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House of Representatives

The House was not in session today. Its next meeting will be held on Monday, December 11, 1995, at 12 noon.

Senate

FRIDAY, DECEMBER 8, 1995

The Senate met at 10 a.m. and was called to order by the President pro tempore [Mr. THURMOND].

PRAYER

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

Let us pray:

Lord of all life, thank You for the gift of time. You have given us the hours of this day to work for Your glory by serving our Nation. Remind us that there is enough time in any one day to do what You want us to accomplish. Release us from that rushed feeling when we overload Your agenda for us with things which You may not have intended for us to cram into today. Help us to live on Your timing. Grant us serenity when we feel irritated by trifling annoyances, by temporary frustration, by little things to which we must give time and attention. May we do what the moment demands with a heart of readiness. Also give us the courage to carve out time for quiet thought and creative planning to focus our attention on the big things we must debate, and eventually decide with a decisive vote. Help us to be silent, wait on You, and receive Your guidance. May the people we serve and those with whom we work sense that in the midst of pressure and the rough and tumble of political life, we have had our minds replenished by listening to You. In the name of our Lord. Amen.

RESERVATION OF LEADER TIME

The PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

FLAG DESECRATION CONSTITUTIONAL AMENDMENT

The PRESIDENT pro tempore. Under the previous order, the Senate will now proceed to the consideration of Senate Joint Resolution 31, which the clerk will report.

The legislative clerk read as follows:

A joint resolution (S.J. Res. 31) proposing an amendment to the Constitution of the United States to grant Congress and the States the power to prohibit the physical desecration of the flag of the United States.

The Senate proceeded to consideration of the joint resolution.

Mr. HATCH. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. DEWINE). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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 President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. HATCH. Mr. President, in listening to the debate on the flag amendment on Wednesday and some of the remarks of some of my colleagues here on the floor, my reaction with respect to some of their arguments and some of the arguments of the opponents of the flag amendment comes down to, there they go again. The same tired, old, worn out arguments, again and again.

One of my colleagues from Arkansas says we are here because of "pure, sheer politics." Evidently, some opponents of the amendment believe there is only one side to this argument, and everybody else must be playing politics. Tell that to Rose Lee, a Gold Star

Wife and past president of the Gold Star Wives of America.

She testified in support of this constitutional amendment to prevent desecration of the American flag, our national symbol. She testified in support of this amendment on June 6, 1995, before the Constitution Subcommittee, and brought with her the flag that had draped her husband's coffin. She said:

It's not fair and it's not right that flags like this flag, handed to me by an honor guard 23 years ago, can be legally burned by someone in this country. It is a dishonor to our husbands and an insult to their widows to allow this flag to be legally burned.

Go tell Rose Lee she supports the flag protection amendment out of pure, sheer politics.

Go tell the members of the American Legion who have been visiting our offices. Go tell our colleague, Senator HEFLIN, a Silver Star winner from World War II, that he is playing politics. Tell the Senate Democratic whip, Senator FORD, that he is playing politics by cosponsoring and supporting this amendment, a man who has suffered a lot for this country. Tell the Democratic leader of the other body, Congressman RICHARD GEPHARDT, and 92 other House Democrats that they played politics when they voted for this amendment.

As for the number of flag desecrations—again, my friend from Arkansas was wrong. He said there were none this year. In fact, there have been published reports of at least 20 American flags destroyed at a cemetery in Bloomington, IN, alone. They were cut or ripped from flagpoles and burned. These desecrations were also reported on local television.

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



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In July of this year, according to USA Today, a flag was defaced with obscene messages about President Clinton and Speaker GINGRICH in New Hampshire. Are there not countless ways of expressing these views without defacing the flag?

In June, a flag was burned in Hays, KS. Just a short time ago, I saw a news clip about a motorist at a gas station using an American flag to wipe the car's dipstick. A veteran—a veteran—called it to the police's attention but, of course, the individual cannot be prosecuted today for that desecration of the flag. He can keep using it as he has, or perhaps he will next use it to wash his car.

My friend from Arkansas raised a concern about a person being punished for refusing to salute or honor the flag. No law enacted under the flag amendment can compel anyone to salute or honor the flag, to say nice things about the flag, or otherwise compel anyone to respect the flag. There is an obvious difference between prohibiting physical desecration of the American flag, and compelling someone to express respect for it. So it is totally irrelevant, in this debate, to talk about punishment for failing to respect or salute the flag or pledge allegiance to it. The pending amendment simply does not authorize such punishment. Nor does it authorize punishment for saying critical things about the flag, or anything else.

Some of my friends who have spoken here also drew attention to a chart with various flags on it from places like Nazi Germany, the Soviet Union, Cuba, and Iraq, with the American flag in the middle. One of my colleagues pointed out that these other countries prohibited flag desecration.

But when opponents of the amendment trot out these comparisons among countries and their flag desecration laws, they never really explain fully their point. To begin with, the difference between the American flag and these other flags is certainly self-evident to all of my colleagues and to the American people. And, of course, I know that those of my colleagues who think these comparisons are useful, recognize the difference between what the American flag represents and what Nazi Germany's flag represents.

So what really is the point of the comparisons of flag desecration laws in these countries? Is it that, in some undefined way, there is a kind of moral equivalence between Nazi Germany, Iraq, and the United States if all three prohibit physical desecration of their flags? That is too nonsensical to be the point. Indeed, until 1989, 48 States and Congress had outlawed physical desecration of the flag. Did any opponent of the amendment feel they were in a police state during that time? I do not think anybody did. Did the American people not have numerous ways to express themselves without physically desecrating our flag? Indeed, as I explained in my opening remarks on Wednesday, freedom of speech actually

expanded in this country through 1989, even as flag protection statutes were being enacted.

If I told my colleagues that Nazi Germany also had stringent gun control laws, do the opponents of the flag protection amendment believe, for that reason, America better not adopt a particular gun control measure? They did. To use that kind of reasoning, why would that not follow?

If I told the opponents of the flag protection amendment that a police state had liberal abortion laws, would that turn them into pro-lifers in America? Would it turn them into supporters of the Partial-Birth Abortion Ban Act of 1995?

So what is the point of comparing whether Nazi Germany, Iraq, and the United States protect their respective flags?

Certainly, it is not to compare those who voted for a measure protecting the flag, such as the Biden statute, including the Senator from Arkansas and almost every other Senator, with the dictators of Nazi Germany and Iraq.

I was struck by the highlighting of the Nazi flag on the same chart as the American flag. It reminded me of another use of these two flags.

Stephan Ross is a psychologist in Boston, MA. He gave a presentation in the Hart Senate Office Building earlier this year. He began by displaying a Nazi flag, and told the audience he had lived under that flag for several years.

In 1940, at the age of nine, the Nazis seized him from his home in Krasnik, Poland. He was a prisoner for 5 years in 10 Nazi death camps. The American army liberated Mr. Ross from Dachau in April 1945. In Mr. Ross's words:

We were nursed for several days by these war-weary, but compassionate men and women until we had enough strength to travel to Munich for additional medical attention.

As we walked ever so slowly and unsteadily toward our salvation, a young American tank commander—whose name I have never known—jumped off his tank to help us in whatever way he could. When he saw that I was just a young boy, despite my gaunt appearance, he stopped to offer me comfort and compassion. He gave me his own food. He touched my withered body with his hands and his heart. His love instilled in me a will to live, and I fell at his feet and shed my first tears in five years.

The young American tank commander gave Mr. Ross what he at first believed to be a handkerchief. Mr. Ross said:

It was only later, after he had gone, that I realized that his handkerchief was a small American flag, the first I had ever seen. It became my flag of redemption and freedom. . . .

Even now, 50 years later, I am overcome with tears and gratitude whenever I see our glorious American flag, because I know what it represents not only to me, but to millions around the world. . . .

