Senate to support this flag amendment.

The vast majority of our citizens support amending the Constitution to protect our Nation's flag. Even then, this amendment just says it gives the right to the Congress to do that. To these citizens and elected officials, protecting the flag as the symbol of our national unity and community and utilizing the constitutional amendment process to do so is no trivial matter.

Sitting in our gallery today are people who put their lives on the line to defend our flag and the principles for which it stands. These are the fortunate ones who were not required to make the ultimate sacrifice like my brother was in the Second World War, and like my brother-in-law was in Vietnam. Every one of these people—like tens of thousands of American families across our country—have traded the life of a loved one for a flag, folded at a funeral. Let's think about that trade—and about the people who made it for us—before deciding whether the flag is important enough to be addressed in the Senate.

Given the great significance of the flag, it is not surprising that support for the flag amendment is without political boundaries. It is not, as some suggest, a battle between conservatives on one side and liberals on the other. Indeed, the flag amendment transcends all political, racial, religious, and socioeconomic divisions. This is consistently reflected in national polling, in resolutions to Congress from 49 State legislatures requesting Congress to send the flag amendment to the States for ratification, and in the support of a bipartisan supermajority of the House of Representatives both last year and during the 104th Congress.

Is this overwhelming support for the flag amendment, as manifested through polling and through the actions of State and national legislatures, frivolity? Are we trivializing the Constitution, when a vast majority of Americans speaking for themselves or through elected representatives seek to utilize the article V amendment process, itself constructed by our Founding Fathers to right the wrongs of constitutional misinterpretation? Are we irresponsible if we simply restore the law as it existed for two centuries prior to two Supreme Court decisions, which were 5–4 decisions, hotly contested decisions? Does the principle of ''government by the people'' end where the self-professed ''experts'' convince themselves that the concerns of the overwhelming majority of ordinary citizens and their representatives are not important?

Is the Constitution, which establishes processes for its own amendment, wrong? I say it is the Constitution which establishes processes for its own amendment, and it is right. It says that the Constitution will be amended when two-thirds of the Congress and three-fourths of the States want to do so. It does not say that this procedure is reserved for issues that some law professors think are important, or issues that would crumble the foundations of our great Republic.

If ''government by the people'' means anything, it means that the people can decide the fundamental questions concerning the checks and balances in our Government. The people can choose whether it is Congress or the Supreme Court that decides whether flag desecration is against the law.

I urge colleagues to think hard about what they consider to be ''important'' before they conclude that the Senate should ignore the people and what they think is important and what should be considered important before they conclude that the Senate should ignore the people's desire to make decisions about the Government which governs them. The flag amendment is the very essence of ''government by the people'' because it reflects the people's decision to give Congress a power that the Supreme Court has taken away. This question is very important. I urge my colleagues not to think that this body is above listening to the vast majority of citizens of this country who want to give Congress the ability to determine whether and how to protect the American flag.

People should not say that there are more important issues than this one. This issue involves the very fabric of our society, what we are all about, and what our children, we hope, will be all about. This issue is very important. Anybody who thinks otherwise is trivializing this very important issue and the 80 percent of the American people who are strongly for it. The other 20 percent are not strongly against it; only a small percentage of those are. The rest of them just don't know or don't care.

You should have been with those seven Congressional Medal of Honor recipients, Miss America, and a whole raft of other veterans outside as we talked about why this amendment is important.

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

RECESS

The PRESIDING OFFICER. Under the previous order, the Senate stands in recess until the hour of 2:16 p.m.

Thereupon, at 12:39 p.m., the Senate recessed until 2:16 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer (Mr. INHOFE).

FLAG DESECRATION CONSTITUTIONAL AMENDMENT—Resumed

AMENDMENT NO. 2889

The PRESIDING OFFICER. We now have 4 minutes equally divided under the McConnell amendment No. 2889, S.J. Res. 14.

The Senator from Kentucky.

Mr. MCCONNELL. Mr. President, we all despise those who desecrate the flag. The issue before the Senate today is how we should deal with that problem.

In the late 1980s, the Congress passed a statute designed to prohibit this vile practice. It was struck down by the Supreme Court on First Amendment grounds. For the last several years we have had proposals in the Senate to amend the Bill of Rights in order to prohibit flag desecration despite the First Amendment. However, I think we should be very reluctant about amending the Bill of Rights.

Therefore, I have offered the amendment which we will be voting on shortly. It takes a new a statutory approach that I am confident would be upheld by the Supreme Court. Simply put, my alternative approach protects the flag by prohibiting three kinds of desecration. First, desecration of the flag that incites violence or breach the peace. Second, desecration of a flag belonging to the United States government. Third, desecration of a flag stolen from someone else and destroyed on government land. Anyone who engages in any of this kind of reprehensible behavior would be subject to fines of up to $250,000 and/or imprisoned for up to 2 years. I think this is a better approach than tinkering with the Bill of Rights for the first time in 200 years.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I generally support the distinguished Senator from Kentucky on all campaign finance reform issues because I think he is one of the most learned people, if not the most learned person in this area and on many other occasions. On this issue I cannot.

I predicted back in 1989 it was unconstitutional when they passed the statute, which passed overwhelmingly by a lot of people who, today, when this amendment is finally voted upon, will vote against it. In other words, they passed the statute that would do what this amendment would allow the Congress, if it so chooses to do, to do.

It seemed illogical to me they are unwilling to do what really has to be done because we have had two statutory attempts to resolve the problem of physical desecration of our beloved American flag. Both times I predicted it was unconstitutional under the Supreme Court's decisions, and both times they were held to be unconstitutional. So a statute is not going to do the job.

In spite of good intentions, the only way we can resolve this problem and do it effectively without taking anybody's rights away is to do what we are doing—not passing a constitutional amendment that prohibits physical desecration of the flag. We are passing a constitutional amendment that gives the Congress a coequal status with the judiciary, two coequal branches of Government to have the right to determine what to do with regard to the flag. That is what we intend to do.

I hope our colleagues will vote against this amendment because it

would undermine, of course, the constitutional amendment.

Mrs. BOXER. Mr. President, I rise to oppose amending the Constitution of the United States to outlaw flag burning, and I will support the McConnell statute to punish flag burners who want to incite violence. The flag stands for freedom, and so does our Bill of Rights. I believe that both must be protected.

Colin Powell recently wrote, ''I would not amend that great shield of Democracy to hammer a few miscreants. The flag will still be flying proudly long after they have slunk away. Finally, I shudder to think of the legal morass we will create in trying to implement the body of law that will emerge from such an amendment.''

As our good friend John Glenn, a great Senator, a great astronaut, and a great Marine, once declared, ''[I]t would be a hollow victory indeed if we preserved the symbol of our freedoms by chipping away at those fundamental freedoms themselves. Let the flag fully represent all the freedoms spelled out in the Bill of Rights, not a partial, watered-down version that alters its protections.''

We can solve this problem with an amendment that is identical to a statute written by the Senator from Kentucky, the Flag Protection Act of 1999.

This amendment would protect the flag of the United States from being destroyed or damaged in certain situations. Under this amendment, any person who destroys or damages the flag of the United States with the primary purpose and intent to incite or produce imminent violence or a breach of peace will receive a stiff fine, imprisonment, or both.

This amendment also increases the fine and imprisonment penalties for damaging a flag belonging to the United States or damaging a flag on Federal land.

I support this amendment because I believe that our flag is the very symbol of our liberty, unity, and equality as a nation—a proud reminder of the democracy we hold so dear. But while we should protect the American flag, we also must remain vigilant in our protection of the Constitution.

This amendment stands on solid constitutional ground. Although the statute criminalizes the destruction or damaging of the American flag with the intent to provoke imminent violence or breach of the peace, Supreme Court precedent supports this approach. In Chaplinsky v. New Hampshire (1942), the Court upheld the constitutionality of laws that prohibit expression calculated, and likely to cause, a breach of the peace.

So I support this amendment because it not only protects our American flag, but it also preserves the rights and freedoms established in the United States Constitution.

Today, we have an opportunity to protect our flag. But just as important, we can preserve the constitutional ideals symbolized by the flag.

Mr. KYL. Mr. President, I rise in support of S.J. Res. 14, the flag protection constitutional amendment, and to explain, quite briefly, my opposition to Senator MCCONNELL's statutory substitute.

The McConnell amendment (No. 2889) would amend the U.S. Code to establish jail terms and fines for (1) damaging a flag ''with the primary purpose and intent to incite or produce imminent violence or a breach of the peace,'' (2) damaging a flag that belongs to the United States, or (3) damaging a flag that belongs to a third party if the damage occurs within the ''exclusive or concurrent jurisdiction of the United States.'' See Section 3, proposed 18 U.S.C. 700.

I oppose the McConnell amendment for three reasons. First, the narrow strictures of the amendment would provide little protection for the flag. For example, the McConnell amendment would not apply to the very case (*Texas* v. *Johnson*, 491 U.S. 397 (1989)) in which the Supreme Court struck down flag protection statutes. In that case, Gregory Johnson burned a flag that had been stolen from a bank. He did not burn the flag on Federal property; be burned it in front of city hall as a political protest. Thus, the second and third restrictions of the McConnell amendment (a ban on destroying flags stolen from the United States, and a ban on destroying stolen flags on Federal property) would not have applied. As for the first restriction (a ban on burning a flag when such action could cause imminent violence or a breach of the peace), it is important to note that the Court in *Texas* v. *Johnson* found that unless there was evidence that a riot ensued or threatened to ensue one could not protect the flag under the breach of the peace doctrine.

Second, it seems unlikely that the amendment would survive scrutiny by the U.S. Supreme Court. In response to *Texas* v. *Johnson*, Congress quickly enacted a facially content-neutral, flag-protection statute that it hoped would pass constitutional muster. See Public Law 101–131. On June 11, 1990, in *United States* v. *Eichman* (496 U.S. 310 (1990)), the Supreme Court struck down that law. The Court found the following: ''Although the Flag Protection Act contains no explicit content-based limitation on the scope of prohibited conduct, it is nevertheless clear that the government's asserted interest is 'related to the suppression of free expression,' and concerned with the content of such expression. The Government's interest in protecting the 'physical integrity' of a privately owned flag rests upon a perceived need to preserve the flag's status as a symbol of our Nation and certain national ideas.'' *Id.* at 315–16. If precedent is an accurate guide, it is likely that the Court would reach a similar conclusion if it considered the McConnell amendment.

Finally, as one of the 58 Senate sponsors of S.J. Res. 14, I want to see that resolution receive an up-or-down vote. The sponsors of the amendment and the numerous veterans, patriotic, civic, and religious groups have worked hard to bring the constitutional amendment to a vote.

In closing, I would like to reaffirm my support for S.J. Res. 14. I cannot believe that our Founding Fathers intended ''freedom of expression'' to encompass the willful destruction of our national symbol—the symbol of America that so many of our sons and daughters have given their lives to defend.

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

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The question is on agreeing to amendment No. 2889.

The clerk will call the roll.

The assistant legislative clerk called the roll.

The result was announced—yeas 36, nays 64, as follows:

[Rollcall Vote No. 45 Leg.]

YEAS—36

Akaka	Durbin	Levin
Bennett	Edwards	Lieberman
Biden	Gorton	McConnell
Bingaman	Graham	Mikulski
Boxer	Harkin	Moynihan
Bryan	Inouye	Murray
Byrd	Jeffords	Nickles
Chafee, L.	Johnson	Sarbanes
Conrad	Kerry	Schumer
Daschle	Kohl	Smith (OR)
Dodd	Lautenberg	Torricelli
Dorgan	Leahy	Wyden

NAYS—64

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

The amendment (No. 2889) was rejected.

AMENDMENT NO. 2890

The PRESIDING OFFICER. The Senate will now consider amendment No. 2890 to S.J. Res. 14 offered by Senator HOLLINGS. There are 4 minutes equally divided.

