

Resolved, That the House of Representatives congratulates Chris Carpenter on being named the Cy Young Award winner for the National League for the 2005 Major League Baseball season.

The SPEAKER pro tempore. Pursuant to the rule, the gentlewoman from Michigan (Mrs. MILLER) and the gentleman from Missouri (Mr. CARNAHAN) each will control 20 minutes.

The Chair recognizes the gentlewoman from Michigan.

GENERAL LEAVE

Mrs. MILLER of Michigan. Mr. Speaker, I ask unanimous consent that all Members have 5 legislative days in which to revise and extend their remarks and to include extraneous material on the resolution under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentlewoman from Michigan?

There was no objection.

Mrs. MILLER of Michigan. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of H. Res. 627 offered by the distinguished gentleman from Missouri (Mr. CARNAHAN).

This resolution would congratulate Chris Carpenter on being named the Cy Young Award winner for the National League in 2005.

After missing the 2003 season while rehabilitating his injured shoulder, Chris Carpenter made a miraculous recovery to win the 2005 Cy Young Award. He went 21–5 with a 2.83 ERA for the St. Louis Cardinals, receiving 19 of 32 first place votes and finishing with 132 points in balloting by the Baseball Writers Association of America.

Carpenter began his career with Toronto. After compiling a 49–50 record in his first six seasons, Carpenter had surgery in September of 2002 to repair a tear in his pitching shoulder and the Blue Jays contemplated sending him back to the minors. He refused the assignment and chose to become a free agent before signing with St. Louis.

Finally healthy in 2004, Carpenter went 15–5 with a 3.45 ERA to earn National League's comeback player of the year honors from his peers. In 2005, Carpenter won 13 straight decisions from June 14 through September 8, helping the Cardinals to the best record in baseball at 100 wins and 62 losses. He struck out 213 batters and got the best of several aces around the league.

I would urge all Members to come together and honor the perseverance and dedication of Chris Carpenter, the winner of one of Major League Baseball's most prestigious awards, by adopting House Resolution 627.

Mr. Speaker, I reserve the balance of my time.

Mr. CARNAHAN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, this has been a real pleasure to cosponsor this with several Members from around the country and

on both sides of the aisle. I want to offer House Resolution 627, congratulating Chris Carpenter of the St. Louis Cardinals on winning the Cy Young Award for the 2005 Major League Baseball season.

Chris is a 1992 graduate from Trinity High School in Manchester, New Hampshire, where he earned the athlete of the year honors as a senior. He was elected to the All State Team for 3 years in both baseball and hockey, and as a member of the Globe All Scholastic Team as a senior, captured the State championship in baseball in 1992.

He played American Legion, Babe Ruth, and Little League Baseball. Chris and his wife have two children, and they make their off-season home in Bedford, Massachusetts. We are proud that he is one of the star players, not just in the league but for the St. Louis Cardinals.

After missing the 2003 season recovering from shoulder surgery, many wondered how Chris Carpenter would respond. He responded in 2004 with a 15-win season and with an earned run average of 3.46. Through his hard work, perseverance and skill, he improved upon those lofty numbers and turned in a spectacular 21-win season with a 2.83 earned run average in the 2005 season.

He was a major factor in the Cardinals' 100 wins last year and earned a place among the most elite pitchers in baseball. For his feats, Carpenter was recognized with the Cy Young Award as the best pitcher in the National League.

As a lifelong Cardinals fan, it is an absolute joy to watch a thrilling player like Chris Carpenter. I look forward to watching his continued success.

In addition, I would like to mention Chris's teammate, Albert Pujols, who won the National League MVP last year. This marks the first time since 1968 that the Cardinals have had both the MVP and the Cy Young Award winner the same year.

I have cosponsored a companion resolution with many others in this House congratulating Albert Pujols, and I hope the House will have an opportunity to take that up in the near future.

Once again, I wish my heartiest congratulations to Chris Carpenter and all that he has accomplished and wish him the best in the future.

Mr. Speaker, I yield back the balance of my time.

Mrs. MILLER of Michigan. Mr. Speaker, I would urge all Members to support the adoption of House Resolution 627. I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentlewoman from Michigan (Mrs. MILLER) that the House suspend the rules and agree to the resolution, H. Res. 627.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the resolution was agreed to.

A motion to reconsider was laid on the table.

RESPECT FOR AMERICA'S FALLEN HEROES ACT

Mr. BUYER. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5037) to amend titles 38 and 18, United States Code, to prohibit certain demonstrations at cemeteries under the control of the National Cemetery Administration and at Arlington National Cemetery, and for other purposes.

The Clerk read as follows:

H.R. 5037

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Respect for America's Fallen Heroes Act".

SEC. 2. PROHIBITION ON CERTAIN DEMONSTRATIONS AT CEMETERIES UNDER THE CONTROL OF THE NATIONAL CEMETERY ADMINISTRATION AND AT ARLINGTON NATIONAL CEMETERY.

(a) PROHIBITION.—Chapter 24 of title 38, United States Code, is amended by adding at the end the following new section:

"§ 2413. Prohibition on certain demonstrations at cemeteries under control of National Cemetery Administration and at Arlington National Cemetery

"(a) PROHIBITION.—No person may carry out—

"(1) a demonstration on the property of a cemetery under the control of the National Cemetery Administration or on the property of Arlington National Cemetery unless the demonstration has been approved by the cemetery superintendent or the director of the property on which the cemetery is located; or

"(2) with respect to such a cemetery at which a funeral or memorial service or ceremony is to be held, a demonstration within 500 feet of that cemetery that—

"(A) is conducted during the period beginning 60 minutes before and ending 60 minutes after the funeral or memorial service or ceremony is held; and

"(B) includes, as a part of such demonstration, any individual willfully making or assisting in the making of any noise or diversion that disturbs or tends to disturb the peace or good order of the funeral or memorial service or ceremony.

"(b) DEMONSTRATION.—For purposes of this section, the term 'demonstration' includes the following:

"(1) Any picketing or similar conduct.

"(2) Any oration, speech, use of sound amplification equipment or device, or similar conduct before an assembled group of people that is not part of a funeral or memorial service or ceremony.

"(3) The display of any placard, banner, flag, or similar device, unless such a display is part of a funeral or memorial service or ceremony.

"(4) The distribution of any handbill, pamphlet, leaflet, or other written or printed matter other than a program distributed as part of a funeral or memorial service or ceremony."

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

"2413. Prohibition on demonstrations at cemeteries under control of National Cemetery Administration and at Arlington National Cemetery."

SEC. 3. PENALTY FOR VIOLATION OF PROHIBITION ON UNAPPROVED DEMONSTRATIONS AT CEMETERIES UNDER THE CONTROL OF THE NATIONAL CEMETERY ADMINISTRATION AND AT ARLINGTON NATIONAL CEMETERY.

(a) PENALTY.—Chapter 67 of title 18, United States Code, is amended by adding at the end the following new section:

“§ 1387. Demonstrations at cemeteries under the control of National Cemetery Administration and at Arlington National Cemetery

“Whoever violates section 2413 of title 38 shall be fined under this title, imprisoned for not more than one year, or both.”.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

“1387. Demonstrations at cemeteries under the control of National Cemetery Administration and at Arlington National Cemetery.”.

SEC. 4. SENSE OF CONGRESS ON STATE RESTRICTION OF DEMONSTRATIONS NEAR MILITARY FUNERALS.

It is the sense of Congress that each State should enact legislation to restrict demonstrations near any military funeral.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Indiana (Mr. BUYER) and the gentleman from Texas (Mr. REYES) each will control 20 minutes.

The Chair recognizes the gentleman from Indiana.

Mr. BUYER. Mr. Speaker, I yield myself such time as I may consume.

(Mr. BUYER asked and was given permission to revise and extend his remarks.)

□ 1530

Mr. BUYER. Mr. Speaker, I rise today in support of well-considered legislation that will protect the sanctity of military funerals at national cemeteries and will protect the privacy of grieving families as they bury their precious loved ones who died in the service of our country.