Protest if you wish. Speak loudly, even curse our country and our flag, but please, in the name of all those who died for our freedoms, don't physically harm what is so sacred to me and countless others.

Go tell Stephen Ross that protecting the American flag from physical dese-

cration is in any way like protecting the Nazi flag from such desecration, or in any way represents some notion, however small, of moral equivalence between Nazi Germany and the United States, or in any way puts the United States on some kind of par with Nazi Germany. That analogy just will not float.

Mr. Ross still has the flag the American tank commander gave him in 1945. Mr. Ross is a supporter of this amendment, and one can read about his story on the front page of the July 4, 1995, USA Today.

Mr. President, some of my other colleagues argue that enactment of this flag amendment would be the beginning of a long slide down a slippery slope to further restrictions on free speech. Give me a break. They even make a thinly veiled comparison between prohibiting physical desecration of the American flag with the Chinese Government's execution of three dissidents. Give me a break. This argument is incredibly overblown. In answer to this, I would like to quote from a letter Bruce Fein, an opponent of the amendment who testified against the amendment. He wrote to the Judiciary Committee in June of this year in response to my questions. He states:

The proposed amendment is a submicroscopic encroachment on free expression that would leave the U.S. galaxies beyond any other nation in history in tolerating free speech and press. If foreign nations were to emulate the constitutional protection of freedom of expression in the United States even with a flag burning amendment, they would earn glittering accolades in the State Department's annual Human Rights reports and from Amnesty International and Human Rights Watch.

Mr. President, it is time for us to recognize that the American flag is our national symbol; that it has meaning to millions and millions of Americans all over this country, many of whom have fought for this country, many of whom have suffered as family members who have lost somebody who has fought for this country under our flag. About 80 percent of the American people are for this amendment. The remaining 20 percent either do not know, or are people who would not be for anything that contrasts values.

Mr. President, all this amendment would do is allow the Congress to enact a law prohibiting physical desecration of the American flag. We are going to take out of the amendment the three words "and the States," so that we will not have 51 different interpretations of what flag desecration is. This change will be made at the request of a number of Senators who are concerned, as I am, about that possibility. At the appropriate time, an amendment to make that change will be filed.

All this amendment does is restore the symbol of our American flag to a constitutionally protected status. And it allows the Congress, if it chooses to—it does not have to, but if it chooses to—to enact implementing legislation to protect the flag.

There is no one in Congress who is going to go beyond reason in protecting the flag. We will still have our emblems on athletic equipment. We will still have little flags. We will still be able to have scarves and other beautiful and artistic renditions of the flag. What we will not have is the ability to physically desecrate the American flag.

All we are asking here is to let the American people decide this. If we have enough support, 66 people in favor, we will pass this amendment through the Senate. That is, of course, only the beginning of the process, because three-quarters of the States will then have to ratify this amendment before it becomes the 28th amendment to the Constitution. I believe three-quarters of the States will ratify it, because almost all of the States have already called for this amendment through effective legislative enactment.

But what will ensue once this amendment passes—something that is worth every effort we put forward—is a tremendous debate in our country about values, about patriotism, about what is right or wrong with America, about things that really will help us to resurrect some of the values that have made America the greatest country in the world. It will be a debate among the people.

For those who do not want a constitutional amendment passed, they will have a right to go to every one of our 50 States and demand that people not allow us to protect the flag from desecration. They will have an equal right with anybody else to make their case. We are here to make the decision to let that debate over values, over right and wrong, over patriotic thoughts and principles ensue. It is worth it.

I personally resent anybody indicating that this is just politics. I have heard some people say, "Well, if this was a secret ballot, it would not pass at all." I do not agree with that. I believe there are enough people in this body who realize that we are talking about something pretty valuable here, something pretty personal, something that really makes a difference in all of our lives; our national symbol. The symbol that soldiers rally behind, fight under, went up San Juan Hill to retrieve. For those of us who have lost loved ones in various wars, this particular debate plays an especially significant role.

There are those here who are themselves heroes, and who may disagree, and they have a right to do so. I think they do so legitimately in their eyes, and certainly sincerely. I respect them and respect their viewpoints, just as I hope that those on the other side will respect the viewpoints of those of us who believe that this is an important thing, that this is a value in America that is important, that ought to be upheld.

In my case, our family has seen suffering. I can remember as a young boy

playing in the woods down in front of our very, very humble home that my dad had built from a burned-out building. In fact, for the early years of my life our house was black. I always thought all houses were black, or should have been. One side of it had, as I recall, a Meadow Gold Dairy sign on the whole side of the house, because he had to take that wood from another building. It was either that or a Pillsbury Flour sign. I believe it was a Meadow Gold Dairy sign. It was one or the other. I always thought that was a pretty nice thing to have on our house as a young kid.

I was down in front of the house playing in the woods, when I heard my mother and dad. I could tell there was something wrong. I ran out of the woods and ran up to the front porch of our house, this humble place, and there was a representative of the military informing my folks that my brother, my only remaining brother, who we all loved dearly, Jess Hatch, Jess Morlan Hatch, was missing in action. It was a sad occasion. My folks were just broken up about it. They loved all nine of us kids, two of whom had predeceased Jess, who was missing in action.

When my brother was home, my mother had some beautiful yellow roses that she had grown. She really had a green thumb. She could raise beautiful flowers. He used to kid her about taking those yellow roses and giving them to his girlfriend, or taking the plants and giving them to his girlfriend. She always laughed. She knew he would never do it. But, for a couple of months after my brother was listed as missing in action, my mother received a dozen yellow roses from my brother. She believed right up until the day that they found his body and brought him back that he was still alive.

He had flown in that fateful Foggia, Italy mission and helped knock out the oil fields that really helped to shorten the war. He flew in a B-24 bomber. He was a hero, and one of the few people who ever shot down a German jet, which were new planes. I have his Purple Heart in our home out in Salt Lake City, as well as a number of his military memorabilia. I also have all of his letters to my mom and dad. I have read every one of them within this last year, and it was interesting to see how he was evolving as a high school graduate to the great person that he really was.

My mom and dad died—my mother last June and my dad 2 years before. They would have given their lives to save the American flag. My brother did. One of my most prized possessions is the American flag that draped my brother's coffin. I have that in my home out at Salt Lake as well, along with his medals.

There have been hundreds of thousands of Americans who died to preserve liberty around the world who fought—maybe not for the flag, but under the flag—and who have revered

the American flag. Who could forget the Iwo Jima Monument, commemorating the soldiers who risked their lives to see that our Nation's flag was lifted and flown above that island, a symbol for all of them.

You can go through literally thousands of stories on why the flag is important. I do not want to make this so emotional, but the fact is that it is emotional. I think it is wrong for anybody to come here and say that this is just a political exercise. That is not a knock at my dear friends who feel that way. I am sure they are sincere, but I think they are sincerely wrong.

Paul was sincere, I guess, when he held the coats of the people who stoned the first Christian martyr. He was as sincere as anyone could be. He held their coats. He believed in what they were doing. He persecuted the saints. But Paul was sincerely wrong, and I believe anybody that denigrates the intentions of those who want to preserve and protect the flag is, in this case, sincerely wrong.

I guess what I am saying here is that this is a much more important issue than just a political issue. To me, politics does not even enter into this. It is an issue of whether we value the values of our country, the things that made this country great. It is an issue of whether we want to have this debate over values, whether we want to let the American people really decide for themselves whether the flag is important or whether it is not.

In a day and age where we seem to be denigrating values all the time, why should we not stand up for one of the values that really has helped make this country great, that has meant something from the beginning of this Nation? Why should we not have that debate? For those who disagree, however sincerely their opposition, I invite them to join the debate. Prove us wrong, not only here on the floor, but do it, once this amendment passes, with the American people. I think they are going to find that the vast majority of the American people do not agree with them.