Mr. HOLLINGS. Mr. President, my colleagues all acknowledge the need for more and more money each time we come up for election or get into political campaigns.

There has been very little discussion of the actual chase for that money which has corrupted the institution. I hate to say that. When I got here 33 years ago, we would come to work, and Senator Mansfield, the majority leader, would have a vote at 9 o'clock on Monday morning. Senator BYRD did the

same thing as majority leader. We would work throughout the week up until 5 o'clock on Friday. Now Mondays and Fridays are gone. We start on the half day on Tuesdays, and then Wednesdays and Thursdays we all want a window.

There is no window in the Chamber, but there are plenty of windows. You to have get with the dialog, as they call it up here, and that is for the money chase. We used to have the extended Easter break and the Fourth of July, but now we have not only January gone, there are 10 days in February, March, April, 10 days in May, June, the July break, August, the month off, and we are supposed to go home and get money.

If you go to the leader and ask, please call up a bill, it may take 3 or 4 days, he looks at you as if you are loony. Talk about debating, deliberating—this deliberative body has been so corrupted, it can't deliberate. Don't give me this so-called eviscerate the first amendment. Buckley v. Valeo did that. The intent there was that every mother's son, anybody of ordinary means, could offer for the Presidency. What has really happened is that we have taken away the speech of those who are without money. And for those who are millionaires, they can buy the office. In fact, it has stood the intent on its head whereby, instead of forbidding the purchase of the office, we have to buy it. You have to get more money.

I hope we will vote for this constitutional amendment which is neutral. It is not pro or con McCain-Feingold or public financing or whatever it is. It gives the people a chance to vote. All you have to do is look to the primaries we have just gotten through. The people are ready, willing, and able to vote and stop this corruption.

I thank the Chair.

The PRESIDING OFFICER. The Senator from Utah has 2 minutes.

The Senator from Kentucky.

Mr. MCCONNELL. Mr. President, we had this constitutional amendment before us in 1997. It only got 38 votes, and it takes 67 votes to change the constitution. Frankly, I am surprised it even got 38 votes. This amendment would essentially repeal a major part of the First Amendment. The Bill of Rights has protected our free speech for over 200 years. We do not need to begin eviscerating it now.

The Washington Post opposes this amendment. Common Cause opposes this amendment. The distinguished Senator from Wisconsin, Mr. FEINGOLD, and others oppose this amendment. This amendment is simply a very bad idea.

I yield the remainder of my time to the Senator from Utah, Mr. BENNETT.

Mr. BENNETT. Mr. President, I congratulate the Senator from South Carolina on his honesty in that he recognizes the proposals with respect to campaign finance reform that have been on this floor are, in fact, unconstitutional. But he seeks to solve the problem with a constitutional amendment, which I think is best summarized in the comment by the Senator from Washington, Mr. GORTON, who said this does not amend the first amendment with respect to political speech, it repeals it.

I don't want to vote in favor of something that could be considered by as careful a scholar as the Senator from Washington as repealing free speech for politicians. We have the same rights, I think, that everyone else should have. For that reason, I ask my colleagues to vote against this amendment.

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

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

Mr. LIEBERMAN. Mr. President, I rise today to explain my vote on Senator HOLLINGS' proposal to amend the Constitution to allow Congress and the States to impose reasonable limits on contributions and expenditures made to support or oppose candidates for elected office. In this case, I believe that the high threshold I have established for supporting a constitutional amendment—that it address a significant threat to the Republic or some egregious wrong—has been met.

This amendment addresses an unfortunate fact whose truth has become more and more apparent in the past several years: money and the never ending chase for it are threatening the integrity of our political system and jeopardizing the essence of our democracy. Although money has always played a role in American politics, its impact became overwhelming during the last few election cycles. Political fundraising and spending during the 1996 campaign was 73 percent greater than during the 1992 campaign, and there is no reason to believe we won't break that record in 2000. We are all intimately familiar with the time and resources we need to spend to raise that money, and with the numerous questionable events and actions that were spurred by the money chase during the last Presidential election. Most of those events and actions, I have sadly concluded, were legal under our current campaign finance laws. But that does not mean they were not wrong. I think they were. By ensuring that we will be able to put a limit on the amount of money spent in political campaigns, this constitutional amendment would help restore a sense of integrity—and of sanity—to our campaign finance system and to our democracy.

Much of the debate over this proposed amendment centers on what some call its threat to the principle of free speech. That, of course, is a principle we all hold dear. But I say, Mr. President, that free speech is not what is at issue here. Free speech is about the inalienable right all of us have to express our views without government interference. It is about the vision the Framers of our Constitution enshrined in that most important of documents—a vision that ensures that we in Congress will never compromise our American birthright to say things and offer opinions even when those opinions are unpopular or discomforting. But that simply is not at issue here, Mr. President—absolutely nothing in this amendment will do anything to diminish or threaten any American's right to express his or her views about candidates running for office or about any problem or issue in American life.

What would be threatened by this proposed Constitutional amendment, Mr. President, is something entirely different: the ever increasing and disproportionate power those with money have over our political system. As everyone in this chamber knows, the spiraling costs of running for office require all of us to spend more and more time raising money and more and more time with those who give it. We are all far too familiar with events or meetings with elected officials attended only by those who could afford to give $5,000 or $10,000 or even $100,000—sums of money that are beyond the capacity of the overwhelming majority of Americans to give. That, Mr. President, is threatening a principle all of us hold just as dearly as the principle of free speech: the principle of democracy. That sacred principle guides our Republic—it promises that each person has one vote, and that each and every one of us—rich or poor—has an equal right and an equal ability to influence the workings of our government. As it stands now, Mr. President, it is that sacred principle that is under attack and that sacred principle that promises to remain under attack unless we do something to save it. And that something, I submit, is campaign finance reform.

I, for one, believe that most of the campaign finance reform we need can and must be done even without this Constitutional amendment. The Supreme Court, after all, has made quite clear in its decisions that even under its view of money as being equivalent to speech, the Constitution still allows Congress to impose restrictions on the amount that can be contributed to campaigns and parties. This, in my view, means that we have no excuse not to act right now to stop the massive soft money contributions that pose the biggest threat to our system. It is important that we not use the First Amendment as a shield against change because it is clearly constitutional to limit and regulate contributions to political campaigns—including soft money.

What it appears we cannot do under the Supreme Court's rulings is limit the amount of money we and others spend in the course of campaigns unless we adopt convoluted legislation geared toward complying with the Supreme Court's view that money is

speech. I think that the need for reform is so great that it is worth accepting convoluted legislation, but I also think that we should act now to vote for this amendment and so ensure that in the future we will be able to properly regulate campaign spending, thereby controlling the amount of money spent in American political campaigns.

Mr. President, nothing less than the future of our democracy is at stake here. Unless we act to reform our campaign finance system, people with money will continue to have disproportionate influence in our system, people who are not even citizens of the United States will try to use money to influence our government's decisions, the American people will continue to lose faith in our government's institutions, and the genius of our Republic—that it is our citizenship, not our pocketbook, that gives each of us equal power to play a role in our country's governance—that genius will be lost.

Mr. President, it is for that reason that I have concluded that this is one of those rare constitutional amendments that is worth supporting. Our current campaign finance system poses an egregious threat to our Democracy. Big money donations, endless spending and the proliferation of anonymously-funded and often inaccurate attack ads all have had an extraordinarily corrosive and distorting affect on our political system and on the citizenry's view of its role in our Democracy's decisions. I frankly can think of few threats to the Republic greater than one that throws into doubt the integrity and well-functioning of our democratic decision-making process.

Mr. WELLSTONE. Mr. President, I rise today to explain my vote against the Hollings amendment to S.J.Res. 14 which would have amended the Constitution to authorize regulation of contributions to, and spending by, Federal and State candidates.

I am a strong proponent of campaign finance reform. I would even go so far as to say that I view the fight to bar private, interested money from dominating our elections as the core battle that needs to be won if Congress is going to turn its attention to enacting an agenda that put working families before wealthy, entrenched special interests. The campaign finance reform debate may be to the nineties what civil rights was to the fifties and sixties. In fact, let me go a step further and say the campaign finance reform may be the new civil rights watershed.

I do not believe that money equals speech, as some of my colleagues have argued during the debate on the Hollings amendment and in previous debates. The vote is undermined by the dollar. The vote may be equally distributed, but dollars are not. As long as elections are privately financed, those who can afford to give more will always have a leg up—in supporting candidates, in running for office themselves, and in gaining access and influence with those who get elected. We all know this is the way it works. And the American people know it, too.

I laud my colleague's intentions in offering this amendment. No one has pushed harder on campaign finance reform than the junior Senator from South Carolina. But while I have supported the Hollings amendment in the past, I voted against it today. There is now significant momentum at both the federal and state levels to enact campaign finance reform—including public financing of elections, which I believe is critical—in a manner that will pass constitutional muster. These efforts, with hard work and determination, have the best chance of resulting in meaningful, lasting improvements in our election system, and therefore in our democracy.

Amending the Constitution is a long and arduous process. It is rarely successful. I simply do not believe that it is now the best mechanism for achieving reform.

The PRESIDING OFFICER. The question is on the motion to table amendment No. 2890. The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

The result was announced—yeas 67, nays 33, as follows:

[Rollcall Vote No. 46 Leg.]

YEAS—67

Abraham	Fitzgerald	McConnell
Akaka	Frist	Moynihan
Allard	Gorton	Murkowski
Ashcroft	Gramm	Murray
Bennett	Grams	Nickles
Bond	Grassley	Roberts
Brownback	Gregg	Santorum
Bunning	Hagel	Schumer
Burns	Hatch	Sessions
Campbell	Helms	Shelby
Chafee, L.	Hutchinson	Smith (NH)
Cochran	Hutchison	Smith (OR)
Collins	Inhofe	Snowe
Conrad	Jeffords	Stevens
Coverdell	Kennedy	Thomas
Craig	Kerrey	Thompson
Crapo	Kohl	Thurmond
DeWine	Kyl	Torricelli
Domenici	Lautenberg	Voinovich
Dorgan	Leahy	Warner
Edwards	Lott	Wellstone
Enzi	Lugar	
Feingold	Mack	

NAYS—33

Baucus	Durbin	Lincoln
Bayh	Feinstein	McCain
Biden	Graham	Mikulski
Bingaman	Harkin	Reed
Boxer	Hollings	Reid
Breaux	Inouye	Robb
Bryan	Johnson	Rockefeller
Byrd	Kerry	Roth
Cleland	Landrieu	Sarbanes
Daschle	Levin	Specter
Dodd	Lieberman	Wyden

The motion was agreed to.

The PRESIDING OFFICER (Mr. CRAPO). The Senator from Kentucky.

Mr. MCCONNELL. Mr. President, I want to take a moment to thank members of my staff for their hard work on the last two amendments: Tam Somerville, staff director of the Rules Committee; Hunter Bates, general counsel, who works with him; Andrew Siff, Denise Grant, and Nathan Oman who have been deeply involved in the last two amendments. I appreciate the great assistance from Senator BENNETT of Utah.

This is a red letter day for the first amendment. The Hollings amendment had only 33 votes in favor of the amendment. As we all know, it takes 67 votes to approve an amendment to the Constitution. There were 67 votes against this amendment to the Constitution. It is clear that the first amendment is secure for another day, and I thank my colleagues who made that possible.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SHELBY. Mr. President, I ask unanimous consent that I may proceed in morning business for 10 minutes.

Mr. LEAHY. Reserving the right to object, Mr. President.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. And I shall not. What is the parliamentary situation right now?

The PRESIDING OFFICER. The Senate is currently considering S.J. Res. 14.

Mr. SHELBY. I ask it be set aside and that I may proceed in morning business for 10 minutes.