The first to rise, however, were the principal individuals in an organization called the Patriot Guard Riders, members of which are in Washington today. The Patriot Riders have two goals: to show respect for fallen heroes, their families and their communities; and to protect the mourning family and friends from interruptions created by any protestor or group of protestors. We owe them our deep sense of thanks and gratitude.

Mr. Speaker, this bill was jointly referred to the Committee on Judiciary, who waived consideration of the bill, and I will insert my letter requesting the waiver and Chairman SENSENBRENNER's letter in the CONGRESSIONAL RECORD at this point.

HOUSE OF REPRESENTATIVES,
COMMITTEE ON VETERANS' AFFAIRS,
Washington, DC, April 25, 2006.

Hon. F. JAMES SENSENBRENNER, Jr.,
Chairman, Committee on Judiciary, House of Representatives, Washington, DC.

DEAR CHAIRMAN SENSENBRENNER: In order to expedite consideration of H.R. 5037, the “Respect for America's Fallen Heroes Act,” the Committee on Veterans' Affairs requests that the Committee on the Judiciary waive consideration of the bill. As you know, H.R.

5037 was referred to the Committee on the Judiciary in addition to the Committee on Veterans' Affairs. The Committee on Veterans' Affairs acknowledges the jurisdiction of the Committee on the Judiciary over portions of this legislation, particularly section 3, which provides for criminal penalties under title 18 of the United States Code.

The Committee on Veterans' Affairs would not construe a waiver of consideration as a waiver of jurisdiction by the Committee on Judiciary over the subject matter contained in this or similar legislation, and the Committee on Veterans' Affairs would fully support any request by you seeking an appointment to any House-Senate conference on this legislation. I will place a copy of your reply letter in the Congressional Record during consideration of the bill on the House floor.

I very much appreciate the cooperation by you and your staff in this matter.

Sincerely,

STEVE BUYER,
Chairman.

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, DC, April 25, 2006.

Hon. STEVE BUYER,
Chairman, Committee on Veterans' Affairs,
House of Representatives, Washington, DC.

DEAR CHAIRMAN BUYER: In recognition of the desire to expedite consideration of H.R. 5037, the “Respect for America's Fallen Heroes Act,” the Committee on the Judiciary hereby waives consideration of the bill. There are provisions contained in H.R. 5037 that implicate the rule X jurisdiction of the Committee on the Judiciary. Specifically, section 3 provides for an additional penalty under title 18 of the United States Code. This provision implicates the rule X(I)(1)(7) jurisdiction of the Committee over “criminal law enforcement.”

The Committee takes this action with the understanding that by forgoing consideration of H.R. 5037, the Committee on the Judiciary does not waive any jurisdiction over subject matter contained in this or similar legislation. The Committee also reserves the right to seek appointment to any House-Senate conference on this legislation and requests your support if such a request is made. Finally, I would appreciate your including this letter in the Congressional Record during consideration of H.R. 5037 on the House floor. Thank you for your attention to these matters.

Sincerely,

F. JAMES SENSENBRENNER, Jr.,
Chairman.

Mr. Speaker, I would like to thank Chairman SENSENBRENNER and his staff for working closely with us to craft this important legislation.

We have all seen the stories right now of the extremist protestors in their demonstrations, placards that read, “Thank God for IEDs” and “Thank God our Soldiers are Dead,” and individuals such as Sergeant Ricky Jones in Indiana whose home had been egged twice and somebody put trash all over their yard and called his mother on the phone to tell them that they were thankful that their son had died.

On March 2, I stood here and described to my colleagues the perversions committed by this individual who claimed a first amendment right to disrupt the solemn ritual of a military funeral. They would manipulate the Constitution to justify harassing families who are mourning a lost family mem-

ber. By the stunned silence in this Chamber and the gasp that ensued that moment, I knew that most all my colleagues shared a deep abhorrence to these outrageous acts and that we share equally a deep desire to prevent them.

Today, we bring for a vote a bill that will do just that. H.R. 5037, the Respect for America's Fallen Heroes Act, will prohibit demonstrations within 500 feet of a national cemetery and Arlington National Cemetery 60 minutes before and after a funeral. This is a bipartisan effort with over 174 cosponsors.

We have worked closely with the Judiciary Committee. We have examined the issues of both constitutionality and the proportionality with regard to sentencing. The Federal circuit court of appeals in Griffin v. Secretary of Veterans Affairs upheld the constitutional existing Department of Veterans Affairs regulations setting requirements for the decorum and decency while on VA property. H.R. 5037 essentially codifies the regulation.

The United States Supreme Court had addressed the “time, place or manner” standard in several cases, including Grayned v. City of Rockford. In that decision, the Court upheld an anti-noise ordinance that prohibited activities adjacent to a school that “disturbs or tends to disturb the peace or good order of such school session or class thereof.”

H.R. 5037's restrictions on “willfully making or assisting in the making of any noise or diversion that disturbs or tends to disturb the peace or good order of the funeral or memorial service or ceremony,” closely tracked the language approved in the Supreme Court opinion. Additional cases that address the time, place and manner standard include Ward v. Rock against Racism and Renton v. Playtime Theaters, Inc.

Mr. Speaker, H.R. 5037 does not unconstitutionally draw distinction on what demonstrations are or are not allowed based on the content of the speech. It would not prevent the Secretary of Veterans Affairs from promulgating or enforcing regulations that prohibit or restrict the VA property or other conduct that is not specifically referenced in this legislation.

Penalties associated with the violations of this legislation are fair and appropriate. Violating the prohibition on demonstrations would be a class A misdemeanor under title 18, United States Code, resulting in fines up to \$100,000 and imprisonment of not more than 1 year or both. The penalty balances the need for deterrence with the equally important requirement for proportionality.

Mr. Speaker, I reserve the balance of my time.

Mr. REYES. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I would like to thank Congressman MIKE ROGERS specifically for his leadership in introducing H.R. 5037, the Respect for America's Fallen

Heroes Act. I would also like to thank House Veterans' Affairs Committee Chairman BUYER and Ranking Member LANE EVANS for their strong support and for helping bring this legislation to the House floor.

Today, I was scheduled to be in my congressional district in El Paso, Texas, to participate in a Medicare prescription drug conference, which I helped to organize, so that our seniors would be provided the latest information on Medicare part D.

Mr. Speaker, while I would have liked to have been able to attend that conference, this issue is just as important, and I am proud to be here today and serve as the lead Democrat cosponsor of this bill, which has gained, by the way, Mr. Speaker, very strong bipartisan support, including the entire House Democratic leadership.

I know that all of us agree that our servicemembers who have made the ultimate sacrifice while serving their country deserve to be laid to rest with respect and dignity. The families of these courageous men and women also deserve funerals that allow them to say good-bye to their loved ones and mourn their loss in that same peace and dignity. Organized protests have disrupted the sanctity of these funerals that have been conducted throughout the United States for servicemembers who have been killed while serving in our current military operations. Some protestors have disrupted these funerals with shouts and signs that read, "Thank God for IEDs" and "Thank God for Dead Soldiers."

In my congressional district of El Paso, our community has mourned the loss of 20 servicemembers who have made this ultimate sacrifice while serving our country in Iraq and Afghanistan.

As a Vietnam combat veteran and member of the House Veterans' Affairs and House Armed Services Committees, I knew I had to do my part to ensure that our Nation's heroes are given the burial that they deserve.

To that end, the respect for America's Fallen Heroes Act would, first, prohibit all demonstrations during the 60 minutes prior to and after funerals taking place at Department of Veterans Affairs national cemeteries or the Department of the Army's Arlington National Cemetery.

Second, impose 500-foot restriction on demonstrations near national cemeteries and Arlington National Cemetery during the funeral and for a brief period before and after the funeral to allow mourners to enter and leave that cemetery in peace and dignity.

Third, allow for civil infraction for violations, including monetary fines and/or jail time of 6 months to a year, as consistent with authority granted to the Secretary of Veterans Affairs to maintain order in national cemeteries under current regulations.