Last but not least, there are those who would argue that this is a denigration of the First Amendment, or that nobody has ever amended the Bill of Rights. Let me tell you something. The Bill of Rights was no sooner passed when the 11th amendment was passed to overcome a faulty Supreme Court decision. A number of the other amendments have been passed since then to overcome Supreme Court decisions that were wrong. It is a legitimate thing.

Keep in mind that Earl Warren, Abe Fortas, Hugo Black, three of the most liberal members ever on the Supreme Court, wrote that they believed the flag could be protected. It had nothing to do with first amendment rights or freedoms in the sense of denigrating the first amendment.

The fact that in the Johnson case, the Supreme Court alluded to the first

amendment, and spoke of the first amendment right of free speech being violated, does not make it right. How can anybody say that we are trying to stop any person from saying whatever they want to, to denigrate the flag. They can denigrate the flag all they want to, with all the free speech in the world, and I am certainly going to uphold their right to do it.

What we are against here, and what we need to establish through a constitutional amendment, is that this does not involve speech. It involves improper and offensive conduct. And that is what Justices Warren, Fortas, and Black basically said. This is not a violation of first amendment protected free speech. Anybody can speak any way they want. Physically desecrating the American flag, however, is a violation of the sensitivities and the values of America by means of offensive, improper conduct, physically treating our national symbol with contempt.

And even though desecrations of the flag occur more than they should, but certainly not in overwhelming numbers, every one of them is reported by the media, seen by millions of people.

So it is a lot bigger issue than some would make it on the floor. I have to say, I hope that our colleagues will vote for this amendment. It is worthwhile to do it. All we are going to do is give Congress the right to define this matter once and for all, and then we are going to have a debate in this country about values, one that I think is long overdue. I hope that our colleagues will consider that, and I personally believe we can pass this amendment, although it is always uphill on a constitutional amendment. We understand that, and that we may have to keep bringing this amendment forth. Ultimately, however, this amendment is going to pass. I guarantee it is going to pass someday, even if it does not pass this time. But I personally believe we have a good shot at it this time.

Mr. President, I will yield the floor to my colleague from Wisconsin.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. FEINGOLD. I thank the Chair.

I certainly want to join with the chairman's comment that this is a worthy debate and one that people should join in if they have either strong feelings in favor of or against the constitutional amendment regarding flag desecration.

Mr. President, in response to the chairman's challenge, I would like to rise today in opposition, strong opposition, to the proposed constitutional amendment relating to the flag.

I do so with the utmost respect for my colleagues and especially the distinguished chairman of the Judiciary Committee and the many Americans who support this effort and, of course, in the spirit of my own utmost respect for the flag of this country.

Mr. President, I and all Members of this body share the enormous sense of pride that all Americans have when

they see the flag in a parade or at a ball game or simply hanging from store fronts and porches all across their home State. It is one of my favorite sights regardless of the occasion. It makes me feel great to be an American when I see all those flags.

I appreciate that this is a deeply emotional issue, and rightly so. Like most Americans, I find the act of burning the American flag to be abhorrent and join with the millions of Americans who condemn each and every act of flag desecration. I understand those who revere our flag and seek to hold it out as a special symbol of this Nation. It is a very special symbol of our Nation.

However, I think the key to this whole issue is that we are not a nation of symbols—we are a nation of principles. Principles of freedom, of opportunity, and liberty. These are the principles that frame our history and these are the principles, not the symbols but the principles, that define our great Nation. These are the principles found in the U.S. Constitution and the Bill of Rights.

No matter how dearly we all hold the flag, it is these principles we must preserve above all else, and it is adherence to these principles which forms the basis of my opposition to the proposed constitutional amendment.

As a threshold, Mr. President, let me say that I view any effort, any effort at all, to amend the U.S. Constitution as something that we should regard with trepidation. The chairman in his comments this morning said to those of us who suggest that maybe if we do the flag amendment, it might lead to other similar amendments, a slippery slope if you will. The chairman kept saying, "Give me a break. Give me a break"—that this was unlikely; that the emotions that fuel this issue would not fuel other attempts to amend the Constitution.

That those emotions would be just as worthy and just as heartfelt and patriotic and just as full of values as the emotions that drive this effort, I think is clear on its face and that this is a first step that could lead to many other steps that could leave the first amendment in tatters.

Since the adoption of the Bill of Rights in 1791, the Constitution has been amended on only 17 occasions. Yet, Mr. President, this is the third amendment that has been considered by our Judiciary Committee in the first term of the 104th Congress alone, with hearings being held on what could very well be a fourth constitutional amendment. According to the Congressional Research Service, over 115 amendments—115 amendments—have been introduced thus far just in the 104th Congress—amendments to the U.S. Constitution.

While I do not question the sincerity of these efforts, there is much to be said for exercising restraint in amending this great document. The Constitution has served this Nation well and

withstood the test of time, and the reason it has withstood the test of time is that we have typically, almost always resisted the urge to respond to every adversity, be it real or imagined, with that natural instinct to say, "Let us pass a constitutional amendment." It is a gut feeling we have when we see a wrong. Let us just nail it down. Let us not pass a law—put it in the Constitution and forever deal with the issue.

However, history, as well as common sense, counsel that we only amend the Constitution under very limited circumstances. I strongly believe that those circumstances do not exist in the case of the so-called flag burning amendment. Proponents of this amendment argue that we must amend the Constitution in order to preserve the symbolic value of the U.S. flag. However, they do so in the absence of any evidence that flag burning is rampant today or that it is likely to be in the future. But perhaps more importantly, this amendment is offered in the absence of any evidence, any evidence at all, that the symbolic value of the flag has in any way been compromised in this great Nation. It has not. No evidence has been offered to show that the small handful of misguided individuals who may burn a flag each year have any effect whatsoever on this Nation's love of the flag or our Democratic way of life.

The inescapable fact of the matter is that the respect of this Nation for its flag is unparalleled. The citizens of this Nation love and respect the flag for varied and deeply personal reasons, some of which were eloquently expressed today by the distinguished chairman of the Judiciary Committee. That is why they love the flag, not because the Constitution imposes the responsibility of love of the flag on them.

As a recent editorial in the La Crosse, WI, newspaper pointed out, "Allegiance that is voluntary is something beyond price. But allegiance extracted by statute—or, worse yet, by constitutional fiat—wouldn't be worth the paper the amendment was drafted on. It is the very fact that the flag is voluntarily honored that makes it a great and powerful symbol."

I think that is a great statement one of our Wisconsin newspapers made.

Mr. President, the suggestion that we can mandate, through an amendment to the Constitution, respect for the flag or any other symbol ignores the premise underlying patriotism; more importantly, it belies the traditional notions of freedom found in our own Constitution.

Mr. President, some would argue this debate is simply about protecting the flag, that it is just a referendum over who loves the flag more. This faulty premise overlooks the underlying issue which I think is at the heart of the debate, that being to what degree are we as a free society willing to retreat from fundamental principles of freedom when faced with the actions of just a handful of misguided individuals?

In my estimation, Mr. President, the answer is clear. The cost exacted by this amendment in terms of personal freedom—in terms of personal freedom—is just far too great a price to pay to protect a flag which already enjoys the collective respect and admiration and love of an entire nation. If adopted, this amendment will have an unprecedented direct and adverse effect on the freedoms embodied in the Bill of Rights. These are freedoms which benefit each and every citizen of this Nation.

Yes, Mr. President, it is true, despite what the chairman said today, it is true that for the first time in our history, for the first time in this great Nation's history, the Constitution and the Bill of Rights, both premised on limiting the Government—they are premised on limiting the Government—will be used to limit individual rights, and, in particular, for the first time the constitutional process will be used to limit, not guarantee, but limit individual freedom of expression.

