efforts. I believe that we will need to come up with several hundred million dollars more for such programs, and that such money should go not only to our bilat-
eral population assistance programs, but to multilateral programs as well.

Mr. President, if we want to conserve our precious natural resources and protect our planet's environment, I believe we will have to do more to support international environmental programs. I hope that my colleagues look carefully at the connection between population and environmental policies. If they do, I think they will join me in this effort.

REMOVING DEFENSE DEPARTMENT REPORTS TO CONGRESS

Mr. BOSCHWITZ. Mr. President, last week the House of Representatives took an action which holds great promise. The House agreed that it is time to bring some much-needed relief to the Department of Defense. It did this by calling for the elimination of 59 recurring reports that the Pentagon must submit to Congress and the modification of the reporting frequency of an additional 11 reports.

The House legislation, introduced by Representatives Aspin, the chairman of the House Armed Services Committee, along with a similar effort being prepared by the Senate Armed Services Committee and its chairman, Senator Nunn, is truly welcome news.

For years, the Defense Department has been forced to respond to the excessive attempts of Congress to micromanage its affairs. We on Capitol Hill have saddled the Pentagon with so many reporting requirements and rules that its operations have come to resemble a maze of almost Byzantine complexity.

The 59 reports which the House would eliminate have been judged to have neither continuing value nor necessity. I agree that Congress could conduct its business without knowing the size of the Washington Monument. In addition, every year we require the Pentagon to submit a budgetary justification document that fills literally tens of thousands of pages.

Five times within the past 2 years, I have spoken in the Senate on the need to restore an effective working relationship between Congress and the Pentagon. Last year, in an effort to bring about constructive change, I introduced the Defense Reports Reduction Act, an amendment to the Defense Department's 1990 authorization bill. My amendment would have terminated all current Defense Department reporting requirements as of January 1, 1991, and set down guidelines for future reports, which would be requested only on a case-by-case basis.

Because of an agreement limiting amendments to last year's authorization bill, I withdrew my amendment. However, the need for Congress to show restraint when it comes to mandating reports from the Pentagon has not gone away. And the fact that legislation is now in the works on this very issue shows that there is recognition that action is more urgently required than ever before.

Only once since 1982 has Congress ordered fewer reports from the Defense Department than in the preceding year. Indeed, compelling the Pentagon to produce hundreds upon hundreds of reports annually is one of Washington's premier growth industries.

Last year, the Pentagon's "White Paper on the Use of Defense and the Congress," stated, and I quote: "In 1970, at the height of the Vietnam war, the annual funding bill required only 28 reports from DOD. In 1988, 719 were required, an increase of almost exactly 2,600 percent. This year, the situation is even worse. During fiscal year 1990, 661 new report requirements were imposed on the Pentagon by Congress. This is an increase of nearly 2,400 percent since 1970.

If I were to stack merely the unclassified reports in front of me the pile would be almost as high as I am—and I'm over 6 feet tall. If I could include the classified reports, the stack would be about twice as tall as I am.

The cost of all of these reports, both classified and unclassified, is astronomical. The 661 reports required in fiscal year 1989 took about 370 man-years to produce at an estimated cost to the American taxpayer of $6 million. The average report cost $54,000, almost twice the income of an average family. One report by itself cost nearly $2 million.

Mr. President, both the House and Senate have taken action in deciding that fewer Pentagon reports are needed and the similar legislation being prepared by the Senate Armed Services Committee mean that there are realistic prospects for decreased congressional micromanagement of the Defense Department. I commend both Representatives Aspin and Senator Nunn for their work in attempting to reduce the reporting burden we inflict on the Pentagon.

The time came last year for Congress to show self-control when it comes to mandating reports from the Defense Department. The legislative process now underway shows that we are going from being part of the problem to being part of the solution.

Mr. BOSCHWITZ. I yield the floor.
but specifics are yet to come, and the hard work is yet to come.

I urge my colleagues on both sides to deal with the deficit. As the distinguished President of said many times before, this is the most serious problem we face in America, and it is up to us in Congress to deal with it.

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

PROPOSED CONSTITUTIONAL AMENDMENT RELATIVE TO DESECRATION OF THE FLAG OF THE UNITED STATES

The PRESIDING OFFICER. Under the previous order, the Senate will resume consideration of Senate Joint Resolution 332, which the clerk will report.

The assistant legislative clerk read as follows:

A joint resolution (S.J. Res. 332), proposing an amendment to the Constitution of the United States authorizing the Congress and the States to prohibit the physical desecration of the flag of the United States.

The Senate resumed consideration of the joint resolution.

AMENDMENT NO. 2666

(Purport To prohibit the desecration of the flag of the United States in a manner that is likely to lead to a breach of the peace.)

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

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Arkansas [Mr. Bumpers] proposes an amendment numbered 2666.

Strike all after "assembled" and insert the following:

"S.700, Desecration of the Flag of the United States; Penalties"

"(a) Whoever purposely or knowingly desecrates the Flag of the United States shall be fined under this title or imprisoned for not more than one year, or both,

"(b) For purposes of this section, the term "desecrate" means deface, damage, or otherwise physically mistreat in a way that the actor knows is likely to lead to a breach of the peace.,"

EXECUTIVE SESSION

EXECUTIVE CALENDAR

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Senate proceed to executive session to consider the following nominations:

Calendar Nos. 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, and 810. I further ask unanimous consent that the nominees be confirmed en bloc; that any statements appear in the RECORD as if read; that the Executive report on the nominations as if read; that the Executive report that the President be immediately notified of the Senate's action; and that the Senate return to legislative session.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The nominations, considered and confirmed en bloc, are as follows:

DEPARTMENT OF STATE

Paul C. Lederer, of New York, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Ecuador.

E. J. Curtis Bohnen, of Maine, to be Assistant Secretary of State for Oceans and International Environmental and Scientific Affairs.

Don Melvin Newman, of Indiana, for the rank of Minister during his tenure of service as the Representative of the United States in the Council of the International Civil Aviation Organization.

Dane Farnsworth Smith, Jr., of New Mexico, a career member of the Senior Foreign Service, class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Guinea.

Charles H. Thomas, of Maryland, a career member of the Senior Foreign Service, class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Hungary.

Alan Phillip Larison, of Virginia, a career member of the Senior Foreign Service, class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Liberia.

James Kounouh Bishop, of New York, a career member of the Senior Foreign Service, class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Somalia.

Steven E. Steiner, of Maryland, a career member of the Senior Foreign Service, class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Somalia.

Robert Jon de Vos, of Florida, a career member of the Senior Foreign Service, class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Liberia.

REPUBLIC OF GUATEMALA

Board for International Broadcasting

Malcolm S. Forbes, of New Jersey, to be a member of the Board of Directors of the Inter-American Foundation for a term expiring April 29, 1982. (Expedient.)

Inter-American Foundation

The following-named person to be a member of the Board of Directors of the Inter-American Foundation for a term of 6 years.

Norton Stevens, of New York (New Position.)

The following-named person to be a member of the Board of Directors of the Inter-American Foundation for a term of 6 years.

Frank D. Yturria, of Texas. (New Position.)

DANE FARNSWORTH SMITH

Mr. DOMENICI. Mr. President, I rise to congratulate Mr. Dane Farnsworth Smith on his confirmation as Ambassador to the Republic of Guinea.

His notable experience and numerous accomplishments during his career will prove, this Senator certain, a great contribution to our relations with the people and the Government of Guinea.

Dane Smith was born in 1940 in Albuquerque, N.M., with his B.A. magna cum laude, from Harvard College in 1962. After attending Union Theological Seminary, he completed his graduate studies at the Fletcher School of Law and Diplomacy of Tufts University, earning a M.A. in 1966, an M.A.L.D. in 1972, and a Ph.D. in 1973.

Mr. Smith was a Peace Corps volunteer from 1963 to 1965 in Asmara, Ethiopia. Two years later he entered the Foreign Service, and has had a most distinguished career at State. His initial assignment was as the assistant Nigerian desk officer (1967-69), followed by his initial overseas assignment when he served as a consular officer in Dakar, Senegal, and as the charge d'affaires for Banjul, the Gambia.

Dane Smith became the economic-commercial officer in Islamabad, Pakistan, from 1972 through 1974, before returning to the Department of State as the senior economist for the Office of Japanese Affairs (1977-79).

Mr. Smith became the AID liaison officer of the Africa bureau economic staff (1977-79), and chief of the Food Policy Division of the Office of Food Policy (1979-81). He then attended the National War College for 1 year.

In 1982, Mr. Smith was selected to serve as the economic counselor in Monrovia, Liberia. He then served twice as deputy chief of mission, first in Gaborone, Botswana, and then in Khartoum, Sudan.

Most recently, he was the Director of the Economic Policy Staff of the State Department's Africa Bureau.

Mr. Smith is a man of many talents. For example, his language abilities include fluency in French, Arabic, German, Spanish, Urdu, and Italian.

And I would point out that he has received a number of important awards for his service to our Nation. In 1979, he received the State Department Meritorious Honor Award, and in 1989, he won the Presidential Meritorious Service Award. He is a member of the African Studies Association, the Middle East Institute, the American Foreign Service Association, the Harvard Club, and the Society for International Development.

Dane Smith married Judith Armunday in 1963. They are the parents of three children: Jennifer L., Dane P., III, and Julinta C. Smith. While he retains a legal address in New Mexico, he presently resides in Washington, DC.
Mr. President, I wish to commend Dane Smith and his family, and to wish them every success in this exciting new assignment.

**LEGISLATIVE SESSION**

The PRESIDING OFFICER. Under the previous order, the Senate will now return to legislative session.

**PROPOSED CONSTITUTIONAL AMENDMENT RELATIVE TO DESECRATION OF THE FLAG OF THE UNITED STATES**

The Senate continued with the consideration of the bill.

**AMENDMENT NO. 2046**

Mr. BUMPERS addressed the Chair.

Mr. President, the Speaker of the House has said there will be no more flag votes in the House this year. They have already killed the constitutional amendment. If all 100 Senators vote aye on this resolution, it is not going anywhere, the House will never consider it again. It is tempting, considering the volatility of this issue, for everybody to vote aye on it. There will be no 30-second spots, if you are up for reelection this fall. You can say, “I voted for a constitutional amendment.” That takes your opponent right out of the action. No explanation, no accountability. Yet, no constitutional amendment. You talk about the best of all worlds, that is it.

Mr. President, I have said many times on this floor, when you start talking about amending the Constitution for any purpose, I belong to the “wait-just-a-minute club.” I am not talking about tinkering with the Constitution, I am talking about amending those 10 amendments that constitute the Bill of Rights.

Mr. President, I personally believe that morale is the lowest in Congress since I have been here. I have been in the Senate 15½ years and I can tell you that in my opinion it is an all-time low in the Cloakroom. I am not sure why, but I think one of the reasons is because we are being distracted from the issues of this country. And that is to diminish the debate here or to suggest that people who are concerned about the great flag, our national symbol, are responsible for the low morale. But we are constantly being distracted from the real problems that beset this Nation. I never will forget when my party’s nominee in Atlanta in 1988 said this campaign will not be about philosophy, but it will be about competence. Mr. President, every election is about philosophy. Every election is about what we believe. Every election is about our national values and how we cherish them. There is something cold and calculating and elitist about the word “competence.” And so these symbols are important.

But I think morale is low because we know that most of the heat around here is designed for a 30-second spot rather than how to save a debt-ridden Nation in decline. In decline because of our profligacy, because of our distractions and our politicizing every single issue no matter its worth or vitality.

We have a $3-trillion debt, $350 billion deficit just for 1991 alone, and yet we have to stop and pause and deal with a symbol.

Mr. President, another reason that I cannot support a constitutional
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amendment is that the Eichman case is a 5-to-4 decision. To rush to judgment when we may have another Supreme Court. Justice before the end of the year and certainly before the end of next year, in my opinion, would be a grave error. The Constitution on a 5-to-4 decision would be the height of folly.

Mr. President, this issue is a minority, and I know that the constitutional amendment will get a majority vote, but it will not get the necessary two-thirds. Sometimes I say, why cannot everybody agree with me? Well, that is exactly what the first amendment is all about. They do not have to agree with me and it is all because of what James Madison said in 1780, which was adopted in 1791, and which we have not changed in 200 years.

I am concerned that if we adopt an amendment to the first amendment this time, the next time it will be a little easier to do it on another issue and the next time it will be a little easier to do it on something else.

My amendment, Mr. President, says that you could go out in front of this Capitol and burn a flag. The Supreme Court in the Johnson case said as long as your burning of that flag, simply as a form of protest, is protected under the first amendment.

But they also suggested in the Johnson case that if your action is not an expressive conduct, not an expression of protest, or if you go beyond honest dissent and protest to the point that your state of mind is that you are likely to create a breach of the peace, then you can be fined and imprisoned. It is just that simple.

Make no mistake about it, while I think my amendment has an excellent chance of standing constitutional tests, it will also not stop all flag burnings. A jury would have to find that there was an intention to create a breach of the peace.

Mr. President, the eighth circuit in St. Louis upheld a conviction of a man who, after demonstrations protesting the sending of troops to Honduras in 1986 burned about five flags. The protesters ended up in front of the U.S. recruitment center in Minneapolis, and people started knocking out windows. And some guy takes a roman candle and starts firing roman candles through those broken windows. Then Carey, the defendant in this case, comes up with a flag over his shoulder, with a silt in it so he could put it over his head to use it as a poncho. And while all this is going on, somebody comes up with a flag and said "Light this." Carey lit it. And then he goes and he throws it into an alcove of the recruitment center. And the Court of Appeals in the Eighth Circuit said, obviously, he testified the situation was violent, he testified the situation

was dangerous, a jury would have a right to conclude that he was going way beyond just protesting. He was actually pouring kerosene on the fire and trying to provoke a lot more violence.

In the Johnson case, which ruled the Texas statute unconstitutional, the Court said, "An interest in preventing breaches of the peace is not implicated on this record."

In short, that was not at issue. And almost every time the Court has ever addressed the issue, they said you cannot do those things. They said it in New Hampshire. They said it in other cases. And here is another thing they said in the Johnson case as to the State's goal of preventing breaches of the peace. The Court concluded that the flag desecration statute was not drawn narrowly enough to encompass only those flag burnings that were likely to result in a serious disturbance of the peace. That is what the Supreme Court said last year in this decision.

Now, Mr. President, my amendment is narrowly drawn. It deals with breach of the peace. It is a legislative remedy that the Supreme Court itself has literally invited us to consider. And I hope my colleagues, who cherish the Constitution as I do, and who also believe that there is a national legitimate concern about protecting our flag, will support my amendment.

I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. THURMOND. Mr. President, how much time have we?

The PRESIDING OFFICER. The Senator has 16 minutes and 20 seconds.

Mr. THURMOND. What is it, 20 minutes to a side?

The PRESIDING OFFICER. The Senator is correct.

Mr. THURMOND. I rise today in opposition to the substitute amendment offered by my good friend from Arkansas, Senator Bumpers.

While I appreciate his efforts to have the Senate pass a statute that is constitutionally sound, I believe we should not support his statutory approach in lieu of our proposed constitutional amendment.

The Senator's amendment would provide penalties against those who desecrate the flag in a manner that the actor knows is likely to lead to a breach of the peace. In Brandenburg versus Ohio, the Supreme Court addressed the issue of regulating expression that will provoke violence. While the Brandenburg decision gives the States flexibility to prevent activity which is directed to produce or incite imminent lawless action, the Johnson decision through dicta may have shed some new light on this ruling. Justice Brennan, writing for the majority in Texas versus Johnson, stated:

"It would be odd indeed to conclude both that if it is the speaker's opinion that gives offense, that consequence is a reason for accounting it constitutional protection and that the Government may ban the expression of certain disagreeable ideas on the unsupported presumption that their very disagreeableness will provoke violence."

Brennan went on to state:

"Thus, we have not permitted the Government to assume that every expression of a provocative idea will incite a riot but have instead required careful consideration of the actual circumstances surrounding such expression asking whether the expression is directed to inciting or producing imminent lawless action and is likely to incite or produce such action."

I assume the distinguished Senator from Arkansas is attempting to have our Federal Code comport with the Brandenburg decision. It should be noted that the State of Texas argued that Johnson's conviction was partly based on their interest in preventing breaches of the peace. However, the Supreme Court declined to allow Brandenburg to uphold this proposition and summarily dismissed the argument proffered by the State of Texas. Brennan stated, "To accept Texas' argument * * * would be to eviscerate our holding in Brandenburg."

Based on the language asserted by the Court in Brandenburg and Johnson, there is considerable doubt whether the Bumpers amendment would be constitutional. I would like to believe it is. However, we have been down this road before trying to craft a statute protecting the flag that this particular Supreme Court will uphold. It is my firm belief that we should move forward and pass this proposed constitutional amendment and send it to the States and allow the American people to decide.

In light of the Supreme Court ruling in Johnson and Eichman, our task is clear. We must adopt our proposed constitutional amendment authorizing the Congress and States power to prohibit the physical desecration of the American flag.

At this point, Mr. President, I would like to make a parliamentary inquiry. Under the unanimous-consent agreement governing consideration of Senate Joint Resolution 332, would, adoption of the Bumpers amendment require a simple majority of the Senate or a two-thirds vote as would the underlying measure? The PRESIDING OFFICER. A simple majority is adequate.

Mr. THURMOND. A further parliamentary inquiry, Mr. President. Under the unanimous-consent agreement, if the Bumpers amendment is adopted, would this displace or prevent a vote of final passage on the underlying measure, Senate Joint Resolution 332,
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The PRESIDING OFFICER. The answer essentially is yes. If the amendment is adopted, it would displace it.

Mr. BUMPERS. I was going to suggest maybe we vote on the constitutional amendment first. If this does not pass, then the Senator could, if it is proper parliamentary procedure to do so, offer his statute, because a number of people would probably vote for this statute if it fails. We are hoping the Senate will vote this constitutional amendment. In fact, I would not object if they both pass.

Mr. BUMPERS. The amendment to be offered will be one by the Senator from North Carolina, which we commonly refer to as the court stripping amendment. If it is passed, it takes my amendment down. If it is not passed, my amendment is still the pending business, and the next in order under the unanimous-consent agreement will be a constitutional amendment by the Senator from Delaware, Mr. Biden.

Mr. BUMPERS. I ask my distinguished colleagues from the footnotes of the Biden amendment, we all know that if you preserve every body who is desecrating the flag goes out and burns a flag in front of the Supreme Court to declare that statute unconstitutional.

One can either of two things. As long as someone is demonstrating to protest, and even burns a flag, this amendment does not stop that. If one goes out and burns a flag in front of the American Legion parade, I think it is fair to say that the mens rea is present, or at least the actor knows that he is likely to create a breach of the peace, and the courts have consistently said that is not protected. They said it in the Chaplinsky case in New Hampshire; they said it in the O’Brien case, where kids were burning draft cards.

I think this is an excellent amendment, and it will deal with the most egregious cases. It is as far as we can go legislatively and, perhaps, it may be even as far as we need to go because we all know that if you preserve every flag in the country, you will solve the landfill problem. You cannot buy a coke without a reproduction of the flag on the side of the cup. Panty hose, napkins, ashtray sticks, everything. Used car dealers have them all over their lots for commercialization. I must say, I am as offended by the use of the flag for commercial purposes as I am by some other acts that desecrate the flag, too.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. BUMPERS. I thank the Chair.

Mr. GRASSLEY. Mr. President, I rise in opposition to the amendment by our colleague from Arkansas, Senator Bumpers.

The amendment is nothing more than a figleaf to provide political cover to those who are against the one, real solution to protecting the flag: A constitutional amendment.

In two instances, five Justices of the Supreme Court have told the American people that they cannot protect their flag by mere statutory enactment.

Adoption of the Bumpers’ amendment would be the third strike against the flag and the vast majority of the American people who want to see it protected.

The PRESIDING OFFICER. The amendment by the Senator from North Carolina, the court stripping amendment, which we commonly refer to as the court stripping amendment.
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Last year, the Judiciary Committee, of which I am a member, spent 3 months and 44 sessions attempting to draw up a means by which the flag can be protected. We came up with two ways.

One, the Flag Protection Act of 1989, has been rejected out-of-hand by the Senate. The Congress did not vote in sufficient numbers in order to submit the other amendment to the people. and for that reason, although successful in the Senate, I will continue to support legislation consistent with the first amendment—two constitutional amendments to the people and their State legislatures for their consideration under article five of the Constitution.

The Congress did not vote in sufficient numbers in order to submit the other amendment to the people and for that reason, although successful in the Senate, I will continue to support legislation consistent with the first amendment—two constitutional amendments to the people and their State legislatures for their consideration under article five of the Constitution.

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The Congress did not vote in sufficient numbers in order to submit the other amendment to the people and for that reason, although successful in the Senate, I will continue to support legislation consistent with the first amendment—two constitutional amendments to the people and their State legislatures for their consideration under article five of the Constitution.
that asks us each time who we are and what we stand for.

In the face of those who tear at the flag, and sneer at what it stands for, let us turn ultimately, not to a constitutional amendment, but to our confidence in ourselves, and in the values that the flag represents. That, Mr. President, is our most powerful weapon of all.

The PRESIDING OFFICER. The Republican leader.

Mr. DOLE. Mr. President, how much time do I have remaining on leader's time?

The PRESIDING OFFICER. The Senator has 8 minutes, 32 seconds.