Mr. LEAHY. Again reserving the right to object, and I will not object, will there be any objection then to, at the conclusion of the Senator's morning business speech, we go to the distinguished Senator from Wisconsin who has been waiting to speak on the amendment which is the pending business?

Mr. SHELBY. Absolutely.

Mr. WELLSTONE. Mr. President, I ask my colleague from Vermont, I am waiting to go to another committee, may I follow the Senator from Wisconsin?

Mr. HATCH. Reserving the right to object, is the Senator from Wisconsin just going to speak or is he intending to offer an amendment?

Mr. FEINGOLD. My intent is simply to speak.

Mr. HATCH. I have no objection.

The PRESIDING OFFICER. Without objection, it is so ordered. The order will be the Senator from Alabama for 10 minutes, the Senator from Wisconsin, followed by the Senator from Minnesota.

Mr. SHELBY. Mr. President, I thank the Senator from Vermont for his understanding in helping us work this out, and also the Senator from Utah, Mr. HATCH, for his indulgence.

(The remarks of Mr. SHELBY pertaining to the introduction of S. 2304 are located in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

The PRESIDING OFFICER. The Senator from Wisconsin is recognized.

Mr. FEINGOLD. Mr. President, we in the Senate speak today to honor the American flag, the symbol of our Nation. Both those who favor and those who oppose the amendment to the Constitution now pending do so. We all, of course, seek to honor the flag.

I dare say that there is not a Senator among us who does not feel goose bumps when first looking up at the dome of the Capitol and seeing our flag. I would wager that no U.S. Senator fails to get a lump in the throat when standing to the strains of the national anthem. And I am confident that there is none among us whose eyes do not sometimes mist over when watching those seven bars of red and six of white ripple in the breeze and tug at the heart.

But, my colleagues, honoring the flag demands that we here fully and fairly debate this amendment. Amending the Constitution is an undertaking of the greatest import. For the Congress to propose an amendment to the Constitution of the United States on the basis of anything less than a full—even an exhaustive—debate would show less than the full respect due to the flag and the Constitution that it represents.

Honor demands that we view any effort to amend the Constitution with trepidation. Since the adoption of the Bill of Rights in 1791, America has amended its Constitution on only 17 occasions. Our Constitution has served this Nation well and withstood the test of time, in large part because Congress has resisted the urge to respond to every adversity, real or imagined, with a constitutional amendment. We should exercise restraint in amending this great charter.

We honor the American flag because we love ''the Republic for which it stands.'' We honor the banner because we cherish ''one Nation . . . with liberty and justice for all.'' We honor the flag because it represents a Constitution, that solemn commitment; and a Bill of Rights, that charter of liberty; unrivaled in the history of humankind.

Honor demands that we seek to protect not just the flag, but the principles in that Constitution and that Bill of Rights—principles of freedom, opportunity, and liberty. I believe these principles, as much as our Nation's cherished symbols, frame our history and define our Nation. As dearly as we hold the flag, we must hold these principles at least as dearly.

Yes, there have been some handfuls of sociopaths who burn our flag to thrust a firebrand in our eye. The question before us today is: Will the misguided actions of these few misfits cause us to curtail our fundamental principles of freedom?

We would only grant them victory if we allow their despicable acts to goad us into desecrating the greatest protection of individual rights in human history—our Bill of Rights. As Senator BOB KERREY has said:

> Patriotism calls upon us to be brave enough to endure and withstand such an act—to tolerate the intolerable.

Let us show our strength, by not rising to the bait. Let us show our bravery, by not giving the flag burners what they want. Let us show our faith in the strength of this country and its institutions, by not lashing out in anger at those who would defile our flag.

The costs of this amendment would exact a far too great a price to pay. This amendment, if adopted, would criminalize the very acts that the Supreme Court has held to be protected by the first amendment. This amendment would clearly and intentionally erode the Bill of Rights.

This amendment would have an unprecedented, direct, and adverse effect on the freedoms embodies in the Bill of Rights. For the first time in our history, this amendment would employ the Constitution and the Bill of Rights—both premised on the idea of limiting the Government—to limit individual rights, and, in particular, the freedom of speech.

Our former colleague, Senator John Glenn, said it very well last year. He said:

> Our revered symbol stands for freedom, but is not freedom itself. We must not let those who revile our way of life trick us into diminishing our great gift or even take a chance of diminishing our freedoms.

I am very proud to attempt to carry on John Glenn's fight against this ill-advised amendment. The Bill of Rights is too fundamental to our history, too important to our people, and too necessary to our future, for us to do anything else.

Honoring the flag demands that we also question the vagueness of the language of the amendment. Our Constitution Subcommittee heard testimony that the term ''flag of the United States,'' as used in this amendment, is ''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 the amendment, including former Attorney General William Barr, have acknowledged that the term ''flag'' could mean any of a number of different things. No one can assure us as to what the term ''flag'' will mean other than to suggest it will be up to the governments of particular jurisdictions.

How would the amendment affect flags on T-shirts? How would the amendment affect flags on scarfs? In the memorable example given by the late and revered Senator John Chafee last year, How would the amendment affect a handmade flag rug?

Now the amendment, of course, does not make anything illegal by itself. It simply gives the Congress the power to prohibit the physical desecration of the flag. But the question is still a powerful one. We must still ask: What kind of statute would this amendment insulate from constitutional attack?

Would this amendment permit Congress to enact a statute that would criminalize wearing a T-shirt with a flag on it? Or could Congress criminalize tearing such a T-shirt?

Would the amendment permit Congress to criminalize wearing a scarf with a flag on it? Or could Congress criminalize spitting on such a scarf?

Would this amendment permit Congress to criminalize making a rug with a flag on it? Or could Congress criminalize stepping on such a rug?

More generally, would the amendment allow Congress to enact statutes that permit the prosecution of people based on the views they express when they defile the flag? Consider two cases: In case one, a person smears blood on a flag while screaming protest of U.S. involvement in a foreign war. In case two, another person drips blood on a flag after suffering an injury at a summertime football game. After adoption of this amendment, would it be constitutional to prosecute the one who spoke and not prosecute the other, who did the same thing without speaking?

Here's another example. My colleagues may remember the very exciting victory of the U.S. Women's Soccer team in the Women's World Cup last year. A thrilling moment for sure, and tens of thousands of very patriotic Americans cheered the heroic deeds of the women who represented our country.

That evening, another soccer game was played here in Washington, DC, involving this city's major league soccer team, D.C. United. Many of the same fans who cheered the U.S. women that afternoon turned out to watch the D.C. United soccer team. Some of those fans, seeking to play for the TV cameras and their fellow fans brought a prop, which they unfurled during the game. Here is a picture of it. As you can see, it is an actual flag. It is not a representation or a picture. It is an actual flag of the United States with the words ''Thanks Girls!'' written on it with some type of chalk or marker.

Obviously the people who defaced this flag intended no disrespect to the United States or the flag. They were excited soccer fans, and probably very patriotic Americans. I wonder if the sponsors of this amendment can be sure of the answer to this question: Would the statute that Congress passes to prohibit flag desecration after this constitutional amendment is ratified allow for these people to be prosecuted? I think it is a fair question.

I think most of us would hope not. But how would the police or the prosecutors make that decision? If they look at the message and the beliefs of the people who have written on the flag, isn't that exactly the kind of content discrimination that the first amendment is designed to prohibit? Do we really want the government examining the motives of those who deface the flag to see if they are patriotic or well meaning enough to avoid discrimination?

I don't think so. I think that is what the first amendment is all about: to protect against Government inquiry into a citizen's political beliefs. On the other hand, if we have a completely content-neutral statute and enforcement that does not look at the motives of those who deface the flag, we might

end up prosecuting the excited and patriotic soccer fans shown in this poster. Obviously, I don't think we want that either.

So this example really shows the difficulties with outlawing desecration of the flag. People in this country use the flag to express joy and patriotism as well as opposition to the Government. And the traditions of our country, our respect for free political expression, demands that we not criminalize conduct that we would otherwise accept if it were motivated by patriotism instead of political dissent.

Some people call these kinds of examples ''wacky hypotheticals.'' But we do not have reliable answers to these questions. And when you are talking about amending the Constitution, you have a duty to consider and address hypotheticals. After all, it is not easy to correct a mistaken Constitution. We cannot just, by unanimous consent, pass a technical corrections bill to fix an unintended consequence of a constitutional amendment.

Let me share another case that I witnessed not far from this Senate Chamber. I was eating dinner at the restaurant called ''America'' over in Union Station. We noticed that the menu is colored like a giant American flag. We talked about having to be careful not to spill anything on it and how damaging our menu might be a crime under this amendment. Then we forgot about it and returned to our meal. But just a half hour later, there was a big commotion in the corner of the restaurant, and we turned to see a woman frantically trying to put out a fire that had started when her oversized American flag menu had gotten too close to the small candles on the table.

Now I hope that that woman was not engaged in an angry argument over the Government. But I suppose that is something that the police might have to investigate if this amendment and a statute that it authorized became law. Don't the police have more important things to investigate than whether the burning of a menu might violate the Constitution?

Some have been misled into believing that one can pull a flag off a building, burn it, and be protected by the Constitution. That is simply not true. There are many laws in effect today that prohibit theft, the destruction of federal property, or disturbing the peace. These can and should be used to address the majority of flag burning incidents.

Honoring the flag demands that we listen, as many on both sides of this debate have, to the true American war heroes who have testified to us on this issue. It was particularly inspiring to welcome John Glenn back to the Senate last year. The perspectives of the witnesses before the Judiciary Committee last year were of particular interest to me because they represented the diversity of views on this amendment by the American people, by veterans, and by war heroes. Those who fought and sacrificed for our country and its flag deserve our utmost respect when it comes to this flag amendment. They know well the costs of freedom and democracy, as well as the joys. Some would portray the views of veterans as monolithic, but, as our hearings showed quite plainly: They are not.

Those many veterans who oppose this amendment do so with conviction and power and strength. They know that no one can question their patriotism or love of country. Listen to the words of Professor Gary May of the University of Southern Indiana, who lost both his legs in the Vietnam war, and who testified before the Judiciary Committee last year. Professor May said:

> Freedom is what makes the United States of America strong and great, and freedom, including the right to dissent, is what has kept our democracy going for more than 200 years. And it is freedom that will continue to keep it strong for my children and the children of all the people like my father, late father in law, grandfather, brother, me, and others like us who served honorably and proudly for freedom.
>
> The pride and honor we feel is not in the flag per se. It's in the principles that it stands for and the people who have defended them. My pride and admiration is in our country, its people and its fundamental principles. I am grateful for the many heroes of our country—and especially those in my family. All the sacrifices of those who went before me would be for naught, if an amendment were added to the Constitution that cut back on our first amendment rights for the first time in the history of our great Nation.

The late Senator John Chafee, who as all will recall also served bravely at Guadalcanal and in the Korean war, last year said simply: ''[W]e cannot mandate respect and pride in the flag. In fact, . . . taking steps to require citizens to respect the flag, sullies its significance and symbolism.'' Senator Chafee's words still bring a brisk, cool wind of caution. What kind of symbol of freedom and liberty will our flag be if it has to be protected from protesters by a constitutional amendment?

My friend and constituent Keith Kruel, a World War II veteran and past National Commander of the American Legion, addressed this point quite well in testimony he submitted for the Judiciary Committee last year. He said:

> Freely displayed, our flag can be protected only by us, the people. Each citizen can gaze upon it, and it can mean what our heartfelt patriotic beliefs tell us individually. Government ''protection'' of a Nation's banner only invites scorn upon it. A patriot cannot be created by legislation. Patriotism must be nurtured in the family and educational process. It must come from the heartfelt emotion of true beliefs, credos and tenets.