I do not know how you could overstate the significance of such a new course in our constitutional history. As Dean Nichols of the Colorado College of Law noted before the Constitution Subcommittee of the Judiciary Committee, said, "I think there would be a real reluctance to be the first American Congress to successfully amend the first amendment."

Do not let anyone kid you. That is what this would do. It would amend the first amendment. It will have a different number, it will be listed in the high twenties, but it will change and alter the first amendment.

The chairman tries to address that by saying, well, shortly after the Bill of Rights was passed, the 11th amendment was passed in 1798. That is accurate. But it did not change the right to free speech. It did not limit the scope of the Bill of Rights.

In fact, the 11th amendment was consistent with the spirit of the Bill of Rights by guaranteeing that the States cannot be compromised by the Federal Government. The 11th amendment was not about limiting free expression or any other freedom of the Bill of Rights. It states:

The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

It is not about free speech. The point is really that this would be the first time—the first time—in this Nation's history that we would change something I consider to be very sacred, the Bill of Rights. That we would choose now, after 200 years of the most unparalleled liberty in human history, to limit the Bill of Rights in the name of patriotism is inherently flawed. And I think it is really, ironically very tragic.

Some will argue that we should not attach too much significance to this

unprecedented step, while still others argue that the amendment has no effect whatsoever on the first amendment. This is despite the fact that this amendment, if adopted—make no mistake about it—if it is adopted, it would criminalize—make it a crime—the very same expression that the Supreme Court has previously held to be explicitly protected under the first amendment.

So it is clearly an erosion of the Bill of Rights. You may argue that it is a justified erosion or a necessary erosion, but it clearly limits what the U.S. Supreme Court has said is part and parcel of our freedom as an American to express ourselves.

Mr. President, I think it is essential to carefully consider the basis for the adoption of the Bill of Rights before we go ahead and alter it for the first time in our Nation's history. Many who originally opposed the Constitution, those not entirely comfortable with the ratification, sought the Bill of Rights in particular because, in their view, the Constitution in its original form without the Bill of Rights, failed to properly consider and protect the basic and fundamental rights of the individuals of this country. That is why we have a Bill of Rights.

Although many Federalists, including Madison, felt that the limited powers conferred to the Government by the Constitution, the limitations in the Constitution itself, were sufficiently narrow so as to leave those rights safe and unquestioned, people still felt we had to go ahead and have a Bill of Rights adopted in order to provide the reluctant States with the assurance and the comfort necessary so they would approve the Constitution, so they would enter into this great Federal Union. And everyone today in the 104th Congress should understand this.

What is so much of the rhetoric of the 104th Congress about? The concern that the Federal Government is too strong, that it does too much, that we ought to leave enough power to the States and to individuals. That is what all the rhetoric is about today. Well, that is what the Bill of Rights was about also. And that is why we have never changed it. Because the notion of the Contract With America is not a new one. It is a heartfelt feeling of all Americans that the Federal Government must be tightly limited in its powers so that our liberties as individuals and as States cannot be compromised.

From this beginning in compromise, almost exactly 204 years ago, the Bill of Rights has evolved into the single greatest protector of individual freedom in human history. It has done so in large measure, I believe, because attempts to alter its character have to date been rejected. If this great document was changed every few years, as I am sure every Congress has been tempted to do, it would not be the great Bill of Rights that not only Americans revere but people around the world revere as well.

That individuals should be free to express themselves, secure in the knowledge that Government will not suppress their expression based solely upon its content, is a premise on which the Nation was founded. The Framers came to this land to escape oppression at the hands of the state. Obviously, there is no dispute about that, that Government should not limit one's ability to speak out. That is established in our Constitution by the simple words in the first amendment, "Congress shall make no law * * *"—no law—" * * * abridging the freedom of speech * * *"

Of course, over time this Nation has had to grapple with the exact parameters of free speech, regulating in regard to defamation or obscenity for example. However, the fact that some expression may be proscribed, can be stopped, does not obviate the presumptive invalidity of any content-based regulation.

In the words of Justice Scalia of the U.S. Supreme Court:

. . . the Government may proscribe libel; but it may not make the further content discrimination of proscribing only libel critical of the Government.

In other words, you cannot choose which messages you like and which messages you do not like. You cannot say libel against this Government is different than other kinds of content that might also be libel. Although we need not concern ourselves with the exact parameters of speech subject to limitation here because the expression in question, political expression, is clearly protected under the first amendment. This points out the fact that the one defining standard that has marked the history of free expression in this Nation is that speech cannot be regulated on the basis of its content.

The presumptive invalidity of content regulation protects all forms of speech, that which we all agree with, as well, of course, as the speech we may disagree with or find objectionable. To do otherwise would make the promise of free speech a hollow promise. What does it mean if we only protect that which we like to hear or is pleasant to our ears?

As the Supreme Court stated in *Street versus New York*:

. . . freedom to differ is not limited to things that do not matter much. That would be a mere shadow of freedom. The test of its substance is the right to differ as to things that touch the heart of the existing order.

Yet, Mr. President, this amendment departs from that noble and time-honored standard. It seeks instead to prohibit a certain kind of expression solely, solely because of its content.

The committee report accompanying this amendment makes it explicit that this effort is directed at that expression which is deemed disrespectful—disrespectful. This amendment attempts to deal only with disrespectful expression. Even more troubling is that this amendment leaves the determination of what is disrespectful to the

Government, the very Government that we were trying to limit after we won the Revolutionary War and got together and passed a constitution. It is that Government that we are going to allow to define what is objectionable by this amendment.

What could be more contrary to the very foundations of this country? For the purpose of free expression to be fulfilled, the first amendment must protect those who rise to challenge the existing wisdom, to raise those points which may anger or even offend or be disrespectful.

As the great jurist, William O. Douglas, observed, free speech:

... may indeed serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger.

Mr. President, adherence to this ideal is exactly what separates America from oppressive regimes across the world. We tolerate dissent, we protect dissenters, while those other countries suppress dissent and jail dissenters or, for example—and I can give you many examples, as I know the Chair can—as recent events illustrate in Nigeria, the condemnation of dissenters to a fate far more grave than incarceration: summary execution.

The first amendment to the U.S. Constitution is not infallible. It cannot sanitize free expression any more than it can impart wisdom on thoughts which otherwise have none. Nor can the first amendment ensure that free expression will always comport with the views of a majority of the American public or the American Government.

But what the first amendment does promise is the right of each individual in this Nation to stand and make their case, regardless of their particular point of view, and to do so in the absence of a Government censor. In my estimation, this right is worthy of preserving, and I think that right is at risk today on the floor of the U.S. Senate.

When we start down the road to distinguishing between whose message is appropriate and whose is not, we risk something far greater than the right to burn a flag as political expression.

Much of what is clearly protected expression can easily be deemed objectionable. For example, as I said many times before and a lot of people have said before me, I deplore those who proudly display the swastika as they parade through our neighborhoods. I deplore those who hide behind white sheets and espouse their litany of hate and ignorance under a burning—a burning—cross. I deplore those comments which suggest that the most effective way to deal with law enforcement is to shoot them in the head. We hear that these days. Just as I object to speech which seeks to equate particularly vile criminal acts with a particular political ideology.

Each of these forms of expression, Mr. President, is reprehensible to me

and to traditional American values of decency and tolerance. But they are all protected forms of expression nonetheless, and they would continue to be protected after this amendment was passed and ratified. So do I believe that we ought to outlaw them through an amendment to the Constitution of the United States? Of course not.

So too it is with flag burning. As the Supreme Court has repeatedly stated, the act of flag burning cannot be divorced from the context in which it is occurring, and that is political expression. It was pretty clear from our Judiciary Committee hearings if somebody is out in the backyard grilling on July 4th and accidentally burns their flag, that would not be the necessary intent. There has to be some mental element—it cannot just be an accident. So this amendment is about what somebody is thinking. It is about what somebody is thinking when they burn the flag. It is about the content of their mind.