Fourth, express the sense of Congress that all States should enact similar restrictions for State and private cemeteries, as well as funeral homes.

Mr. Speaker, this bill is narrowly tailored to protect military families at the sacred time from verbal attacks, while protecting our freedom of speech at the same time. Furthermore, provisions in this legislation are in line with judicial precedents specific to time, place and manner of demonstration.

In *Griffin v. Secretary of Veterans Affairs*, the United States Supreme Court upheld the constitutionality of existing regulations that prohibit demonstrations on property under the control of the National Cemetery Administration. The Supreme Court held: "All visitors are expected to observe proper standards of decorum and decency while on VA property. Toward this end, any service, ceremony, or demonstration except as authorized by the head of the facility or his designee, is prohibited."

As mentioned earlier, our bill is limited to Federal land under the control of the Department of Veterans Affairs and the Department of the Army's Arlington National Cemetery.

Furthermore, Mr. Speaker, in *Grayned v. City of Rockford*, the Supreme Court held that the Secretary of Veterans Affairs maintains very broad discretion to implement regulations to prohibit demonstrations. The Court stated: "Because the judgment necessary to ensure that cemeteries remain 'sacred to honor and memory of those interred or memorialized there' may vary with individual circumstances, we conclude that the discretion vested in VA administrators is reasonable in light of the characteristic nature and function of our national cemeteries."

Mr. Speaker, this legislation is narrowly drawn to allow the families and friends of our fallen heroes to lay their loved ones to rest in peace and dignity. The restriction on freedom of speech is content neutral.

The restriction is limited in time, manner and place to balance the constitutionally protected rights of law-abiding speakers against the legitimate competing interests of unwilling listeners who would otherwise be distracted from an important social objective, the dignified burial of our honored dead.

So with that, Mr. Speaker, in a few weeks, our Nation will come together to remember and honor our servicemembers who have made the ultimate sacrifice while in service to our country. I ask all my colleagues to join me, to join us, in honoring our fallen servicemembers by voting in favor of H.R. 5037.

Mr. Speaker, I reserve the balance of my time.

Mr. BUYER. Mr. Speaker, I would like to inform the body that the Congressional Budget Office has determined that implementing H.R. 5037 would have no significant cost to the Federal Government, and it has no intergovernmental mandate as defined by Federal law.

Mr. Speaker, I yield 4 minutes to the gentleman from Michigan (Mr. ROGERS), a former captain in the United States Army and former FBI agent, who has worked closely with this legislation.

Mr. ROGERS of Michigan. Mr. Speaker, I want to thank Chairman BUYER for his counsel and his leadership working through this bill. I greatly appreciate it. I know certainly the families do as well.

To my good friend and colleague, SILVESTRE REYES, thank you for lending your leadership and your voice and assistance and counsel on this very important piece of legislation. Thank you for your service, not only for the military but the Border Patrol and now to the people of your district back home. I certainly appreciate it.

Mr. Chairman, this started for me when I attended the funeral of Sergeant Joshua Youmans, a very brave and great American who gave his life defending freedom in Iraq; and as I arrived to the funeral to the chants and the taunting and some of the most vile things I had ever heard, it was almost staggering to me that someone would take the time and energy to show up and preach that kind of hateful speech upon some very vulnerable individuals as they went into the church to mourn the loss of a great American patriot.

What struck me that day is this very young widow who got before a very packed church service to lay her honored husband to rest and told the story about how this soldier, before he passed away, had the privilege of holding his daughter for the first and only time. She talked about how proud she was of her husband and what he had done for his country, how proud she was to be an Army wife and how she could not wait to tell her young daughter, McKenzie, the courage and sacrifice of a great American, her husband, Joshua Youmans.

You juxtapose that with what they had to go through, this gauntlet of terror, people taunting and jeering and saying the most hateful things you possibly can imagine, and I walked out of that church that day knowing that we as Americans can and must do better by these families. This is their chance to stand up and mourn the loss of a family member.

A father once told me that at a service of his son he knew that this was the moment between sanity and insanity for him, and you can imagine that when people stop by and grieve and support and love and comfort these families, when America steps up to put their arms around these families to say that we love you, we support you and we respect you and we appreciate your sacrifice, it means the difference in that father returning to sanity after the burial of his son or, in this case, the burial of the husband.

It is so important that we stand by the men and women who sacrifice so much, and this bill does that. It protects the first amendment. They can

still preach their vile hatred, if they want to do that an hour before and an hour after; but, again, it also creates a bubble. It creates a hub of American people around these families to give them the right, which they so richly deserve, to grieve in peace and have the dignity and the honor to lay their loved ones to rest in peace.

I can say it no better, Mr. Speaker, than so many people who e-mailed me, almost 30,000 people from Baghdad Iraq to Brighton, Michigan, my hometown and told stories of why this was so important, some of them very moving.

I will read you one now: "Over the last 6 months my unit has taken over 30 casualties in some of the most vicious areas south of Baghdad. The thought of their families having to face protestors after their memorials incites a rage I have never known before. These protestors mock all that we have accomplished here, the lives that have been forever changed, and the lives that have been lost, using our most valued doctrines of faith and freedom as their defense. I cannot thank you, and Congress, enough for your dedication to this effort. I can only hope that your colleagues will join you in this battle. Mr. Speaker, so many have. Signed, Sergeant Ashley A. Voss, Baghdad, Iraq."

□ 1545

I will share another letter from a grieving mother.

"Thank you for creating and seeking to help grieving families of our American heroes. My husband and I support this act 100 percent. Our son, Sergeant Trevor Blumberg, was killed in action in Iraq on September 14, 2003. We know the pain and horror in losing a heroic son; no less than to have to face cruel, inhumane people who cannot dignify your time of grief. Please continue to place these families in America's hearts and minds. Nothing less is deserved."

That was from Janet M. Blumberg, a proud parent of an American hero.

Thanks to all who support the act.

Mr. REYES. Mr. Speaker, I yield 4 minutes to the gentleman from California (Mr. BACA) who knows the pride of wearing America's military uniform, an Army veteran.

(Mr. BACA asked and was given permission to revise and extend his remarks.)

Mr. BACA. Mr. Speaker, I rise today in support of H.R. 5037, which I am a proud cosponsor of as a veteran, the Respect for America's Fallen Heroes Act.

These are individuals who have sacrificed their lives for this country, men and women who have served us, and we must remember those who have sacrificed their lives because we are enjoying our lives, because they gave ultimately so we would enjoy the freedom and peace we have today.

So we have the same responsibility, and that is what this bill does to honor those individuals. As we commemorate

Military Appreciation Month in May as well as Memorial Day on May 29, I urge my colleagues to support this bill. It seeks to provide every fallen soldier with a private and dignified burial for those who have given to this country, the men and women who have sacrificed a lot.

All around the country, grieving families of soldiers who were killed in service to our Nation are being harassed at funeral sites. These protesters show us with hurtful signs and messages, adding undue stress to military families seeking to bury their loved ones with pride and dignity.

While we respect the right of free speech in this country, military families have a right to mourn the loss of their husbands, wives, and children in peace. H.R. 5037 would enforce the right by banning protests at VA national cemeteries, as well as Arlington National Cemetery, 60 minutes before and after a funeral takes place.

This bill would also impose a 500-foot restriction on demonstrations at the site to give families privacy. Additionally, this bill would create a class A misdemeanor for violations with penalties up to \$100,000 in fines or 1 year in prison.

Finally, H.R. 5037 expresses a sense of Congress that all States should enact similar bans for both State-run and privately owned cemeteries and funeral homes.

Mr. Speaker, this bill is consistent with the Supreme Court ruling. It is consistent with the Supreme Court ruling and it is constitutional. This bill provides additional rights to free speech while giving the Armed Forces and their families the due respect and the dignity that they deserve because their families have given so much to this country, and we deserve to give it back to them.

I ask Members to support this important bill.