Mr. DOLE. Can I use part of that time?

The PRESIDING OFFICER. Yes.

Mr. DOLE. Mr. President, here we go again debating yet another quick fix. We have more quick fixes to provide more cover for more people. I think we ought to vote on the real amendment. Some people will vote no; some people will vote yes.

We have already tried the statutory approach, and it has failed miserably—not once, not twice, but three times—and most recently, before the Supreme Court.

Now my distinguished colleague from Arkansas proposes that we try the statutory approach once more, without an expedited review provision and without any expectation that this statute will ever be upheld by the Supreme Court.

This statute proposed by this amendment adopts the flagleaf, "the flagleaf" approach. It would prohibit only those acts of flag desecration that "the desecrator knows are likely to lead to a breach of the peace."

As a result, the statute would not cover the act of flag desecration that occurred in Texas versus Johnson. It would not cover the flag desecration that occurred in United States versus Eichman. It would not cover the flag desecration that occurred in United States versus Haggerty.

This statute, in other words, would not prohibit those acts of flag desecration that were the subject of the two flag decisions recently rendered by the Supreme Court.

These acts of flag desecration did not provoke violence, there were no breaches of the peace, but these acts deeply offended the American people nonetheless. You can count on that.

So, in my view, the statute proposed by this amendment is not only constitutionally flawed, it is also woefully narrow in scope and it should be rejected by the Senate today.

Mr. President, as I read it, this statute would encourage violence. It would encourage flag-desecrator bashings.

For if a breach of peace did not occur, the Bumpers statute would simply not apply, and the flag burning could continue as scheduled.

So what my distinguished colleague from Arkansas seems to be saying to the American people is simply this: When you see a flag desecrator, you ought to riot. You ought to run wild in the streets! You ought to attack the flag burners! For if you stand on the sidelines, and keep the peace, the flag desecrators will get away with their despicable act.

Mr. President, this just does not make sense.

Finally, Mr. President, the American people should have no false assumptions about the purpose of this amendment. This amendment is not about protecting the flag, or preventing riots in the streets. This amendment is really about giving political cover to those Senators who intend to vote against the constitutional amendment today. It is that simple.

The American people know that politics is a way of life in this town, and here is just the latest example.

Mr. President, at the end of the debate on the Bumpers amendment, I understand the distinguished Senator from California will make a point of order on the grounds that it violates the Constitution of the United States. If the Supreme Court has taught us anything, it has taught us that flag desecration laws just will not work, particularly since the Court views these laws as suppressing speech that others may consider offensive.

I happen to disagree with this view, but it happens to be the law of the land.

I wish I could support an amendment like this or something else if it were properly drawn.

Mr. President, the only way to remedy what we are trying to do today—maybe we do not have the votes—I assume we do not have the votes—is through a constitutional amendment. I reserve the remainder of my leader time.

Mr. THURMOND, I yield to the distinguished Senator from California 3 minutes.

The PRESIDING OFFICER. The distinguished Senator from California is recognized.

Mr. WILSON. Mr. President, what the Senator from Arkansas is attempting to do, we have already attempted to do and failed. His is an effort to criminalize conduct which would, for the first time, really provide that the fighting words "sufficient to incite to violence" can, in fact, be held as an act that will justify Congress in protecting the flag against the kind of desecration which last year many of us sought to achieve by a constitutional amendment, as indeed we are today.

Mr. President, if we go back to the words of the Supreme Court early in our rebuffal, in a landmark decision of Marbury versus Madison, it was made clear that the Constitution, in contrast to the ordinary statute passed by Congress, has remained, to quote the words of that decision "are superior paramount law, superior to ordinary legislative acts, unchangeable by ordinary means."

What we are about today is an effort to undertake those extraordinary means, first of amending the Constitution and then submitting it to the States for ratification in a narrowly focused effort to protect the flag of the United States from physical desecration.

The holding of the Supreme Court, first in the Johnson case, and now last month in the case of the statute by which we attempted to overcome their holding in Johnson, made it clear that virtually any conduct which expresses even inarticulate contempt for the symbolic value of the flag of the United States, will be honored by the Supreme Court, honored in a way that I do not believe that it should, but it will be treated by that Court as speech deserving of protection under the first amendment.

I think that goes too far, Mr. President. It seems to me that extending that logic would protect the conduct of a kind that we find outrageous, not just unpopular, not just legitimate dissent. It would protect someone who not only speaks ill of the dead but goes into a cemetery and defaces headstones, who throws paint on them or chips off the epitaph from a headstone.

It could even say that treason, an act betraying the United States, is legitimate political dissent because it expresses a means of speaking a grievance, real or imagined. Mr. President, I think that goes too far, and yet that is the holding of the U.S. Supreme Court, and we are bound by it. We have but one course, and that is to amend the Constitution. My friend from Arkansas, by his statute, cannot achieve the protection that he seeks to achieve.

Mr. President, good intentions, I think, are not enough. This is a special case.

This is a flag which, in the words of Chief Justice Rehnquist, evokes a nearly mystical response from millions of Americans—those who fought under it, those who are the survivors of those fighters buried under it. It is a symbol of our nationhood. It is something special.

The inarticulate expression of contempt on the part of flag burners, or those who would otherwise physically defile the flag, does not amount to speech, in my mind, Mr. President, but it does, Mr. President in the judgment
of the Supreme Court. I therefore raise the point of order that the statute proposed by the Senator from Arkansas would be unconstitutional and is out of order.

Mr. BUMPERS. Mr. President, will the Senator withdraw that for 2 minutes?

The PRESIDING OFFICER. The point of order is out of order at this time for the reason that time remains on the amendment. The point of order is not timely at this point.

Mr. BUMPERS addressed the Chair.

Mr. WILSON. Excuse me, Mr. President.

The PRESIDING OFFICER. The Senator from South Carolina has relinquished the floor.

Mr. WILSON. I beg your pardon. I thought all time had expired.

The PRESIDING OFFICER. The time given to the Senator had expired.

Mr. THURMOND. Mr. President, in order for the Chair to rule on this subject, I am willing to yield back my time.

Mr. BUMPERS addressed the Chair.

The PRESIDING OFFICER. The Senator from Arkansas.

Mr. BUMPERS. I ask unanimous consent that I be granted 2 minutes off the majority leader's time.

Mr. WILSON. Mr. President, Is there objection? Without objection, it is so ordered.

The BUMPERSs. Mr. President, I want simply to make this point. First of all, the Senator from California is saying that my amendment is unconstitutional. That is not really a decision at this point of this amendment for us to make.

Sometimes, I must say, I feel that I am the only person around here who has read all the court decisions. The Eichman case, the Johnson case, the Carey case, the Barnett case, the O'Brien case, the Chaplin case, every one of them is replete with language that sets out specifically that this kind of an amendment will withstand constitutional muster. I say again, in the Johnson case the Supreme Court literally invited us to craft a narrow amendment.

Let me tell you, before you start voting, where you are. We have a constitutional amendment resolution pending. Mine is a first-degree amendment, a legislative remedy that only requires a simple majority vote. The constitutional amendment is not going to pass. The Helms amendment is not going to pass. The Biden amendment is not going to pass. The only thing in the world you have a chance of getting before the Supreme Court is the Bumpers amendment. If you vote no on that, you are saying I hate it, but I do not want to address it.

What you do when you vote no on the Bumpers amendment is say I do not want to do anything. I do not believe there are many people here—maybe 10 people—who are of that mind.

I am offering this amendment because it probably will—I cannot call you categorically—waive all constitutional muster. But if you read the decisions, you will think it will. It is an opportunity to deal with this problem in a way that will take care of the most egregious, offensive cases. I can tell you that if the Bumpers amendment does not pass, kiss this whole thing goodbye at least until next year. So I plead with you to do something responsible and deal with this problem by voting for my amendment. I am convinced that this is as much as you can do legislatively and have any hope of it withstanding constitutional muster.

I yield back such time as I may have.

The PRESIDING OFFICER. The Senator from California is recognized.

Mr. WILSON. Mr. President, if all time is yielded back, I then make the point of order that the amendment by the Senator from Arkansas is out of order because it proposes a statute whose enactment would violate the Constitution of the States.

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

The PRESIDING OFFICER. Under the precedents of the Senate, constitutional points of order are not decided by the Chair but by the entire Senate. So the question is, Is the point of order well taken?

Mr. WILSON. I ask, Mr. President, 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. The clerks will call the roll.

The legislative clerk called the roll.

Mr. HELMS (when his name was called). Mr. President, I am about to vote "present" because I do not think any Member of the Senate knows whether this amendment is constitutional or not.

So I vote "present."

The result was announced-yeas 51, nays 48, as follows: [Rollcall Vote No. 125 Leg.]

YeaS—51

Adams  
Bauers  
Bennett  
Biden  
Boren  
Bresen  
Bumpers  
Byrd  
Breaux  
Bryant  
Breaux  
Bumpers  
Byrd  
Breaux  
Bumpers  
Byrd  
Breaux  
Bumpers  
Byrd  
Breaux

NAYs—48

Ford  
Powell  
Olewn  
Olsen  
Ogiens  
Graham  
Hallford  
Helms  
PELL  
Smyth  
Pryor  
Jeffords  
Koch  
Cronkite  
Kerry  
Kerry  
Kennedy  
Kerrey  
Kerry  
Kennedy

ANSWERED "PRESENT"—1

Helms

The PRESIDING OFFICER (Mr. BAYH). The rollcall on the point of order is 51 yeas, 48 nays, one present; the point of order is well taken. The Bumpers amendment falls.

Under the previous order, the Senator from North Carolina (Mr. HAEFELY) is recognized for the purpose of offering an amendment.

Mr. HELMS. Mr. President, momentarily I shall offer a second proposal that can quietly lead us out of the legislative thicket in which Congress has been led by the Supreme Court.

The PRESIDING OFFICER. The Senate is not in order.

The Senator may proceed.

Mr. HELMS. Let me emphasize, Mr. President, that it is my intent to vote for the proposed constitutional amendment. I am a cosponsor of it. I intend to support it, and I hope that we can reach the 67-vote necessity on it. I do not think that is going to happen, and I do not think any other Senator thinks it is going to happen.

On the previous amendment, I voted "present" because I do not think one Senator in this Chamber knows whether the Bumpers amendment was constitutional. So you were voting for Bumpers or against Bumpers, and I was unwilling to do that because the question before the Senate was, Is this amendment constitutional? I could not answer the question honestly, so I voted "present."

My amendment will put an end to all of the rhetoric, much of it bordering on the absurd, about how the first amendment will be destroyed if the Constitution is amended to outlaw the desecration of the American flag by protesters who publicly burn that flag to mock and denigrate the Republic for which it stands.

An overwhelming majority of Americans wants this sorry business of desecrating the flag stopped. They want it outlawed. And they expect Congress to get about the business of repudiating the well-justified will of the majority. They do not accept the nonsense that forbidding the public burning of flags by unbalanced, publicity seeking extremists is in any way a denial of the right of free speech.
Mr. HELMS. Mr. President, I send to the desk an amendment and ask that it be stated.

The PRESIDING OFFICER. The clerk will report.

Mr. HELMS. Mr. President, I send to the desk an amendment and ask that it be stated.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from North Carolina (Mr. HELMS) proposes an amendment numbered 2077.

Strike all after the resolving clause and insert in lieu thereof the following:

SEC. 1. AMERICAN FLAG PROTECTION ACT.

(a) SHORT TITLE.-This section may be cited as the "American Flag Protection Act".

(b) COURT OF APPEALS JURISDICTION.-

(1) In general.-Chapter 81 of title 28, United States Code, is amended by adding at the end thereof the following new section:

"1250. Appellate jurisdiction limitations.

"(a) Notwithstanding the provisions of sections 1253, 1254, and 1257 of this chapter and in accordance with section 2 of Article III of the Constitution, the Supreme Court shall not have jurisdiction to review, by appeal, writ of certiorari, or otherwise, any case arising out of any act interpreting, applying, enforcing, or effecting any State statute, ordinance, rule, regulation, or practice, which relates to the public mutilation, defacement, incineration, or other physical abuse of any flag of the United States.

"(b) For purposes of this section, the term "flag of the United States" has the same meaning as in section 1960(b) of title 18."

(c) EFFECTIVE DATE.-The amendments made by this section shall take effect on the date of enactment.

Mr. HELMS. Mr. President, as I understand it, each side has 20 minutes; is that correct?

Mr. HELMS. Will the Chair please advise me when I have 5 minutes remaining?

The PRESIDING OFFICER. The Chair will do so.

Mr. President, the pending amendment invokes the authority given explicitly to Congress in Article III of the Constitution, the authority to regulate the general jurisdiction of the lower Federal courts and the appellate jurisdiction of the Supreme Court. The amendment curtails such jurisdiction so that the Federal courts no longer have the power to hear cases involving the public mutilation, defacement, incineration, or other physical abuse of any flag of the United States.

Let me read the relevant part of Article III section 2.

The Supreme Court shall have appellate jurisdiction, both as Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

That is pretty simple.

The Helms amendment uses the power given to it by the framers. Adopt the Helms amendment and the result is that such cases—in this case, flag burning—become exclusively a matter for the States to handle as they see fit. Prior to the 1989 case, Texas versus Johnson, 48 States and the Federal Government made it a crime to mutilate or defile the flag. The Helms amendment would return to the States their power to outlaw flag desecration.

During the long debate on the flag issue, speaker after speaker invoked the sanctity of the Bill of Rights, while at the same time condemning the act of flag burning. They adhered to the act, but declared that they would never support amending the Constitution. In other words, they were telling their constituents that they wished there were some way to stop this flag burning, but they just could not bear the thought of amending the Constitution. A real copout. Well, here’s their chance to put up or shut up.

Prior to the 1989 Supreme Court decision, 48 States had laws against flag desecration. Only Alaska and Wyoming did not. The pending amendment will allow those 48 States, if they wish, to renew enforcement of their laws—or, if they so choose, not enforce them.

Mr. President, our Founding Fathers, who wrote this remarkable Constitution of ours, feared the concentration of power in the Federal Government, and in the Supreme Court. That is why they carefully included Article III, section 2. They intended that Congress, which is supposed to represent "We the People," have the very explicit power to remedy a run-a-way Supreme Court. So the Founding Fathers gave Congress the means to protect the people, assuming that Congress would have the guts to use it.

We shall, this day, discover whether the Senate does, in fact, have the guts to use it.

Our late distinguished colleague, and my friend Senator Sam J. Ervin, Jr., was recognized as an astute constitutional scholar. Shortly before his death, he told me that he had counted 71 occasions when Congress denied jurisdiction to the Federal courts and the Supreme Court—a number of times at the request of the Supreme Court. So let us see if we have the guts to do the same.

So let me read again, Article III, section 2.

The Supreme Court shall have appellate jurisdiction, both as Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

As for suggestions about "court stripping" and "threats to the independence of the judiciary," the framers of the Constitution had far different concepts in mind. In Federalist No. 80, Alexander Hamilton wrote about the judicial power conferred in the Constitution. He said:

If some partial inconvenience should appear to be consistent with the incorporation of any of the judicial powers into the plan, it ought to be recollected that the national legislature will have ample authority to make such exceptions and to prescribe such regulations as will be calculated to obviate or remove those inconveniences.

The great John Marshall, in the Virginia ratifying convention, said:

Congress is empowered to make exceptions to the appellate jurisdiction, as to law and fact, of the Supreme Court. These exceptions certainly appear to be proper for the interest and liberty of the people. 3 Debates on the Federal Constitution 600 (J. Elliot 2d ed. 1808).

In addressing congressional checks on the judiciary, Hamilton and Marshall pointed directly to Article III, section 2. Their commentaries, along with other legislative history, affirm what a reading of the provision plainly indicates.

For these reasons I have advocated and will continue to advocate legislation to withdraw jurisdiction from the Supreme Court in those areas where it has clearly distorted the meaning of freedom and all of the good and decent things that America stands for.

In 1978 and 1982 the Senate passed amendments which I offered taking jurisdiction away from the court in the area of school prayer. In each instance the majority party in the House refused to let the legislation come to a vote.

In short, Mr. President, the fundamental question is: What is wrong with using the power clearly given to Congress by the Founding Fathers, to let the American people decide whether their Nation's flag is worthy of honor and respect. We have the opportunity, we have the duty, to remedy the damage done by five of the nine members of the Supreme Court.
Mr. President, I want to conclude with two sets of remarks authored by Mr. John O'Sullivan, editor of Bill Buckley's National Review, from the June 11 and July 9 editions of that periodical. On June 11, Mr. O'Sullivan said:

Article III, section 2 of the Constitution, however, gives Congress the power by single majority vote, to remove any matter from the jurisdiction of the Court. At some point, Congress is going to have to reassert the "deliberate sense of the people against a Court acting on abstract rights." This would be a good occasion to recover self-government.

From the soon to be released July 9 edition he added:

The flag, however, is the sort of unique national symbol by which a nation is held together and might be unlikely to deserve unique legal protection. If that could be accomplished without too much trouble, by the simple passage of legislation, there would be a strong case for doing so. If Congress can under Article III, section 2, of the Constitution deprive the Court of Jurisdiction on laws protecting the flag, it should seriously consider doing so.

Mr. President, I reserve the remainder of my time and I thank the Chair.

Mr. HELMS. On my time, could I ask the Senator a couple of questions?

Mr. SPECTER. Yes, I have.

Mr. HELMS. He said that flag burning is outside the ambit of the first amendment. He therefore rejects the argument that this is a free speech issue. I thank the Chair.

Mr. McCLURE. Will the Senator yield me 2 minutes?

Mr. HELMS. I certainly will.

Mr. McCLURE. I thank the Senator from Idaho (Mr. McClure).

Mr. McCLURE. Mr. President, I rise in support of the amendment of the Senator from North Carolina. I do so for two reasons. I think the last point made by the Senator from North Carolina is a very telling point, that if Justice Rehnquist does not think that is under the first amendment then he does not with respect to this amendment either. I think the point is well made.

Those people who believe the proposed amendment to the Constitution of the United States is an amendment to the Bill of Rights and that we are somehow tampering with the Bill of Rights, missed the point that it was the Court that tampered with the Bill of Rights. It is the Court that created the condition which we are trying to correct today.

A year ago, we were told we could do it by statute; do not worry about amending the Constitution. That was a terrible thing to do. Do it with a statute. We tried that. The Court again said, no, you cannot do that.

We have an opportunity here by this means to do it short of a constitutional amendment. There are those who say you cannot do it this way either.

As a matter of fact, if you cannot do this way either, then indeed an amendment to the Constitution is the only means by which you can correct a misjudgment made by the Supreme Court of the United States. That, I submit, is provided for by the Consti-
tution itself. It is a check which free people have against judicial tyranny in terms of the arbitrary judgment of a majority of nine men and women who by themselves decide what our Consti-
tution is.

If we do not agree with what they say, and it is a constitutional question, then you either do it by this method or you do it by a constitutional amend-
ment. I, therefore, strongly support the pending amendment. I also strong-
ly support the amendment of the Con-
stitution to the United States upon which we are debating.

Mr. HELMS. I thank the Senator from Idaho very much.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. BIDEN. Mr. President, I ask to make a rhetorical statement of the Senator from Idaho. I believe understands he cannot do both. He cannot support the Helms amendment and support the President at the same time. He can support either one or the other.

If he supports Helms, then the President's amendment is dead. It is done, gone, over, finished, defeated. And if Helms loses, then the President has a chance just so we understand on this vote. A vote for Helms is a vote against the President's amend-
ment.

Mr. President, how much time re-
main?

The PRESIDING OFFICER (Mr. Lieberman). The Senator from Dela-
ware has 9 minutes 17 seconds remain-
ing.

Mr. BIDEN. Mr. President, quite frankly, we have been through this ex-
ercise a number of times before on court stripping. If the Helms amend-
ment were adopted, none of the laws, indeed, no flag burning law at all, could ever be reviewed by the Supreme Court.

Yesterday, I gave several examples of the kinds of law I believe understands the President's proposed amendment would au-
uthorize. None of them would be able to be reviewed by the Supreme Court of the United States. I guess folks might say, well, what difference does that make?

Let me tell you what it means. It means that we will have entered waters in this country that have never been entered. If the Helms amend-
ment is adopted, a State could pass a law prohibiting blacks from buying or waving American flags or a city council could do the same. Any local juris-
diction could do it. There would be no challenging that law in the court and once passed, it is unreviewable, un-
challengeable by anyone in a Federal court.

A State could pass a law saying that only veterans had the right to wave the flag or pin the flag on their lapel or do anything at all with the flag. Nothing could be done about that. The city of Berkeley could pass a law saying that only veterans cannot wave the flag, and it would not be review-
able by the President.

The Senator asked a rhetorical ques-
tion earlier. He said he is not asking for a constitutional amendment. What is he asking to eliminate? What are we so worried about? I think it might be baseless—is it based on the number of items that the Senator from North Carolina and others feel distasteful based on Supreme Court decisions, why not just eliminate the Court? Why not, since we do not seem to like its makeup, we do not seem to like the way it votes on a number of issues, just pass a law and eliminate the Court? In effect, you do that if you continue to just whittle away at major chunks of its jurisdiction.

Mr. President, I will cease here be-
cause I know my colleague from Penn-
sylvania wants another minute. I want to try to accommodate him as best as I can. As well, I was told my colleague from Massachusetts wishes to speak.