Senator BOB KERREY, who is in the Chamber at this time, the only Congressional Medal of Honor winner to serve in the Senate in this century, spoke directly to the point when he said: ''Real patriotism cannot be coerced. It must be a voluntary, unselfish, brave act to sacrifice for others.'' I yield the floor.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. WELLSTONE. Mr. President, I thank Senator FEINGOLD for his statement. I will be relatively brief.

I ask unanimous consent that if other Senators aren't here, Senator KENNEDY be allowed to speak after myself.

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

Mr. WELLSTONE. Mr. President, I come to the floor not the first time to announce my opposition to this proposed constitutional amendment, giving power to the Congress and the States to prohibit physical desecration of the flag of the United States.

I wish to speak about this a little bit more personally because I think all of us come to our point based upon real-life experience. My father was a Jewish immigrant born in the Ukraine and who fled persecution from Russia. My mother's family came from the Ukraine as well. As a first generation American on my father's side, I revere the flag and I am fiercely patriotic. I love to see the flag flying over the Capitol. I love to recite the Pledge of Allegiance to the flag. I think it is a beautiful, powerful symbol of American democracy.

What I learned from my parents more than anything else, and from my own family experience as the son of a Jewish immigrant who fled czarist Russia, is that my father came to the United States because of the freedom—the freedom we have as American citizens to express our views openly, without fear of punishment.

I am deeply impressed with the sincerity of those who, including Senator HATCH, favor this constitutional amendment. I am impressed with the sacrifice and patriotism of those veterans who support this constitutional amendment. I think in the veterans community there certainly are differences of opinion. I do not question their sincerity or commitment at all.

It is with a great deal of respect for those with whom I disagree, including some members of the American Legion, that I oppose this amendment. I oppose it because, to me, it is ultimately the freedom that matters the most. To me, the soul of the flag, as opposed to the physical part of the flag, is the freedom that it stands for, the freedom that my parents talked about with me, the freedom that all of us have to speak up. I do not want to amend the Bill of Rights for the first time in its 209 years of existence. I don't want to amend the first amendment, the founding principle of freedom of speech from which all other freedoms follow.

I want to very briefly read from some of what our Justices have had to say because I think they say it with more eloquence than I could. In Texas v. Johnson, an opinion written by Justice Brennan, joined by Justices Marshall, Blackmun, Scalia, and Kennedy—and I note this is a diverse group of judges we are talking about—they said:

If there is a bedrock principle underlying the First Amendment, it is that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable. . . . The way to preserve the flag's special role is not to punish those who feel differently about these matters. It is to persuade them that they are wrong. . . . We do not consecrate the flag by punishing its desecration, for in doing so we dilute the freedom that this cherished emblem represents.

If freedom of speech means anything, I think it means protecting all speech, even that speech which outrages us. I have no use for those who desecrate the flag. Speech that enjoys widespread support doesn't need any protection. As the great Justice Oliver Wendell Holmes pointed out, freedom of speech is not needed for popular speech, but instead it is for the thought that we hate, the expression threatened with censorship or punishment.

I quote from General Powell's letter. He has been quoted several times, but it is too eloquent to pass up:

We are rightfully outraged when anyone attacks or desecrates our flag. Few Americans do such things and when they do they are subject to the rightful condemnation of their fellow citizens. They may be destroying a piece of cloth, but they do no damage to our system of freedom which tolerates such desecration. . . . I would not amend that great shield of democracy to hammer a few miscreants. The flag will still be flying proudly long after they have slunk away.

Our late and dear friend and colleague, Senator Chafee, who was a highly decorated soldier in two wars wrote:

We cannot mandate respect and pride in the flag. In fact, in my view, taking steps to require citizens to respect the flag sullies its significance and its symbolism.

Finally, my colleague from Wisconsin mentioned Senator Glenn, another real American hero. Senator Glenn said:

Without a doubt, the most important of those values, rights and principles is individual liberty: the liberty to worship, to think, to express ourselves freely, openly and completely, no matter how out of step these views may be with the opinions of the majority.

That is the first part of my presentation—just to say that I love this flag. I think when you have the family background I have, you are fiercely patriotic. I love this country. My mother and father are no longer alive, but I still think they know I am a Senator. They weren't alive when I was elected. It would mean everything in the world to them. But, to me, the real soul of the flag, going beyond the physical presence of the flag, is the freedom that the flag stands for. I don't think we should give up on that freedom. I don't think we should amend the first amendment to the Constitution. I think it would be a profound mistake. I say that out of respect for those who disagree with me in the Senate. I say it out of respect for those in the veterans community who disagree with me.

Mr. KENNEDY. Mr. President, once again we are debating whether to amend the Constitution to prohibit flag burning. Flag burning is a vile and contemptuous act, but it is also a form of expression protected by the first amendment. Surely we are not so insecure in our commitment to freedom of speech and the first amendment that we are willing to start carving loopholes now in that majestic language.

I strongly oppose the constitutional amendment we are debating today. The first amendment is one of the great pillars of our freedom and democracy. It has never been amended in over 200 years of our history, and now is no time to start. There is not even a plausible factual basis for carving a hole in the heart of the first amendment. There is no significant problem.

Flag burning is exceedingly rare. Published reports indicate that fewer than 10 flag burning incidents have occurred a year since the Supreme Court's decision in Texas v. Johnson in 1989 on the first amendment. Over the last 5 years, there was only one such incident in Massachusetts. This is hardly the kind of serious and widespread problem in American life that warrants an assault on the first amendment. Surely there is no clear and present danger that warrants such a change. This proposal fails the reality test.

The Constitution is not a billboard on which to plaster amendments as if they were bumper sticker slogans. In this Congress alone, over a dozen constitutional amendments have been introduced. With every new proposed amendment, we undermine and trivialize the Constitution and threaten to weaken its enduring strength.

I remember listening to a speech given by Justice Douglas, one of the great Supreme Court Justices of this century. Students asked him: What was the most important export of the United States? He said, without hesitation: The first amendment because it is the defining amendment for the preservation of free speech as the basic and fundamental right in shaping our Nation.

Clearly, it would be a mistake of historic proportions for this Congress to make the first alteration to the first amendment in more than two centuries. The first amendment breathes light into the very concept of our democracy. It protects the freedoms of all Americans, including the fundamental freedom of citizens to criticize their government and the country itself, including the flag.

As the Supreme Court explained in Texas v. Johnson, it is a bedrock principle underlying the first amendment that the Government may not prohibit the expression of an idea simply because the society finds the idea itself offensive and disagreeable.

No one in the Senate condones the act of flag burning. We all condemn it. The flag is a symbol that embodies all that is great and good about America. It symbolizes our patriotism, our achievements, and, above all, our respect for our freedoms and our democracy. We do not honor the flag by dishonoring the first amendment.

Gen. Colin Powell agrees with our opposition to this proposed amendment. He has told us in reaching this decision he was inspired by the words of James Warner, a former marine aviator, who was a prisoner in North Vietnam between 1967 and 1973. As James Warner wrote in 1989: It hurts to see the flag being burned, but I part company with those who want to punish the flag burners. In one interrogation, I was shown a photograph of American protesters burning a flag. There, the officer said: People in your 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 astonished to see pain, compounded by fear, in his eyes. I have never forgotten that look, nor have I forgotten the satisfaction I felt in using his tool, the picture of the burning flag, against him.

That says it all. We respect the flag the most, we protect it the best, and the flag itself flies the highest when we honor the freedom for which it stands.

I urge my colleagues to vote against this misguided constitutional amendment.

I yield the floor.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, at least the Senator is consistent because he opposes both the McConnell amendment and the flag amendment.

Having made that point, of the 36 Senators who voted for the McConnell ''statutory fix,'' shall we call the proposal, 30 are opponents of the flag-protection amendment. These 30 Senators apparently believe that some flag desecration should be prohibited. Voting for McConnell makes their first amendment arguments a mockery.

At least the distinguished Senator from Massachusetts is consistent, because the McConnell amendment says, one, that flag desecration on Federal land with a stolen flag should be prohibited; two, damaging a flag belonging to the United States will be prohibited; or three, desecrating a flag intending to promote violence should be prohibited.

It reminds me of 1989 when a high percentage of Senators in this body, who claim to be against the constitutional amendment to prohibit desecration of our beloved flag, voted for the statutory anti-flag-desecration amendment.

If first amendment rights hold with regard to this constitutional amendment, that it would violate first amendment rights, then why wouldn't it have violated first amendment rights with regard to any statute that would prohibit desecration?

I think anyone can see the game that is going on; that is, that some of the folks wouldn't vote to protect the flag no matter what happens because they know the flag desecration amendment or a statutory amendment is not going to protect our flag because it will be stricken down as unconstitutional. I predicted it in both cases where the Supreme Court has stricken it down.

If one agrees that flag desecration is wrong, why limit it to these circumstances provided in the McConnell amendment? Why should it be legal to burn a flag in front of a crowd who loves flag desecration, or on television where people are at a safe distance, yet make it illegal to burn a flag in front of people who would be upset by that act? Why make it illegal to burn a Post Office flag but not a flag belonging to a hospital across the street? Why make it illegal for a lone camper to burn a flag in a campfire at a Yellowstone park, when it is legal to burn a flag before hundreds of children at a public school under current law?

To anyone interested in protecting the flag, these distinctions make no sense. That is what is amazing to me. There is such inconsistency. I personally believe that it is the elitist position that calls the 80 percent of Americans who believe we should sustain the dignity of our flag, of our national symbol, that we are somehow Neanderthals, the 80 percent of the people in this country who want to protect our national symbol from acts of physical desecration.

The funny thing about it, this amendment does not even do that. All this amendment does is restore the power to the Congress of the United States to be able to pass a statute if the Congress so chooses, something that we have to do by constitutional amendment if we want to be coequal with the judicial branch of Government.

Opponents of the constitutional amendment argue that this would be an unprecedented infringement on the freedom of speech, which does not satisfy James Madison's counsel that amendments of the Constitution should be limited to ''certain great and extraordinary circumstances.'' Setting aside the fact that flag desecration is conduct, not speech, and that our freedom of speech is not absolute, these critics never fully address the fact that our Founding Fathers, James Madison in particular, saw protection of the flag as falling outside the scope of the first amendment and was more a matter of protecting national sovereignty. The original intent of the Nation's founders indicates the importance of protecting the flag as an symbol of American sovereignty. Madison and Jefferson consistently emphasized the legal significance of infractions on the physical integrity of the flag.

For example, one of Madison's earliest pronouncements concerned an incident in October 1800 when an Algerian ship forced a U.S. man of war—the *George Washington*—to haul down its flag and replace it with the flag from Algiers. As Secretary of State under Thomas Jefferson, Madison pronounced such a situation as a matter of international law, a dire invasion of sovereignty which ''on a fit occasion'' might be ''revised.''

Madison continued his defense of the integrity of the flag when he pronounced an active flag defacement in the streets of an American city to be a violation of law. On June 22, 1807, when a British ship fired upon and ordered the lowering of an American frigate's flag, Madison told the British Ambassador ''that the attack . . . was a detached, flagrant insult to the flag and sovereignty of the United States.'' Madison believed that ''the indignity offered to the sovereignty and flag of the Nation demands. . .an honorable reparation.'' Madison's statements suggests his belief that protecting the physical integrity of the flag ensured the protections of the Nation's sovereignty.

This is the author of the Constitution. We have these people inconsistently voting for statutes—twice in the last 11 years—that are unconstitutional, that would, I suppose if you take their arguments on the floor, denigrate the first amendment to the Constitution. If this constitutional amendment is denigrating it, why isn't the statute they voted for denigrating it as well?

Madison did not conclude, as some defenders of the right to deface the flag contend, that the first amendment protected the rights of Americans to tear down a flag or that defacing the flag was a form of expression protected by the first amendment. On the contrary. It would appear that Madison had an intimate familiarity with the significance of protecting the physical integrity of the flag, especially as such protection related to the first amendment, which he helped draft and move through the First Congress. He knew there had been no intent to withdraw the traditional physical protection from the flag.