This Nation has a proud and storied history of political expression, much of which, obviously, can be characterized and is characterized sometimes as objectionable. Does any Member of this body believe that if the question had been put to the Crown as to whether or not the speech and expression emanating from the Colonies in the form of the Boston Tea Party or the Articles of Confederation, should be sustained, the answer, I think, we all know would have been a resounding no. Could not the same be said of messages of the civil rights and suffrage movements? This Nation was born of dissent and, contrary to the view that it weakens our democracy, this Nation stands today as the leader of the free world because we tolerate those varying forms of dissent, not because we persecute them.

In seeking to protect the U.S. flag, this amendment asks us to depart from the fundamental ideal that Government shall not suppress expression solely because it is disagreeable.

As Justice Brennan wrote for the majority in *Texas versus Johnson*:

If there is a bedrock principle underlying the first amendment, it is that the Government may not prohibit expression of an idea simply because society finds the idea itself offensive or disagreeable. We have not recognized an exception to this principle even where our flag has been involved.

In charting a divergent course, this amendment would create that exception, an exception at odds with free expression and with our history of liberty. If adopted, this amendment would, for the first time in our history, signal an unprecedented, misguided and troubling departure from our history as a free society.

Mr. President, there are also definitional and practical flaws with this amendment. Beyond the proposed amendment's departure from traditional notions of free expression, there are practical aspects that raise concerns, not just for those who may offer objectionable points of view, not just

for the purported or possible flag burners, but for all Americans. This amendment will subject the constitutional rights of all Americans to potentially an infinite number of differing interpretations, the parameters of which the proponents themselves cannot even define.

Without any guidance as to the definition of the key terms, the proposed amendment provides the Congress and the States the power to prohibit the physical desecration of the U.S. flag.

Testimony was received by the Constitution Subcommittee that the term "flag of the United States," as used in this amendment, is, as they said, "problematic" and so "riddled with ambiguity" as to "war with the due process norm that the law should warn before it strikes." Even supporters of this amendment, including former Attorney General of the United States William Barr, have acknowledged that the term "flag" could mean many different things. The simple fact of the matter is that no one can lend any guidance as to what the term "flag" will mean, other than to suggest that it will be up to various jurisdictions.

Senator HATCH, the chairman, has indicated today that the States will be removed from the amendment. If that is not the case, leaving them in would raise a second practical problem with this effort to amend the Bill of Rights, that being that the fundamental constitutional rights would be explicitly subject to the geographic boundaries of political subdivision.

The report accompanying this measure acknowledges that the extent to which this amendment will limit your freedom of expression could well depend on where you live. Therefore, if you live in Madison, WI, your rights could be vastly different than the rights of your cousin who lives in Seattle, WA, for example.

Furthermore, the rights of the States to limit the first amendment would not prohibit subsequent legislative bodies from expanding or further limiting rights under the first amendment. In other words, fundamental rights to free speech could vary from one election to the next.

So I will await with interest the amendment regarding the States, but as the amendment is written now there will be at least—at least—for the first time in our country's history, 51 interpretations of the first amendment.

I think this is counter to the very premise of the Bill of Rights, that being that the rights of individuals should remain beyond the purview of unwarranted governmental intrusion or intervention. That is what led to the adoption of the Bill of Rights in the first place.

In the words of Justice Jackson, speaking for the Supreme Court in 1943:

The very purpose of the Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials, to establish them as legal principles

to be applied by the courts. One's right to life, liberty and property, to free speech, a free press, freedom of worship and assembly, and other fundamental rights may not be submitted to vote; they depend on the outcome of no elections.

Yet, this amendment does exactly that and subjects those fundamental rights to the outcome of elections. What comfort is a first amendment which tells the American public that the appropriateness of their political expression will be left up to the Government?

At the core of this proposed amendment is the desire to punish that expression which is disrespectful. The ability to accomplish this troubling goal turns upon the interpretation that would be given to the term "desecration." Mr. President, despite attempts to argue that it means to "treat with contempt" or "disrespect" or to violate the "sanctity" of the flag, it is just obvious that this is subject to interpretation. The word "desecration" could not be more subject to interpretation. It is almost an inherently vague term.

If, as the report accompanying this measure suggests, every form of desecration is not the target of this amendment, then it logically follows that the Government—the Federal Government—will make distinctions between types of political expression, and the distinction will be this: that which is acceptable and that which is not. The flaws in this process should be obvious to every American.

So long as your political expression comports with that of the governing jurisdiction, you are going to have your freedom of expression, and it will be preserved. We can certainly debate this point, but in punishing only that expression which is "disrespectful," someone—in this case the Government—has to decide what is disrespectful and what is not.

For those of us who think that this is an easy distinction and there is not going to be a problem deciding what is desecration and what is disrespectful, I have an example. A Vietnam war veteran, a friend of mine from Wisconsin, Marvin J. Freedman, recently wrote in an article, aptly entitled, "The Fabric of America Cannot Be Burned," that the fatal flaw in this amendment will be its application. In Mr. Freedman's words:

The real potential for crisis is one of context. Consider the star spangled bandanna. Let's say a highly decorated veteran is placing little American flags on the graves at a veterans cemetery for Memorial Day, works up a sweat and wipes his brow with one of those red, white, and blue bandannas. If the flag amendment were on the books, would the veteran's bandanna be deemed a "flag of the United States"? Probably not. But if it were, would his actions be interpreted as "desecration"? I cannot imagine anyone thinking so.

Mr. Freedman continues:

However, if a bedraggled-looking antiwar protester wiped his brow with the same bandanna after working up a sweat and denouncing a popular President and the United

States Government's military policy, a different outcome could be a distinct possibility. Whether the bandanna would be deemed a "flag" and the sweat-wiping considered desecration would very likely be directly related to the relative popularity of the President and the war being protested. That is where the flag amendment and the first amendment would bump into each other.

Mr. President, we are all free to draw our own conclusions as to the validity of Mr. Freedman's hypothetical. I think it does a good job in pointing out, in very simple terms, that which the Supreme Court has often stated: You cannot divorce flag desecration from the political context in which it occurs. Ultimately, value judgments have to be made, and I think these are judgments that this amendment, unfortunately, reserves to the Government. For the first time in our history, it gives that judgment to the Government, not to individuals, not to the citizens of this country.

Mr. President, the rights at the heart of this debate are far too fundamental and far too important to be subjected to the uncertainty created by this amendment. We must not abandon 2 centuries of free expression in favor of an unwarranted and ill-defined standard which allows Government to choose whose political message is worthy of protection and whose is not. This is counter to the very freedoms the flag symbolizes.

The very idea that a handful of misguided people could cause this Nation—a Nation which has, from its inception, been a beacon of individual liberty, and a Nation which has defended, both at home and abroad, the right of individuals to be free—to retreat from the fundamental American principle that speech should not be regulated based upon its content is really cause for great concern.

I cannot believe we are going to let a few people who are not even around, as far as we know, not even doing this flag desecration, cow us into passing this amendment. That would give the victory to the flag burners. It would be score one for the flag burners if we are foolish enough to amend the Constitution and Bill of Rights, for the first time in our history, just to deal with such misguided people.

Again, Mr. President, there is no doubt that the American people care deeply about the flag. But I really believe they care just as deeply about the Constitution. I was recently contacted by a man from Sturgeon Bay, WI, a veteran of the Navy. What did he have to say? He wrote:

The most important part of the Constitution is the Bill of Rights, the first ten amendments. The most important one of those is the first amendment. Burning a flag, in my opinion, is expressing an opinion in a very strong way. While I may disagree with that opinion, I must support the right to express that opinion. To me, the first amendment is the most important thing. The flag is a symbol of that and all other rights, but only that, a symbol.