I hope we would overwhelmingly reject this amendment. It certainly will satisfy no one.

By the way, if this amendment passes, then Gregory Johnson will be able to go back and do under the Texas statute exactly what he did before, and it would still be protected unless Texas changed that law. You could burn the flag in Texas but not Oklahoma. That might cause some in-
teresting dilemmas. But at any rate, I will not go into all the bizarre exam-
plars that could in fact arise as a conse-
quence of stripping the court of juris-
diction over the first amendment and particularly flag burning.

I yield to my colleague from Penn-
sylvania, who said earlier he would like 1 minute.

Mr. SPECTER. Mr. President, I thank my distinguished colleague from Delaware.

Mr. President. I had made an argu-
ment a few moments ago that under Marbury versus Madison, the Supreme Court was the final arbiter of constitu-
tional decisions, and then I had re-
f erred to an extended discussion I had with Chief Justice Rehnquist in the con-
firmation proceedings where he raised the issue there might be some power in Congress to withhold some juris-
diction, but Chief Justice Rehn-
quists said that that power could not apply under any circumstance to the first amendment.

The distinguished Senator from North Carolina then came to the floor and asked this Senator if I had read the opinions by Chief Justice Rehn-
quist, and I said I had. I would like at this time to refer specifically to Chief Justice Rehnquist's opinion in Texas versus Johnson where at page 9 the Chief Justice says this:

"But the Court insists that the Texas statute prohibiting the public burning of the American Flag infringes on respondent Johnson's freedom of expression. Such free-
don, of course, is not absolute."

So here conclusively and categorically Chief Justice Rehnquist deals with the first amendment issue and says that the first amendment does not cover flag burning. And Chief Justice Rehnquist then goes on to discuss the Chaplinsky case, which I had referred to earlier and the Schenck case, so that there is no question but what Chief Justice Rehnquist regarded Texas versus Johnson, a flag-burning case, as one which was arguably under the first amendment. But the Chief Jus-
tice said the first amendment did not go that far.

We are referring again to the ques-
tion raised by Senator Helms as to whether I had read the Chief Justice's opinion. He did not write an opinion in U.S. versus Eichman. That opinion was written instead by one of his col-
leagues.

The opinion was written by Justice Stevens and, at page 5 of U.S. versus Eichman, Justice Stevens again consid-
ers the flag burning in terms of "free-
dom of expression protected by the first amendment embraces not only the freedom to communicate partic-
ular ideas but also the right to commu-
nicate them effectively. That right, however, is not absolute."

So there is no doubt that the Ste-
vens opinion, joined in by Chief Jus-
tice Rehnquist, again considers flag burning within the context of the first amendment. So it is abundantly clear even with the question raised by the distinguished Senator from North Carolina that this is a first amend-
ment issue; that you cannot take away the jurisdiction of the Supreme Court on first amendment issues.

But again I say, for other reasons in a floor statement which I have made, I support the amendment to protect the flag, and certainly strongly disagree with taking away the jurisdiction of the Supreme Court on such a funda-
mental matter.

I again thank my colleague from Delaware.

The PRESIDING OFFICER. Who yields time?

Mr. BIDEN. How much time is re-
main on each side?

The PRESIDING OFFICER. The Senator from Delaware has 2 minutes and 10 seconds remaining; the Senator from North Carolina has 6 minutes and 37 seconds.

Mr. BIDEN. Mr. President, obviously the Senator from North Carolina has done this more often.

Mr. President, may I ask a question? Does a quorum call come out of the time of the Senator who places the quorum call?

The PRESIDING OFFICER. The Senator is correct.

Mr. BIDEN. That is what I thought the Chair would say.
Mr. President, the Helms amendment is, it seems to me, an attempt that is not satisfied with the Supreme Court’s rulings on the flag. The amendment would not reverse the Supreme Court’s decisions permitting flag burning if the Court chooses to do so.

It will not accomplish the purpose that is stated, and that is to provide for the ability of the American flag to be protected. If in fact the Federal Government were to move to remove jurisdiction, the legal arguments of whether or not they can as it relates to the first amendment, then it seems to me only a short step before the States would move to remove the jurisdiction of the courts on matters related.

I can imagine the statute that says you cannot prosecute someone who physically abuses a flag burner or who murders a flag burner; the bizarre notion that you have a situation where an amendment, unlike their brethren on the Supreme Court, are accountable to the people for the decisions which they render—would be more prudent on the subject of flag burning. It would therefore be expected that the majority of the State courts would openly disregard the Supreme Court precedents and decide in favor of the people and outlaw this despicable practice. As I said at the outset of my remarks, prior to the 1989 Supreme Court ruling in Texas versus Johnson, 48 States and the Federal Government outlawed flag burning.

Vote for the Helms amendment and put your faith in the judgment of the American people and their elected representatives. I do not have all ability to review even the most bizarre and crazy amendments that could and might be drafted.

Mr. President, I strongly urge that we reject the Helms amendment. If the Senator from North Carolina is prepared, I am ready to yield the remainder of my time.

Mr. BUMPERS addressed the Chair. The PRESIDING OFFICER. The time allocated to the Senator from Delaware has expired.

Mr. BIDEN. Does the Senator from North Carolina have 6 minutes?

The PRESIDING OFFICER. The Senator from North Carolina has 6 minutes and 37 seconds.

Mr. HELMS. Mr. President, I will yield back the remainder of my time.

Mr. President, Senator Bumpers is a source of great amazement to me. I just do not know where the Senator gets the fantasies that he talks about on the Senate floor, and all the bizarre things that he dreams up. How in the world did the Senator conjure up the notion that the States in any way could deprive the U.S. Supreme Court of its jurisdiction? I just do not understand it.

Mr. President, the question has been raised by some about the practical effect this legislation would have on the two Supreme Court decisions on flag burning.

Unlike a constitutional amendment, the withdrawal of jurisdiction under my amendment would not reverse the Supreme Court’s rulings on the flag. According to the distinguished professor of constitutional law at Stanford University, Gerald Gunther, the decisions of the court would remain on the books as influential precedents. State courts would have greater independence as a practical matter as the constitutional issues before them moved further from the core of existing Supreme Court holdings.

State courts would be free to continue their strict adjudication in those decisions as the last authoritative pronouncements on the subject. Indeed, the State courts could extend, for example, the rationale supporting the Supreme Court decisions permitting flag burning if they choose to.

However, Mr. President, it is more likely that the justices of the highest State courts—unlike their brethren on the Supreme Court, are accountable to the people for the decisions which they render—would be more prudent on the subject of flag burning. It would therefore be expected that the majority of the State courts would openly disregard the Supreme Court precedents and decide in favor of the people and outlaw this despicable practice. As I said at the outset of my remarks, prior to the 1989 Supreme Court ruling in Texas versus Johnson, 48 States and the Federal Government outlawed flag burning.

Vote for the Helms amendment and put your faith in the judgment of the American people and their elected representatives, after all that is the way the system was designed in the first place.

Mr. President, let me say categorically that shifting jurisdiction to the State courts for the determination of an issue is wholly reprehensible under the plain reading of the Constitution and Supreme Court precedent.

In challenging the constitutionality of my measure, opponents usually refer to the case of United States v. Klein, 90 U.S. 132 (1871). The interpretation of that case used by opponents of the use of article III section 2 is that the Court decided that the Congress did not have the power to remove the jurisdiction of the judiciary. That is an erroneous interpretation.

In Klein, the Court held that the Congress could not enact legislation to eliminate an area of jurisdiction in order to control the results in a particular case. Following the Civil War, Klein sued in the Court of Claims under a statute that allowed for the recovery of land captured or abandoned during the war, provided that an individual could prove that he had not assisted the Confederacy. Relying on an earlier decision that a presidential pardon proved conclusively that the recipient of the pardon had not aided the South, Klein prevailed in the lower court. However, while the Government appealed the case, the Congress passed a law which said that a pardon would not support a claim for captured property.

The Court held that the act of Congress was unconstitutional because it subverted the judicial process by prescribing a rule for the decision of a case in a particular way as well as infringing on the constitutional power of the executive by negating the power of the Presidential pardon.

It is clear then that Klein has no application to my legislation. Klein involved a congressional attempt to forbid the Court from giving the effect to evidence which, in the Court’s judgment, such evidence should have been given. The Congress sought to curtail the Court’s appellate jurisdiction to obtain a particular result in a specific case, by doing so Congress, in the words of Justice Salmon Chase, “inadvertently passed the limit which separates the legislative from the judicial power.” As I said earlier Congress’ action in Klein is all together different from Congressional contractions of the Court’s jurisdiction that seek merely to shift the determination of any result to the lower Federal courts, or as in the case of the Helms legislation, to the State courts.

Chief Justice Chase said that the shifting of responsibility to the lower State courts is in keeping with the spirit of the Constitution. Chase summed up the spirit of the legislation before us acknowledging that:

* * * If this Act did nothing more * * * than simply deny the right of appeal in particular cases, there can be no doubt that it must be regarded as an exercise of the power of Congress to make "new expediency of the Constitution" as it is sometimes used to avoid the Constitution.

Mr. President, the terms of article III are phrased so clearly that no doubt exists as to the intent of the Framers. They have given the power to rectify the mistakes of the Supreme Court. We should get about using the instrument they have presented us.

Mr. President, finally, there are also those who say that my measure is unconstitutional because it violates the principle of separation of powers. However, when examined closely it becomes apparent that the criticism relies on an inadequate understanding of the framework of checks and balances embodied in the Constitution.

Professor Gunther, of the Stanford Law School, states that:

(Article III does provide for an independent judiciary, but independence does not mean total insulation of the judicial branch from the other branches.

The Framers' goal was not to create a government of separated powers, rather what they sought was a balance among 'separated institutions sharing
Mr. President, I reiterate: the framers did not mean for the judiciary to be completely independent—which appears to be the assumption my friends from Delaware and Pennsylvania are making. Just as they provided checks on the executive and legislative branches of the Government, they included mechanisms to restrain the judiciary. The exceptions clause in article III, section 2 is one of those mechanisms. I fail to see how the exercise of a power explicitly granted by the Constitution can be construed as a violation of that same document.

Let me just summarize one more time. This does not involve the first amendment—not at all. The distinguished Senator from Pennsylvania talked about Chief Justice Rehnquist. Then I asked him how did Mr. Chief Justice Rehnquist vote on this flag-burning amendment. Of course he voted with Bob Dole and Jesse Helms, and all the rest who say that there should be a constitutional amendment if we cannot do it any other way.

But we can do it another way. We do not have to go through the agony of a two-thirds vote in the Senate and a two-thirds vote in the House and a three-quarters vote by the States in ratification. No. All we have to do is implement the Constitution of the United States. Just for emphasis, let me read it again:

2. In all cases affecting Ambassadors, other public ministers, and consuls, and those in which a State shall be party, the Supreme Court shall have original jurisdiction.

There is no question about that.

All the other cases before mentioned the Supreme Court shall have appellate jurisdiction both as to law and fact—as who?

As who?

as the Congress shall make.

So Senators can do as they please. We can put an end to all of this flag burning talk right now as far as the Senate is concerned; send it over to the House and see what they do about it statutorily with the majority vote in both Houses, and that is the end of it. I will say again this is not only an authority given to the Congress of the United States by the Founding Fathers but in this instance I think it is the duty of Congress to respond to the vast majority of the American people who resent these kooks, these loonies, who run around burning flags. If we are going to call that free speech, how about mooning? Is that free speech? Somewhere society has to get hold of itself. I think the time is now.

I yield the remainder of my time.

Mr. HELMS addressed the Chair.

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

The PRESIDING OFFICER. All time is expired.

The question is on agreeing to the amendment of the Senator from North Carolina (Mr. HELMS) No. 2067.

Mr. HELMS. Mr. President, have the yeas and nays been ordered?

The PRESIDING OFFICER. They have not been ordered.

Mr. HELMS. 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.

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The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The result was announced—yeas 10, nays 90, as follows:

[Vote results listed]

So, the amendment (No. 2067) was rejected.

The PRESIDING OFFICER. Under the previous order the Senator from South Carolina (Mr. Thurmond) is recognized for the purpose of offering an amendment.

The Senator from South Carolina.

Mr. THURMOND. Mr. President, I believe I am in order for the next amendment, am I not?

The PRESIDING OFFICER. The Senator is correct.

Mr. THURMOND. I have been talking to the distinguished chairman of the committee and we have decided instead of my offering an amendment, that we just take 20 minutes a side on the bill and that will save a rollcall later, too, and save that much time. I ask unanimous consent that that be approved.

Mr. BIDEN. Mr. President, reserving the right to object, and I will not object, the unanimous-consent agreement is meant to give the managers control of 20 minutes each on the bill, which I assume can be used at any time between now and the time of final vote on the legislation.

The PRESIDING OFFICER. The Parliamentarian advised me the previous order provided for 40 minutes equally divided between the two leaders prior to the vote on disposition.

Mr. THURMOND. This is not intended to affect the leaders at all. If we took up this amendment it would take 40 minutes. The distinguished chairman of the committee and I just decided we would take 20 minutes per side and speak on the bill, and that would eliminate a rollcall on my amendment if I offered it. I ask unanimous consent that that be approved.

The PRESIDING OFFICER. Is there objection?

Mr. HEFLIN. Reserving the right to object, I would like to have at least 5 minutes.

Mr. BIDEN. Mr. President, I will be delighted to yield the Senator 5 minutes. I want to make it clear to him he would not get any time if the request was not made and we moved forward as planned. I hope Senators will not start popping up here. I am delighted to yield the Senator 5 minutes off the 40 minutes.

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

Mr. THURMOND. Mr. President, in view of that, I shall not offer an amendment.

The PRESIDING OFFICER. The Senator from South Carolina will have 20 minutes under his control and the Senator from Delaware will have 20 minutes under his control for the purpose of discussing the bill.

Mr. THURMOND. Mr. President, soon we will be voting on our proposed amendment to grant power to the Congress and States which we all be-
Mr. President, on June 22, 1989, the Senate voted on Senate Resolution 151 expressing our profound disappointment with the Johnson decision. This resolution was overwhelmingly adopted by a vote of 97 to 3. I want to remind my colleagues of our resolve by adopting that measure. It stated:

Whereas, the flag of the United States is the most profound symbol of our ideals, aspirations, and indeed our identity as a Nation;

Whereas, the flag stands for our very being, including our commitments to freedom, justice, equal opportunity, and peace;

Whereas, Americans have always displayed the flag as a living symbol of our Nation and the values for which it stands;

Whereas, the burning of the American flag is an affront to our American heritage and an affront to the American people;

Whereas, millions of Americans have fought valiantly, and many thousands have died, to protect this sacred symbol of Americanism, from the beginning of the Republic, through the two World Wars, the Korean Conflict, the Vietnam Conflict, to the present, and that those who died and gave their lives for our country are profoundly offended by the desecration of this sacred emblem;

Whereas, the Congress and forty-eight States have enacted laws to protect against desecration of the flag;

Whereas, the Senate expressed its respect for the flag as recently as March 16, 1989, when on a vote of 97-0, it passed S. 607, prohibiting the displaying of the flag on the floor or ground;

Whereas, throughout the history of our Nation, the Supreme Court has properly defended and protected the First Amendment rights of our Nation's citizens;

Whereas, the United States Supreme Court, yesterday, rendered a decision in the case of Texas v. Johnson, No. 88-155, finding unconstitutional a Texas statute prohibiting the desecration of the flag, determining that this conduct was an act of "symbolic speech," protected by the First Amendment;

Whereas, the Congress has believed that the act of desecrating the flag is clearly not "speech," as protected by the First Amendment, and that such reprehensible conduct shall be taken to protect the flag.

In this same case, Justice Black, who described himself as a first amendment absolutist, stated:

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"I believe that the States and the Federal Government have the power to protect the flag.
Let us submit this amendment to the people. We have to do it by two-thirds vote of both Houses and if we in the Senate pass it, I have a feeling the House will pass it, in spite of the vote the lock record shows.

Then, three-fourths of the States will have to approve it. If three-fourths of the States approve it, then it takes effect.

Mr. President, if we submit it to the people and let them vote on it, is that not truly a true democratic and is it not the way it ought to be done? If we cannot decide things here in the Congress, if we are so confused or so at odds with each other on these important questions—and this is an important question-then submit it to the people. That is what we are asking be done. Let the people vote on it. If they want Mr. SYMMS, Mr. President, I think Senator Heflin and Senator Thurmond have made it very clear here that what we are talking about is symbolism. In this day and age, when there is no much nativism in America, there is absolutely nothing wrong with having the American flag as a positive symbol people can be proud of.

Mr. President, yesterday our flags around the Capitol were flying at half mast in commemoration of those who fought and those who died in the Korean war, and appropriately, yesterday the Senate began its debate on the President's proposed constitutional amendment to protect the flag with which we honor those war heroes.

I heard a number of my colleagues yesterday and on previous occasions decry the fact that the Senate is spending these several hours debating the flag amendment when there are so many other important issues on which we could be spending our time. Let me put it simply: protecting the American flag is an important, not a trivial, issue, particularly so for those who have fought and the survivors of those who have died fighting under the red, white, and blue banner. We can spare those millions of Americans a few hours of debate on this important amendment.

In an article printed last week in the Washington Times, Pat Buchanan argues persuasively that the Supreme Court's decision in the flag burning cases is a misapplication of the first amendment that should be—must be—overturned. Burning the flag is to convey something about one's view of America and, according to the Court, is therefore protected political speech. But Buchanan observes that "mooning a candidate is also political expression. Is that, too, now protected?" he wonders.

I believe that is the logical extension of the Court's majority opinion in these flag burning cases, and it points out the illogic of their view of the noble language comprising the first amendment. It brings to mind, as Bu-
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channan suggests, George Orwell's observation:
"on an intellectual would make a statement like that; no ordinary man could be such a fool.
I am pleased to be a cosponsor of the President's proposed constitutional amendment allowing States and the Federal Government to protect the American flag. This amendment is so important to honor the millions of Americans who have fought and died to protect this flag and all that it represents. I hope the vote on final passage will show that the Senate is committed to this ordi-
nation, that no ordinary man could be such a fool.
Freedom of speech was never an absolute right. Men have been sued, and punished, for slander, libel, false advertising, libeling, riot, obscenity, panhandling. All these are more purely speech than pouring kerosene on a flag and putting a match to it.
Until 1969, flag burning was outlawed in 48 states. Were we free before Bill Bren-
nan struck down those state laws? It is time Americans recaptured their hijacked Constitution from the unelected ideologues who have distorted it for 30 years. Behaving like sheep before black-robbed shepherds, we have let this country be driven to where the Ten Commandments cannot be posted in a public school, or a manger placed in a public park at Christmas, but flag burning and pornography are court protected activities. A supposedly self-governing American people must now call for this all-powerful tribunal to tell us what we may, and may not do, about capital pun-
lishment, taxes, abortion, conscription, even how our legislative districts may be drawn up. This is the American Civil Liberties Union's America; not what the Founding Fathers had in mind. And we all know it.
Fortunately, the Senate did go too far. The good news about the flag-burning decision is that the affront to Congress, and not just the states, may finally convince our cowardly first branch of government to drive the renegade third branch back onto its constitutional reservation.
But there is no better method of redress than amending the Constitution. The Founding Fathers, who knew the capacity of men to abuse power, provided for a Bill of Rights.
Article III specifically authorizes Congress to restrict the "appellate jurisdiction" of the Supreme Court. All Congress need do is pass a law denying the Supreme Court the right to hear appeals from state courts on cases dealing with flag desecration.
Flag worship is not, as some insist, a form of idolatry. A man who reveres and honors the flag no more "worships" it than a man who keeps a picture of his family on his desk worships them.
All of us know friends who, without re-
qust, will take out of their wallets a photo-
graph of a child. This is not idolatry, but an expression of paternal pride, affection, love. Burning the flag is like taking that picture, splitting it, throwing it in the gutter, trampling on it. It is not an invita-
tion to argue; it is a challenge to fight. Like calling one's mother a tramp.
The idolatry, here, is that part of those who have exalted the First Amendment above the Constitution of which it is only a part; then, declared it to be an absolute, inviolable right. Anyone who did that with the Second Amendment would be called a nut.
"We, the People of the United States," the Constitution says in its preamble, "do ordain a Constitution, in order to form a more perfect Union . . . insure domestic Tranquility . . . etc". How does burning the American flag help "create a more perfect union"; how does it help "insure domestic Tranquility"?
America's cultural struggle, deeper. People who hate America are not longer satisfied with airing their views, because no one pays any attention to their views. That is why they resort to provocation; unravelling on streets, burning flags, filling the airways with filth, polluting the culture. Then they demand we respect, pro-
tect, even subsidize their hatred.
The flag amendment is a vehicle for giving them the kind of beating that is long overdue. As Thomas Jefferson reminded us, "A little rebellion, now and then, is a good thing, as necessary in the political world as storms in the physical." A flag amendment is our rebellion.
Where should that rebellion lead? Ulti-
mately, to restoration to its rightful place of our lost, 10th Amendment: "The Powers not delegated to the United States by the Consti-
tution, nor prohibited by it to the States, are reserved to the States respectively, or to the Citizens of the several States."
Flag-burning and abortion cases are the tips of the icebergs of today's problems, and we must go to the roots of the matter.
Ron Kirklin commentary

Ron Kirklin Commentary

On this Flag Day, in 1777 the Continental Congress proudly adopted the Stars and Stripes as the official flag of the United States. Now, 203 years later vermin are publicly desecrating that symbol of our God given freedom, protected by perverted Supreme Court decisions in the name of free speech—may God forgive us. Forty years ago, I carried a small American flag from one end of Korea to the other as a young marine in combat. I was given a small pocket bible by the Red Cross. It had metal covers, supposedly bullet proof, on the front and back, on one flap was engraved, the Lords Prayer, on the other an emblazoned American flag. Each time I had occasion to read my Bible, and that was frequent in combat, I saw the Lords Prayer and that gave me strength to go on and my tiny American flag, that told me why I must go on. Many a young marine carried that symbol of freedom in his duffel bag, pocket next to his heart. Many died to pres-
serve the freedom it represents. Today and every day that proud symbol, the Stars and Stripes flies proudly above my home as a re-
minder of the continuing fight to preserve our freedoms for which so many have have fought and died. Out of respect for those fallen patriots of the past, I cannot, we cannot allow these liberal un-Americans to take license with our liberty. In the name of liberty, let desecrating our flag, I agree with the President, we must have a constitutional amendment to protect our flag. And we must have it now.
The Presiding Officer, Who yields time?
Mr. Biden. Mr. President, I yield 10 seconds to the Senator from Pennsyl-

va.
Mr. Specter. Mr. President, after extensive study, analysis, and hearing by my constituents on both sides, I believe I have decided to vote for a constitutional amendment to permit flag burning to be made illegal because I believe the flag represents a fundamental Ameri-
can value rooted in the traditions and conscience of our people.
Balancing competing values has been the lodestone of U.S. constitu-
tional government for more than two centuries. In that continuum, it is my judgment that society's interest in re-
spect for the flag substantially outweighs the individual's interest in burning the flag.2

Footnotes at end of article.
The Constitution has traditionally permitted limiting what a person may say; fighting words are not covered; endangering others by inciting to riot and crying fire in a crowded theatre are excluded; obscenity is not protected. Two of the Supreme Court's most renowned civil libertarians, Chief Justice Earl Warren and Justice Hugo Black, who led the expansion of individual rights, held the firm view that flag burning was not constitutionally protected.