Mr. BUYER. Mr. Speaker, I yield 3 minutes to the gentleman from Ohio (Mr. CHABOT), the chairman of the Subcommittee on the Constitution.

Mr. CHABOT. Mr. Speaker, I rise today in support of H.R. 5037, the Respect for America's Fallen Heroes Act, and I am very pleased to have been an original cosponsor and to have helped to author the bill, along with Chairman BUYER, Chairman MILLER and Representative ROGERS.

We are all painfully aware of the recent trend of demonstrations and protests occurring near military funerals and national cemeteries. These protests have included signs saying "God Hates America" and "Thank God for IEDs," which are those improvised explosive devices which are responsible for so many of the deaths of our honorable military soldiers in Iraq and Afghanistan. Such demonstrations are not compatible with respect due to our Nation's fallen heroes and they should not be consistent with our Nation's laws.

This act prohibits such demonstrations in a manner that is fully con-

sistent with the Constitution while fully protecting the respect and dignity of funerals held on and near national cemeteries.

The first provision of H.R. 5037 prohibits demonstrations on national cemetery grounds unless such demonstrations are approved by the cemetery director. It is common sense.

This provision is clearly constitutional under judicial precedents, most recently *Griffin v. Secretary of Veterans Affairs*. In that case, the Federal Circuit Court of Appeals, just a few years ago, upheld as constitutional an existing Federal regulation providing "any service, ceremony, or demonstration, except as authorized by the head of the facility or designee, is prohibited" on Veterans Affairs property. The first provision of H.R. 5037 simply codifies that principle in statute.

The second provision of H.R. 5037 prohibits any demonstration within 500 feet of national cemeteries within 60 minutes before or after the service, if the demonstration includes "any individual willfully making or assisting in the making of any noise or diversion that disturbs or tends to disturb the peace or good order of the funeral or memorial service or ceremony." This exact language has been upheld as constitutional by the Supreme Court in the case of *Grayned v. City of Rockford*.

At the same time, this language does not unconstitutionally draw distinctions regarding what demonstrations are allowed and are not allowed, based on the content of the speech. The Supreme Court, again in the *Grayned* case, upheld this precise language as constitutional because the language "contains no broad invitation to subjective or discriminatory enforcement."

This is clearly important legislation, and I strongly urge its passing.

Let me say that all supporters of H.R. 5037 are asking is that the families and friends of our Nation's fallen heroes be given a few hours of peace during which to honor their loved one's greatest sacrifice, a few hours to pay respect to a selfless life devoted to protecting others. That is not unconstitutional. That is not even an imposition. That is the least we can do for those who fight to uphold the Constitution.

I urge all my colleagues to join in supporting this bill, which will give the families of those who died for us the comfort of knowing they will be able to pray in peace and thank the fallen on and near the sacred ground where they will rest forever so we can live free today.

Mr. REYES. Mr. Speaker, I reserve the balance of my time.

Mr. BUYER. Mr. Chairman, I yield 1 minute to the gentleman from Minnesota (Mr. KENNEDY).

Mr. KENNEDY of Minnesota. Mr. Speaker, just over 2 months ago, during the funeral of Corporal Andrew Kemple, a Minnesotan who was killed while fighting for freedom, vile slogans like "God Hates America" and "God

Loves IEDs" were chanted by protesters, and I use that term loosely, with a radical, hateful agenda.

Words like "reprehensible" and "disgusting" simply do not adequately describe the slogans or this stunt on such a solemn occasion. The men and women who have given what Lincoln called "the last full measure of devotion" deserve better than this.

I urge my colleagues to support the Respect for America's Fallen Heroes Act. Our men and women in uniform never fail us when the Nation calls upon them. We owe them nothing less than the same commitment to duty.

Mr. REYES. Mr. Speaker, I yield myself such time as I may consume to read into the RECORD a statement from our minority leader, Ms. PELOSI.

"I urge all of my colleagues to vote today for H.R. 5037, the Respect for America's Fallen Heroes Act. I am proud to be a cosponsor of this bipartisan legislation that will ensure grieving military families are protected from protesters spewing a message of hatred. For our men and women in uniform who have made the ultimate sacrifice for our country, and for their families, we must act today to ensure that they receive the respect and the moments of solemnity that they have earned and deserve.

"No Americans have stood stronger and braver for our Nation than those who have served in our Armed Forces. Our soldiers have courageously answered when called, gone when ordered, and defended our Nation with great honor. Their noble service reminds us of our mission as a nation, to build a future worthy of their courage and sacrifice.

"Americans may debate and disagree about foreign and domestic policy. This is the essence of our democracy. But when it comes to our military men and women, America must stand united and honor them as the heroes that they are."

Minority Leader NANCY PELOSI.

Mr. Speaker, I continue to reserve the balance of my time.

Mr. BUYER. Mr. Speaker, I yield 1 minute to the gentlewoman from Michigan (Mrs. MILLER).

Mrs. MILLER of Michigan. Mr. Speaker, during this time of conflict, we have seen so many examples of heroism exhibited by the men and women of our armed services.

Every day these great heroes are on the front line of the war in Iraq and Afghanistan and throughout the entire world, defending our liberty and freedom and democracy. And most Americans, thank goodness, support their efforts and their mission; and the vast majority honor their service and sacrifice.

But some do not and have expressed their objections in a variety of ways that have been articulated on this floor today. Some are protesting the Congress or the President, and that is fine because we are the policy-makers and we are the correct targets for indi-

cating support or opposition to the war.

But some have taken their objections to places where they simply do not belong. Many have begun to protest our fallen heroes as they are being laid to rest by their loved ones. Groups like the Patriot Guard, God bless them, have stood up and shielded families from this obscene type of protest, but we need to do more.

No fallen soldier, sailor, airman or marine's family should ever be subjected to such trauma at a time of such great grief. Instead, our fallen heroes should be afforded the honor and dignity befitting their sacrifice.

I urge my colleagues to support this important piece of legislation.

Mr. REYES. Mr. Speaker, I reserve the balance of my time.

Mr. BUYER. Mr. Speaker, I yield 1 minute to the gentleman from Maryland (Mr. BARTLETT).

Mr. BARTLETT of Maryland. Mr. Speaker, when the unbridled expression of one right infringes on another, we appropriately limit that right, and that is what we do today.

On March 3 of this year, 20-year-old Lance Corporal Matthew Snyder of Westminster, Maryland, was killed when his Humvee overturned on assignment in Iraq.

Before his deployment, Matthew explained that he volunteered for convoy escort security because, "There was a position that needs to be filled, and I am a Marine."

Outside the church where Matthew's family and friends gathered for his funeral, a group of six out-of-State protesters loudly chanted and carried signs, including, "Thank God for Dead Soldiers."

I stand today joined in spirit by members of the American Legion and the For Our Troops Club of Hereford High School in support of this bill that will honor America's fallen soldiers and respect the privacy of their families by protecting the dignity of their funerals.

Mr. REYES. Mr. Speaker, I reserve the balance of my time.

Mr. BUYER. Mr. Speaker, I yield 1 minute to the gentleman from Georgia (Mr. GINGREY).

Mr. GINGREY. Mr. Speaker, I thank Chairman BUYER, Chairman CHABOT, Chairman MILLER, Mr. REYES, and all of the Members that have brought forth this bill, the Respect for America's Fallen Heroes Act.

Mr. Speaker, it is unbelievable that we would need this kind of a bill, but we do know what is going on. You have heard that from the other Members that have spoken. It is unbelievable that people would trample on the families of these fallen soldiers during such a sensitive time.

In my district, Mr. Speaker, had they showed up at the funeral of Justin Johnston or Paul Saylor or Lieutenant Tyler Brown, who was buried at Arlington, I am sure those families would have had a lot of difficulty restraining themselves, as would this Member.

I think we need to pay tribute, of course, to the Patriot Guard riders who have been keeping these people away from the funeral sites until this legislation has its intended effect.

This bill to pass today is going to require 66 percent vote of this body. I think it will get 100 percent.

Mr. REYES. Mr. Speaker, I reserve the balance of my time.