Madison and Jefferson intended for the Government to be able to protect the flag consistent with the Bill of Rights. This was based on their belief that obtaining sovereign treatment was distinct from an interest in protecting against the suppression of expression. Madison and Jefferson consistently demonstrated that they sought commerce, citizenship, and neutrality rights through the protection of the flag. They did not seek to suppress the expression of alternative ''ideas,'' ''messages,'' ''views,'' or ''meanings.''

Although it is commonly asserted that Congress has never sent an amendment to the States to amend the Bill of Rights, this assertion is absolutely false. Even if you assume this amendment would lead to a violation of first amendment rights, it is absolutely false to think the Congress has never sent an amendment to the States to amend the Bill of Rights. Yet the Bill of Rights has been amended in some form on several occasions. For example, the 13th amendment amended the 5th amendment as interpreted in Dred Scott v. Sanford, to provide that the former slaves were not property subject to the due process clause, but were free men and women.

Further, the 14th amendment was interpreted in Bolling versus Sharpe, to have effectively amended the due process clause of the 5th amendment to apply equal protection principles to the Federal Government.

Moreover, in Engel versus Vitale, the Supreme Court circumscribed the 1st amendment rights of American school children by holding that the establishment clause precluded prayer in the public schools.

Each of these constitutional changes substantially modified the rights and correlative duties of affected parties from those originally envisioned by the Framers of the Bill of Rights. The change effected by the Engel versus Vitale decision did not expand rights, but restricted them by taking away the right of children to pray at school.

Further, there have always been numerous limits on free speech. We limit libelous and defamatory speech. We limit speech that constitutes ''fighting words.'' We limit speech that consists of falsely shouting ''fire'' in a crowded theater. We limit speech that is obscene. We limit speech that jeopardizes national security. And each of these limits balances an important governmental interest in protecting against an individual's right to engage in radical or dangerous speech.

Thus, the Bill of Rights has been amended numerous times and has consistently been interpreted to include limits on speech. The long legal tradition of accepting regulation of physically destructive conduct toward the flag is consistent with these limits that balance society's interest in promoting respect for the nation with an individual's interest in sending a particular message by means of desecrating our beloved flag. The proposed amendment would effect a much smaller change than the other amendments listed and a much narrower limit on speech than the other limits mentioned. The amendment would simply restore the traditional right of the people to protect the physical integrity of their flag, something that existed 200 years before the Supreme Court struck it down. Protestors would still be free to speak their opinions about the flag at a rally, write their opinions about the flag to their newspaper, and vote their opinions at the ballot box.

Most of the American people, men and women, black, brown, and white, support the flag protection amendment and 49 State legislatures have asked for the flag protection amendment. Accordingly, I believe we should send the flag protection amendment to the States for ratification.

The argument that we have never amended the Bill of Rights or limited

speech is absurd; it is false, and, in any event, the flag protection amendment would change only the results of a few recent court decisions to restore the true meaning of the Bill of Rights as ratified by our forefathers.

This proposed amendment recognizes and ratifies our Founding Fathers' view—and the constitutional law that existed for nearly 200 years—that the American flag is an important and unique incident or symbol of our national sovereignty. As Americans, we display the flag in order to signify national ownership and protection. The Founding Fathers made clear that the flag, and its physical requirements, related to the existence and sovereignty of the United States and that desecration of the flag were matters of national concern that warranted government action.

This same sovereignty interest does not exist for our national monuments or our other symbols. While they are important to us all, the flag is unique. It is flown over our ships and national buildings. We took the flag to, and planted it for eternity, on the Moon. We carry it into battle. We salute it and pledge allegiance to it. Men and women have died for it and have been tortured for their fidelity to it.

Senator MCCAIN, in appearing before our committee, told of one of the experiences he had when he was in the Hanoi prison with others of our men. He said there was a young man who literally could not afford shoes. He had no shoes until he was 13 years of age. He was raised in poverty. But when he joined the military, he stood out as a really fine human being, and ultimately he went to officer's candidate school.

Flying over Vietnam, he was shot down. When he arrived in the Hanoi prison, if I recall it correctly, he took a bamboo needle and he knitted together little bits of cloth to make an American flag, and he put it inside his shirt. Every night, he would bring out that flag and put it on the wall, and they would all salute and pledge allegiance to it. It was one of the things that kept them from going insane.

One day his captors found him with that flag and took him outside and beat him within an inch of his life. Of course, they took his flag from him. Then they tossed his broken and bleeding body inside the compound which had a concrete slab in the middle. Senator MCCAIN may tell this story because he can tell it better than I can having been there. I think it is worthwhile to retell it.

Senator MCCAIN said they picked him up and cleaned him up as best they could in those very tragic circumstances. He was all black and blue with his eyes shut from having been beaten. They had incandescent light bulbs on all day long, every day, and all night long, every night. As they all went to sleep, suddenly Senator MCCAIN looked up and here was this young military man sitting there with another bamboo needle getting little bits of cloth to make another American flag.

To be honest with you, that flag meant an awful lot to those people who were under those very terrible circumstances. It means a lot to me.

Opponents of this proposed constitutional amendment argue this would be an unprecedented infringement on the freedom of speech which does not satisfy James Madison's counsel that amendments to the Constitution should be limited to ''certain great and extraordinary circumstances.''

Setting aside the fact that flag desecration is conduct not speech and that our freedom of speech is not absolute, what these critics never fully address is the fact that our Founding Fathers, James Madison in particular, saw protection of the flag as falling outside the scope of the first amendment and was more a matter of protecting national sovereignty. The original intent of the Nation's founders indicates the importance of protecting the flag as an incident of American sovereignty. Madison and others did that.

We took this flag, as I said, and planted it for eternity on the Moon. We carry it into battle. We salute it and pledge allegiance to it. Men and women have died for it and have been tortured for their fidelity to it. As Americans we recognize and believe that the flag is our unique symbol of unity and sovereignty. As Madison noted, the flag is a unique incident which, when desecrated, ''demands an honorable reparation.''

That was how we viewed it—as a people, as a nation—until 1989 when the Court handed down its 5–4 decision in the Johnson case. Are we really going to stand here on the floor of the Senate and pretend that the law never was as it was? Does anyone here believe that two narrow Supreme Court decisions should settle whether we as a nation should and can safeguard our symbol of sovereignty?

There are opponents to S.J. Res. 14 who argue that our flag—this incident of sovereignty—is not important enough to amend the Constitution; that amending the Constitution requires a ''great and extraordinary occasion.'' Tell that to the young man in Vietnam. For reasons I have stated, the Supreme Court's decisions in the Johnson and Eichman cases—decisions which overturned centuries of law and practice—more than meets Senator LEAHY's test. Senator KERREY's test, and others. It certainly meets it more than the 27th amendment which dealt with pay raises for members of Congress or the 16th amendment which gave Congress the power to impose an income tax. I can understand why some in Congress would view the 16th amendment as one of Congress' finest moments, not that I ever have. In fact, my State of Utah was one of only three States to reject the 16th amendment.

The flag amendment presents this Congress with an opportunity to do something great and extraordinary. It is anything but an abdication of responsibility. Indeed, one could argue that, failure to vote for this amendment is an abdication of our responsibility and that restoring the power of Congress the power to prohibit acts of desecration against our symbol of national sovereignty would be a great and extraordinary occasion.

Mr. DORGAN. Ten years ago the U.S. Supreme Court in a 5–4 decision struck down a Texas flag protection statute on the grounds that burning an American flag was ''speech'' and therefore protected under the First Amendment of the Constitution. I disagreed with the Court's decision then and I still do. I don't believe that the act of desecrating a flag is an act of speech. I believe that our flag, as our national symbol, can and should be protected by law.

In the intervening years since the Supreme Court decision I have twice supported federal legislation that would make flag desecration illegal, and on two occasions I voted against amendments to the Constitution to do the same. I voted that way because, while I believe that flag desecration is despicable conduct that should be prohibited by law, I also believe that amending our Constitution is a step that should be taken only rarely and then only as a last resort.

In the past year I have once again reviewed in detail nearly all of the legal opinions and written materials published by Constitutional scholars and courts on all sides of this issue. I pledged to the supporters of the Constitutional amendment that I would reevaluate whether a Constitutional amendment is necessary to resolve this issue.

From my review I have concluded that there remains a way to protect our flag without having to alter the Constitution of the United States. I joined Senators BENNETT, MCCONNELL and CONRAD today to introduce legislation that I believe accomplishes that goal.

The bill we offered today protects the flag but does so without altering the Constitution and a number of respected Constitutional scholars tell us they believe this type of statute will be upheld by the U.S. Supreme Court. This statute protects the flag by criminalizing flag desecration when the purpose is, and the person doing it knows, it is likely to lead to violence.

Supporters of a Constitutional amendment are disappointed I know by my decision to support a statutory remedy to protect the flag rather than support an amendment to the U.S. Constitution. I know they are impatient to correct a decision by the Supreme Court that they and I believe was wrong. I have wrestled with this issue for so long and I wish I were not, with my decision, disappointing those, including many of my friends, who passionately believe that we must amend the Constitution to protect the flag.

But in the end I know that our country will be better served reserving our attempts to alter the Constitution only for those things that are ''extraordinary occasions'' as outlined by President James Madison, one of the authors of the Constitution, and only in circumstances when it is the only remedy for something that must be done.

More than 11,000 Constitutional amendments have been proposed since our Constitution was ratified. However, since the ratification of the Bill of Rights in 1791 only 17 amendments have been enacted. These 17 include three reconstruction era amendments that abolished slavery, and gave African-Americans the right to vote. The amendments included giving women the right to vote, limiting Presidents to two terms, and establishing an order of succession in case of a President's death or departure from office. The last time Congress considered and passed a new Constitutional amendment was when it changed the voting age to 18, more than a quarter of a century ago. All of these matters were of such scope they required a Constitutional amendment to be accomplished.

However, protecting the American flag can be accomplished without amending the Constitution, and that is a critically important point.

Constitutional scholars, including those at the Congressional Research Service, the research arm of Congress, and Duke University's Professor William Alstyne, have concluded that this statute passes Constitutional muster, because it recognizes that the same standard that already applies to other forms of speech applies to burning the flag as well. This is the same standard which makes it illegal to falsely cry ''fire'' in a crowded theater. Reckless speech that is likely to cause violence is not protected under the ''fighting words'' standard, long recognized by the Supreme Court of the United States.

I believe that future generations—and our founding fathers—would agree that it's worth the effort for us to find a way to protect our flag without having to wonder about the unintended consequences of altering our Constitution.

Mr. President, I yield the floor.

The PRESIDING OFFICER (Mr. SANTORUM). The Senator from California.

Mrs. FEINSTEIN. Mr. President, I rise in strong support of S.J. Res. 14, a proposed constitutional amendment to protect our national flag from physical desecration.

S.J. Res. 14 would give Congress, and Congress alone, the authority to draft a statute to protect the flag. It would give Congress the opportunity to construct, deliberately and carefully, precise statutory language that clearly defines the contours of prohibitive conduct.

At the outset, let me say that amending the Constitution is serious business, indeed. I know that, and I know we need to tread carefully. The Constitution is, after all, democracy's sacred text. But the Constitution is also a living text. As originally conceived, it had no Bill of Rights. In all, it has been amended 27 times.