The following are only a few of the countless examples demonstrating the unique status of the flag's value which is rooted in the conscience and tradition of the American people. Betsy Ross Philadelphia is a household name drawing thousands of visitors from all parts of the Nation; the Pledge of Allegiance made by school children daily all over our land; the flag is displayed by millions of Americans on holidays and every day by many individuals as well as public institutions, such as the Congress with the flag flying over the U.S. Capitol; the focus is on the flag accompanied by the singing of the "Star-Spangled Banner" on many public occasions including sporting events.

An elected official—who travels among the people, listens to his constituents—has special insights on the will of the people beyond those getting their information and insight from all other sources.

The most intense response on this issue comes from those who have made sacrifices for their country in military service: deaths of loved ones; loss of limbs; or other permanent physical or psychological injuries. Their intensity is perhaps explained by the extra pain they sustain because their loss was not worth while if others not only did not serve or sustain trauma like theirs, and others are permitted to deprecate the symbol Americans fought and died for.

Not everyone feels that way. Many Americans, including disabled veterans, speak out against this amendment. But I have found a deep residue of feeling among my constituents in favor of protecting the flag.

My own instinctive feelings favor flag protection. I was awakened by an alarm clock radio early on June 22, 1989, with the news of the Supreme Court's decision striking the Texas anti-burning statute. My first reaction was—why did the Supreme Court have to do that. My next thought was about the Chaplinsky "fighting words" case I studied in law school which made so much sense when the Court said freedom of speech did not cover fighting words.

In reflecting on the flag issue, I thought of my father's pride in serving in the American Expeditionary Force in the Argonne Forest in France to "make the world safe for democracy." Compared to Russia, America was heaven notwithstanding the struggle to support his family during the depression and the World War II shrapnel he carried in his legs until the day he died. Our prime family possession was the plaque he received for his service: the Goddess of Liberty knighting the wounded American doughboy. While not quite the flag, it was close. In balancing society's interest in respect for the flag against the individual's interest in burning the flag as an expression of political dissent, I have thought long and hard about the rock solid value of freedom of speech and the recent calls from my colleagues at the Yale Law School. Three summers ago, I reread cases on free speech in preparing for Judiciary Committee hearings on a Supreme Court nomination. While this country will survive the loss of limbs; or other permanent physical or psychological injuries. Their intensity is perhaps explained by the extra pain they sustain because their loss was not worth while if others not only did not serve or sustain trauma like theirs, and others are permitted to deprecate the symbol Americans fought and died for.

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patriotism so brazenly, diminish the real definition of patriotism.

Madam President, what is patriotism? Is it love of country, not love of flag. It is love of country, a country that is willing to tolerate dissenters, not a flag that does so, but a country under all of its laws, a country that can actually tolerate someone dumb enough to burn a flag, a country that itself can make mistakes and a country that is even willing to admit them sometimes and correct them.

It is not a flag that does any of those things, but a country and a government which representing it has the confidence in its strength and willingness to do so. If this amendment were to pass, it will not be the first time that a legislative body has succumbed to easy politics, but it will be the first time that the U.S. Senate would have taken so powerful a national symbol and in the name of protecting what it stands for actually weakens the extraordinary foundation on which it stands.

Madam President, my most important reservation about this amendment is deeply personal. It has to do with the lessons I learned in the experience of opposing the war in Vietnam and in the efforts of my friends and fellow citizens to try to end that war. It has to do with the lessons learned about many different kinds of protests and the value to this country of never limiting our tolerance of dissent.

During the years of civil rights protest and Vietnam protests, countless citizens expressed countless feelings through symbols, peace signs, dress codes, the form of demonstrations, to communicate something about ideas. The famous case of Cohen versus California in 1971 illustrates this when Justice Harlan wrote: "One man's vulgarity is another's lyric."

Eighteen years ago, I was one of the leaders of a group of veterans opposed to the war. We came to Washington, more than 5,000 strong, and took part in a week long demonstration that included many forms of protest. No one would have tolerated the burning of a flag and there was no burning of a flag by anyone. But there were dramatic moments involving symbols.

On one occasion, a group of marines carried an American flag upside down, the international sign of distress. They took extraordinary care to never let the flag touch the ground, to fold it formally and correctly. Nevertheless, people saw in their act what they wanted to see, many misinterpreting it. Despite their scars, their medals, their uniforms, their love of country and honorable service, some observers disdained their form of protest and some suggested desecration.

Ironically, after the Supreme Court flag decision, hundreds of veterans in Virginia flew flags upside down in protest.

The words of the National Anthem and Government the symbols of their service as a way of trying to reach the conscience of the Nation. One by one we stepped forward and dropped through, furlowed or even a beret over a fence erected in front of the Capitol.

I will never forget the sorrow and the anguish as I personally put over those who took part who gave back those symbols of a war and that, too, was a confrontation with symbols that many could never understand. It called to question the very patriotism of men who loved their country deeply, who had bled for it and who were willing to do so again.

That event and its use of symbols, Madam President, reinforces the caution with which we should approach any restraint on the freedom of expression. It showed me how fragile is our patience, how easily upset our tolerance, and how quickly some might judge unacceptable and about which someone else deems patriotic. We cannot afford to pick and choose expression we agree with or disagree with based on a moving standard.

The first amendment has always understood that fact. Mr. President, my flag didn't send me to Vietnam. My country did. And like thousands of other veterans, when I fought there I fought for my country. I fought with my flag—and with great pride—but not for it specifically. And when a firefight ended I thought not immediately about the flag—but about wounded, about how wonderful it was to be alive—about friends and family who seemed so far away.

And when we talked in quiet moments about the war we talked about families and home, about politics, about communing about foreign policy, about goals and strategies, about past wars, about the peace movement and protests back home, about R&R—about the future. I do not believe I ever heard a fellow soldier talk about the flag. We did not need to. We respected it—even revered it. It was with us everywhere. We needed no constitutional amendment to affirm its status.

The words of the National Anthem tell us all we need to know:

The rocket's red glare, the bombs bursting in air, gave proof through the night that our flag was still there.

Those words reinforce the clarity and the simplicity of this choice. Through bombs and rockets, fires and pestilence, war and peace, our flag is still there—without hungry politicians grabbing for proprietary political advantage, without easy politics, but it will be the first time that a legislative body has succumbed to easy politics, but it will be the first time that the U.S. Senate would have taken so powerful a national symbol and in the name of protecting what it stands for actually weakens the extraordinary foundation on which it stands.

Our flag does not need us to protect it. It will protect itself, as it has for all these years, because of the Republic for which it stands. If we protect the Republic, the flag will take care of itself.

Protecting the flag is indeed an honorable and appropriate goal. Many of us voted for a law to do so, with the hopes that it would pass constitutional muster. But the question now is, does the effort to protect the flag take precedence over the Bill of Rights and the Constitution?

I voted for a statute not because a statute is essential to protect the flag, but because the flag is a symbol vital and important enough to deserve a reaffirmation of law that has existed in 48 States of the Union and because I believed, and still do, that one could do so without doing violence to the Constitution.

I did so believing that a majority of the court in 1969 had made it clear that if a statute were passed seeking to protect the physical integrity of the flag in all circumstances, such a statute would withstand constitutional scrutiny.

I did so recognizing that there are laws against attacking national monuments. No one is allowed to scrawl anything on the Lincoln Memorial, whether the message is intended as a political message or not. The same is true of a gravesite. The same is true of our currency. Regardless of whether someone writes a dissenting opinion, or "I hate President Bush," or "I regretted the war," or "I voted for a war," or "I hate President Bush," on the Lincoln Memorial, or "I hate President Bush," on the Lincoln Memorial, or "I voted for a war," they cannot get in jail for defacing public property. I believe a flag is no different.

I did so recognizing that in the Johnson case it was the message for which Johnson was punished. To pass constitutional muster there can be no linkage of the act the statute seeks to prohibit and the message the burner seeks to express. I believe the statute we passed avoided that linkage.

I thought that the balancing test which the Court applies—the test of strict scrutiny—would permit the State to take this action. The Court now says we cannot, and I understand why. The Court has attached to the action of burning the flag rights under the first amendment. And so the question is now, do we want to change the Congress of the United States by the Senate:

Constitution of the United States in order to extend that protection?

The Constitution has been amended only 16 times in the 198 years since the Bill of Rights was ratified. No amendment has ever limited the Bill of Rights itself.

That fact alone makes one question why we are here debating this now. It was, after all, only 6 days after the Court's decision that the President proposed a constitutional amendment—dead in the heat of emotion swirling around the Supreme Court's decision.

I still wonder how much careful deliberation went on in that period? How many constitutional scholars suggested this was important and worthy? But you do not need to look far to understand what has really brought us to this moment—to this remarkable consumption of the Senate's time while debt piles up, drugs threaten communities, children's needs are unmet and the country yearns for action.

Because of the vote in the House of Representatives this vote in the Senate has become as symbolic as the issue itself. But then everyone should know what is really happening here. The New York Times of July 24 told us what it reported:

Republicans are poised to use a vote for or against a constitutional amendment as a critical weapon in the rough politics of values.

Or as John Buckley of the Republican Congressional Campaign Committee said:

"It's going to be a very long campaign season for those who get on the wrong side of this.

Or, as Lee Atwater said:

"We don't intend to make this a partisan issue. The President will not make it a partisan issue. If they choose to support our amendment.

A few days ago, the minority leader referred to the 30-second ads.

Mr. President, it is really tragic—for country and country alike when flag and Constitution are abused for partisan politics. That is its own form of desecration. And so suggested Justice Stevens in his dissent.

Symbols have always been an important part of the governing process of a nation. And we in the United States have no exception. Symbols are important to candidates, to party, and to Nation.

But no one ever suggested that symbols and the debates about them should become substitutes for the real process of governing. In the final analysis, this debate is really one more in a long stream of symbolic substitutes.

Too much of the vital debate of this country has been consumed by one symbol or another being thrust into the national consciousness, tapping into hopes, fears, and prejudices.

But no symbol more underscores government by symbol than the current debate taking place in the United States to amend the Constitution of the United States to protect our flag. It is hard to believe that with all the other pressing problems pressing for attention that the U.S. Senate should be forced to devote such energy to this curious choice of priorities.

It is one thing to pass a statute which regulates conduct and, by most interpretations, does not do violence to the First Amendment. But it is another to change the Constitution itself so as to take away the ability of the court to decide that a particular form of expression involving the flag might indeed deserve First Amendment protection.

As Duke Law Professor Walter Dellinger testified before the Senate Judiciary Committee:

"This potentially dangerous amendment would create an entirely unlimited exception to either one, some, none, or all of the Bill of Rights. It would place this power in the hands of all future Congresses, fifty state legislatures, the government of the District of Columbia, and perhaps as many as 14,000 local governments; it would set a dangerous precedent for resorting to the amendment process for the curtailing of the rights of the unpopular in general, and for unpopular speech in particular; and it would deprive the First Amendment of much of its moral legitimacy by suggesting that speech that is deeply offensive to most of us will be suppressible, while speech deeply offensive to others must continue to be tolerated.

If we passed this amendment, we would undermine not only the powerful, clear understanding we now have that in the United States, no one can be prosecuted for expressing an opinion, but we would undermine also what Professor Dellinger calls the moral legitimacy of the first amendment.

Sadly, we would be giving to a flag burner recognition he does not deserve—the "ultimate trophy," the 27th amendment to the Constitution of the United States.

If we adopt this amendment, Gregory Lee Johnson will have succeeded beyond his wildest imagination. He will have succeeded in taunting us into drafting a permanent blemish onto our most fundamental constitutional principles. He will have succeeded in making us just look a little silly, and a little less free, and a little less brave.

Mr. President, I cannot help but feel that an amendment to the Constitution for this purpose is not the act of a nation strong and vibrant, confident in the natural affection that flows from citizens to the symbols of nationhood.

A nation as strong and vibrant as we are does not need to change the Bill of Rights to protect a symbol. That symbol should be protected by the very love and devotion which without compulsion elevates symbols in the first place.

I believe we have more to fear from passing an amendment prohibiting the burning of a flag than we do from the act of a miscreant burning our flag itself. For the passage of such an amendment is an act of fear. We are not a nation which shows signs of losing our confidence—we have not lost our ability to look a demagogue in the eye without blinking—surely we are still a nation whose scorn and public opprobrium for a flag burner should be protection enough.

James Madison warned us of the dangers of exactly what this amendment attempts to do.

On June 8, 1789, Madison rose to propose the amendments to the Constitution which became the Bill of Rights.

In doing so he warned:

"And in this case it is necessary to proceed with caution; for while we feel all these inducements to go into a revision of the Constitution, we must feel for the Constitution itself, and make that revision a moderate one. I should be unwilling to see a door opened for a reconsideration of the whole structure of the Government—for a reconsideration of the principles and the substance of the powers given; because I doubt, if such a door were opened, we should stop at that point which would be safe to the Government itself.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. KERRY. I ask for 1 additional minute. Does the chairman have time? Mr. BIDEN. I really do not. I apologize. There are other Senators wanting to speak.

I yield 5 minutes to the Senator from New Hampshire.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. RUDMAN. I thank the chairman.

Madam President, let me speak briefly. I would like to just state what this debate is not about because, although I have not heard too much of it on the floor today, I certainly hear it in the public press, but this debate is not about patriotism.

On the Democratic side of the aisle, the distinguished Junior Senator from Nebraska [Mr. KÈMMER], who holds the Nation's highest decoration, that I have always held in awe, the Congressional Medal of Honor, opposes the amendment. The Senator from Hawaii, my good friend, Senator Inouye, who holds the Distinguished Service Cross and lost a limb fighting under this country's flag in Italy, opposed the amendment.

On this side of the aisle, the distinguished Republican leader, decorated in Italy—severely, gravely wounded in Italy—and Senator McCain, one of the great American heroes, held captive by the Vietnamese, but refused to have his will broken for 7 years, favor the
amendment. Madam President, this is not about patriotism, and let anyone who challenges the patriotism of anyone on either side be ashamed of themselves.

Madam President, it is not about demagoguery. With all respect, there are Members who support this amendment who believe it deeply and they are not demagogues. Madam President, I oppose the constitutional amendment. It proposes, for the first time in our Nation's history, to restrict the rights granted to American citizens under the Bill of Rights to the U.S. Constitution.

As the Members know, on June 11, 1990, the Supreme Court in a 5-to-4 decision struck down the Federal statute that criminalized the conduct of anyone who "knowingly mutilates, defaces, physically defiles, burns, maintains on the floor or ground or tramples upon" a U.S. flag. This action was a sequel to last year's decision, where the Court by the same vote struck down a Texas law on the subject.

Before addressing the merits of the issue, I would like to take a look at the individuals who are provoking this effort to restrict the Bill of Rights, the first 10 amendments to the Constitution, which were adopted 200 years ago.

In the most recent case, U.S. versus Eichman, three individuals were prosecuted by the Government: Vietnam war protestor David Gerald Blatock, "revolutionary artist" Scott W. Tyler also known as "Dead Scott," and feminist Shawn D. Eichman. Let us look at their backgrounds.

They are members of a New York-based group called the Emergency Committee to Stop the Flag Amendment and Laws.

The Washington Post described the three in this way: "Wearing leather jackets and tie-dyed clothes, they brought a wide range of causes to the courtroom. Tyler displayed slogans on racism and AIDS and an epithet in support of abortion rights, while Eichman, who wore flags as a necklace and handkerchief, pumped for Mao Tse man, who wore flags as a necktie and racism and AIDS and an epithet in courtroom. Tyler displayed slogans on jackets and tie-dyed clothes, they are nuts. They are irrelevant.

At the other end of the spectrum, the Supreme Court has frequently held that first amendment rights "are not confined to verbal expression," and has for over 50 years regularly erred on the side of protecting acts intended to communicate political thoughts, no matter how offensive.

The Court has used the following line of reasoning in these decisions:

"Conduct may have a communicative content, and may be intended to express a point of view. When conduct or action has a communicative content to it, the first amendment is implicated in any regulation or prohibition of that conduct or action. But, this does not mean that such conduct or action is necessarily any more immune from governmental process than other forms of speech," such as picketing and leafleting.

In 1968, the United States versus. O'Brien, while upholding a congressional prohibition on burning draft cards, the Supreme Court enunciated the generally applicable rule that it uses in evaluating first amendment cases to this day:

"A government regulation is sufficiently justified if it is within the constitutional power of the Government; if it furthers an important or substantial governmental interest; if the governmental interest is unrelated to the suppression of free expression; and if the incidental restriction on alleged first amendment freedom is no greater than is essential to the furtherance of that governmental interest."

In fact, laws, governing communicative conduct were struck down by the Supreme Court as early as 1931, 59 years ago. In Stromberg versus California, the Court held unconstitutional a State prohibition on displaying the red flag "as a sign, symbol or emblem of opposition to organized government." This California statute had been passed to prevent the flying of the red flag as a gesture in support of communism.

There have been many other cases protecting communicative actions under the first amendment. These include:
A prohibition on schools expelling Jehovah’s Witnesses who refused to salute the flag. This decision, Board of Education versus Barnette, is notable because it was issued in 1943 at the peak of World War II.

A sit-in by black students to protest a “whites only” library, in 1956;

The right of striking workers to picket in an area generally open to the public, in 1956;

Permitting school students to wear black armbands to protest the Vietnam war, in 1968; and

With respect to my own State of New Hampshire, a prohibition on prosecuting individuals who defaced the message “Live Free or Die” on their license plates, in 1976.

Parenthetically, I would note that there has been no noticeable increase in people attacking New Hampshire’s proud motto since the Supreme Court held that such action was constitutionally protected.

Contrary to much of the rhetoric of recent weeks, Supreme Court actions on behalf of all citizen who chose to defile the flag in order to vent their hostility toward our society are also not new. In 1969, in Street versus New York, the Court overturned the conviction of a person who had been found guilty of violating a New York statute that made it a misdemeanor “publicly (to) mutilate deface, defile, or defy, trample upon, or cast contempt upon either by words or act [any flag of the United States].” The defendant had burned the flag to protest the murder of civil rights leader James Meredith.

A number of Senators, during this debate, repeated the words of Chief Justice Warren who dissented in that case. But, the words of Justice Harlan who wrote in the opinion of the Court are compelling:

“We have no doubt that the constitutionally guaranteed freedom to be intellectually diverse or even contrary, and the “right to differ as to things that touch the heart of the existing order,” encompass the freedom to express publicly one’s opinions about our flag, including those opinions which are defiant or contemptuous.

There have been other similar decisions by the Court since then.

In United States versus Washington, the Court reversed the conviction of a defendant who had affixed a peace symbol to the flag flying from his apartment window. The Court held that the State did not have an interest in protecting a privately owned flag from its owner.

In Smith versus Goguen, the Court struck down a Massachusetts flag-misuse statute, finding it void for vagueness.

These cases foreshadow the result reached by the Court in the flag-burning cases in 1989 and this year. The fact is that, since the late 1960’s, the Court has recognized the value of symbolic speech and has guaranteed it protection under the first amendment. The Court has also established that speech cannot be prohibited in order to protect the public’s sensibilities.