My constituent, I think, said it quite well. I appreciated very much the time

and effort taken to write to me, not because we share the same perspective, but because the letter makes the very important point that, in the final analysis, and as the proponents of the amendment readily concede, the flag is but a symbol of this Nation. As I said at the outset, Mr. President, we are not a nation built on symbols; we are a nation built on principles.

We will be paying false tribute to the flag, in my opinion, if in our zeal to protect it we diminish the very freedoms it represents. The true promise of this great and ever-evolving Nation is rooted in its Constitution. Ultimately, the fulfillment of this promise lies in the preservation of this great document, not just of that which symbolizes it. If we sacrifice our principles, ultimately, our symbols will represent something less than they should.

Therefore, Mr. President, I must respectfully oppose this effort to amend the Bill of Rights. While I do not oppose this effort with anything less than the utmost respect for the American flag, my belief that we must be vigilant in our preservation of the Bill of Rights and the individual freedoms found therein really dictates my opposition.

Mr. President, to conclude, the measure before us limits the Bill of Rights. It actually limits the Bill of Rights in an unprecedented, unwarranted, and ill-defined manner. As such, I intend to oppose this resolution.

Mr. President, I ask unanimous consent that a series of editorials from throughout the State of Wisconsin, all opposed to flag burning and also to this amendment, be printed in the RECORD.

There being no objection, the articles were ordered to be printed in the RECORD, as follows:

[From the Wisconsin State Journal, June 14, 1995]

OUR OPINION: FLAG BURNING AMENDMENT
UNPATRIOTIC

Today, Flag Day, is an occasion to celebrate liberty. And one of the best ways you can celebrate liberty is to write your congressman to urge a vote against the proposed constitutional amendment to ban flag burning.

It may seem unpatriotic to stand up for a right to burn the American flag. But the proposed amendment is not about whether it is patriotic to burn a flag. It is about whether it is right to limit the liberties for which our flag flies. A true patriot would answer no. Consider:

It's futile, even counter-productive, to try to require patriotism by law.

In fact, it would inspire greater respect for our nation to refrain from punishing flag burners. As conservative legal scholar Clint Bolick of the institute for Justice told a House subcommittee, we can lock up flag burners and by doing so make them martyrs, "or we can demonstrate by tolerating their expression, the true greatness of our republic."

Laws to protect the flag would be unworkable.

The proposal now before the House seeks a constitutional amendment to allow Congress and the states to pass laws banning physical desecration of the flag. It would require approval by two-thirds of the House and Senate and three-fourths of the states.

It's called the flag burning amendment because many of its supporters consider burning the flag to be the most egregious form of desecration.

But what counts as desecration of the flag? What if someone desecrated something made up to look like a flag with some flaw, like the wrong number of stars or stripes? Does that count? What if a flag is used in art that some people consider rude or unpatriotic? Does that count as desecration?

The arguments could rage on and on, enriching lawyers and diminishing the nation. A ban on flag burning would set a dangerous precedent.

The proposed amendment is a reaction to 1989 and 1990 Supreme Court rulings that invalidated federal and state laws banning flag desecration. The court rules that peaceful flag desecration is symbolic speech, protected by the First Amendment freedom of speech clause.

Supporters of a ban on flag burning argue that burning a flag is not symbolic speech at all but hateful action. But if today's cause is to ban flag burning because it is hateful action, tomorrow's cause may be to ban the display of the Confederate flag because many people consider it to be hateful action. Or to ban the use of racial or sexist comments because they amount to hateful actions. And on and on until we have given up our freedoms because we are intolerant.

The right to protest is central to democracy.

A democracy must protect the right to protest against authority, or it is hardly a democracy. It is plainly undemocratic to take away from dissenters the freedom to protest against authority by peacefully burning or otherwise desecrating a flag as the symbol of that authority.

If the protesters turn violent or if they steal a flag to burn, existing laws can be used to punish them.

Flag burners are not worth a constitutional amendment.

A good rule of thumb about amending the U.S. Constitution is: Think twice, then think twice again. Flag burning is not an issue that merits changing the two-centuries-old blueprint for our democracy.

This nation's founding fathers understood the value of dissent and, moreover, the value of the liberty to dissent. So should we.

OUR VIEW: THE AMERICAN FLAG—OLD GLORY DOESN'T NEED AMENDMENT

[From the La Crosse (WI) Tribune, June 7, 1995]

The U.S. Supreme Court ruled in a Texas case in 1989 that flag burning is protected by the First Amendment as a form of speech.

The court's decision didn't go over very well with friends of Old Glory then, and six years later that ruling still sticks in the craw of many patriots—so much so that constitutional amendments protecting the flag against desecration have picked up 276 co-sponsors in the U.S. House of Representatives and 54 in the Senate.

The House Judiciary Committee takes up the amendment today, with a floor vote expected on June 28. The Senate Judiciary Committee tackled a similar amendment on Tuesday.

For two centuries soldiers have given their lives to keep the American flag flying. It is a symbol of freedom and hope for millions. That is what infuses the stars and stripes with meaning and inspires the vast majority of Americans to treat it with respect.

But to take away the choice in the matter, to make respect for the flag compulsory, diminishes the very freedom represented by the flag.

Do we follow a constitutional amendment banning flag desecration with an amendment

requiring everyone to actually sing along when the national anthem is played at sports events? An amendment making attendance at Memorial Day parades compulsory?

Sen. Howell Heflin, D-Ala., argues that the flag unites us and therefore should be protected. But Heflin and like minded amendment supporters are confusing cause and effect. The flag is a symbol of our unity, not the source of it.

Banning flag burning is simply the flip side of the same coin that makes other shows of patriotism compulsory. What are the names of the countries that make shows of patriotism compulsory? Try China. Iraq. The old Soviet Union.

Coerced respect for the flag isn't respect at all, and an amendment protecting the American flag would actually denigrate that flag.

Allegiance that is voluntary is something beyond price. But allegiance extracted by statute—or, worse yet, by constitutional fiat—wouldn't be worth the paper the amendment has drafted on. It is the very fact that the flag is voluntarily honored that makes it a great and powerful symbol.

The possibility of the Balkanization of the American people into bickering special interest groups based on ethnicity or gender or age or class frightens all of us, and it's tempting to try to impose some sort of artificial unity. But can the flag unite us? No. We can be united under the flag, but we can't expect the flag to do the job of uniting us.

We oppose flag burning—or any other show of disrespect for the American flag. There are better ways to communicate dissent than trashing a symbol Americans treasure. But making respect for the flag compulsory would, in the long run, decrease real respect for the flag.

The 104th Congress should put the flag burning issue behind it and move on to the nuts-and-bolts goal it was elected to pursue: a smaller, less intrusive, fiscally responsible federal government. A constitutional amendment protecting the flag runs precisely counter to that goal.

[From the Oshkosh (WI) Northwestern, May 28, 1995]

BEWARE TRIVIALIZING OUR CONSTITUTION

It is difficult to come out against anything so sacrosanct as the American flag amendment—difficult but not impossible.

An amendment to protect the flag from desecration is before Congress and has all the lobbying in its favor.

The trouble is, it is an attempt to solve, through the Constitutional amendment process, a problem that really is not a problem.

Flag burning is not rampant. It occurs occasionally; it brings, usually, society's scorn upon the arsonist, and does no one any harm, except the sensitivities of some.

These sensitivities give rise to the effort to abridge the freedom of expression guaranteed by the First Amendment, which has been held by the courts to include expressions of exasperation with government by burning its banner.

At worst, this flag protection is an opening wedge in trimming away at the basic rights of all Americans to criticize its leaders. That right was so highly esteemed by the Founding Fathers that they made free speech virtually absolute.