If the Constitution is democracy's sacred text, then the flag is our sacred symbol. In the words of Supreme Court Justice John Paul Stevens, it is ''a symbol of our freedom, of equal opportunity, of religious tolerance, and of good will for other peoples who share our aspirations.'' [dissenting opinion in *Texas* v. *Johnson*, 491 U.S. at 437 (1989)]

If the flag had no symbolic value, we would not get chills when we see it lowered to half-mast or draped on a coffin. We wouldn't feel so much pride when we see it flying in front of our homes or at our embassies abroad. I wonder, is there any of us who can forget that wonderful Joe Rosenthal photograph of the six Marines hoisting that flag on the barren crag of Mount Suribachi, after the carnage at Iwo Jima, where over 6,800 American soldiers were killed. There have been many photographs of soldiers. There has been no photograph I know of that so endures in our mind's eye, that has carried so much symbolism, as that one. I remember seeing it because the San Francisco Chronicle ran it on the front page during World War II. I was just a small child, but from that point on, I knew the flag was something special.

People speak metaphorically about the fabric of our society and how it has become frayed. I submit that in a very real sense, our flag is the physical fabric of our society, knitting together disparate peoples from distant lands, uniting us in a common bond, not just of individual liberty but also of responsibility to one another. As such, the flag is more precious to us, perhaps, than we may even know.

The flag flies over government buildings throughout the country. It flies over our embassies abroad, a silent but strong reminder that when in those buildings, one is on American soil and afforded all the protections and liberties enjoyed back home.

Constitutional scholars as diverse as Chief Justices William Rehnquist and Earl Warren and Associate Justices Stevens and Hugo Black have vouched for the unique status of the national flag. In 1974, Byron White said:

> It is well within the powers of Congress to adopt and prescribe a national flag and to protect the unity of that flag. . . [T]he flag is an important symbol of nationhood and unity, created by the Nation and endowed with certain attributes.'' [Smith v. Goguen, 415 U.S. at 585–87 (1974)]

Justice White continued, ''[T]here would seem to be little question about the power of Congress to forbid the mutilation of the Lincoln Memorial or to prevent overlaying it with words or other objects. The flag is itself a monument, subject to similar protection.''

I could not agree more with the opinion of Justice White: ''The flag is itself a monument, subject to similar protection.'' Since that time, unfortunately, a narrow majority of the Supreme Court has now ruled twice that this great symbol of our national unity is not protected under the Constitution. So that is why we are here today, to begin the process of protecting the flag, which is a symbol of all the protections we are afforded as Americans and all the liberties we enjoy.

The flag flying over our Capitol Building today, the flag flying over my home in San Francisco, each of these flags, separated by distance but not in symbolic value, is its own monument to everything America represents. It should be protected as such.

Our history books are replete with stories of American soldiers who were charged with the responsibility of leading their units into battle by carrying our Nation's flag. To them, it was more than a task, it was an honor worth dying for, and many did. When one soldier would fall, another would take his place, raise the flag, and press forward. They would not fail. Their mission was too important, the honor too great, flag and country too respected to give anything short of the last full measure of their devotion, their lives, to succeed.

The American flag is a revered object as well as a national symbol. Indeed, it is our monument in cloth. I believe it should be viewed as such, and not simply as something that serves as one of many vehicles for free speech.

Everything about the flag—its tangible form, its very fabric—has significance. The shape, the colors, the dimensions, and the arrangement of the pattern help make the flag what it is. The colors were chosen at the Second Continental Congress in 1777. We all know them well: Red for heartiness and courage; white for purity and innocence; blue for vigilance, perseverance, and justice.

Moreover, our flag is recognized as unique not only in the hearts and minds of Americans but in our laws and customs as well. No other emblem or symbol in our Nation carries with it such a specific code of conduct and protocol in its display and handling.

For example, Federal law specifically prescribes that the flag should never be displayed with its union down, except as a signal of dire distress or in instances of extreme danger to life or property. When a flag is flown upside down, it is in fact a signal of distress.

The U.S. flag should never touch anything beneath it: neither ground, floor, water, or merchandise. The U.S. flag should never be dipped to any person or thing. And the flag should never be carried horizontally but should always be carried aloft and free.

Why, then, should it be permissible conduct to burn, to desecrate, to destroy this symbol, this emblem, this national monument? That is not my definition of free speech.

For the first two centuries of this Nation's history, that was not the Supreme Court's definition of free speech

either. In fact, until the Court's 1989 decision in Texas v. Johnson, 48 of the 50 States had laws preventing burning or otherwise defacing our flag.

As I said at the outset, I don't take amending the Constitution lightly. But when the Supreme Court issued the Johnson decision and the subsequent United States v. Eichman decision [496 U.S. 310 (1990)], those of us who want to protect the flag were forced to find an alternative path.

In the Johnson case, the Supreme Court, by a 5–4 vote, struck down a State law prohibiting the desecration of American flags in a manner that would be offensive to others. The Court held that the prohibition amounted to a content-based regulation. By design, at least according to the Court, the lawfulness of Johnson's conduct could only be determined by the content of his expression. As a result, the Texas statute could not survive the strict scrutiny required by legal precedent, so the Court struck it down.

After the Johnson case was decided, Congress passed the Flag Protection Act of 1989. That Act prohibited all intentional acts of desecrating the American flag and was, therefore, not a content-based prohibition on speech or expression. Nevertheless—and this is the point why a statute won't do—another narrow majority of the Supreme Court acted quickly to strike down the Federal statute as well, ruling that it suffered the same flaw as the Texas statute in the Johnson decision and was consequently inconsistent with the First Amendment. That 5–4 decision makes today's discussion necessary.

I support S.J. Res. 14 because it offers a way to return the Nation's flag to the protected status it deserves. The authority for a nation to protect its central symbol of unity was considered constitutional for two centuries. It was only a decade ago that a narrow majority of the Supreme Court told us otherwise.

It is important to point out that S.J. Res. 14 is not intended to protect ephemeral images or representations of the flag but only the physical flag itself. In other words, this amendment is not intended to restrict the display of images of the American flag on articles of clothing, patches, or similar items. This amendment would only protect the flag itself.

Because we are protecting our national symbol, it makes sense to me that Members of Congress, representing the Nation as a whole, should craft the statute protecting our flag.

I also believe the amendment is consistent with free speech. I disagree with those who say we are making a choice between trampling on the flag and trampling on the first amendment. Protecting the flag, circumscribing certain conduct, will not prevent people from expressing their ideas through other means in the strongest possible terms.

I support this amendment because I believe flag burning is content, not speech, and can be regulated as such. But to my friends who would argue otherwise, I remind them that even the right to free speech is not unrestricted. For example, the Government can prohibit speech that threatens to cause imminent tangible harm, including face-to-face ''fighting words'', incitement to violate our laws, or shouting ''fire'' in a crowded theater. Obscenity and false advertising are not protected under the first amendment, and indecency over the broadcast media can be limited to certain times of day.

Even Justice William Brennan's decision in New York Times Co. v. Sullivan [376 U.S. 253 (1964)] accepted that some speech (in that case, known false statements criticizing official conduct of a public official) may be sanctioned.

There is much that is open to debate about the proper parameters of free speech. In the dissent to the 1990 Eichman case, Justice Stevens wrote that certain methods of expression may be prohibited if three criteria can be met:

First, the prohibition must be supported by a legitimate societal interest unrelated to the ideas the speaker desires to express. I believe protecting the flag meets the first test. It does not matter why an individual chooses to desecrate a flag—all desecration is equally prohibited.

Second, the speaker must be free to express his or her ideas through other means. Again, a law protecting the flag does nothing to keep an individual from expressing his or her views through speech or countless other activities.

Third, societal interest must outweigh the ability of an individual to choose among every possible form of speech. In this case, I believe the significance of the flag—its value as a symbol of freedom and democracy throughout the world, its ability to bring us together as a nation, and the effect its destruction has on many Americans—clearly outweighs the need to protect an individual's ability to express his or her views in every conceivable way.

Is anyone here convinced that desecrating a flag might be the only way for someone to express an opinion?

I recognize that by supporting a constitutional amendment to protect the flag, I am choosing a different course from many of my fellow Democrats in Congress and, quite frankly, from many of my close friends for whom I have the greatest respect. But my support for this amendment reflects my broader belief that the time has come for the Nation to begin a major debate on its values. We need to ask ourselves what we hold dear—is there anything upon which we will not cast our contempt?

How can we foster respect for tradition as well as ideological diversity? How can we foster community as well as individuality? These are all important values, and we must learn to reconcile them. We must not advance one value at the expense of another.

The framers of the Constitution recognized two important elements in our constitutional tradition—liberty and responsibility. Without responsibility, without the rule of law, there could be no protection of life, limb, or property—there could be no lasting liberty. I believe there is a danger in moving too far in either direction—toward too restrictive order, or toward unfettered individual liberty.

The key is the balance. In this instance, I believe we cannot tilt the scales entirely in favor of individual rights when there exists a vast community of people in this country who have gone to war for our flag.

There are mothers and fathers, wives, husbands, and children who have received that knock on their front door and have been told their son or daughter, husband or wife, father or mother has been killed in the line of duty. They have been given a flag on this occasion, a flag which helps preserve the memory of their loved one and which speaks to his or her courage. That is the symbol, that is the emblem, that is the national monument.

Requiring certain individuals to stop defacing or burning the flag, I think, is a very small price to pay on behalf of millions of Americans for whom the flag has deep personal significance.

Less than a decade ago, when 48 States had laws against flag burning, there was no less free speech. And if this amendment is adopted, the First Amendment will continue to thrive. I believe S.J. Res. 14 will protect the integrity of the flag and keep our First Amendment jurisprudence intact.

While expressing my support for S.J. Res. 14, I briefly want to explain why I oppose the amendment my colleague from Kentucky, Mr. MCCONNELL, offered. His amendment, derived from the text of S. 982, would have had the effect of replacing the constitutional language with statutory language.

However well-intentioned and earnest the Senator was in offering the amendment, I believe it was flawed. The Supreme Court, following its rulings in Texas v. Johnson and U.S. v. Eichman, would certainly strike it down as violative of the First Amendment. We have been down this road before.

The Johnson and Eichman decisions stipulate that neither Congress nor the States may provide any special protection for the flag. In both decisions, the Court made it clear that special legal protections for the American flag offend the Court's concept of free speech. Because the Court views the flag itself as an object of symbolic speech and not as a monument, any conduct taken with regard to the flag constitutes protected expression, as well. So we cannot overrule such a notion with a statute. That is why, clearly and simply, we need a constitutional amendment. And that is why I stand today to support that amendment.

I yield the floor.

The PRESIDING OFFICER. The Senator from Vermont is recognized.

Mr. LEAHY. Mr. President, am I correct that the Senate is not operating under a time agreement?

The PRESIDING OFFICER. That is correct.

Mr. LEAHY. Mr. President, I note that even without a time agreement, we have had a good debate. Senators on both sides of the issue have spoken. We have had practically no quorum calls. We should have debate like this where Senators can speak.

I see two of the most distinguished veterans of the Vietnam war on the floor, the distinguished Senator from Nebraska, Mr. KERREY, and the distinguished Senator from Virginia, Mr. ROBB. Both are highly decorated veterans of that war.

I ask unanimous consent that I be able to yield to the Senator from Nebraska, and then upon completion of his statement, that he be able to yield to the Senator from Virginia.

Mr. HATCH. Mr. President, reserving the right to object.

Mr. LEAHY. I withhold the request so the Senator from Utah can speak.

Mr. HATCH. Reserving the right to object, as I understand it, the Senate has to go out at about 5:30.

Mr. LEAHY. I renew the request.

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

The Senator from Nebraska.

Mr. KERREY. Supporters of this amendment are winning converts. Each election cycle seems to bring them closer to the 67 votes they need to send this 17-word amendment to the States for their ratification. And 49 legislatures have already indicated they would ratify this amendment if Congress were to take this action.

Mr. President, these 17 words would make it constitutional for Congress to pass a law giving the government the power to prohibit the physical desecration of the flag of the United States of America.