As I noted earlier, I believe the Court was wrong in the two recent flag-burning cases. But they were judgment calls in line with precedents extending back for nearly 60 years. Deciding when an act is sufficiently communicative and insufficiently damaging to the public interest to be deserving of constitutional protection can be a very close call.

And, whether the Court was right or wrong, I do not believe that these two cases require, for the first time in our history, a constitutional amendment which limits the scope of the freedom granted under the first amendment.

The flag is the symbol of our Nation, its history and its values. We love the flag because it symbolizes our Constitution, our form of government, our way of life, and our freedoms. The Bill of Rights, however, is the foundation of our freedoms, and we should not protect the symbol at the expense of the foundation.

The best way I can make this point is to quote a portion of an article in the Washington Post by a former American POW in North Vietnam, James Warner. Mr. Warner was a prisoner of war from 1967 to 1973. 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 own country protest against your cause. That proves you are wrong.”

“No,” I said. “That proves that I am right. In my country we are not afraid of freedom, even if it means that people disagree with us.” The officer was on his feet in an instant, his face purple with rage. He smashed his fist onto the table and screamed at me to shut up. While he was ranting I was amazed to see propaganda before my 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.

Madam President, as I said, this debate is not about patriotism. Members of Congress and American citizens on both sides of this debate have fought and made sacrifices for their country, love the flag, and support our society, our Government, and our way of life.

The people who burned the flag last year—they hate America by their own words and deeds. We can invite them to leave our country, we can and should oppose their acts, but we should not amend our Constitution for them.

Madam President, I commend to my colleagues the 13th, 14th, and 15th amendments. They expand the Bill of Rights. This will be the first time in the Nation’s history, if this were to be successful and passed by the House on a later vote, that we would limit the Bill of Rights.

I would like to conclude these brief remarks with a quote by a great American President, Woodrow Wilson, who probably summed it up as well as anyone:

I have always been among those who believe the greatest freedom of speech is the greatest safety, because if a man is a fool, the best thing to do is to encourage him to advertise that fact by speaking.

Of, if I could parenthetically add, expressing himself by doing a ludicrous thing like burning the flag. He went on to say:

It cannot be so easily discovered if you allow him to remain silent and look wise. But if you let him speak, the secret is out and the world knows he is a fool.

Madam President, those who burn the American flag are fools. Let us not dignify them by changing the Bill of Rights.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. BIDEN. How much time is remaining?

The PRESIDING OFFICER. The Senator has 8 minutes and 6 seconds for his side of the argument.

Mr. BIDEN. I yield 1 minute to my colleague from California.

The PRESIDING OFFICER. The Senator from California.

Mr. CRANSTON. Mr. President, I will vote against both the Biden constitutional amendment and the Dole constitutional amendment.

Although I recognize that the remarkably able chairman of the Judiciary Committee, Senator Biden, in honoring his commitment of a year ago to bring forward a carefully crafted constitutional amendment, if the statute he wisely offered then was deemed unconstitutional, has worked very hard to develop language which is much more narrowly drawn than the Dole amendment, I do not believe that any amendment to the Constitution under the Bill of Rights is necessary or appropriate in regard to the flag.

I voted for the Biden statute last year based upon the judgment of numerous constitutional scholars that a content neutral statute would pass constitutional muster. The Supreme Court concluded otherwise. The Court, quite properly, has concluded that any effort to curtail political dissent expressed through flag burning violates the principles underlying the first amendment.

Madam President, I deplore flag burning, but I care more deeply about preserving the Bill of Rights and freedom of speech. In 200 years, our Nation has flourished under the protection of the Bill of Rights. We should not take any step, however well-intentioned, which would diminish those rights. We should not, at a time when the rest of the world looks
to our Constitution and Bill of Rights as the model for democracy and liberty, by weakening that great charter of freedom.

Mr. BIDEN. Madam President, I yield to the beginning of my time to the distinguished Senator from Virginia, Senator Robb.

The PRESIDING OFFICER. The Senator has 6% minutes.

Mr. BIDEN. I yield all 6% minutes.

The PRESIDING OFFICER. The Chair recognizes the junior Senator from Virginia.

Mr. ROBB. I thank the Chair.

Madam President, what I am about to say is not easy for me. It is not easy to admit that you have changed a strongly held position.

On the day that the Supreme Court ruled that Texas could not punish flag burners, I shared the visceral outrage of most Americans. Like most veterans, I wanted to show my respect for our flag and my contempt for those who would defile it.

When presented with a proposed amendment to protect the flag that same afternoon, I signed on as a co-sponsor. I did not give any speeches on it or hold any press conferences or participate in any rallies, but I did vote for both the statute and the amendment last fall.

My initial instinct was to do the same again today—knowing that changing my position on this issue would not be politically popular in my own State or fully understood by most fellow veterans. But this is one instance where debate in the greatest deliberative body in the free world actually helped change at least one Senator's mind.

On further reflection in the months since those votes and during the debate that has followed the Supreme Court's recent decision in United States versus Eichman, I have concluded that the meaning of our flag can better be protected by not tinkering with the first amendment.

As the Court observed in the Eichman case:

If there is a bedrock principle underlying the first amendment, it is that government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable.

Punishing desecration of the flag dilutes the very freedom that makes this emblem so revered and worth revering.

As public officials, we can appreciate the irony of extolling the virtues of the first amendment, when it is that very amendment that protects those who may seek to defame us.

Even Thomas Jefferson saw the amendment quite differently at the end of his Presidency.

Given my earlier thinking on this issue, the simpler thing to do would be to ignore my conscience and vote for the amendment.

It would be made even easier by the fact that, since the House of Representatives has already rejected the amendment, the Senate vote is "purely for the record," purely for political purposes, when so many critical challenges facing this country could otherwise be addressed and the political vote would be consistent with my emotional reaction to this issue.

Having been a member of the Armed Forces, Active and Reserve, for a third of a century, I have never knowingly failed to stand and render appropriate honors to our flag during my adult lifetime. And I am unapologetic about having chills run up and down my spine when our "national anthem" is played. I have also handed our folded flag to too many widows of servicemen and police officers killed in the line of duty. But despite all these experiences I am no longer persuaded that a constitutional amendment will best protect our flag.

I am persuaded instead that a preservation of the Bill of Rights is the best example that we can provide to the fledgling democracies around the world as they face dissent and try to rise above the lessons handed down by their autocratic forebearers.

My heart requires that I defend the flag. My mind tells me that our flag will be better protected and the freedoms and values it represents will be better honored by resisting this amendment.

I believe that in doing so I am faithfully upholding my solemn oath to support and defend the Constitution of the United States.

Madam President, I yield any time I have remaining.

Mr. BIDEN addressed the Chair.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. BIDEN. How much time remains?

The PRESIDING OFFICER. One minute and forty-four seconds.

Mr. BIDEN. Madam President, I understand the Senator from South Carolina has 1% minutes. I would be glad to yield my time to the Senator from Wyoming.

Mr. THURMOND. I yield my time to the Senator from Wyoming.

The PRESIDING OFFICER. The Senator is recognized for 3 minutes.

Mr. WALLOP. Madam President, the following reasoned thesis was developed as a letter to the editor by Mr. Joseph E. Schmitz of Washington, DC.

His arguments merit the serious attention of the Senate.

I ask unanimous consent that the entire text be printed in the Record.

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

The key to success for Congressional House opponents of the flag amendment was their characterization of the issue as "the flag vs. the Bill of Rights." (See Wall Street Journal, June 22, 1990, at A10). Members of Congress claim to oppose the flag amendment because it would somehow "de-stabilize" the Bill of Rights. House Democrats argued passionately that the flag amendment would be the first substantive change in the Bill of Rights since its ratification 209 years ago.

The fact is that the Bill of Rights has been substantively amended on numerous occasions by expansive Supreme Court interpretations. The current Bill of Rights schizophrenia is blatantly wrong to anyone who simply takes the time to read the Bill of Rights, the text of which has never changed. The shame is that honest, patriotic Americans are fooled by the clever lies of those who simply care more about a disrevered individual's license to burn Old Glory than they do about protecting the flag.

The whole flag debate came to a head last year when the Supreme Court struck down a Texas flag protection statute as violating the First Amendment. But the applicable portion of the First Amendment reads: "Congress shall make no law ... abridging the freedom of speech." How did "Congress" come to include "Texas" and how did "abridging the freedom of speech" come to include "prohibiting flag desecration"? By judicial fiat, of course. "We the people" certainly never Amended the Bill of Rights to prohibit States from punishing flag desecrators, as evidence by the fact that most States and Congress had anti-flag burning statutes in place last year when the Supreme Court voted 5-4 to overturn the Texas law.

At the heart of the flag burning controversy is the federal judiciary's usurpation of a power "reserved to the States respectively, or to the people" by the Tenth Amendment. The liberal pundits conveniently ignore the fact that during the Civil War, when so many critical occasions were facing this country, the Federal Congress had anti-flag burning statutes in place to prevent the physical desecration of the flag of the United States. Had this amendment been drafted during the Civil War, it may well have read: "Among the powers reserved to the States respectively, or to the people, is the power to prohibit the physical desecration of the flag of the United States." Far from "estabilizing" the Bill of Rights, this new proposed amendment merely reaffirms the ultimate provision of the Bill of Rights in one specific context.

The American system of government is based upon the consent of the governed. The Declaration of Independence proclaims that "Governments ... derive their just powers from the consent of the governed.

The opening words of the Constitution are "We the people," and Article V of the Constitution requires the ratification of three-fourths of the states for amendments to the Constitution.

If the respective States and the people of the United States wish to exercise their constitutional power under the Tenth Amendment to prohibit flag burning, and to amend the constitution pursuant to Article V so as to prevent the federal judiciary from further usurping that constitutional power, the proposed flag amendment is by far the most stability-enhancing measure for the Bill of Rights. A one vote difference on the Supreme Court is hardly the type of bedrock...
upon which to base an allegedly fundamental right of free expression for an entire nation.

The Bill of Rights is about core values. The debate over the flag amendment is about core values. Ultimate ratification of the flag amendment should depend not upon a misguided or dishonest argument that the Bill of Rights has never before been amended, but upon how deeply-rooted respect for the flag still is in our society.

Perhaps those opposed to the flag amendment are right. Perhaps Americans place more value today in permitting a few social misfits to defile publicly our national symbol than they place in protecting the banner that countless American servicemen have valiantly fought for and sacrificed their lives to protect.

If the liberals are correct about their fundamental right to desecrate the flag, then the currently proposed flag amendment would surely fail to be ratified by three-fourths of the states. It appears, however, that the liberals in Congress are actually afraid to propose the flag amendment to the Senate. Why else the almost smoke screen about protecting the supposedly never-changing Bill of Rights?

If the Congressional champions of the flag desecrators lobby are wrong, heaven help them at the polls.

The PRESIDING OFFICER. The Chair advises the Senator that his time has expired.

Mr. WALLOP. The Senator is well aware and managed to finish just in time for the unanimous-consent agreement. Thank you. I yield the floor.

Mr. DODD. Mr. President, Edmund Burke, the 18th century statesman, orator, and writer, once said that "the people never give up their liberty but under some delusion." Last week, when the House overwhelmingly voted against the proposed constitutional amendment to ban flag desecration, it was a clear-headed people who spoke up for preserving liberty and freedom—without delusion. They understood that if the Bill of Rights means anything, if freedom of speech means anything, it means also the freedom to criticize the Government by challenging the authority of its symbols.

We stand here in the Senate today charged with the same mandate that our colleagues faced in the other body, perhaps even a greater one—for we know that the people have already spoken.

We must ask ourselves whether or not, in the name of political expediency, we are willing to tinker with the Bill of Rights for the first time in 200 years.

Benjamin Franklin almost 200 years ago said, "They that can give up essential liberty to obtain a little temporary safety, deserve neither liberty nor safety.

We must ask ourselves today whether or not there is room for giving up a little liberty to achieve potentially a little safety for our flag by amending the first amendment to that Bill of Rights, knowing that it has been preserved unfettered through a bloody Civil War, the Great Depression, two world wars, even the trauma of Vietnam.

Are we willing, Mr. President, to abdicate even a part of the freedom that preserves our democracy—through all the conflicts that have challenged, and will continue to challenge us? Are we willing to tarnish our Bill of Rights simply because a 30 second television spot might challenge us to show the kind of individual leadership that can, with clear words of conviction, dismiss such shallow arguments out of hand?

Mr. President, in my view, the answer to that question is very clear. We must overwhelmingly join our House colleagues in voting against this attack on our fundamental freedoms.

The question before us today has nothing, absolutely nothing, to do with condoning the behavior of those few who choose to desecrate our greatest national symbol. Their actions should repulse us, and they do. We must look beyond, however, the trifling distractions of petty noisemakers. We must have faith that what they do does not change—or even challenge—the strength of our principles that make our flag wave with such simple and inviolable dignity. We should exalt in the power of our position—knowing that it has sustained our Nation throughout all its glorious history.

John Stuart Mill, in his famous work, "On Liberty," wrote:

If all mankind minus one, were of one opinion, only one person were of the contrary opinion, mankind would be no more justified in silencing that one person, than he, if he had the power, would be justified in silencing mankind.

If we choose, Mr. President, to silence the flag burner, we lend credence to his actions by fearing them. If we choose to silence the flag burner, we desecrate our great Constitution for having lost faith in its magnificent power.

The first amendment, more than possibly any other amendment, is what distinguishes this society and the reason that we are held up as a model for emerging democracies around the world. Certainly, we appreciate the right of trial by jury, to prohibit illegal search and seizures, to prohibit cruel and unusual punishment. Other societies have such prohibitions in their own laws but very few through-out history have guaranteed the right of free speech.

Mr. President, earlier this month I was in Czechoslovakia where after 44 years of Soviet Marxist domination the people of that land have thrown off the shackles of their oppression. For the first time since the Second World War, they are experiencing freedom—freedom from a brutally imposed ideology—free. Mr. President, to speak without danger or without fear of retribution.

The people of Czechoslovakia, the students in Tiananmen Square, the peasants in Nicaragua, the wall-busters of Eastern Europe, were emboldened by the power and example of our Constitution, of the Bill of Rights that stands as a beacon of freedom and hope to men and women throughout this world.

Let us be emboldened here today, knowing that it is our Constitution that has fueled their freedom. Let us choose to preserve the simple document that is such a testament to the absolute power of absolute freedom and liberty.

Mr. President, I urge the rejection of both these amendments to our Bill of Rights.

Mr. President, I yield back the remainder of my time.

The PRESIDING OFFICER. All time has expired. Under the previous order, the Senator from Delaware is recognized to offer his amendment.

AMENDMENT NO. 2668

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

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

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Delaware (Mr. Biden), and Mr. Leavitt, proposes an amendment numbered 2668.

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

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

The amendment is as follows:

Strike all after resolving clause and insert the following:

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

"Article 1. The Congress shall have power to enact the following law:

"It shall be unlawful to burn, mutilate, or display upon any flag or the United States adopted by Congress by law, or any part thereof, made of any substance, of any size, in a form that is commonly displayed.

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

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

"Sec. 3. The Congress shall have the power to prescribe appropriate penalties for the violation of a statute adopted pursuant to section 1."
Mr. BIDEN. Madam President, I want to make it clear that the amendment is sent to the desk on behalf of myself and the distinguished Senator from Michigan [Mr. Levin]. Madam President, I understand I control 10 minutes of the time for debate on this amendment. Is that correct?

The PRESIDING OFFICER. The Senator is correct. The Senator from Delaware controls 20 minutes of the time, and the Senator from South Carolina controls the remaining time.

Mr. BIDEN. Madam President, I yield 10 minutes to the distinguished Senator from Michigan [Mr. Levin], the cosponsor of the amendment.

The PRESIDING OFFICER. The Chair recognizes the Senator from Michigan.

Mr. LEVIN. Madam President, I yield the Chair. I thank my friend from Delaware.

Madam President, I believe we can and should protect both the flag and the First Amendment: the flag because it is a unique symbol of our Nation, and the first amendment because it is a unique testament to freedom.

My preference was to have done that by Federal statute. I believe that such a statute would have struck the best balance between the clear desire of most Americans to protect the American flag from burning or other forms of mutilation, and the clear need to protect the cherished liberties for which it stands.

I had hoped that the Supreme Court would uphold the statute that I and 60 other Senators voted for in this Chamber a few months ago. I voted for that statute because it would have given us a national statute protecting the symbol of our national unity. It provided for that protection, and yet had no impact on the first amendment because the motive, intent, and purpose of the flag burning was irrelevant. The action of the burning was prohibited regardless of intent or effect.

However, as we all know, that statute was recently declared unconstitutional by a five-to-four decision of the Supreme Court. So today the Senate is faced with a choice: Do we continue to pursue the protection of the American flag or, as we say that the Supreme Court’s most recent decision striking down a statute passed by a majority in Congress should be the end of our effort?

I said before the passage of the statute last year, and I still believe, that if the Supreme Court struck down that statute, then we should take the next step of basically authorizing that same statute by a carefully worded constitutional amendment.

That is why I am a cosponsor of the Biden substitute to Senate Joint Resolution 332, which offers the Senate the opportunity to vote on a carefully constructed, narrowly drawn constitutional amendment to protect the American flag.

The Biden substitute does that. I am afraid that Senate Joint Resolution 332 does not. But I am not ready to give up on efforts to protect the American flag. Neither am I ready to say that the only way to cross through a forest is to fell every tree in that forest, when cutting a narrow path would just as effectively provide passage.

I believe we should pass a narrowly drawn constitutional amendment, the Biden substitute, one that protects the flag, while also drawing out our responsibilities to protect the liberties that it represents. I believe, as do my people, that the Supreme Court’s most recent decision striking down a statute passed by a majority in Michigan and here, that Senate Joint Resolution 332 is not a narrowly drawn constitutional amendment to protect the flag. Instead of moving us carefully along a path to protecting the flag, Senate Joint Resolution 332 will weaken important safeguards of the Bill of Rights.

First, let us look at the face of Senate Joint Resolution 332. In its preamble the resolution states, “Whereas, physical desecration may include, but is not limited to such acts as;” and then it goes on to describe a number of acts.

Madam President, on its face, this resolution does not say “what you see is what you get,” but rather in effect, it says “what you see is an inkling, a taste, of what you might get.” On its face, Senate Joint Resolution 332 is an invitation to the Federal Government and to the States to go broadly beyond the resolution’s own words.

In addition, Senate Joint Resolution 332 states that, “Physical desecration includes ‘displaying the flag in a contemptuous manner.’” Madam President, I agree that there are some actions which most people would conclude are examples of “displaying the flag in a contemptuous manner,” but there are certainly other instances of displaying the flag which are obviously open to wide interpretation as to whether the manner is contemptuous or not.

Second, the testimony offered by the Justice Department last year before the Senate Judiciary Committee included numerous references to the broad flexibility that the Federal Government and States would have in enacting legislation pursuant to an amendment such as Senate Joint Resolution 332.

On August 1, 1989, William Barr, Assistant U.S. Attorney General in the Office of Legal Counsel, stated the following on page 13 of his testimony regarding the Dole-Dixon amendment which was identical with Senate Joint Resolution 332:

The amendment would define the framework within which the legislative authority of the Congress and the States could be exercised. Within this framework, however, the Congress and the States would have wide latitude to prohibit acts of desecration toward the flag that they believe deserves prohibition.

On page 14, the Assistant Attorney General said:

While we believe the amendment would certainly permit the legislatures to define “flag” in this (narrow) manner, legislatures would be free to adopt a broader definition, as Congress itself has done.

On page 17, Mr. Barr stated, “There are an infinite number of forms of desecration. I will not attempt even a representative listing here.”

On page 20 of his testimony, the Assistant Attorney General concluded by saying, “By way of summary, the Doles-Dixon amendment confers substantial discretion on Congress and the States to determine precisely the degrading acts toward our flag that are to be prohibited.”

Madam President, “wide latitude,” “broader definition,” “infinite number,” “substantial discretion,” are not words normally used to describe a narrow constitutional amendment. But those are the very words that the administration used last year in describing a constitutional amendment, which is identical to Senate Joint Resolution 332, which is before us today.

What is particularly ironic is that on June 21 of this year, in his testimony before the Judiciary Committee, Mr. J. Michael Lutting, Acting Assistant Attorney General of the Office of Legal Counsel, stated that “the amendment is appropriately narrow in scope.” He also stated that “Congress and the States would have to determine which types of physical desecration to forbid. The range of their choice is fairly narrow, because physical desecration entails actual contact with the flag.”

Madam President, in less than 1 year, the administration spokesmen have shifted in their description of what can be prohibited under this amendment from “infinite number” to “fairly narrow.” The first amendment has endured for 200 years, and now we are asked to consider an amendment, Senate Joint Resolution 332, which has traveled at warp speed, in less than 1 year, from being described by the administration in terms of being “infinite” to being described by the same administration as “fairly narrow.”

I find it hard to understand how an amendment capable of such elastic interpretations by the same administration over such a short period of time can be referred to as “carefully drawn.”

One final point, Madam President, with respect to the testimony offered on behalf of Senate Joint Resolution 332 by the administration, which highlights its potential for broad interpretation and application. As Mr. Barr
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Mr. GRAMM. Madam President, for 200 years the States believed they had the authority to prohibit flag burning, and most of them did. We in the Congress believed that we had that authority, and on occasion that authority was used. Yet, for 200 years, despite the fact that flag burning was then banned in the overwhelming number of jurisdictions in the Nation, we still had debate. We had debate on numerous subjects. We had protests and demonstrations on behalf of or in opposition to, many causes. Yet where is the evidence to suggest that the inability to legally burn the American flag, the symbol of the freedom that we all enjoy, somehow prevented people for 200 years from expressing their opinion?