At best, the flag protection amendment trivializes the Constitution.

That is no small consideration. The Constitution was trivialized once before. The prohibition amendment had no business being made a constitutional chapter. It was not of constitutional stature. It could have been done by statute alone. Its repeal showed that it was a transitory matter rather than being one of transcendent, eternal concern.

The flag protection amendment is trivial in that flag burning is not always and everywhere a problem. If the amendment succeeds, what else is out there to further trivialize the document?

Must the bald eagle be put under constitutional protection if it is no longer an endangered bird?

This is a "feel good" campaign. People feel they accomplish something good by protecting the flag from burning. (Isn't the approved method of disposing of tattered flags to burn them, by the way?)

But it offers about the same protection to flags that the 18th offered to teetotaling.

If someone has a political statement to make and feels strongly enough, he'll do the burning and accept the consequences. The consequences surely will not be draconian enough that flag burning would rank next best thing to a capital offense.

Congress has more pressing things to do than put time into this amendment.

[From the Milwaukee (WI) Journal Sentinel, June 12, 1995]

FLAG AMENDMENT ILL-ADVISED

Probably nine-tenths of the knuckleheads who get their jollies from burning the American flag or desecrating it in other ways have no idea what freedoms that flag symbolizes. Because these people are stupid as well as ungrateful, they never think about the precious gift they have been given.

The irony is that the American flag stands for, among other things, the freedom to express yourself in dumb and even insulting ways, like burning the flag. This is a freedom literally not conferred on hundreds of millions of people.

A few years ago, several states passed laws that made it illegal to desecrate the flag, but in 1989 the Supreme Court ruled that such statutes violated the Bill of Rights. Congress is now moving to amend the Constitution itself, so that flag desecration laws can be enacted.

That movement is as ill-considered as it is understandable. The Constitution should be amended only reluctantly and rarely, when a genuine threat to our nation emerges and when there is no other way to guard against it.

That is why the founding fathers made it so difficult to revise the Constitution, and why, as a Justice Department spokesman pointed out the other day, the Bill of Rights has not been amended since it was ratified in 1792.

The unpatriotic mischief of adolescent punks is infuriating. But it is not a serious enough act to warrant revision of the nation's charter. The Bill of Rights exists to protect people whose behavior, however repugnant, injures nothing but people's feelings.

The American flag protects even people who burn it; it prevails over both them and their abuse. That is one of the reasons the flag and the nation it stands for are so strong.

Mr. KYL addressed the Chair.

The PRESIDING OFFICER (Mr. GORTON). The Senator from Arizona.

Mr. KYL. Mr. President, I would like to respond briefly to the remarks of the Senator from Wisconsin and other arguments in opposition to this proposed amendment and to speak briefly in favor of the amendment. Senator ROTH from Delaware is here to speak to an important subject as well. So what I will do is truncate my remarks, and Senator HATCH will be here a little bit later to speak at greater length on the constitutional amendment.

Mr. President, I think we need to start with some fundamentals. I have never questioned the sincerity, or the judgment, or reasoning, or conclusions, even, of those who oppose a constitutional amendment on desecration of the flag. There are very sound constitutional arguments on both sides of this issue. It is one of those classical issues on which people on both sides can marshal evidence, historical commentary, and reasoning to support their views. In my view, it is not an easy question to resolve. But I do take some offense at the suggestion that those who propose the amendment—just to use one quotation used before—are involved in misguided rhetoric, and terminology of that sort. We can disagree over something of this importance, without suggesting that those who hold a different view are dangerous, misguided, or simply engaged in rhetoric.

I think, to some extent, that while nothing—except perhaps declaring war—is a more solemn right and responsibility of the Congress than amending the Constitution, it is also possible that some in Congress, from time to time, become consumed by their own importance. It is easy to do. Yet, I think it is equally important for us to recognize that we do not amend the Constitution, that while it is important for us to raise all of these questions and to debate this as solemnly as we can, that we do not amend the Constitution, Mr. President. The people amend the Constitution. All we can do is recommend an amendment. It is the people who make the ultimate decision.

To put it in the simplest terms, what we are suggesting is we ask the American people: Do you want to amend the Constitution to protect the flag? If the people say no, then it will not happen; if the people say yes, I suggest that we should rely upon their judgment in this matter, the very people who, after all, elect us to represent them in all other matters except amending the Constitution, which under our document is reserved to the people for final decision.

I think we have to put some trust in the American people here to do the right thing.

It is interesting to me that historically in this country for 200 years we got along very well living under a Constitution that protected free speech, and yet in 49 of the 50 States, prevented desecration of the flag. This is not a choice between protecting the flag and the U.S. Constitution, as was suggested a moment ago. That is a false choice. For 200 years we did both. We can do both.

Since the decision of the Supreme Court which struck down the protection of the flag, 49 States, including my State of Arizona, have passed memorializing resolutions calling on Congress to pass a flag desecration amendment so that the States could consider it.

In 1991, Arkansas, while President Clinton was still serving as Governor,

became the 11th of 49 States to “urge Congress of the United States to propose an amendment to the U.S. Congress, for ratification by the States, specifying that the Congress and the States shall have the power to prevent the physical desecration of the flag of the United States.”

I also note that the decision of the Supreme Court invalidated the law that then-Governor Clinton had signed months earlier which prohibited the intentional desecration of the flag, though the President now opposes this particular amendment.

The House passed a companion measure to that which is being considered here, on June 28, by a vote of 312 to 120. This has bipartisan support. The Senate Judiciary Committee, with equally bipartisan support, approved the amendment on July 20 by a vote of 12 to 6.

The purpose of this resolution is to restore the authority to adopt statutes protecting the U.S. flag from physical desecration. As I said, it is not a choice between the flag and the Constitution. We proved for 200 years that both are possible to protect.

The flag is worthy of protection. It is a unique national symbol, representative, among other things, of the men and women who have served this country. It is draped over the coffins of those who have paid the ultimate price to preserve our freedom and invokes very strong emotions in all Americans. It is important to protect the symbol for these reasons.

You cannot burn or deface other national symbols which have far less emotional symbolic value than the flag, but we allow it because the Supreme Court said a few years ago we would allow the desecration of the flag.

This resolution, frankly, is in direct response to the Texas versus Johnson decision in Texas of the Supreme Court. It was a 5-to-4 decision. So literally, one unelected judge decided that a law that had existed for over 200 years was now mysteriously unconstitutional.

The Court later ruled in United States versus Eichman that Congress could not by statute protect the flag making it very clear that our only response could be a proposed constitutional amendment.

Mr. President, I am not going to respond to each of the arguments made because Senator ROTH has some important things to say on another subject. Let me just respond to a couple.

One of the arguments and probably the key argument of the proponents is that we would be trampling on the right of free speech by adopting this amendment. I understand that argument. It is not a frivolous argument.

The argument of some opponents that flag burning is a nonproblem because it is hardly ever done and therefore why would we even want to bother with this, I think is a good argument against the notion that this would be a significant intrusion on the first amendment.

It seems to me opponents cannot argue on the one hand that this is insignificant, never happens, why are you worrying about it, and on the other hand say it would be the biggest travesty and impingement on free speech to be visited on the U.S. Constitution and the people of America.

You cannot have it both ways. The truth of the matter is it is true that this is not a big problem, but it does not follow from that that we should not offer the States the ability to restore the protection of the flag that it enjoyed for 200 years. Mr. President, 49 States seem to think this is important enough to have memorialized Congress, asking for the ability to once again restore that protection.

Now, the passing of a constitutional amendment would not prevent those who hate America or who have particular grievances from expressing this contempt through any other speech or even certain conduct as the Supreme Court has permitted. You do not have to burn the flag to express your views.