Mr. BUYER. Mr. Speaker, I yield 1½ minutes to the gentleman from Minnesota (Mr. GUTKNECHT).

Mr. GUTKNECHT. Mr. Speaker, I rise in strong support of H.R. 5037, the Respect for America's Fallen Heroes Act. I am a proud cosponsor of this act which will ban protests at military funerals at national cemeteries, including Arlington National Cemetery.

Burying a child, father, husband or wife is hard enough without having to see signs that say things like "God Hates You" or hearing hateful language shouted at your family during a funeral procession or graveside ceremony.

□ 1600

On February 23, 2006, the funeral of Army Corporal Andrew Kemple from Anoka, Minnesota, was disrupted by protestors who claimed that U.S. military deaths are divine retribution for the Nation's tolerance for homosexuality. The protestors even went so far as to taunt Andrew's mother as she entered the church for her son's funeral service.

It is hard to think of a more shameful act than taunting a woman who just gave her son in service to our Nation.

All Americans are proud of the sacrifices made by our Nation's brave Americans in uniform. We have seen their skill and their courage in the armored charges and midnight raids and in their lonely hours of faithful watch. We have seen the joy when they return home and felt the pain when one is lost.

No matter what one's position may be on U.S. policy matters, we should all agree that demonstrating at the funeral of one of our fallen heroes is disgraceful and unacceptable. We must stand behind our Nation's military families, especially on the day when caskets draped with the American flag are carried that last mile.

The Minnesota State legislature passed a bill on Monday, May 1, to ban all protests at military funerals, burials, and memorial services. I encourage other States to follow Minnesota's lead, and I urge the House of Representatives to pass the Respect For America's Fallen Heroes Act today. Our Nation's heroes deserve no less.

Mr. REYES. Mr. Speaker, I have no further requests for time, so I will now close and then yield back the time.

Mr. Speaker, this afternoon, all around the country they have seen Members of Congress come together to stand up for our men and women in uniform and for their families. I think

the message is clear that we want those that have made the ultimate sacrifice, and those that are laying them to rest, to have the opportunity to do so with peace and dignity. So I am proud to be here, and I am proud to work with my colleagues and thank them for their support in bringing this to the floor this afternoon.

Mr. BUYER. Mr. Speaker, will the gentleman yield?

Mr. REYES. I yield to the gentleman from Indiana.

Mr. BUYER. Mr. Speaker, and my colleagues, I want to thank the gentleman from Texas. It is a pleasure to have worked with you. We are colleagues on the Veterans' Affairs Committee, and I appreciate your service over the years. But you and I haven't had a chance specifically to work on a bill. And I have enjoyed my associations with you. And the cause is right. The spirit of the country is right. They want us to set the standards of dignity, and you recognized that early on and championed this cause in a bipartisan fashion. And it says a lot about who you are. I think it is because you know who you are, and that makes this a pretty easy process. For that I want to thank the gentleman.

Mr. REYES. Thank you, Mr. Chairman. I really equally appreciate the opportunity to work with you because we know, as veterans, the sacrifices that men and women make on behalf of this country and their families, and so it has been a privilege to be able to work with you and my colleague, MIKE ROGERS, who also has been a leader on this very important issue for our country and for our country's military.

Mr. BUYER. Mr. REYES, you probably share the very same sense I do when you see the Patriot Guard Riders. And you know, one thing I want to comment to you, that I am proud about them, not only for taking an individual initiative, but also for their restraint.

I do recall what it was like when I came back from the first gulf war, and we buried a friend, and we stood there in our military uniforms, so proud of our service. At the same time we were grieving, and we were also moved that one of the finest of our unit was killed, and it was so powerful to all of us. And it was also yet so private and personal to all of us, given what we had just gone through on behalf of a country.

And as I reflect upon that moment, I could not imagine someone from the outside, based on some other reason or rationale and their own image, would interrupt that moment in time for us. And I think a lot of these Patriot Guard Riders also share that very same feeling I have. And I just want to compliment their restraint; because I could tell you, it would be hard, it would be really hard, if I were in the family, if I were one of the family members and this was happening, I would want to go over there and take matters into my own hands. But you know what? People haven't done that. And I am really proud of some of the families and the Patriot Guard Riders themselves.

So we are not only setting the standards of decency. We are also setting the standards for criminal conduct so everybody is well behaved. But I just want to thank the gentleman.

Mr. REYES. Absolutely. And I also would make two observations. First, the great restraint that they are showing shows the great respect that we have as a Nation of laws because while we may disagree with the message, we don't disagree that they have a right to deliver it. It is just not appropriate. And somewhere along the line they didn't learn the lesson that they should not intrude on somebody's private time to grieve and to be at peace, especially for their loved ones who have just sacrificed everything for their country.

Yesterday morning I had the opportunity to be with some of our military troops at Fort Bliss in my district. And I had several of them come to me and very privately, because, you know, our men and women in uniform are that way. They are courageous, they are professional. They are top-notch, but they are also very private. And in a private way they thanked me and said, please convey to all your colleagues in Congress our deep appreciation that we know that if something happens to us, our families will be taken care of, and specifically referred to this legislation and the peace of mind that they have, and they wanted us to convey that message.

Mr. BUYER. I am glad and pleased that you and Mr. ROGERS took this initiative. But at the same time it is a sad commentary that we actually have to come to the House floor and create a law in title XVIII to do this. We shouldn't have to be doing this. So when people say you are regulating speech again, well, nobody really wants to do that. We have such respect for the first amendment. But at the same time there is a significant government interest here and that deals with our decency that you spoke of in setting those standards.

And also the case law that you cited. The Supreme Court has been very clear to give us that ability to do just that, as Mr. CHABOT had also testified to before our committee.

But it is unfortunate we have to be here to do that. But we cannot permit the repugnant acts of a few to define the character of America.

Mr. REYES. I agree with you, Mr. Chairman.

Mr. Speaker, I yield back the balance of my time.

Mr. BUYER. Mr. Speaker, when I rose in March to tell this body of the outrageous acts committed against one grieving family in Indiana, I said that the great virtue of the American character is our compassion. It is our compassion and human decency that represents the very best of our Nation.

I had a task to perform and that was very similar to many of my colleagues in this body, and that is, when we get the word that someone from our congressional districts has died in the

service of our country. So it is an easy call to make, but it is a difficult conversation to have.

And I remember calling the mother of Sergeant Ricky Jones in Kokomo, Indiana, and when I spoke with her and said, Ma'am, is there anything that I can do for you or the family, she said, You can't believe what this has been like. And I said, Well, I have two children. You are right. I can't believe that. She said, No, no, you don't understand, and then began to convey to me that, When I had heard that Ricky had died, I began receiving family and friends to the home. They would also call on the telephone. The phone rang. I thought it was going to be either family or friend, and she picked up the phone and the voice on the other end said, I am glad your son is dead. He deserved to die, and hung up the phone. She was shocked and appalled. And she recovered from that.

About an hour later the phone rings again and it is another voice on the other end of the phone that said, I am glad your son is coming home in a body bag. I am glad he is dead, and hangs up the phone.

Later, someone had egged their family home twice. And then they put trash all over their yard in the middle of the night. And all this was done while the body of Sergeant Ricky Jones was being transported back to Indiana.

I was pleased that the Deputy Secretary of Veterans Affairs, Gordon Mansfield, and the Under Secretary for Memorial Affairs, Bill Turk, came to Indiana to stand with this family, with myself, and also the Governor of Indiana was also present. But for Gordon Mansfield to have made that trip was very meaningful because Gordon Mansfield is a highly decorated combat veteran from Vietnam who is a paraplegic. He is in a wheelchair from his combat wounds. And for him to also have been so disturbed by what happened, for him to travel to Indiana to be with that family says so much about Gordon Mansfield and the leadership that he gives at the Department of Veterans Affairs.

I was pleased. It was the first time I had ever seen the Patriot Guard Riders. Hundreds of them were there. And that is why, Mr. REYES, that I spoke about their restraint, because when you see them, you are not sure what's about to happen here. These are some pretty tough guys.