Madam President, do you think there is any evidence to suggest that is the case? If I believed for one moment that legitimate views and opinions could be expressed only by destroying the symbol of our right to express our opinion I would be opposed to amending the Constitution. But, Madam President, I see no evidence whatsoever to suggest that, given the great capacity of the human mind to find ways to call attention to one's opinion, with all the infinite variety of opportunities available, that it is essential that we give people the right to burn the symbol of freedom in order for them to be able to express their opinion.

If someone wants to call attention to himself he has a right to do it. He can jump up and down. He can condemn officials and institutions. He can set his bittches on fire to call attention to his views and as long as he does not set anybody else's bittches on fire. Then I say that is freedom of speech. I do not see any evidence whatsoever to substantiate the claim that for 200 years people's freedom has been limited by their inability to legally burn the American flag.

We voted on a law that was aimed at protecting the flag and the vote was 91 and 9 and 3 of the 9 voted against it because they thought the law was unconstitutional, not because they did not want to protect the flag: that is 84 people thought the flag ought to be protected. The Court said the flag cannot be protected without amending the Constitution. This is no unconstitutional act. This act that we contemplate today is the very essence of the Constitution and that is our ability as prescribed in the Constitution to amend the Constitution.

Madam President, would I rather protect the flag by law? Yes. Would I rather not have a 27th amendment to the Constitution to allow Congress and the States to protect the national symbol if there were any other way of doing it? Yes, I would rather not do it this way. But there is no other option. The courts have made it clear if we want to protect the flag this is the way we have to do it. So the burden of proof is on those who say this limits free speech.

Madam President, I am unconvinced and, as a result, I support the constitutional amendment as proposed in the underlying Joint Resolution 332 and I hope it will succeed. I appreciate the Chair's kindness to me.

Mr. HATCH. Thank you, Madam President. I am opposed to this so-called content neutral amendment.

Senate Joint Resolution 332, the Bush amendment, has been available for a year, and has been subjected to intense and searching inquiry. We have had five hearings on the Bush amendment. It has been reviewed, on the hearing record, by numerous scholars and others. It was fully debated on the Senate floor. For several days last October, the Judiciary Committee had a hearing on this issue just last week, on June 21. The alternative amendment, now before us, was not presented at that hearing for review.

The pending amendment to Senate Joint Resolution 323 has been subjected to no scrutiny. It has not been reviewed at a single hearing. It has been available only for a matter of hours.

This amendment to the Constitution is better titled the stealth amendment. I take it that the basis for the pending amendment is a desire to avoid what its sponsor claims would be a transgression of first amendment values. What about the values underlying section 5, which provides for a difficult process to amend the Consti-
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tution? Surely, the framers contemplated greater deliberation than this.

We have heard a great deal of talk about the grave significance of amending the Constitution and the care with which we must undertake such a step. I agree.

On June 11, the day the ill-fated Flag Protection Act of 1989 went down in flames, the Republican leader, Senator Dole, called for a vote on Senate Joint Resolution 332 on Flag Day. Just as I mentioned, this amendment had been available for nearly a year. Four committee hearings and a full-scale Senate floor debate had already taken place on the amendment. Yet, one of our colleagues called this the "fast food school of constitutional amendments." Talk about a fast food approach to amending the constitution! The pending amendment isn't even half-baked.

At the Judiciary Committee hearing last week, the distinguished chairman of the committee, Senator Biden, who has been a real workhorse on this issue, commented to the effect that there is no more solemn task for a Member of Congress than the consideration of amendments to the Constitution. I submit Madam President, that the brevity of our consideration of this brand new language to amend the Constitution clearly contradicts the solemnity of which the Senator from Delaware spoke.

As an example of how haste is undesirable, take a good look at the amendment. It essentially writes a statute into the Constitution and says Congress has the power to enact it. Any time there is another offensive act toward the flag not covered in the amendment, we will have to amend the Constitution. That turns the Constitution into a statutory code-like document.

For example, the amendment does not allow Congress to prohibit the desecration of a swastika on the flag. Desecration is not prohibited by this amendment. And if we fix that omission, we may come up with another omission next week.

Madam President, I cannot help but reflect on the history of this amendment. Its sponsor has claimed that Senate Joint Resolution 332 will not override Texas versus Johnson because it does not specify if it override the first amendment. Neither does this constitutional amendment. The amendment is no more specific than Senate Joint Resolution 332 about whether it overrides the rest of the Constitution, such as the fourth amendment on search and seizure. Yet, the President's amendment was subject to this misplaced criticism.

So there is something positive about this amendment, although not in its substance or the process by which it was brought before us. The positive thing is that it implicitly, even if inadvertent, concedes that much of the criticism directed toward the President's amendment is misplaced.

I urge the rejection of this amendment because it really does not say anything. It basically just says Congress has power to enact a law that it shall be unlawful to burn, mutilate, or trample on any flag of the United States. There are all kinds of other ways we can denigrate the flag of the United States and all kinds of other ways that we can desecrate the flag and if we want to outlaw those we have to enact another constitutional amendment to do so. That is what is wrong with this amendment.

I urge our colleagues to vote it down. It has not had the consideration that the President's amendment has and frankly the President's amendment is the way to go and I hope all of our colleagues will support it.

Madam President, I reserve the remainder of the time and yield back the time.

The PRESIDING OFFICER. Who yields time?

The Senator from Delaware.

Mr. BIDEN. Madam President, let me begin by saying no one has illusion about what my amendment is going to be. I said at the outset it parallels the statute, it will take the statute and put the statute in the form of a constitutional amendment.

Two of the witnesses before the committee when we held hearings last week were explicitly there at my request to speak to my notion of taking the statute and putting it in amendment form. It is true they have not had the precise language because I have quite frankly been trying to get enough votes to have the precise language to see that this amendment had an opportunity of passing.

Madam President, let me say to my distinguished friend from Utah about whether or not the Biden-Levin amendment would overrule any other amendment. The Dole amendment, as you read in the back, says the Congress and the States shall have the power to prohibit. That overrides arguably all the amendments of the Constitution. The Biden-Levin amendment is explicit. For that reason I did not put it in that form. It says the Constitution prohibits the following. It gives no discretion to the Congress or to the States to determine how to protect the flag. It states precisely how the flag will be protected. Therefore, it does not have the same fatal flaw as the President's amendment.

Madam President, yesterday I took the floor to address two issues. First, is protecting the American flag an object worthy of amending the Constitution? As the Senator from Texas said I would rather do it another way. But it is worthy of a constitutional amendment.

Madam President, the fact of the matter is that we have always stated in law and it has always been clear under our traditions that the Federal Government has a compelling interest in protecting and promoting the flag. That is not a debatable notion or motion.

The second issue before us, if it is worthy of amendment, what is the appropriate content of the amendment?

As to the first question, I explained at length yesterday why I believed the American flag is worth protecting even if the Constitution must be amended to meet that end. To me, the flag symbolized the bond that unites one of the most heterogeneous nations in the history of mankind, one of the most heterogeneous people in the world, because that is what we are, a heterogeneous community made up of many nationalities, many races, religions, and backgrounds, and we need unifying symbols. They are important. As Justice Holmes said, paraphrasing him, symbols are important.

The flag serves that crucial role.

Indeed, as Justice John Paul Stevens wrote in support of the constitutionality of the Flag Protection Act, "The Federal Government has a legitimate interest in protecting the symbolic value of the American flag."

The weight of that interest defies measurement. That is because—as he went on to write—the flag serves at all times "as a reminder of the paramount importance of pursuing the ideals that characterize our society." It is difficult to define.

To say that the flag is worth protecting, however, does not end our analysis. We must then ask how should that flag be protected.

I made clear, I hope, yesterday in a 2-hour presentation why I believe the President's proposed amendment is not the answer. That amendment would do fundamental violence to the first amendment. It would go to the core principle of the first amendment.

The President's amendment forces us to choose between doing violence to the Bill of Rights and permitting violence to the flag. And in that choice, Madam President, it is clear that the Bill of Rights warrants greater protection.

But that choice need not be made. Together with Senator Levin, I proposed a substitute for the President's proposed amendment. Our proposed amendment would protect the flag and not do violence to the core principles of the first amendment.

Let me make clear what I mean by that.
I acknowledge that a restriction on flag burning is a restriction on expressive conduct. But, that was equally true last year when 91 Senators voted to do just that. Had the Supreme Court upheld my statute, we would all have had the exact same impact on the conduct of every American as we would with this statute. So if we were going to limit speech, the core principle would have been limited, if that is the argument, by the statute as well as by the amendment. And 91 of us thought the statute made sense. We could not allow, for example, the right to do so.

Now, the simple principle of the first amendment that must be viewed here and the core principle, the core principle of that amendment, which I pursued with the statute and pursue now in this amendment, is that Government cannot regulate expression based upon the viewpoint of the speaker.

That is the same principle upon which the amendment today is based. The amendment that I propose authorizes Congress alone, and not the States, to enact flag protection. Moreover, this law has been revised to avoid any use of content-laden terms criticalized by the Court.

That means that it will not, as the President's amendment would, allow speech to be punished as a speech. We could not allow, for example, the Senator from Illinois to stand on the top of the Capitol and make a speech in favor of America and deny someone else the right to stand on top of the Capitol and make a speech against America. But we can deny anyone from standing on top of the Capitol and making any speech.

We can deny the time and place and manner, whether or not people can speak, not what they can say, but if they can say anything. And the virtue of this amendment of mine and Senator Levin's is it does not do violence to that core principle of equality and equal treatment of every viewpoint. Everyone, everyone, no matter what the circumstance, would be prohibited from burning, mutilating, or trampling on that flag. And there is a basic reason for that. It is a unifying symbol of a diverse people.

With due respect to all my colleagues in here who have served their country bravely and given much, the reason we are protecting the flag is not because of their efforts. The reason we are protecting the flag is because it is of symbolic unifying value in a country that is increasingly diverse and needs unifying symbols. For how else do you define what an American is unless you define it in terms of the way in which we govern ourselves and the symbols which we agree unify us? That is why I am proposing this amendment.

There are reasons to be against my amendment, but not for first amendment reasons. You can argue that it is beyond and outside the tradition of how we amended the Constitution, and that is true. In the past, we have only amended the Constitution to deal with procedural differences between the Federal and State governments, the franchise, who can vote, how can they vote, and how old do they have to be to vote, and expanding civil liberties.

That is all true. And this does not fit into that mold and may warrant people voting no. There are other reasons to vote against this, arguably.

In basing this amendment on the cardinal first amendment principle of viewpoint neutrality we have relied on the testimony of two learned and very well-respected constitutional law scholars—Henry Monaghan of Columbia Law School and Cass Sunstein of the University of Chicago Law School.

Concededly, both men argued against an amendment to the Constitution. They did so based on a cautious predisposition against constitutional amendments generally. I respect these arguments and I appreciate the wisdom in which they are steeped.

But I believe that the compelling governmental interest in protecting the flag outweighs those arguments as long as we can protect the flag without doing fundamental violence to the core principles of the first amendment.

The amendment we have proposed meets that test. With viewpoint neutrality as our signpost said professor Monaghan, the first amendments cardinal value—equality—would be preserved.

And as Professor Sunstein put it:

I do not believe that . . . an amendment on this subject would, by itself threaten constitutional liberty in the United States in a serious way. Our tradition of free speech is sufficiently robust to withstand a narrowly drawn amendment.

One that “maximized neutrality,” in Professor Sunstein’s words.

Our amendment ensures that the implementing legislation will be viewpoint neutral. It ensures that no other constitutional provisions—such as free speech—are overidden to protect the flag. It ensures that there will be no patchwork of conflicting local flag protection laws.

Under this amendment there are no risks—we know what we are getting. And what we’re getting is legislation that in Professor Monaghan’s words:

Will prevent prosecutions and convictions and prosecutorial discretion to be exercised upon some assessment of whether the prosecution or the jury likes what was done.

To be sure, the amendment we have proposed has some impact on first amendment values.

But I believe, on balance, that his amendment stands in the proud tradition of U.S. legal scholars—from Justice Harlan to Justice Fortas from Justice Black to Justice Stevens, from Chief Justice Warren to Chief Justice Burger—who have believed that flag protection and free expression are not incompatible.

They joined in believing that the one symbol of our nationhood ought to be protected. They recognized, as Justice Holmes once said, that “we live by symbols.”

I share that view.

The amendment that we proposed today would do nothing more than authorize a single law protecting the flag—and does nothing less than respect the core of first amendment values of neutrality and equality.

We can protect both the flag and the Constitution. That is what this amendment does, and I urge my colleagues to support it.

Madam President, I realize my time is drawing to a close. There are reasons to be against this amendment, but not because it violates the core principle of the first amendment of viewpoint neutrality. But the Dole amendment not only has all the reasons to be against it that this may, but it has a fundamental flaw in that it does violate the first amendment core principles.

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

Mr. BIDEN. I thank the Presiding Officer.

Mr. GRASSLEY. Madam President, I rise to oppose the amendment by the distinguished chairman of our Judiciary Committee, Senator Biden.

I strongly believe that the amendment I support—Senate Joint Resolution 332—will only take the law back to the day before the Supreme Court’s 1989 decision in Texas versus Johnson. I also believe that Senate Joint Resolution 332 will not do violence to the freedoms guaranteed by the Constitution.

Senate Joint Resolution 332 will simply restore the powers of the States and the Congress that constitutional scholars properly maintain they legitimately had prior to the Supreme Court’s June, 1989 Texas versus Johnson.

Although any attempt to pass an amendment to the States to protect the flag is apparently dead for this Congress, I believe it is right that the Senate take a stand on this issue.

I know that the Senator from Delaware has attempted to draft an amendment that he describes as “content neutral.”
However, I think it is safe to say that protecting the flag is not a content neutral. In fact, it is a matter of priorities and values.

I believe that protecting the flag involves protecting a fundamental value of our Nation. Of course, that fundamental value has on occasion come in conflict with some of the principles of our modern first amendment jurisprudence. And I think it is safe to say that many of us believe that modern first amendment jurisprudence—including some of the decisions of the Supreme Court—has misinterpreted the original understanding of the first amendment.

First, section 1 of the proposed amendment by the Senator from Delaware would—first of all—enshrine a criminal statute in our basic document of Government. This is unprecedented and unwise.

For another thing, section 1 restricts the power to protect the flag to the Congress. Third, I do not believe that it is wise to attempt to place a definition of the flag in the Constitution. Section 2 of the amendment may be overly broad. In addition, if changes should have to be made to this definition, this new article of the Constitution would itself have to be amended.

I believe that both Federal and State statutes contain adequate, proper, and constitutional definitions of what is meant by the term "flag of the United States," without violating any freedoms guaranteed by the Constitution.

I think it is entirely proper that the people—through their State legislatures—should also be able to safeguard the American flag. The States are full partners in our Federal Union. They have separate governmental entities that are a part of this Union. There is no reason why the States should not participate in this endeavor.

The 48 States with flag protection statutes have never caused any harm. I do not think the State statutes are going to change if Senate Joint Resolution 332 is adopted. I think it is wrong to suppose that the legislatures of the 50 States will suddenly become irresponsible and begin to do very strange things. I have more faith than that in the people and the States.

Senate Joint Resolution 332 is simple and straightforward. It grants all the power that needs to be granted to the political bodies that are in the best position to protect the flag. Senate Joint Resolution 332 has been thoroughly reviewed by our committee during our four hearings last year and the one we held on June 21. It deserves our full support.

I urge my colleagues to reject the Biden amendment.

Mr. THURMOND, Madam President, I yield the rest of my time to the distinguished Republican leader.

The PRESIDING OFFICER. Will the Senator yield to the distinguished Republican leader?

Mr. DOLE. Madam President, I yield my 6½ minutes to the distinguished Republican leader.

Mr. MITCHELL. Madam President, I also wish to accommodate as many of my colleagues as possible and would be agreeable to reducing the time for debate on the pending constitutional amendment to 10 minutes a side, controlled by the distinguished Republican leader and myself.

The PRESIDING OFFICER. The distinguished Senator from Delaware has 6½ minutes.

The PRESIDING OFFICER (Mr. Kerrey). Is there objection? Without objection, it is so ordered.

The distinguished Republican leader has approximately 5 minutes and 5 seconds for debate.

Mr. DOLE. Mr. President, my distinguished colleague, Senator Brink, proposes something called a content-neutral constitutional amendment.

That is an interesting proposition, if you can understand it, since the so-called content-neutral solution has struck out, having flunked three separate times in the Federal courts.

Mr. President, I will not hide my intentions: I do not want a content-neutral amendment. And I do not think most of my colleagues want a content-neutral amendment either.

I want a constitutional amendment that punishes what it is supposed to punish—flag desecration. I want an amendment that protects the cherished values that the flag symbolizes, not an amendment that views the flag neutrally—as if it were some lifeless rock. And I want an amendment that punishes only those people who publicly cast contempt upon the flag, not an amendment—like the Biden amendment—that would lump the innocent with the likes of Gregory Johnson.

So my distinguished colleague can have his content-neutral amendment. This approach may have made sense when we considered the so-called Flag Protection Act of 1989. But it makes no sense at all now that a constitutional amendment is the only way to give Old Glory the protection she so much deserves.

The Biden proposal would also strip the States of the authority to pass laws criminalizing flag desecration, as if my amendment would create a crazy-quilt patchwork of State flag statutes.

The truth is, my amendment would simply validate the 48 State flag statutes that are already on the books. These State laws have worked well, and fairly, for decades.

And let us face it: Congress has not once—not once—been deluged with constituent mail complaining about the great injustices wreaked upon the American people by the 48 different State flag laws.

Let me also point out the obvious: There are many areas in which Federal and State interests overlap.

We have many different State product liability laws. Many different State insurance laws. Many different State securities laws. The list goes on and on.

Mr. President, in each and every one of the areas that I have just described, Federal and State regulation have happily coexisted. And there is no reason to believe that Federal and State flag desecration laws could not continue to coexist as well as they have been for decades.

So my distinguished colleague Senator Brink, may think that stripping the States of authority over the flag desecrators is a big improvement. I happen to think it is a big mistake. And I happen to believe it is a big insult to the 48 State legislatures that we have thought important enough to pass laws prohibiting the desecration of our national symbol.

Finally, Mr. President, the good Senator from Delaware has criticized—as too vague—the words physically desecrate, which appear in my amendment.

The word "desecrate" appears 10 times in the majority opinion in Texas versus Johnson. Apparently, the Supreme Court did not have a so-called definitional problem, and I do not know why we would have a problem either.

As an alternative my distinguished colleague from Delaware proposes to
insert the words "mutilate" and "trample," as if these words are bright beacons of clarity. Certainly words like "mutilate" and "trample" are neither less vague nor more vague than the word "desecrate."

Mr. President, when I introduced my amendment, I was told that the Senate could not take it up immediately. I was told we needed more hearings, more testimony, more debate.

Well here we are, debating the Stealth amendment—an amendment that I have seen for the very first time just hours ago.

This amendment has had no hearings. We have heard no testimony. And we will have just 40 minutes of debate on the Senate floor.

Mr. President, for this reason alone, the amendment should be defeated.

Mr. President, I think I have consumed my time. If I have any time I will yield it back.

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

The yeas and nays have not been requested.

Mr. BIDEN. Mr. President, I ask for the yeas and nays on my amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is now on agreeing to amendment No. 2068 offered by the Senator from Delaware. The yeas and nays have been ordered and the clerk will call the roll.

The assistant legislative clerk called the roll.

The result was announced—yeas 9, nays 39, as follows:

(Rollcall Vote No. 127 Leg.)

YEAS—7

Biden Fowler

Burdeek Hollings

Cohen Levin

NAYS—39

Adams Durenberger Lieberman

Alaska Enun Lott

Armstrong Ford Logan

Bougon Gann Mark

Bentsen Glenn McCollum

Bingaman Gore McCollum

Brown Gravel McKee

Brown Gorr McConnell

Boren Graham Metzenbaum

Bouwittt Grauman Mikulski

Bradley Gramley Mitchell

Bray Marikin Mayshak

Bryan Hatfield Murkowski

Broadus Hatfield Nickles

Burns Iselin Puckett

Byrd Helms Petri

Chafee Helms Presler

Chuah Humphrey Pryor

Coelho Isonyme Reid

Conrad Jeffords Riegle

Cranston Johnston Rockefeller

D'Amato Kasabian Rockefeller

Danforth Klachen North

Daschle Kennedy Hatman

Dennetty Kerry Sanford

Dixon Kerry Sarbanes

Douglas Forbster Sasser

Dole Lautenberg Slsoby

Domenici Leahy Simon

Simpson specter Stevens Thurmond Wappo Wilson Wirth

So the amendment (No. 2068) was rejected.

Mr. GRASSLEY. Mr. President, at last count, 46 of our Senate colleagues have joined as cosponsors to Senate Joint Resolution 332, a joint resolution sponsored by Senator Dole which proposes an amendment to the Constitution of the United States authorizing Congress and the States to prohibit the physical desecration of the flag of the United States.

I do not intend to offer a prediction of the vote count.