I suggest in civilized society people should be able to express themselves in ways that are not so personally and viscerally offensive, for example, to a family grieving over the flag-draped coffin of a loved one.

Mr. President, let me just conclude by quoting from some people who have spoken to this issue before in a way which I think is instructive. This is not misguided rhetoric by extremists or superpatriots. I refer, Mr. President, to the words of Chief Justice Earl Warren, an eminently respected jurist of this country: “I believe that the States and the Federal Government do have the power to protect the flag from acts of desecration and disgrace.”

A famous liberal jurist, a man greatly respected on the Supreme Court of the United States, Justice Hugo Black:

It passes my belief that anything in the Federal Constitution bars a State from making the deliberate burning of the American flag an offense. It is immaterial that the words are spoken in connection with the burning. It is the burning of the flag that the State has set its face against.

And Justice Abe Fortas, a respected liberal, a Democrat, not an extremist conservative patriot: “* * * the States and the Federal Government have the power to protect the flag from acts of desecration * * *.”

Let me quickly also demonstrate this point further by noting the names of many respected members of the Democratic Party who have sponsored or voted for this amendment. This is not a partisan issue, as I said: 93 House Democrats voted for the flag amendment, including RICHARD GEPHARDT the minority leader, Deputy Whips BILL RICHARDSON and CHET EDWARDS, and a host of other ranking and subcommittee members and key members of the Democratic Party. Democrats and Republicans alike, liberals and conservatives, can appreciate the importance of doing this.

And the final argument that was made that these words are so subject to

interpretation, "desecration" and "flag"—who knows what "flag" means? Mr. President, the American experience of 200-plus years teaches us what the word "flag" means, and "desecration" has meaning which can be interpreted by judges of good will.

The Bill of Rights and the 14th amendment to the U.S. Constitution are filled with general statements which the Framers of the Constitution and of the 14th amendment clearly understood need to be phrased relatively generally in order to deal with the variety of circumstances to which they would be applied. Words like "establishment of religion," "unreasonable searches and seizures," leaving "unreasonable" to the interpretation of the courts. "Due process of law"—I can hear the arguments now. What do you mean by "due process"? What do you mean by "just compensation," by "speedy trial"? You need to define it.

Mr. President, one of the geniuses of the Constitution is that it is not defined with all of the precision that we apply to legislation, to laws, and the even greater precision that is applied to regulations to execute those laws. That is the genius of the Constitution.

So, all of the generalized phrases, the "cruel and unusual punishment," "equal protection of the laws," and other generalized statements have served us very well for over 200 years. Certainly for words like "flag," which I suggest has a pretty specific meaning, and even "desecration," which is less so, it is possible to interpret those words in a meaningful and consistent way, particularly, as was noted earlier, if we amend the proposal here to provide for the Federal Government, the Congress, rather than the States, to adopt the legislation that would provide for the protection of the flag.

So, much more will be said about this amendment. Senator HATCH will be here in a moment to discuss the amendment in more detail, to explain the reasons why the Judiciary Committee was able to pass it out with such an overwhelming majority.

I am going to close by quoting from Chief Justice Rehnquist in his dissenting opinion on the decision in the Texas versus Johnson case, which precluded the Congress and the States from any longer protecting the flag. I think these words are appropriate as we think about the possibility that American soldiers will again be sent to foreign lands to fight, and the concern for those people who we put in harm's way, people who defend the ideals of our country. It is appropriate to reflect upon the value of the flag as a symbol to those people.

Let me quote again, as I said, from the dissenting opinion of Justice Rehnquist in Texas versus Johnson. He said:

At Iwo Jima, United States Marines fought hand to hand against thousands of Japanese. By the time the Marines reached the top of Mt. Suribachi they raised a piece of pipe upright and from one end fluttered a flag. That ascent had cost nearly 6,000 lives.

Mr. President, that sacrifice could never be put adequately into words, but the flag symbolizes perfectly what words cannot describe. And it is that symbol that we see when we go to the monument just a couple of miles south of here and see the flag being raised over Mt. Suribachi that recalls so many memories and evokes so many emotions among Americans, that we come to the conclusion that this one very special symbol of America and everything for which it stands should receive minimal protection by the people of the United States. That is why I urge my colleagues to follow the lead of the House of Representatives and submit this question to the people of the United States to determine whether or not they want to amend the Constitution to protect the flag from desecration.

Mr. President, I yield the floor to Senator ROTH. At the time that Senator HATCH comes, he will speak further to the issue of the flag.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. ROTH. Mr. President, first of all, let me express my appreciation to the distinguished Senator from Arizona for his courtesy and compliment him on his most eloquent statement.

Mr. President, I ask unanimous consent to speak as in morning business.

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

WELFARE REFORM

Mr. ROTH. Mr. President, there are alarming signals coming from the White House that President Clinton may veto welfare reform. Instead of ending welfare as we know it, the Administration apparently intends to continue politics as usual.

From the early days of his administration, President Clinton promised welfare reform to the American people. On February 2, 1993, he told the Nation's Governors that he would announce the formation of a welfare reform group within 10 days to work with the Governors to develop a welfare reform plan. At that meeting, the President outlined four principles which would guide his administration to reform welfare.

The first principle as outlined by the President is that "welfare should be a second chance, not a way of life." In further defining what these means, the President stated that people should work within 2 years and that, "there must be—a time-certain beyond which people don't draw a check for doing nothing when they can do something." On July 13, 1993, President Clinton went even further and told the National Association of County Officials that a 2-year limit could be put on welfare. He said, "you shouldn't be able to stay on welfare without working for more than a couple of years. After that, you should have to work and earn income just like everybody else." He went on to say, "And if you put the

building blocks in, you can have a 2-year limit on welfare as we know it. You would end the system as it now exists."

Mr. President, that is a strong statement and a bold challenge. H.R. 4, the "Personal Responsibility and Work Opportunity Act of 1995," meets this first principle. We require people to work after 2 years and place a 5-year limit on the receipt of Federal benefits. Let me repeat this. We provide not a 2-year limit on benefits, but a 5-year limit. And, I might add, the conference report on H.R. 4 allows the States to exempt up to 15 percent of their caseload from this limit.

The President's support for time limits, by the way, is one of the many ironies throughout the welfare reform debate. A good deal of attention has been focused on the analysis done by the Department of Health and Human Services on the impact the various welfare bills would have on families and children. The single greatest reason families would become ineligible for benefits is the 5 year limit. It is a bit inconsistent for the President to embrace a time limit but invite criticism of our proposal for a 5-year limit on benefits.

The second principle, as outlined by the President, is "we need to make work pay." The President indicated, that through the earned income credit program, "we ought to be able to lift people who work 40 hours a week, with kids in their home, out of poverty."

The Republican balanced budget plan is consistent with this second principle outlined by the President. Under our plan, the EIC continues to grow. We are targeting the EIC program to those most in need.

The administration has criticized the Balanced Budget Act for its provisions on EIC. But I believe it is both fair and accurate to point out that in expanding the EIC, the Clinton administration and the Democratic 103d Congress went far beyond the President's stated goal as well as beyond the original goals of this program. For example, they expanded the credit to individuals who did not have children at home.

We have found unacceptable levels of errors, abuse, and waste in this program. Spending for the EIC is quite simply out of control. We have proposed a responsible and reasonable reform of the EIC program separate from H.R. 4. Our welfare bill does not conflict with the President's principle on work.

The third principle of welfare reform outlined by President Clinton some 34 months ago is that tougher child support enforcement is needed. H.R. 4 fully meets this principle. In an October 18, 1995 letter, the Director of the Office of Management and Budget informed the majority leader that:

The Administration strongly supports bipartisan provisions in both the House and Senate bills to streamline paternity establishment, require new hire reporting, establish State registries, make child support laws uniform across State lines, and require