And one thing that I recall from that experience that was very intriguing was that many of them were also Vietnam veterans. Not all of them were Vietnam veterans, and not all of them were even veterans. Some of them were not. They are patriots.

And Sergeant Ricky Jones is the son of an Air Force Vietnam veteran; so these Vietnam era veterans, they know exactly what it was like when they came home.

Mr. Speaker, I ask unanimous consent for an additional 5 minutes.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Indiana?

There was no objection.

Mr. BUYER. They know exactly what it was like when they came home, and they were not going to permit this to occur to their son or daughter; but they were going to set those standards. And so for that reason, and many others, I am so proud of the Patriot Guard Riders.

We have before us an opportunity to make a clear expression of that compassion and decency on behalf of those who are passing their darkest hours and on behalf of all Americans who would give them peace during that difficult journey.

Mr. Speaker, I would like to thank the chief sponsors of this bill, Mr. ROGERS of Michigan, SILVESTRE REYES of Texas, and JEFF MILLER of Florida. Together they have done their due diligence to ensure that the legislation will withstand any judicial scrutiny.

I would like to thank Kingston Smith and Mary Ellen McCarthy, counsel of the Veterans' Affairs Committee; Paige McManus of the Veterans' Affairs Committee for their work on the bill; as well as Andy Kaiser of Congressman ROGERS' staff.

I would also like to thank, of the Judiciary Committee staff: Paul Taylor, Hillary Funk and Mike Volkov.

Mr. Speaker, I urge my colleagues to unanimously support H.R. 5037.

Mr. TIAHRT. Mr. Speaker, every so often a bill comes before this House that I wish was unnecessary. A bill that is so intrinsically rooted in basic human decency that no one could imagine a legislative remedy would be needed. H.R. 5037, Respect for America's Fallen Heroes Act, is such a bill.

H.R. 5037 would prohibit protests at the funerals of our fallen military men and women. A small group of people are hurling insult onto tragedy for the family and friends of fallen heroes. For me and my constituents, this blight on human decency is personal.

On November 29, 2005, Kansas Sergeant Jerry Mills and Sergeant Donald Hasse were patrolling Taji, Iraq their vehicle was hit by an improvised explosive device—tragically cutting their lives short. Their bodies were returned to Kansas for burial and everlasting respect of their grateful countrymen.

Sergeants Mills and Hasse were heroes. They gave their lives for this country. Both of these heroes deserved funerals befitting of their patriotism and sacrifice. Regrettably, some wanted to turn a solemn event into a political statement.

Protesters arrived at Sergeant Hasse's funeral in Wichita, Kansas. Fortunately, so did the Patriot Guard Riders, a group of motorcycle riders dedicated to honoring fallen service men and women and protecting the funeral proceedings from protestors. The Patriot Guard Riders, invited by the Hasse family, kept the protestors at bay and protected Sergeant Hasse's young son from having to witness such inhumanity.

Although the same protestors were due to also demonstrate at the funeral for Sergeant Mills in Arkansas City, Kansas, they never arrived. The Patriot Guard, invited by the Mills

family, did attend to honor the memory of Sergeant Mills. An injustice was averted.

No family should have to endure such a double tragedy of losing a loved one and then being berated by protesters. The Respect for America's Fallen Heroes Act will keep protesters away from grieving families and friends—allowing these heroes to be mourned and honored with dignity and respect. I ask all my colleagues to join me in supporting this important piece of legislation that is unfortunately needed. I ask my fellow Americans to remember and honor these heroes, and their families, who have made the ultimate sacrifice defending freedom.

Mr. BACA. Mr. Speaker, I rise today in support of H.R. 5037, the "Respect for America's Fallen Heroes Act."

As we commemorate Military Appreciation Month in May, as well as Memorial Day on the 29th, I urge my colleagues to support a bill that seeks to provide every fallen American soldier with a private, dignified burial.

All around the country, grieving families of soldiers killed in service to our nation are being harassed at funeral sites. These protesters show up with hurtful signs or messages, adding undue stress to military families seeking to bury their loved ones.

While we respect the right to free speech in this country, military families also have a right to mourn the loss of their husbands, wives, and children in peace. H.R. 5037 would enforce that right by banning protests at VA national cemeteries, as well as at Arlington Cemetery, 60 minutes before and after a funeral takes place. This bill would also impose a 500-foot restriction on demonstrations at these sites and create a Class A Misdemeanor for violations with penalties up to \$100,000 in fines or 1 year in prison. Finally, H.R. 5037 would express the sense of Congress that all states should enact similar bans for both state-run and privately-owned cemeteries and funeral homes.

Mr. Speaker, this bill is constitutional and preserves the individual's right to free speech, while giving our Armed Forces and their families their due respect. It is the right thing to do and I ask my colleagues vote in support of this important piece of legislation.

Mr. DAVIS of Florida. Mr. Speaker, I rise in strong support of H.R. 5037, the Respect for America's Fallen Heroes Act, which would ban all non-approved demonstrations 60 minutes prior to and after funerals taking place at VA national cemeteries or at Arlington National Cemetery, as well as impose a 500-foot restriction on demonstrations. Furthermore, the bill would allow for a Class A Misdemeanor for violations with penalties up to \$100,000 in fines or up to one year in prison.

As we have seen, a troubling public display has been taking place around the country perpetuated by groups who wish to call attention to a cause. This activity is not a case of free speech and should be stopped. There is a time and a place for protest in our Democracy, but it is wholly inappropriate to use a funeral as an opportunity to make statements about a personal belief, a political cause or federal policy. Families and loved ones should be allowed to grieve in peace. For this reason, I am a cosponsor of this legislation along with more than 170 of my colleagues.

Mr. Speaker, more than 2,500 brave men and women have given this country the ultimate sacrifice while serving their country in

Iraq and Afghanistan. Their families and loved ones should be proud of their service to their country. The sadness of those left behind is bad enough without having to face screaming protesters with an agenda.

This bipartisan bill is consistent with the Constitution and is not a limitation of the freedom of speech that we enjoy in this country. I strongly support this legislation and stand with my colleagues. I hope that this legislation becomes law as soon as possible.

I urge my colleagues to vote "yes" on H.R. 5037.

Mr. PORTER. Mr. Speaker, over 2,400 brave men and women have paid the ultimate sacrifice fighting the War on Terror and the great State of Nevada has lost 19 heroic sons, 9 of which, are in my district. Just last week, on May 5, First Sergeant Carlos N. Saenz of Las Vegas died when an improvised explosive device detonated near his military vehicle.

As we continue to fight the War on Terror, it is imperative that we protect America's fallen heroes by ensuring that they are treated with respect, while being laid to rest.

As a member of Congress, and a parent, I understand the importance of ensuring that families are able to provide a meaningful and proper burial for their loved ones. As we protect the constitutional rights of those who disagree with the war, we must also protect the rights of our fallen heroes and their families.

The Respect for America's Fallen Heroes Act, which bans all demonstrations 60 minutes prior to and after funerals taking place at Department of Veterans Affairs' national cemeteries or the Department of Army's Arlington National Cemetery, seeks to protect the families right to grieve in peace.

The National Cemetery Administration's (NCA) vision is to serve all veterans and their families with the utmost dignity, respect, and compassion and to ensure that every national cemetery will be a place that inspires visitors to understand and appreciate the service and sacrifice of our Nation's veterans. In order to ensure that the NCA and the Department of Veterans Affairs are able to keep their commitment to America's veterans and their families, I am in full support of this important piece of legislation.

Mr. Speaker and my distinguished colleagues, I offer my full support for this important piece of legislation and I support your efforts to protect the rights of America's fallen heroes and their families.

Mr. MILLER of Florida. Mr. Speaker, I rise today to offer my unwavering support for H.R. 5037, the Respect for America's Fallen Heroes Act. I am proud to be an original cosponsor of this bill.