But Mr. President, I want to provide this body with a vote count based upon how everyone should have voted if the Members cared to be consistent on their position on amending the Constitution, particularly the first amendment of the Constitution. This is how we should vote if we want to avoid presenting a double standard; if we are to maintain any sense of credibility.

Mr. President, opponents to a constitutional amendment to protect the flag argue that we should not amend the Constitution for that purpose.

Yet if Senators today cast their votes based upon whether or not they have sponsored or cosponsored constitutional amendments for everything from A through Z, everything under the Sun, then the vote today on Senate Joint Resolution 332 will be 99 to 1.

Mr. President, some refine their arguments against a constitutional amendment to protect the flag by trying to distinguish between the proposition of amendment the Bill of Rights, specifically the first amendment's speech clause in this case, and that of amending other parts of the Constitution.

I guess what they are arguing is that the rest of the Constitution is not as important, so it's OK to amend it.

But even if we concede this point, there are still 83 members of the U.S. Senate who have either sponsored, cosponsored, or cast votes to facilitate the passage of a constitutional amendment to the first amendment's speech clause.

Simply look back at the debate on Senate Joint Resolution 282 during April 1988. This was a constitutional amendment directly undermining the speech clause of the first amendment.

It was offered in the name of reducing expenditures for campaigns, because the Supreme Court had ruled doing so was an unconstitutional infringement upon free speech.

During the debate on April 21 and 22, 1988, it was revealed that Common Cause, the American Civil Liberties Union, and the Washington Post all opposed this resolution because it violated the first amendment.

But that did not stop 50 Senators who cast their votes to facilitate the passage of this first amendment constitutional amendment with rollcall votes 107 and 108.

And now this Congress, Senate Joint Resolution 48 has been introduced with 25 Senators who have added their names as sponsor and cosponsor.

There are only 17 Senators who have not sponsored, cosponsored, or voted to facilitate the passage of a constitutional amendment to limit the speech clause of the first amendment.

They are as follows: Senators BIDEN, BOWE, PAYNE, COHEN, DANFORTH, DURENBERGER, GORE, HAYFIELD, HUMPHREY, JEFFORDS, KENNEDY, KOHL, LIEBERMAN, METZENBAUM, PACHOCK, ROBS, AND AKAKA.

Of these 17, 4 have indicated they intend to vote in favor of the constitutional amendment to protect the flag.

So based upon past actions regarding the first amendment, Senate Joint Resolution 332 should pass by an overwhelming margin of 87 to 13.

All I can say is that I would hate to be in the shoes of some of our colleagues who must explain why they support constitutional amendments which would violate the free speech of millions of Americans, all in the name of so-called campaign reform, or as some have said, incumbent protection, but these same people won't support a narrowly drafted constitutional amendment that restricts conduct, not speech, that desecrates the flag of the United States.

It's simply inexcusable.

Mr. COATS. Mr. President, often the American flag's unique power to move and inspire is only evident when displayed in times of crisis—like that day when it was draped over the caskets of those sailors who died on the battleship _fours_, or on the day when it was burned by chanting Iranian fanatics during the hostage crisis.

These unforgettable images provoke a kind of pride and anger that is easier felt than explained. They are emotions that do not need to be syrupy or sentimental, but they are rooted in one solid and extraordinary fact: that the flag somehow embodies the selflessness of thousands of men and women who died to preserve an American experiment in freedom.

But now the Supreme Court has reaffirmed the curious and disturbing new constitutional right. The Court once again determined that it was perfectly legal to burn the American flag as a form of political speech. This kind of desecration provokes in most Americans—including myself—a sense of barely restrained outrage, an outrage that is felt across this Nation.

But it is not that Americans are insecure. We do not blindly follow traditions. We never have. But we do care deeply about symbols, particularly...
that one symbol of ideas and values for which men and women have sacrificed and died in every generation. To desecrate the flag, I believe, is to desecrate their memory and make light of their sacrifice.

There is a type of patriotism that is held so deeply that it finds expression in concrete things like a patriot's crippled body, or in bits of colored cloth. For men and women who have risked death in service of a flag, it is more than just a symbol. It is a sacrifice you could hold in your hand—or trample underfoot in contempt.

The flag bears our pride in times of celebration. It bears our grief when it is flown at half staff. But it should not be forced to bear the insults of a calloused and deformed conscience.

The Court has now made it clear that protecting the flag will take a constitutional amendment. The support I have seen and heard for such an amendment is undeniable. I read it in my mail. It is clear at rallies. But most of all, I can see it in the determination fixed on the faces of our veterans. These angry men and women are not political activists by nature, but they have been actively provoked. The Court's decision was rooted in a curious paradox, accusing those who want to protect the flag of dehumanizing the values it embodies.

When veterans opposed to flag burning stripped away the court's veneer of sophistry, they found themselves accused of betraying democratic principle—an accusation belied by their sacrifice. In effect, they were, patronizingly lectured on their deficient respect for the Constitution—an odd lesson, especially for those crippled in the very defense of that Constitution. These wounds will not easily heal, and this issue will not easily die.

Tolerance is an important thing in a free and diverse society. But tolerance can never be rooted in the view that nothing is worth our sacrifice or our outrage because nothing is worth our sacrifice.

Chief Justice Rehnquist cautioned a stinging dissent in the previous flag case by saying:

"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."

Justice John Paul Stevens added, referring to the ideals of American patriotism:

"...these ideas are worth fighting for—and our history demonstrates that they are—it cannot be true that the flag that uniquely symbolizes our power is not itself worthy of protection from unnecessary desecration."

Protecting the American flag is not required to preserve the Republic. Our Republic is not as fragile as that. But it is, I believe, a requirement of conscience—owed as a trust to those we ask to risk death in service of that symbol. This trust is fragile, and by the constitutional amendment we have a rare opportunity to strengthen it.

Yes, as a people we must be tolerant, but we must never adopt the enervating and cowardly disdain that strips us of patriotic conviction and dulls our ability to be offended by the desecration of vital symbols, symbols that mean so much to so many in this Nation.

In the world it is called tolerance. Wrote Dorothy Sayers, but in hell it is called despair. The sin that believes in nothing, cares for nothing, enjoys nothing, finds purpose in nothing, lives for nothing, and remains alive because there is nothing for which it will die.

A WISCONSINITE SPEAKS OUT ON FREEDOM AND THE AMERICAN FLAG

Mr. KOHL. Mr. President, soon this body will vote on whether or not to amend the Bill of Rights for the first time in its 200-year history. Like all of my colleagues, I have heard from many of my constituents who want their opinion to be included in the debate about this proposed constitutional amendment to prohibit flag desecration. Whatever their point of view, people have very strong feelings about this subject. One of my constituents, Roger Grace of Milwaukee, requested that I share an essay he wrote on the need to leave the Bill of Rights intact with my colleagues, and I am more than happy to do so.

Mr. President, I ask unanimous consent that Roger Grace's essay on the Bill of Rights and the American flag be printed in the Record.

There being no objection, the essay was ordered to be printed in the Record, as follows:

The first thing I want to make clear is that I love the flag of the United States. However, I must oppose the constitutional amendment banning physical desecration of the flag because I have a great love for the rights contained in the Bill of Rights. The Bill of Rights was created to preserve the rights we won in the Revolutionary War; so that our freedoms would never be taken away from us. However worthy the cause to dilute the Bill of Rights is to court disaster. For, in the weakening of the Bill of Rights this case, you set a precedent for weakening the Bill of Rights. This precedent could make it easier to further dilute our greatest protection from tyranny.

The flag is a symbol of freedom. The freedom of expression must extend to even the most heinous form of expression, like burning the flag that we revere, or we will spiritually desecrate the flag more severely than any match will ever desecrate the flag. Soldiers fought for the flag's symbolic protection of freedom. If you do not preserve the rights they fought for, you will make a mockery of their deaths.

Because I revere freedom of speech and expression, I will put flag desecrators in the same category in which I put fundamentalists, Nazis, communists, KKK members and people who advocate violence unless all other alternatives had been used and didn't succeed; people who must be tolerated for the sake of freedom, even though I think they utter idiotic phrases that are offensive to any clear-thinking, unbiased person.

I must reiterate that in rushing to pass the flag desecration amendment, you will be doing what none of the enemies of freedom have been able to do: Desecrate the symbolic and spiritual meaning of the flag that we revere.

If the flag could speak I believe it would say, "I don't need protection. I'm a beacon of the freedoms that all men yearn for. I have been stepped on, but I'm still standing tall. I have been dragged through the mud, but I'm still a beacon of the freedoms that all men yearn for."

Although I fear it is a lost cause, I must speak against this. For as some one said, "The only cause worth fighting for is a lost cause." I think James Stewart said that as Mr. Smith.

Mr. KENNEDY. Mr. President, today the United States is not the only nation in the world considering a ban on the desecration of its flag. The totalitarian government in China is about to outlaw burning, tarnishing, tearing, trampling, and other acts harming the Chinese flag. The United States, with its historic tradition of tolerance of dissent, should not emulate the brutal dictatorship in China. Our country, our Constitution, and our flag stand for something more than the enforced obedience that the Chinese Government demands.

True, we cherish our flag for its design, its colors, and its fabric, but we cherish it most because of what it stands for—the ideals of liberty and tolerance and justice that are written in the Constitution and enshrined in the heart of every American.

Those ideals are captured in the Bill of Rights, especially the first amendment, which protects the fundamental freedoms that the flag represents, and for which the American Revolution was fought. For two centuries, the Constitution and the Bill of Rights have served as the enduring charter of our liberties, a unique symbol for freedom-loving peoples throughout the world.

And for two centuries, nothing—not a bitterly divisive civil war, not a shattering depression, none of the other dramatic changes that have transformed America from a cluster of quarrelling colonies to the world leader
It is today—has caused this Nation to amend the Bill of Rights.

Yet now, we are being asked to do so—partly because of concern over the antics of a few obnoxious protesters—but largely because of a partisan campaign to misuse the flag and abuse the Constitution for political advantage. Stirred by fears of sound bites and 30-second spots, Members of Congress who should know better are expressing a willingness to sacrifice the Bill of Rights for what they hope will be a benefit in the polls.

But the first amendment is fighting back. It is by no means clear that the cynical calculations of those with little faith will prevail, even at the polls. The more the American people hear about what is really at stake in this debate, the more they reject the idea of tampering with the first amendment.

There can be no doubt that flag burning is a despicable act. It casts contempt on our country, and on the proud symbol under which so many Americans have fought and died in service to its ideals. Flag burning sends a deeply offensive message that the overwhelming majority of American categorically reject.

But the greatness of the first amendment is that it protects their speech, too. It protects not only speech we admire, but also speech we abhor. No constitutional guarantee is more central to our democracy than freedom of speech. If the Government can censor its critics, then the ideal of free and open debate—so indispensable to our democracy and to our freedom—becomes an empty promise.

It would be particularly ironic to diminish that freedom now, at the very moment when emerging democracies around the world look to the United States as the world’s preeminent example of liberty. What message do we send to the nations of Eastern Europe, if we restrict the first amendment, the very cornerstone of American democracy?

The proposed flag burning amendment will do more violence to our Constitution than any flag burner could ever hope to accomplish. For the first time in 200 years, an amendment would be enacted that creates an exception to the Bill of Rights.

Any amendment to remove the constitutional protection for flag burning—no matter how well-meaning or carefully drawn—would endanger our remaining liberties. Throughout our history, freedom of speech has rested on the idea that the Constitution requires us to tolerate opposing viewpoints—not just those we approve, but those we despise as well. That tolerance is a fundamental part of our democracy. We proudly teach it to our children; it is perhaps the most distinctly American virtue. It is what makes us free; it is what makes us proud to pledge allegiance to the flag.

A constitutional amendment would undermine that broad tolerance. Freedom of speech would then protect only some of us, not all of us. If we make an exception today to the first amendment because of a few isolated acts of flag burning, what will we say tomorrow, when the majority is again offended by some other form of unpopular protest? There is no fair or logical way to draw the line. We must take our stand now, and reject any constitutional amendment that limits the first amendment.

As Pastor Martin Niemoller said a generation ago:

When Hitler attacked the Jews * * * I was not a Jew; therefore, I was not concerned. And when Hitler attacked the Catholics. I was not a Catholic, and therefore, I was not concerned. And when Hitler attacked the unions and the industrialists. I was not a member of the unions and I was not concerned. Then, Hitler attacked me and the Protestant church—and there was nobody left to be concerned.

Today, we are being asked to attack the flag burners. It is time for the Senate to be concerned—and to say no.

It is true that the Supreme Court has recognized that the first amendment does not protect obscenity, or libel, or fighting words, or shouting "fire" in a crowded theater. But not one of those judicially recognized exceptions concerns political protest, which is at the very core of the freedom of speech protected by the first amendment.

It is wrong to deprecate the Constitution to prevent desecration of the flag. We do not honor the flag—we dishonor it—when we diminish the freedoms for which it stands.

A constitutional amendment would also undermine the separation of powers that has protected our constitutional freedoms throughout our history. The brilliance of the Constitution's framers is clearly demonstrated by their concept of an independent Federal judiciary, sworn to uphold the Constitution against the idea of public outrage.

For more than 200 years, we have trusted the courts to determine when expression is protected by the Constitution, because judges insulated from public pressure can best evaluate the claims of unpopular minorities. But adopting a constitutional amendment will upset this separation of powers. Elected officials will decide when minority views are worthy of protection. If we adopt this amendment, no unpopular minority can safely assume its rights will be preserved.

Next year, in 1991, America will celebrate the bicentennial of the Bill of Rights. It would be the height of hypocrisy for Congress to commemorate that historic anniversary by proposing to amend the first amendment for the first time in our history.

The proposed constitutional amendment will not bring flag burning to an end. Love of country cannot be legislated; it springs from affection for the democratic principles, the free traditions, and the generous and noble character that are at the heart of America's greatness.

Americans are outraged by flag burning not because the Government tells us that we must be, as the Chinese Government tells its people, but because we love the country that our flag represents, and because we are free to do so.

"Punishing desecration of the flag," Justice Brennan wrote for the Supreme Court earlier this month, "dilutes the very freedom that makes this emblem so revered and so revered for.

As former Solicitor General Charles Fried testified, "Shawn Eichman and Gregory Johnson can burn a flag. They cannot burn the flag."

We respect the flag most—and protect it best—when we honor the freedoms for which it stands. I urge my colleagues to reject the proposed constitutional amendments. After two centuries of unparalleled success for our free society, this Congress should not be the Congress that begins to dismantle our constitutional liberties.

I yield the floor.

Ms. MIKULSKI. Mr. President, today is a very important day because the U.S. Senate is taking its first real look at the consideration of a constitutional amendment to amend the Constitution to deal with legislation protecting the flag.

Mr. President, I take amending the Constitution very, very seriously. I am here because of three constitutional amendments. I am a U.S. Senator because of three constitutional amendments. The first reason I am a U.S. Senator is, because of the populist movement, the U.S. Senate passed a constitutional amendment giving the people the direct choice of choosing the U.S. Senate, and taking it out of the hands of the legislature. The other constitutional amendment that helped me was giving women the right to vote, another constitutional amendment that expanded democracy.

Mr. President, I am also here because of the Bill of Rights. I never thought I would be in politics. Mr. President. I grew up in an ethnic, working class neighborhood. My mother and father worked in a little neighborhood grocery store. They worked very hard so that I could go to Catholic schools. You see under our Constitution this country, parents had freedom of choice. There was no State-determined religion and no mandated form of education. Our Government said you had to go to school, but it did not say where you had to go to school.
Under the first amendment, we could practice our Roman Catholic faith. I could go to the Catholic schools where the nuns taught me how to be a Catholic, and how to be a good child. I could vote for the candidates I believed in, and through their education hopefully how to do well.

Mr. President, later on, as I had my masters degree in social work and was fighting the war on poverty, I was invited to a meeting in St. Stanislaus Church where the community had gathered, again under the freedom of our Constitution, because their homes were about to be taken for a 16-lane highway.

Mr. President, I organized a protest movement. I exercised free speech and freedom of expression. We challenged the thinking of city hall and all the road planners. But the way we challenged it was, we organized a festival in the very neighborhood where they wanted to put a highway. I exercised my freedom of speech on that first festival when I said the British could not take Fells Point, the termites could not take Fells Point and, believe it or not, the State Roads Commission would not take Fells Point.

Through other citizens, I helped organize a mass-based community organization called ECAR: Southeast Community Against the Road. Well, that mass-based group liked what I was saying so much, they encouraged me to run for political office.

Mr. President, 19 years ago I did. I challenged that establishment. I beat two political machines. I went in a neighborhood where they said no woman could win, where no one who did not have the backing of one machine could win, and certainly no one who had been active in the civil rights movement could win.

Well, now you know the rest of the story. Mr. President. I went to the city council; I went to the United States Congress; and, along with you, 4 years ago, I took my oath in these chambers and became one of 16 women in all of American history ever to become a U.S. Senator. And I am also the first woman of Polish extraction ever to serve in the Congress.

Mr. President, I know the power of the Constitution and I know the power of amending the Constitution. Because the amendments have continually expanded democracy, I am in the U.S. Senate. I did not go to prison. In another country, those who protest Government, challenge existing policy, are often not only sanctioned but imprisoned. Here, dissent, protest, done in a lawful, unviolent way, community organizing was rewarded by the people, because I spoke for them and their frustration.

And, today, I also speak for the people. I am very frustrated about what is going on in our country, Mr. President, because I think that there is a war going on against our culture. I agree with those who express that concern. I believe that, yes, there is a war going on against our own people and our own symbols. I am deeply disturbed about the desecration of the flag. I am very concerned about the other activities that are going on. I talk about not only the desecration of the flag, but what we also see in some of the other activities even funded by our own Government, the desecration of religious symbols. When I listen to music, or turn on TV, I see a culture that denigrates women. We look at them, not as our children, but as objects of sex. And then I see the violence.

Mr. President, there is a part of me that wants to fire a salvo today to protect our culture, to protect our society, to look out for those moms and dads, to fire that salvo by drawing the line. Mr. President, the more I considered that, and the more intense my feelings were, I found myself really praying for the Lord to show me what to do. I said, God, you give me the guidance, and I say that with humility. I wanted to speak out against this vilence and violence that I see. I wanted to organize meetings, town hall meetings to talk about what is going on. I wanted to organize PTA meetings to plan strategies. In essence, Mr. President, because I am so concerned about this war against our culture, I wanted to live the first amendment. I wanted to pray, I wanted to speak out. And I wanted to organize.

So, Mr. President, as I come here today, very thoughtful, I concluded that you do not change the culture by changing the Constitution. That is not the way we should do it. Mr. President, I believe that we change the culture by having the Constitution. And, by having the Constitution, by speaking out, by organizing, by asking God to give us the guidance for ideas that are beyond us right now.

Mr. President, I believe we should not desecrate the flag. I voted for legislation to prohibit it. When they ask me to vote today for legislation to prohibit it, I will do that. But, Mr. President, today I will not vote to change the Constitution.

Yes, I believe we need to change the law. And, you know what, Mr. President, I think we need to change the Supreme Court. Their 5-to-4 decisions leave a lot to be desired, both in the law books and in the communities.

But, Mr. President, today I ask, with all the passion and patriotism in me, that for those who speak about constitutional rights, who talk about their freedom of speech, who talk about their freedom of expression—yes, we give you a law to enable you to do that. But we call you also to a new kind of thing, which is community responsibility. If we allow you to march and organize, remember the community and the responsibility and follow a nonviolent strategy.

Let us ask of ourselves what we ask of Nelson Mandela and speak out in a nonviolent way. When we desecrate symbols we desecrate every other—the Constitution, we desecrate the culture. Mr. President, we ask people who use our airwaves, who have access to the young minds of our country, to also exercise community responsibility. We do not want to inhibit expression, or freedom of expression. But we do want to have a culture that calls people to their best and best mode of behavior. And I do not think we are doing that, in our society.

Mr. President, not everything goes. We cannot build a society for the 21st century that advocates permissiveness, that advocates no responsibility, that advocates the 50 percent is the wrong way. We all know about the intensity and increase of hate crimes.

Our Constitution says that the Constitution is the supreme law of the land. Mr. President, for the Constitution to be supreme, we must respect the Constitution. And I am concerned that our culture is being assaulted, eroded and eroded by the culture that we surround ourselves with.

We see the fact of this. Rape in a suburban community in my own State is up 197 percent. Child abuse is on the rise. And we all know about the intensity and increase of hate crimes.

Mr. President, there is a part of me that wants to fire a salvo today to protect our culture, to protect our society, to look out for those moms and dads, to fire that salvo by drawing the line. Mr. President, the more I considered that, and the more intense my feelings were, I found myself really praying for the Lord to show me what to do. I said, God, you give me the guidance, and I say that with humility. I wanted to speak out against this vilence and violence that I see. I wanted to organize meetings, town hall meetings to talk about what is going on. I wanted to organize PTA meetings to plan strategies. In essence, Mr. President, because I am so concerned about this war against our culture, I wanted to live the first amendment. I wanted to pray, I wanted to speak out. And I wanted to organize.

So, Mr. President, as I come here today, very thoughtful, I concluded that you do not change the culture by changing the Constitution. That is not the way we should do it. Mr. President, I believe that we change the culture by having the Constitution. And, by having the Constitution, by speaking out, by organizing, by asking God to give us the guidance for ideas that are beyond us right now.