Let me say at the beginning that I have deep respect for those who have views that are different from mine. The Senator from California spoke very eloquently in favor of this amendment. I have heard the distinguished Senator from Utah, indeed, submit a personal appeal for me to reconsider my views on this issue. I have a great deal of respect for the purpose of this amendment. I especially pay tribute to the U.S. American Legion. These patriots have done more than any others to help young Americans understand that freedom is not free.

I have had the honor, through 16 years of public service, to experience what the American Legion and other service organizations have done, but especially the American Legion and the Girl's State and Boy's State organizations, taking on the people who do not understand the history and the story of the United States of America. They teach them that story, that history, and they teach them to require the respect necessary to be a good citizen. It is the value they add to our community that is immeasurable.

I have listened with an open mind to their appeals that I support this amendment. Regretfully and respectfully, I must say no.

I fear the unintended consequence of these 17 words and the laws that may be enacted later will be far worse than the consequences of us witnessing the occasional and shocking and disgusting desecration of this great symbol of liberty and freedom.

Mr. President, real patriotism cannot be coerced. It must be a voluntary, unselfish, brave act to sacrifice for others. When Americans feel coercion, especially from their Government, they tend to rebel. So none of us should be surprised if one unintended consequence of the laws that prohibit unpopular activity such as this is an actual increase in the incidence of flag desecration.

Another unintended consequence of this amendment will be the diversion of police resources from efforts to protect us from dangerous crime. Nobody should underestimate that this fact will happen. The efforts to protect us from those who desecrate the flag will require the training of police officers on when and where to respond to complaints.

Mr. President, we pass the laws, but others must implement and enforce them. They will receive complaints about neighbors and friends or people who desecrate the flag. The police will have to respond to every one of them. These laws will give the power of the Government to local law enforcement agencies to decide when some individual is desecrating the flag.

There are 45 words in the first amendment and this amendment protects the rights of citizens to speak, to assemble, to practice their religious beliefs, to publish their opinions and petition their Government for redress of grievance. The 17 words that are in this proposed 28th amendment would limit what the majority of Americans believe is distasteful and offensive speech.

Though this seems very reasonable because most Americans do not approve of flag desecration, it is only reasonable if we forget that it is the right to speak the unpopular and objectionable that needs the most protecting by our Government.

In this era of political correctness, when the fear of 30 second ads has homogenized and sterilized our language of any distasteful truths, this amendment takes us in the opposite direction of that envisioned by our Founding Fathers whose words and deeds bravely challenged the status quo.

Last year when I testified about this before the Judiciary Committee, I took the liberty of buying an American flag and gave it to the committee.

I bought that flag because every time I look at it, it reminds me that patriotism and the cause of freedom produces widows. Widows who hold the flag to their bosom as if it were the live body of their loved-one.

The flag says more about what it means to be an American than a thousand words spoken by me. Current law protects the flag. If anyone chooses to desecrate my flag—and survives my vengeful wrath—they will face prosecution by our Government. Such acts of malicious vandalism are prohibited by law.

The law also protects me and allows me to give a speech born of my anger and anguish in which I send this flag aflame. Do we really want to pass a law making it a crime for a citizen despondent over a war, or abortion, or something else they see going on in their country to give a speech born of their anger? Do we really want a law that says the police will go out and arrest them and put them in jail?

I hope not. Patriotism calls upon us to be brave enough to endure and withstand such an act—to tolerate the intolerable. I sincerely and respectfully thank all of those who hold views different from mine for their patriotism. I will pray this amendment does not pass. But I thank God for the love of country exhibited by those who do.

Thank you, Mr. President. I yield the floor.

The PRESIDING OFFICER. Under the previous order, the Senator from Virginia is recognized.

Mr. ROBB. Mr. President, thank you. I thank my distinguished colleague and fellow Vietnam veteran from Nebraska for his words. It is an important topic.

Mr. President, when I came home from Vietnam a little over thirty years ago, I came home to a nation divided. I was assigned by the U.S. Marine Corps to head up a major officer recruiting program on college campuses all across America. It was 1969 and anti-war fever was consuming the nation. As you can imagine, my Marine uniform on a college campus became a lightning rod for protests and protesters. In this assignment, Mr. President, incoming bullets, rockets and artillery were replaced by insults, jeers and demonstrations. At times, it was tough.

I had just spent a tour of duty, which included commanding an infantry company in combat, and over 100 of my men received the Purple Heart, almost a quarter of them posthumously. Like all other warriors who served in uniform, it wasn't their job to question the policy that sent them to Vietnam, but they answered the call and those that died, did so with honor, for our Nation.

So while I did my best to reason with the crowds that came out to greet me on college campuses, I didn't appreciate the instinctive disrespect that was shown to me and the uniform I wore.

But Mr. President, I rise today to defend the rights of those individuals 30 years ago to protest me and my uniform.

Freedom of speech is the foundation of our democracy—and silencing that speech would have been against everything I had fought for in Vietnam. To

paraphrase an old saying: I didn't agree with what they said. But I had been willing to die to protect their right to say it.

Mr. President, I am repulsed by any individual who would burn the flag of my country to convey a message of dissent. It is an act I abhor and can barely comprehend. But in the democracy that our forefathers founded, and that generations of Americans have fought and died to preserve, I simply do not have the right to decide how another individual expresses his or her political views. I can abhor those political views, but I cannot imprison someone for expressing them. That's a fundamental tenet of democracies and its what makes America the envy of the world, as the home of the free and the brave.

Mr. President, when we frame the acceptable context for conveying a political message, we qualify freedom in America. We chip away at the extraordinary freedom that has distinguished us from our enemies for 200 years.

Last week, I received an e-mail from a retired U.S. Marine Corps Colonel from Virginia. Like many Americans (and many American veterans), he had struggled with this issue and searched his conscience for what's right. In his message to me, he said: ''I have seen our flag torn in battle, captured by our enemies, and trampled on by protesters. In all those events I never felt that the American way of life was in grave peril . . . for whenever our flag fell or was destroyed there was always another Marine to step forward and pull a replacement from his helmet or ruck sack.''

He continued: ''The Constitution is the bedrock of America, the nation . . . the people. It is not possible to pull another such document from our 'national ruck sack.' We have but one Constitution, and it should be the object of our protection.''

Mr. President, there is no question that it is precisely because the flag represents those sacred ideals that define our democracy, that we are so angry to see one being trampled or torn or torched. What angers us the most is the message of disrespect that desecration conveys. The ingratitude of the desecrater is tangible and we simply cannot help but be outraged. How can anyone be so shallow and so ungrateful that they would destroy the flag of a nation so great that it gives them the freedom to commit such a despicable act?

In fact, Mr. President, it is the motivation of the flag burner, not the burning of the flag itself, that makes us so angry that we want to punish that individual and throw away the keys. We know that when an American flag is old and tattered, or damaged and no longer fit to fly, we don't bury it, or throw it in the trash. We burn it. That is the proper, respectful method of disposing of a flag. So it is not the burning of the flag that stirs us to anger. It is the reason why the flag was burned that gets us so upset. And the reason why the flag is burned (to convey a message of dissent) is the reason why the Constitution protects it.

It is precisely because the act of flag burning sends a message that elicits such a visceral and powerful response that it is undeniably speech. Vulgar, crude, infantile, repulsive, ungrateful speech, but undeniably speech.

Mr. President, since speech that enjoys the support of the majority is never likely to be limited, the Bill of Rights, by its very design, protects the rights of a minority in key areas that the founders held dear. And it is the freedom to dissent peacefully that separates the greatest democracy the world has ever known from other regimes like those in China, Cuba, Iraq, and others where political dissent has been met with imprisonment and sometimes death.

We've applauded the awarding of the Nobel Peace Prize to individuals in other countries willing to risk their lives to peacefully protest their government. And we know that the first sign that freedom is in trouble anywhere around the world is when the government starts locking up its dissenters.

If we reach past our natural anger and disgust for a few publicity-hungry flag-burners, we know in our hearts that a great nation like ours, a nation that defends liberty all over the world, should not imprison individuals who exercise their right to political dissent. And we know in our hearts that a few repulsive flag-burners pose no real danger to a nation as great as ours.

Mr. President, a great defender of freedom in the world, General Colin Powell, had this to say in letter last year about this amendment:

> I understand how strongly so many of my fellow veterans and citizens feel about the flag and I understand the powerful sentiment in state legislatures for such an amendment. I feel the same sense of outrage. But I step back from amending the Constitution to relieve that outrage. The first amendment exists to insure that freedom of speech and expression applies not just to that which we agree or disagree, but also to that which we find outrageous. I would not amend that great shield of Democracy to hammer a few miscreants. The flag will still be flying proudly long after they have slunk away.

Mr. President, our flag stirs very deep emotions in me. It never fails to inspire me. I still get a chill down my spine when it passes in a parade. And I've handed it, folded, to too many widows not to revere it to the core of my being.

I fully support the Citizens Flag Alliance and especially my fellow members of the American Legion for all their hard work to instill in our people a greater respect for our flag. I understand why so many of my fellow veterans support this amendment. But I want the same thing they want. I want all of our citizens to respect our flag and all that it stands for.

Mr. President, I want that flag to be the proud symbol of a nation that is truly free. And for it to be that proud symbol, we must also protect the sacred freedoms placed in the first amendment of the Constitution by our forefathers.

Mr. President, I am a proud veteran of the U.S. Marine Corps. And I learned many lessons serving in combat in Vietnam. I served with Marines who loved this country and were great patriots. They were often young and sometimes scared. But they risked their lives in Southeast Asia.

Some of those brave warriors died for our nation. On two separate occasions, I had men literally die in my arms.

Those who made the ultimate sacrifice may have died keeping faith with their country. They may have died so that others might be free. They may have died for an ideal or a principle or a promise—sacred intangibles that transcend time. Some might say they died for the flag. But I was there, Mr. President, and they did not die for a piece of cloth (however sacred), that eventually becomes worn and tattered and eventually has to be replaced. No. They died fighting for all that our flag represents.

My fellow veterans who died in combat sacrificed their lives for these intangibles that are the core values of our democracy. They died for liberty and tolerance, for justice and equality. They died for that which can never burn. They died for ideals that can only be desecrated by our failure to defend them.

In opposing this amendment, I truly believe that I am again called upon to defend those intangible ideals—like freedom and tolerance—for which so many of us fought, and too many of us died. I am in a different uniform today, in a different place and time. But I feel as if, in some way, I am again battling the odds to defend principles that, as a younger man, I was willing to die for. I'd still put my life on the line today to defend those principles.

I say that because the flag represents freedom to me. But the first amendment guarantees that freedom. And when we seek to punish those who express views we don't share, then we—not the flag burners—we begin to erode the very values, the very freedoms, that make America the greatest democracy the world has ever known. I support our flag, and the republic for which it stands. But I cannot, with the faith I have in that republic, support this constitutional amendment.

I thank the Chair. And I thank my distinguished colleague from Nebraska who has received the highest honor our country can bestow on any who has defended America in battle; the Medal of Honor. I am proud to appear with him.

I yield the floor.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, I commend the distinguished Senator from Virginia for his statement, as I do the distinguished Senator from Nebraska. I can assure my friend from Virginia, a

young marine, my son, will receive a copy first thing in the morning at his home in California of the speech by the Senator from Virginia and a speech by the Senator from Nebraska.

Later this evening I am going to be having dinner with my oldest and dearest friend, a man I went to college with, a marine. He served the Republic and faced the same kind of reaction when he came back from combat from Vietnam. One day he was in a firefight in Vietnam, 2 days later he was walking down the street in his uniform in the United States, facing protesters' shouts.

Having risked his life, as did both of you, he said what saved him through that time was to know exactly for what he fought. At least he has had the satisfaction of seeing so much of that come full circle: The Wall here, people realizing that whatever the protesters had against the war, it should not be against the warriors, especially when they see the names of tens of thousands who did not come back.