The rights of free speech and expression under the Constitution's First Amendment are not absolute, and there are many U.S. Supreme Court decisions interpreting and explaining the right and its limits. As Chairman BUYER explained, there are several judicial precedents which make clear that H.R. 5037 is constitutional. On April 6, the Subcommittee on Disability Assistance and Memorial Affairs, the subcommittee I chair, took testimony on this bill.

Said David Forte, Professor of Law, Cleveland-Marshall College of Law, Cleveland State University, in written testimony submitted to the Subcommittee:

"There are thus two constitutional issues to be confronted: (1) Does the ban on "certain" demonstrations meet the requirement

of First Amendment law as laid down in Supreme Court precedents, and (2) Is the discretion lodged in the cemetery superintendent to permit exceptions fall within an acceptable constitutional range? I conclude that the answer to both questions is in the affirmative and that the bill is well within constitutional limits.

Mr. Speaker, at this time I ask unanimous consent that Mr. Forte's statement be included in the CONGRESSIONAL RECORD.

I have visited the troops in Afghanistan and Iraq several times over the years.

While always moving and inspiring experiences, one time in particular stands out. It was September 2003 and we were preparing to return to the States. After quite a wait, we were told that they were loading onto the plane the casket of Sergeant Trevor Blumberg, and we would be leaving Baghdad with his body. I have had few honors as great as that one. I am pleased to say that Mrs. Blumberg has since contacted Representative ROGERS' office to express her and her husband's support for this bill.

Our Nation's veterans have made the ultimate sacrifice, and it is appalling to see and hear their military service being derided. Unfortunately, throughout the country, that is indeed what is happening and it must stop.

I want to thank Mr. ROGERS, Chairman BUYER, and Mr. REYES for all their work in crafting this legislation and their continued dedication to the men and women of our armed forces.

I would also like to recognize Mr. Paul Taylor and Ms. Hilary Funk, staff on the Judiciary Committee's Subcommittee on the Constitution, for working so closely with my staff and me.

Mr. Speaker, I urge all my colleagues to support this bill.

TESTIMONY OF DAVID F. FORTE, PROFESSOR OF LAW, CLEVELAND-MARSHALL COLLEGE OF LAW, CLEVELAND STATE UNIVERSITY, IN SUPPORT OF H.R. 5037 BEFORE THE HOUSE COMMITTEE ON VETERANS' AFFAIRS, SUBCOMMITTEE ON DISABILITY ASSISTANCE AND MEMORIAL AFFAIRS, JEFF MILLER, CHAIRMAN, APRIL 18, 2006

I. INTRODUCTION

H.R. 5037, entitled the "Respect for America's Fallen Heroes Act," seeks to limit "certain demonstrations" in cemeteries under the control of the National Cemetery Administration or on the property of Arlington National Cemetery. The bill defines what constitutes a demonstration disruptive of the memorial services or funerals being held in or within 500 feet of such cemeteries, but allows an exception for demonstrations on cemetery grounds if "approved by the cemetery superintendent." There are thus two constitutional issues to be confronted: (1) Does the ban on "certain" demonstrations meet the requirements of First Amendment law as laid down in Supreme Court precedents, and (2) Is the discretion lodged in the cemetery superintendent to permit exceptions fall within an acceptable constitutional range? I conclude that the answer to both questions is in the affirmative and that the bill is well within constitutional limits.

II. THE BAN ON DEMONSTRATIONS

Demonstrations are a form of expressive conduct. In all governmental restrictions on expressive conduct, Supreme Court jurisprudence requires application of the O'Brien test, *United States v. O'Brien*, 391 U.S. 367 (1968) or of the "time, place, and manner" test. *Cox v. New Hampshire*, 312 U.S. 569 (1941). The Court has declared that both tests have

similar standards. *Clark v. Community for Creative Non-Violence*, 468 U.S. 288 (1984).

Under the O'Brien test, "a governmental regulation is sufficiently justified if it is within the constitutional power of the government; if it furthers an important or substantial governmental interest; if the governmental interest is unrelated to the suppression of free expression; and if the incidental restriction on alleged First Amendment freedoms is no greater than is essential to the furtherance of that interest." 391 U.S. at 376. Under the "time, place, and manner" test, government regulations of expressive conduct are valid "provided that they are justified without reference to the content of the regulated speech, that they are narrowly tailored to serve a significant governmental interest, and that they leave open alternative channels for communication of the information." *Clark*, 468 U.S. at 293.

It is clear from the text of H.R. 5037 that the purpose of the bill is to assure the dignity of funerals or memorial services held in honor of our fallen dead by preventing demonstrations that are disruptive of those ceremonies. To that end, the bill delineates what kind of demonstrations shall be prohibited, viz, a demonstration within five hundred feet of a cemetery in which a funeral or memorial service is to be held if the demonstration takes place within a time period from 60 minutes before until 60 minutes after the funeral or memorial service. Furthermore, the bill requires that only those demonstrations in which a "noise or diversion" is willfully made and "that disturbs or tends to disturb the peace or good order of the funeral service or memorial service or ceremony" shall be prohibited.

Maintaining cemeteries for veterans is clearly within the constitutional power of government. It is also clear that, under 38 U.S.C. sect. 2403, the purpose of maintaining cemeteries "as a tribute to our gallant dead" is an important or substantial governmental interest. It is similarly evident from the text of the bill that its purpose is to prevent conduct that is intentionally disruptive of a funeral or memorial service without reference to the content of the expressive conduct. The text does not ban accidental noises present in our modern society near to many cemeteries, such as traffic or the sounds of children playing. Nor does it ban only demonstrations with a particular kind of message. A demonstration connected with a labor dispute that is disruptive of a funeral is as violative of the law as would be an anti-war demonstration or a "support our troops" march. Finally, "the incidental restriction on First Amendment freedoms is no greater than is essential to the furtherance" of the interest of maintaining the dignity of a funeral for our fallen dead. Demonstrations 60 minutes before or 60 minutes after the ceremony are permitted. Even during the period in which a ceremony is being held, a demonstration beyond 500 feet of the cemetery is permitted. This is no blanket ban at all.

The fact that H.R. 5037 prohibits disruptive demonstrations on grounds that are not part of a national cemetery finds support in Supreme Court precedent. The case of *Grayned v. City of Rockford*, 408 U.S. 104 (1972) is directly on point. In *Grayned*, the Supreme Court upheld an antinoise ordinance, which read: "No person, while on public or private grounds adjacent to any building in which a school or any class thereof is in session, shall willfully make or assist in the making on any noise or diversion which disturbs or tends to disturb the peace or good order of such school session or class thereof." 408 U.S. at 107-08. It is axiomatic in our legal tradition that the state may take reasonable steps to abate a nuisance that may emanate from private property. What H.R. 5037 does is

to abate a nuisance that would disturb the good order of a federally mandated activity in our national cemeteries, namely, to provide memorial services and ceremonies that are "a tribute to our gallant dead."

It should be noted that in *Grayned*, the Supreme Court held that the antinoise ordinance was good against claims of overbreadth or vagueness. H.R. 5037's prohibition on "willfully making or assisting in the making of any noise or diversion that disturbs or tends to disturb the peace or good order of the funeral or memorial service or ceremony" tracks the language approved by the Court in *Grayned*.

Furthermore, the language of H.R. 5037 finds support in the case of *Boos v. Barry*, 485 U.S. 312 (1988). In the case, the Supreme Court reviewed a District of Columbia law that made it unlawful to display any sign that brought a foreign government into "public odium" or "public disrepute" within 500 feet of an embassy, and which banned "congregating" within 500 feet of an embassy. The Court struck down the ban on displaying a sign critical of a foreign government, but upheld the ban on congregating if, as construed by the lower courts, the congregation was "directed at a foreign embassy." H.R. 5037 bans only those demonstrations within 500 feet of a cemetery that are intentionally disruptive of ceremonies or funerals within national cemeteries. The disruptive requirement does not need judicial construction. It is made in the terms of the statute and is fully supported by the decision in *Boos v. Barry*.