Mr. President, I believe we should not desecrate the flag. I voted for legislation to prohibit it. When they ask me to vote today for legislation to prohibit it, I will do that. But, Mr. President, today I will not vote to change the Constitution.
tive way to legally protect the physical integrity of the flag.

Let me say from the outset that I view this vote as an individual decision. This is not, and should not be, a partisan issue.

I believe the arguments for a constitutional amendment are compelling. The Government has an interest in the preservation of the flag, and the Supreme Court has affirmed such an interest.

In a 1969 Supreme Court case, Street versus New York, former Chief Justice Earl Warren said, I believe that the States and Federal Government do have the power to protect the flag from acts of desecration and disgrace. It is difficult for me to imagine that, had the Court faced this issue, it would have concluded otherwise.

Former Justice Black, concurred with former Chief Justice Warren and added: It goes my belief that anything in the Federal constitution bars a State from making the deliberate burning of the American flag an offense.

In that same case, former Justice Abe Fortas wrote: The flag is a special kind of personality. A flag may be property, in a sense, but it is property burdened with peculiar obligations and restrictions. Certainly, these special conditions are not per se arbitrary or beyond governmental power under our Constitution.

The Supreme Court's 1968 decision in United States versus O'Brien, upheld a law which convicted a man for burning a draft card. The Court found that not all conduct, considered speech by some, is protected. The Court rejected the view that an apparently limitless variety of conduct can be labeled speech whenever the person engaging in the conduct intends thereby to express his idea.

Some have attempted to make a distinction between acts which tangibly threaten the well-being of an individual, such as the potential harm caused to individuals when someone falsely shouts "fire" in a theater, and those acts which do not threaten the physical well-being of an individual, such as flag-burning. The Court, in United States versus O'Brien, made no such distinction.

As some may recall, in that case the defendant argued that the act of burning his draft card constituted symbolic speech, or "speech plus." The defendant was protesting the Vietnam war, and expressed his opposition in this graphic way. There were thousands of ways to protest the war, and the Court held that burning one's draft card was not one of them.

I acknowledge that during that time, it was mandatory for those who were draft eligible to carry a draft card. However, the issue on which the conviction was upheld was on the question of whether the defendant's actions constituted speech. The act of burning a card could not hide behind the cloak of free speech as a justification for the act.

We are faced with a similar scenario in this matter. What is the Government's interest in protecting speech, and in protecting the flag?

Justice Stevens, writing in the most recent Eichman case, makes a key point. He states: It is clear that the prohibition of flag burning does not entail any interference with the speaker's freedom to express his or her ideas by other means. It may well be true that other means of expression may be less effective in drawing attention to those ideas, but that is not itself a sufficient reason for immunizing flag burning.

Justice Stevens continues: The freedom of expression protected by the First Amendment reinforces not only the freedom to communicate particular ideas, but also the right to communicate them effectively. That right, however, is not absolute. We have attempted to redress this issue on a number of occasions. The courts have held that a statutory approach will not work. The only permanent solution to this problem is through the adoption of a constitutional amendment.

Mr. President, the vote on this amendment is not a referendum on one's patriotism and those who seek to use the vote in this manner are guilty of the worst abuses of the political process. I will vote for this amendment because I believe it is appropriate as a legal remedy to a subject that merits redress. Those who voted against this amendment do not hold the flag in any less regard than I do.

Patriotism cannot be bought and sold, or proven in 30 seconds. It is intangible. It does not rise and fall with the polls; cannot be measured on a chart—or be subject to some sort of litmus test. True patriotism, it was once written, is of no party.

Nor is it, in the words of Adlai Stevenson, a short and frenzied outburst of emotion but the tranquil and steady dedication of a lifetime.

My interest in preserving the flag will continue long after the debate on this amendment has ended. I simply do not believe the actions of a few people to burn and desecrate the flag are constitutionally protected. I have read the arguments in the Court's decisions in Johnson and Eichman, and have found the dissent persuasive.

Mr. President, nobody advocates burning the American flag. The question before us is how best to protect our flag. We agree on the principle of respect for our flag. However, we differ on the means for upholding that principle.

The Senate will express its will shortly. We have held numerous debates on this subject. The Judiciary Committee has held many hearings, and should be congratulated on its commitment to granting ample opportunity for discussion and debate.

The American people have made their views known on the issue. The House has expressed its will. It is now our moment. I urge my colleagues to support Senate Joint Resolution 332.

I thank my colleagues.

Mr. SIMON. Mr. President, I have participated in the debate on the proposed constitutional amendment. I voted on the flag on previous occasions on this floor, and I have examined this issue in considerable depth as chairman of the Judiciary Committee's Subcommittee on the Constitution.

I realize that this is an issue that stirs strong emotions on both sides, and I have tried to explain as clearly as I can to my constituents why I cannot support this amendment to our Bill of Rights. I recently summarized my views on this issue in remarks in Chicago, and I ask unanimous consent that these comments be printed in the Record.

There being no objection, the comments ordered to be printed in the Record, as follows:

SYMBOLS OF LIBERTY AND LIBERTY ITSELF

(Remarks of Senator Paul Simon before the American Library Association, Chicago, June 23, 1990)

My message today is about freedom.

In recent days, the House of Representatives, by a sufficient majority of 177 courageous legislators, rejected a constitutional amendment to criminalize flag-burning.

It was a victory for freedom. But we are far from the end of the war to preserve the Bill of Rights. A push is on in the Senate, with the hope that if the House approves the amendment, enough votes can be changed in the House to propose the constitutional amendment to the states. We probably will vote on this in the next few weeks.

This battle can be won only through education, through a reaching out to all citizens to repeat their commitment to freedom.

The Stars and Stripes are on display at my home in rural Southern Illinois every day of the year. I am proud of the flag and what it represents. I served overseas in the Army under the flag.

Flag-burning is a disgusting and obscene gesture hurled in the face of our people.

It is an act which should be subject to statutory limitations, just as burning currency is.

But a law to permit such limitations, a law enacted with my support, has been struck down in a 5-4 ruling of the Supreme Court.

The understandable emotional response to that unpopular decision is the move to amend the Bill of Rights for the first time in more than two centuries.
June 26, 1990

CONGRESSIONAL RECORD—SENATE 15575

Rushing to amend the Constitution, when there is an unpopular notion taken, is not a new phenomenon in our nation's history. When many felt the nation was threatened by polygamy, a serious effort to change the Constitution occurred. A few decades ago when criminal elements appeared on national television, taking the fifth amendment and refusing to testify, polls showed a majority of Americans wanted to get rid of the fifth amendment. When a few weeks ago the Supreme Court handed down a 5-4 decision on a Kansas City, Missouri, act involving the ability of the federal court to impose taxes, within hours a constitutional amendment was proposed and speeches were being made on the Senate floor.

The opinion polls show substantial support for a constitutional amendment on burning the flag, those-like librarians-who see a sense of loyalty to a regime that murdered millions in the name of a nation's sense of loyalty to a regime that murdered millions in the name of freedom? Will that create some new phenomenon in our nation's history. While I am outraged by this attack on the Bill of Rights. We are witnessing an attack on liberty in the name of patriotism.

My colleagues and I who oppose this amendment have been threatened with political retaliation, threatened with being attacked in "a good 30-second spot" for our defense of the Constitution. Those at the highest levels of our government who use this issue to divert attention away from our momentous challenges do a disservice to the nation. Directing hatred toward a handful of flag-burners cannot hide the needs of the poor and of the homeless and of the elderly and of the illiterate. Yes, I have a sense of outrage toward those who burn our flag. But I am also outraged at those who have enriched themselves in the savings and loan scandal, who have defrauded our citizens of billions of dollars.

I am outraged at a deficit that clouds our future, that both political parties largely ignore. I am outraged by a system of campaign financing that makes our government more responsive to the whims and the wishes of the economically more fortunate than to middle-income and less fortunate Americans. I am outraged by a system of health care that denies quality care to the elderly and to the illiterate. I am outraged at a deficit that clouds our future, that both political parties largely ignore. I am outraged by a system of campaign financing that makes our government more responsive to the whims and the wishes of the economically more fortunate than to middle-income and less fortunate Americans.

I am outraged at long-term care that is the right of people in all industrial nations except South Africa and the United States. I am outraged at long-term care that is the right of people in all industrial nations except South Africa and the United States. I am outraged that decent health care is still denied millions of Americans. But instead of dealing with these problems, we are engaged in a fight over symbols that diverts our attention from the real problems and threatens to erode our most basic document, our Constitution.

There are those who would make the position on this issue a litmus test for patriotism. The reality is this is more of a test of partisanship than to middle-income and less fortunate Americans. I am outraged at a system of education that has abdicated its responsibility. I remain outraged by a system of campaign financing that makes our government more responsive to the whims and the wishes of the economically more fortunate than to middle-income and less fortunate Americans.

Mr. ROTH. Mr. President, last October, flag protection did not violate the Constitution. When the President for example interprets of responsibility in interpreting the Bill of Rights. We are witnessing an attack on liberty in the name of patriotism. Our tradition resounds with the exhortation of Thomas Jefferson that Americans should change their political system every 200 years. In a system that purports to embrace popular will, it is difficult to see how voting for a constitutional amendment that the people want could violate one's oath, particularly in view of the Senate's judgment that flag protection violates no part of the Constitution. If, last October, flag protection did not violate the first amendment, why does it today?

The Constitution established three branches of Government, each supreme in its own sphere. Each branch owes allegiance to the same Constitution. Thus each Senator, like the President or a Supreme Court Justice, takes an oath to support the Constitution. None of us take an oath to support another branch's interpretation of the Constitution; the Constitution does not require that. Each branch owes respect to another, but not abdication of responsibility in interpreting the Constitution.

This is commonly accepted practice. When the President for example interprets his foreign policy powers, this body has been known to disagree; each branch is interpreting the Constitution even though the issues may fall within the President's jurisdiction. However, Congress seems more reluctant to disagree with the Supreme Court. One of the reasons for this reluctance is that a liberal Congress is fearful that the country is becoming more conservative, so that the Supreme Court—which has, even lately, been relatively more liberal—appears to be their best hope. The relentless drive of liberals to increase the role of the judiciary in American life at the expense of the branches elected by the people is manifest here. And that is why members who last year found no
Inconsistency between flag protection and free speech now plausibly innate that the matter to choose between the Bill of Rights and protecting the flag, choose the Bill of Rights. In any case, no need to choose. Ninety-one Senators rendered that judgment last year, notwithstanding a Supreme Court decision—and nothing has changed. Furthermore, one may wonder how sacrosanct were the Bill of Rights before the Supreme Court narrowed the amendment right to bear arms, before the Supreme Court emasculated States' rights once recognized under the tenth amendment, or before the Supreme Court transformed the fifth amendment due process clause from conservative to liberal. Last century we amended the Bill of Rights no less than eight times to overturn the Dred Scott decision. Today's reverence for the Bill of Rights is no more than liberal Thanksgiving for the recent Court victories that they may not have been able to win at the ballot box.

So do not be fooled by what is going on here. Even though 91 Senators, today 91 Senators, took their oath to the Bill of Rights, found nothing wrong with flag protection, some of them now fear that a constitutional amendment might undercut the current reverence they have been able to generate for the judicial political agenda. And well they should fear; one-half of the 16 constitutional amendments after the Bill of Rights have been adopted to overturn Supreme Court decisions. Erroneous decisions of the Supreme Court are the single most common reason for amending the Constitution.

The Supreme Court decisions in Texas versus Johnson and United States versus Eichman are erroneous decisions that need correction. To me, it seems ironic that a Supreme Court that has found that the right of free speech does not embrace obscene words, copyrighted words, perjured words, libelous words also has concluded that the conduct of burning the flag is protected from prosecution by the first amendment. All of that speech is not "speech," yet burning the flag is "speech" in the eyes of five of the nine Justices.

For two centuries the law was otherwise. Conduct, even conduct undertaken to communicate a message, could be prohibited where it offended the community. This constitutional amendment, if adopted, would not send us on some unknown course, but rather only return us to where we as a nation were for two centuries. Any protestor who would seek to convey a message by spray painting the Lincoln Memorial or assaulting a Member of Congress is, as far as I know, still prosecutable for his conduct regardless of his message. The Supreme Court found that draft-card burners could be prosecuted. But why not flag burners? According to the Supreme Court, a draft card is a part of the Selective Service System and, therefore, has value which the Government may protect. The flag, according to the Court, apparently has no governmental value. In that conclusion, the Court is wrong. It is true that the flag is a symbol, but that does not mean that it has no value. Every nation has a right to a flag as an incident of sovereignty. The American Government has an intangible property interest in the flag, in the Every American flag, in many respects as an artist does in copies of his work or a corporation does in its trademark.

We are a great and diverse people—black, white, yellow, brown, and red. Our forefathers came from all parts of the globe. We practice many religions—Catholic, Protestant, Jewish, and others—as well as none. Yet for all our diversity, we are united as one under the flag. The flag does have a value, a value more significant than a draft card. There are values more important than efficiency. If the efficiency of the military draft is a value we may recognize, so is the value of nationhood itself. The Court was wrong. We should terminate this embarrassment by proposing a constitutional amendment. The flag is the people flag, and we are the people's representatives. Let us do their will. Let the people decide. That is the way our system was established to work.

Mr. GRASSLEY. Mr. President, I rise again to very strongly support Senate Joint Resolution 332, the constitutional amendment to protect the flag of the United States. I believe that protecting the flag is a matter of priorities and values. My oath of office demands that I preserve, protect, and defend the Constitution. I do not take my oath lightly.

I believe that the flag protection amendment will not cause the destruction of the Constitution, the Bill of Rights, or the first amendment.

I believe that Senate Joint Resolution 332 will help to defend the first amendment. I believe that protecting the flag is consistent with other constitutional priorities and values such as domestic tranquility, decency, civility, and the responsibilities of individual members of the American community in upholding these values.

Let's remember one thing: The freedom to burn the flag is not a fundamental freedom. It did not exist until June 1899, when five Justices of the Supreme Court decided it was. In fact, some of the most respected civil libertarians that ever served on the Court—such as Chief Justice Earl Warren and Associate Justice Hugo Black—never through that there was any constitutional problem with punishing flag desecrators. Consequently, we are not considering a core right grounded in the Constitution.

The flag protection amendment does not change the first amendment because there is nothing wrong with the first amendment.

What we are confronted with—as we were 1 year ago—is the present Supreme Court's incorrect interpretation of the fundamental rights grounded in the first amendment.

I believe the flag protection amendment will help in the restoration of the original understanding of the first amendment: The protection of the ability to discuss and criticize the Government, and to advocate political change.

It is important to remind my colleagues that our debate over the flag illustrates that our constitutional rights do not exist in a vacuum.

One person's exercise of a constitutional right can often trespass on another's rights.

The first amendment has been interpreted in recent years to not only include political speech, but outrageous acts of arson, commercial speech, nude dancing, and host of other acts and concerns.

Given this state of first amendment jurisprudence, it is no wonder that the lines that once distinguished our fundamental freedoms, have been blurred.

In essence, the debate over the flag is evidence of the battle between two conceptions of how the Constitution ought to be construed.

On one side, the opponents of the flag amendment are all too eager to remind us of the venerable tradition of the "continuing expansion" of individual rights and liberties.

They view any attempt to circumscribe expressive actions—such as the flag—as a dangerous precedent to capture the genius of the American political tradition.

However, those of us who favor the flag amendment need to remind our colleagues on the other side of this issue of one point: The community itself has rights that deserve protection. These include physical safety or the security of property, known as domestic tranquility—and the achievement of emotional well-being, known as the pursuit of happiness.

Most importantly, let's remember that the first amendment has never been construed to provide absolute license for all expressive acts. Reasonable time, place, and manner restrictions have been upheld as constitutionally permissible because the community values of our Republic I have described above are worthy of protection as well.
One wonders whether such a view remains after Texas versus Johnson and United States versus Eichman.

Let's ask: Just what is the logical extension of the Court's rationale in those decisions?

Should publicly urinating or defecating on the flag to show contempt for the flag and the country it represents be protected by the first amendment as a fundamental right?

Or would such acts be liable to public health and safety regulations?

I maintain that flag burning can and should be proscribed.

It is common sense that while it is a badge of honor to have died, picking up a fallen flag from the ground—as it was during the Civil War—it is also a constitutional right to allow someone to spit on, rip, or burn the same flag?

The debate over the flag seems to come down to this: The Constitution contains a competition between protected rights and responsibilities.

How is this conflict to be resolved, especially if the text of the first amendment and recent Supreme Court decisions give little guidance?

I think the amendments before us places that decision where it should be: In the hands of the people and their State legislative representatives.

The adoption of the flag protection amendment will not result in our starting down a slippery slope toward more constitutional amendments that will erode our fundamental freedoms.

Nor will adoption of the flag protection amendment place the stability of our Government in jeopardy by establishing government-by-plebiscite.

Successful passage of the flag protection amendment will not result in a flood of changes in the Constitution. There has not been any flood of amendments since the last amendment—the 26th—was adopted in 1971.

And let's not forget just how hard it is to get an amendment enacted by State legislatures. Just ask the proponents of the equal rights amendment, who were given two chances to convince 38 States to adopt it.

Mr. President, there are those who say that late-20th century America cannot be trusted to act with the restraint of the Framers of the Constitution. They contend that supporters of Senate Joint Resolution 332 are “wrapping-themselves-in-the-flag.”

Some even claim that we are engaged in form of idolatry called “flag worship.” I do not worship the flag, I respect and honor it. I worship God.

In fact, some of the opposition to the flag protection amendment is based in its own brand of idolatry.

The notion that the Framers believed that the rights enumerated in the first 10 amendments to the Constitution should never be altered.

I'd like to hear some of these same opponents of Senate Joint Resolution 332 in a discourse on the meaning of the 2d or 10th amendments.

It would appear to this Senator that these opponents—as sincere as they may be—seem to be “wrapping-themselves-in-the-bill-of-rights.” It would appear that some opponents may be attempting to exploit their blind loyalty to a national symbol for partisan purposes.

The first 10 amendments to the Constitution are not absolute or inviolate. The 12th, 14th, and 16th amendments tempered with the bill of rights. They altered the rights of the States and general property and the Republic still stands.

Of course, it is always proclaimed that these amendments expanded individual rights; and that this kind of tampering is consistent with the original understanding of the constitutional framers.

I'm afraid we cannot resolve that debate here today. However, I think we must take a serious look at what appears to be antidemocratic—small “d”—undertones inherent in the opposition to the flag protection amendment.

This sentiment may ultimately pose more danger to the stability of the American Republic.

The Constitution contains an amendment process on purpose. The framers did not add article 5 as some “sop-to-the-masses,” in the real hope that it would never be used.

I think it is plain that the Framers believed that the people are the ultimate sovereigns of the country. The people should have a role in determining the future course and structural development of their Nation.

The flag protection amendment is just such an issue.

The Supreme Court's decisions on flag desecration involve a method of expression; not about the expression of an opinion.

To interpret the Constitution to allow such a method of expression not only does damage to the first amendment, but it does damage to the national morale.

If the first amendment comes to be seen simply as a license for anybody to do anything—so long as there is some faint political content—then the first amendment will fall into disrepute. It will become the last refuge of the scoundrel.

Ultimately, we should ask ourselves how does desecrating the flag help to create a more perfect union? or how does it help to “insure domestic tranquility?”

If we answer ourselves honestly, the flag protection amendment becomes a step toward a restoration of the Constitution to the people.

Although any attempt to pass an amendment to the States to protect the flag is apparently dead for this Congress, I believe it is right that the Senate take a stand on this issue.

Once again, I urge my colleagues to support its passage.

Mr. DURENBERGER. Mr. President, as I have previously indicated, I will vote today against the pending constitutional amendment. The action by the House of Representatives last week to defeat this amendment has removed some of the drama from this debate, but it has not removed all its significance. Every debate about the Constitution is important, and deserves the attention of the American people.

As I said last week, Mr. President, the argument over this amendment has and will continue to be fraught with emotion and conflict. Like any red-blooded American, I cannot watch the film clips of those who burn our flag without anger welling up inside me. The individuals who sparked this controversy, who have already received mountains of attention more than they deserve, engaged in a cynical and hateful act against America. But in an era of shock journalism and mass merchandized politics, the acts of an infinitesimal minority are magnified hundreds fold and pushed onto the American consciousness. Our challenge here in the Congress is react in the proper way.

This boils down to a choice between fundamentals. Justice Frankfurter wrote in 1940:

“The Flag is the symbol of our national unity, transcending differences, however large, within the framework of the Constitution. I believe that sets the issue very well. The flag symbolizes our unity. The Constitution is the substance of that unity. I'm afraid the proponents of the amendment are elevating the symbol above substance, in a way that may end up diminishing both. History will no doubt judge that the first amendment to the Constitution is the single greatest contribution to world civilization that we have made as a people. It enshrines the individual, his words, his beliefs and associations, in a place above Government, beyond control. That is the powerful idea that draws millions from around the world to our shores; that is what, in the past few years, has inspired millions to risk everything to bring down repressive regimes.

Free speech carries with it costs to the society which embraces it. First and foremost, there is the potential that some will exercise that right in repulsive, obnoxious ways. Free speech protects "the thought we hate" as Justice Holmes wrote. But free speech also guarantees that there will be an answer, and each patriotic American has a duty to respond. Offensive ideas don't go away when we try to silence them or put them in jail; they go away