I recall last year when the Senate rose as one to commemorate the heroism and valor of the Senator from Nebraska. Both of you have been decorated for heroism, both of you have faced near death in battle. I think both of you have come back here to serve your country in as strong a way as you did there, both as Senators but in bringing a calm, considered, integrity constantly throughout your service in the Senate.

I am not a veteran. I did not serve in battle. But I think how proud I am to have served in the Senate with both of you. I thank you for your speech tonight. I hope all Americans and all Senators will listen.

Mr. President, I met again today with Vermont representatives to the American Legion convention, which is taking place in Washington this week. These are people who deserve our respect, who served this nation in time of war, and who sacrificed so that our freedoms and way of life would triumph over Nazi Germany. As they gather, I pledge to continue to work with them to address the unmet needs of American veterans. Abraham Lincoln reminded us of our sacred obligation ''to care for him who shall have borne the battle, and for his widow, and his orphan.''

Following the Judiciary Committee's hearings last year on the constitutional amendment to restrict the first amendment to protect the flag from use in political protest, I asked Maj. Gen. Patrick Brady, chairman of the Citizens Flag Alliance, what in his opinion were the most pressing issues facing our veterans. His response may surprise the proponents of the constitutional amendment. His response to my inquiry regarding the most pressing issues facing veterans was ''broken promises, especially health care.''

I asked the same question of Professor Gary May, an American hero who lost both legs while serving his country in Vietnam. Professor May said:

> Veterans and their families need services and opportunities, not symbolism. Recruitment for military service is predicated in part on a quid pro quo—if honorable service is rendered, then meaningful post-service benefits will follow. Our record of making good on this contract is not good. The favorable expressed sentiment for veterans by supporters of the flag desecration amendment would be better placed in support of extending and stabilizing services responsive to the day-to-day needs of ordinary veterans and their families.

Have we followed this good counsel here in the Senate? The unfortunate answer is no. Our veterans and retirees have received more high-sounding rhetoric about patriotism than real efforts on our part to resolve the broken promises.

During the debate on the Intermodal Surface Transportation Efficiency Act of 1998, the Senate voted to shift over $10 billion worth of critical veterans funding to help pay for extravagant highway spending programs.

Three times that year, the Senate raided veterans' programs: in the budget resolution, in the IRS Reform legislation, and in the VA/HUD Appropriations Bill. All three times, too many Senators voted against the veterans. If only a few more of those who now beat their chests about symbolic actions had voted for them, the necessary funding for veterans would have been assured.

We have had numerous other missed opportunities to increase the funds in the Veteran Administrations medical care account. Hospitals are seeing more patients with less funding and staff, and it can take months to get a doctor's appointment. It is not mere symbolism to fund those hospitals.

It has been estimated that a third of all homeless people in this country are American veterans. Many of those people may be suffering from post-traumatic stress disorder or other illnesses relating to their military service.

We all know that with the end of the cold war, military bases are closing. Military retirees who relied on the base hospitals for space-available free medical care are losing access to care. Many service members retired near military bases specifically so that they could enjoy the free medical care we promised them, but now they have to find health care in the marketplace.

I saw this in Vermont recently, where we had to fight—yes, fight—to keep adequate funding for the only veteran's hospital in the State. The in-patient surgical program at the White River Junction VA hospital was nearly closed down. If the closure had gone through, many elderly Vermont and New Hampshire veterans would have had to travel all the way to Boston for medical care, and many of them just cannot. The VA has recommitted itself to the White River Junction program, but this sort of thing is happening all across the country.

Last year, we finally raised the veteran's budget for medical care by $1.7 billion. I was particularly relieved that Vermont veterans finally received some assistance, in the form of a $7 million Rural Health Care Initiative. That funding will develop a number of innovative programs to bring high quality care closer to home. I would remind everyone that a majority of the Senate defeated an amendment offered by my friend PAUL WELLSTONE that would have raised VA medical care funding an additional $1.3 billion in Fiscal Year 2000. I was proud to vote for the increase, but disappointed that more of colleagues did not go along with this much-needed amendment.

We have a long way to go in ensuring that our veterans receive the health care that they so richly deserve. After many years of fixed funding and increased costs, we need continued funding increases, and new programs to provide higher quality care.

We must also keep our promises to those who have completed a military career. I have strongly supported efforts to improve TRICARE, the military health care system upon which military retirees rely for their health care. The system is generally sound, but problems have arisen in developing the provider networks and ensuring quick reimbursements for payments. Last November, I supported a TRICARE forum in Burlington, Vermont, to allow retirees and other participants to express their concerns directly to health care providers. Of course, we must also ensure that Medicare-eligible retirees continue to receive high quality health care.

What are we doing instead? In 1996, we changed the immigration laws to expedite deportation proceedings by cutting back on procedural safeguards and judicial review. The zealousness of Congress and the White House to be tough on aliens has successfully snared permanent residents who have spilled their blood for this country. As the INS prepares to deport American veterans for even the most minuscule criminal offenses, we have not even been kind enough to thank them for their service with a hearing to listen to their circumstances. Last year I introduced the Fairness to Immigrant Veterans Act, S. 871, to remedy this situation, but it has been bottled up in committee.

If we truly wish to do something patriotic, what we should be talking about is honoring our veterans. We should honor our veterans by answering Lincoln's call ''to care for him who shall have borne the battle, and for his widow, and his orphan.'' We should honor our veterans with substance rather than symbols.

If we fail to meet the concrete needs of American veterans and try to push them aside with symbolic gestures, we will have failed in our duty not only to our veterans, but to our country, as well. I wonder where we would be if the effort and funds expended each year lobbying for the constitutional amendment had been directed toward the needs of our veterans and their families

and to making sure that we honor them by fulfilling our commitments to them.

I see one of the many veterans of World War II serving still in the Senate, and I will yield to my friend and neighbor, the distinguished senior Senator from New York.

Mr. MOYNIHAN. Mr. President, I had not intended to speak in this debate. This is the fourth time this amendment has come to the floor since I have been present. But the speeches, statements, the addresses by the Senator from Nebraska and the Senator from Virginia compel me simply to bear witness to them. There are 10 Members in the Senate today, 10 remaining persons, who were in uniform in World War II.

I was in the Navy—not heroically; and I was called up again briefly in Korea. I was part of that generation in which service to the Nation was so deeply honored, and lived with horror to see the disrespect shown those who answered the country's service in Vietnam, as they were asked to do. They were commanded to do so and they had taken an oath to obey.

What a thrilling thing it is to see, two such exemplars, men of heroism, achievement and spotless honor, come to this floor and speak as they have done. We take one oath which binds us today. Those who have been in the military have taken earlier oaths. Our oath is to uphold and defend the Constitution of the United States against all enemies, foreign and domestic—not ''foreign or,'' not just ''foreign.'' This was added over the course of the 19th century.

Surely, there would be no one, however unintentionally—and I say this as a member of the American Legion—who would propose that to debase the First Amendment to the Constitution meets the criteria of upholding and defending it.

Those two men have defended their nation in battle—one in the Navy, one in the Marines. I speak as one who was involved. I was in 20 years, altogether, before being discharged. I have to grant, I was not aware that I was discharged, but it turned up later in the file somewhere.

Our oath is solemn, and it is binding, and they—Senators ROBB and KERREY—stand there as witness to what it requires of us. If we cannot do this on this floor, what can we expect Americans to do on battlefields, in the skies, under the seas, and on the land in the years ahead?

Please, I say to all Senators, heed them and walk away from this trivializing of our most sacred trust. Defeat this amendment.

I thank the Chair.

Mr. DASCHLE. Will the majority leader allow me to make one brief comment before he propounds his unanimous-consent request?

Mr. LOTT. Yes.

Mr. DASCHLE. Mr. President, I came to the floor to thank the distinguished senior Senator from New York, but also my two colleagues, Senators ROBB and KERREY, for their extraordinary statements on the Senate floor. I hope the American people have had the opportunity to hear, and I hope the opportunity to read what they have said is made to schoolkids and others who have given a great deal of thought to our Constitution and the reason our Founding Fathers wrote as they did.

Their eloquence and their power and their extraordinary persuasiveness ought to be tonic for us all late in the day on an afternoon which has seen a good debate. I am hopeful people have had the opportunity to hear this contribution, above and beyond all of those made so far in this debate.

I yield the floor.

VETERANS BENEFITS

Mr. WELLSTONE. Mr. President, I wish to make one other point, which is not a constitutional argument, but it does have a lot to do with veterans. I say that we have spent some time on this, and we should; it is not an unimportant matter. But I also hope we will spend time on the floor of the Senate talking about a range of other very important issues that affect veterans. I am amazed that every time I meet with veterans in Minnesota, or in other parts of the country, I hear about the ways in which veterans fall between the cracks. We have a budget this year that is better than a flatline budget, but Senator KENNEDY is out here—a health care Senator—and he knows that better than anybody in the Senate.

The fact is, we have an aging veteran population like we have an aging population in general, and that is all for the good because people are living longer. We don't have any real way right now of helping those veterans the way we should. We passed the millennium bill, but the question is, Will the appropriations be there? We ought to be talking about the health care needs of veterans as well. We ought to be talking about how we are going to make sure those veterans can stay at home and live at home with dignity, with home-based health care.

I was at a medical center in Minneapolis, which is a real flagship hospital. It is not uncommon, when you go visit with veterans, you will see spouses who are there with their husbands, or maybe out in the waiting room or the lobby relaxing. You can talk to them for 3 minutes and realize they are scared to death about their husband going home. Maybe they had a knee or a hip operation, or maybe they have cancer. The spouses are mainly women. They don't know how they are going to take care of their husbands.

There isn't even any support for respite care. When are we going to talk about that issue? When are we going to talk about the number of veterans who are homeless? When are we going to talk about the number of them who are Vietnam vets, because they are struggling with posttraumatic syndrome and because they are struggling with substance abuse and they don't get the treatment? When are we going to be talking about this overall budget for veterans' health care, which is not a national-line budget?

There is an increase from the President this year—I am glad for that—but it doesn't really take into account all of the gaps and all of the investment we need to make. When are we going to do that?

I did not come to the floor to not speak to this amendment. I have spoken with as much as I can muster as to why I oppose it. But I also want to say—I want this to be part of my formal remarks because I don't think it is off the Record—colleagues, that I hope we will talk about the whole set of other issues that are very important, not only to veterans but to the American people.

I can assure you that I have worked with veterans to put together their independent budget. That is a whole coalition of veterans organizations. It is really shocking how many veterans fall between the cracks. We have a lot of work to do. We are talking about people's lives. It is no way to say thanks to veterans when we don't come through with the health care we promised them.

I want to make it clear that I hope we will soon focus on these issues as well. I hope the veterans community will—I know the veterans community will—focus on these issues as well. I spend an awful lot of time with veterans. I have a lot of meetings with veterans and with county veteran service officers. These issues come up over and over again.

THE FREEDOM TO FARM ACT

Mr. WELLSTONE. Mr. President, as much as I hate to recognize this, this is the fourth anniversary of the passage by the House and the Senate of the ''freedom to fail'' bill.

On this date in 1996, both houses of Congress approved a new farm bill, described then as ''the most sweeping change in agriculture since the Depression. It would get rid of government subsidies to farmers over the next seven years.''

The bill has made sweeping changes in agriculture—it has produced one of the worst economic crises that rural American has ever experienced. Thanks to the Freedom to Farm, or as I call it the Freedom to Fail Act, tens of thousands of farm families are in jeopardy of losing their livelihoods and life savings.

The Freedom to Farm bill is not saving tax payers money, in fact we have spent $19 billion more in the first 4 years of the 1996 farm bill than was supposed to be spent through the 7 year life of the law.

However, what has resulted is the precipitous loss of family farmers because this legislation has not provided