Under H.R. 5037, a person who displays "any placard, banner, flag, or similar device, unless the display is part of a funeral or memorial service or ceremony," and such a display causes a "diversion that disturbs or tends to disturb the good order of the funeral or memorial service" is subject to the law. This prohibition is closely akin to the focused picketing ordinance upheld by the Supreme Court in *Frisby v. Schultz*, 484 U.S. 474 (1988). That ordinance banned picketing "before and about" any residence. Although in most public areas, people may picket and expostulate even though others may object to the message, in certain areas the functioning of the forum takes precedence, provided there are alternative ways the protestor may express his message. Schools are one forum whose functioning may not be disturbed or diverted. *Grayned*. The home is another place. Justice O'Connor noted that the picketers could still march through the neighborhood to express their opposition to abortion and abortionists. They simply could not disrupt the "tranquility" of a doctor's home. 484 U.S. at 484. Similarly, in H.R. 5037, the bill seeks to protect the tranquility and dignity of a memorial service. It allows the picketer or demonstrator to display whatever kind of sign or device he wishes one hour before or one hour after the ceremony, or at any time if more than 500 feet distant from the cemetery, even if it offends those who may be traveling to the ceremony.

If, however, a person displays "any placard, banner, flag, or similar device, unless the display is part of a funeral or memorial service or ceremony," and the display occurs within a cemetery, there is no requirement in the bill that it be part of a disruptive demonstration. But in that case, the display does not take place in a traditional public forum, such as a public sidewalk, but rather within a non-public forum dedicated to honoring our veterans. In that situation, the ban is a reasonable, and thereby a valid, restriction in a non-public forum designed to preserve the appropriate functioning of the forum, i.e., a national cemetery. I discuss the law applying to non-public forums in Part III below.

Thus, under either the O'Brien test or under the time, place and manner test, the statute is drawn to be within Constitutional standards.

Nonetheless, I find one phrase in the bill puzzling. Under section (b)(2), a demonstration is defined as "Any oration, speech, use of sound amplification equipment or device, or similar conduct before an assembled group of people that is not part of a funeral or memorial service or ceremony." (emphasis added) It would see that a single individual with a bullhorn who disrupts a ceremony might not be covered under this section. Thus, I do not see the use of the phrase "before an assembled group of people." In any event, with such a phrase, the restriction on expressive conduct is even less than would be permitted to be under the Constitution.

III. THE DISCRETION OF THE CEMETERY SUPERINTENDENT

It is a central canon of our First Amendment jurisprudence that permission to engage in expressive conduct cannot be left to the unbridled discretion of a governmental official. *City of Lakewood v. Plain Dealer Publishing Co.*, 486 U.S. 750 (1988). Such a discretion carries with it the dangers of prior restraint, vagueness, overbreadth, and content and viewpoint discrimination. Section (a)(1) of H.R. 5037 prohibits demonstrations in cemeteries under the control of the National Cemetery Administration or in Arlington National Cemetery "unless the demonstration has been approved by the cemetery superintendent." Nonetheless, I do not believe that this section permits unbridled discretion in the cemetery superintendent. Rather, I think that his discretion is well-cabined within and defined by the administrative function the law places upon the cemetery superintendent.

A case directly on point is *Griffin v. Secretary of Veterans Affairs*, 288 F.3d 1309 (Fed. Cir. 2002). Some veterans were not permitted under federal regulations from placing a Confederate flag at a national cemetery. Placing a flag was interpreted as a forbidden demonstration under 38 C.F.R., sect. 1.218(a)(14). Subsection (i) declares in part, "[A]ny service, ceremony, or demonstration, except as authorized by the head of the facility or designee, is prohibited." Petitioners asserted that the section gave unconstitutional discretion to the administrator of the facility.

In *Griffin*, the Federal Circuit Court pointed out that cemeteries are non-public forums the regulations of which are subject only to a reasonable basis test. However, although the government may limit the content of expression in non-public forums, it may not engage in viewpoint discrimination. The question was whether the discretion given by the law to the cemetery's administrator brought with it the danger of viewpoint discrimination. After all, a Confederate flag carries a different viewpoint from the Stars and Stripes.

The Federal Circuit found that the Supreme Court had applied the viewpoint discrimination doctrine only in traditional public forums or in designated public forums. 288 F.3d at 1321. The court zeroed in on the relevant variable in this kind of case: "We are obliged to examine the nature of the forum because the restrictions in nonpublic fora may be reasonable if they are aimed at preserving the property for the purpose to which it is dedicated." 288 F.3d at 1323. Finding that there was sufficient Supreme Court support, citing *United States v. Kokinda*, 497 U.S. 720 (1990), the Federal Circuit upheld the discretion lodged in the cemetery's administrator "when such discretion is necessary to preserve the function and character of the forum." 288 F.3d at 1323.

The purpose of many non-public forums is normative and preserving the function of that forum may entail restricting opposing normative viewpoints. Schools, for example, are nonpublic forums charged with developing students' character for participation as well-informed and well-developed citizens in our system of representative government. To that end, schools may insist that students observe rules of respect and avoid hateful or immoral language. A student with an opposite viewpoint who fails to observe the rules of respect and makes his point with crude language is not protected by the First Amendment. *Hazelwood School District v. Kuhlmeier*, 484 U.S. 260 (1968). Accordingly, the superintendent of a national cemetery is charged with maintaining the cemetery and its activities "as a tribute to our gallant dead." Under H.R. 5037 he is granted reasonable discretion to assure that all activities within the cemetery accord with its lawfully stated purpose. He may permit ceremonies or demonstrations or signs or programs that accord with such purpose and forbid those that do not. In doing so, the restriction imposed is "reasonable and not an effort to suppress expression merely because public officials oppose the speaker's view." 288 F.3d at 1321, citing *Cornelius v. NAACP Legal Del & Educ. Fund, Inc.*, 473 U.S. 788, 800 (1985).

IV. CONCLUSION

H.R. 5037 is a well-crafted bill that seeks to maintain the decorum necessary to honor our veterans and those who have died for our freedoms and who now rest in national cemeteries. I find that the bill's careful limitations on disruptive demonstrations and the limited discretion it gives to cemetery superintendents to be well with constitutional limits.

Mr. CANTOR. Mr. Speaker, I rise today in strong support of H.R. 5037, the Respect for America's Fallen Heroes Act.

Throughout the history of our country, countless Americans have made the ultimate sacrifice so that we could live freely.

We owe these fallen heroes a debt of gratitude, and we should guarantee the fallen and their families a peaceful journey to their final resting place.

Mr. Speaker, our military cemeteries are hallowed grounds. During the Gettysburg Address, I believe President Abraham Lincoln said it best:

We have come to dedicate a portion of that field, as a final resting place for those who here gave their lives that the nation might live. It is altogether fitting and proper that we should do this.

But, in a larger sense, we can not dedicate—we can not consecrate—we can not hallow—this ground. The brave men, living and dead, who struggled here, have consecrated it, far above our poor power to add or detract. The world will little note, nor long remember what we say here, but it can never forget what they did here.

For these reasons, I am greatly troubled that groups exploit the sacrifice of so many Americans. These groups trespass on the memories and hallowed ground of our heroes.

Demonstrations at cemeteries disrespect those who have fallen and the loved ones they leave behind. As they held their lines—we must do the same. This bill strikes a proper balance between the liberties they defended and the respect earned.

I urge the passage of this bill for we must support their loved ones and honor their sacrifice.

Mr. RYUN of Kansas. Mr. Speaker, I rise today in support of H.R. 5037, the Respect for

America's Fallen Heroes Act. This is a much needed piece of legislation to curb the unfortunate actions of a small minority of people.

Although I am glad to have this opportunity to support the servicemembers in my home state of Kansas and around the world, I am disappointed that we even need this bill.

I have a lot of servicemembers in my district who are courageously serving our country in combat. I have talked to many of them and I have seen their desire and passion to serve their country out of a love for freedom, democracy, and for their country.

Unfortunately, some of these servicemembers have lost their lives and their families must now grieve their loss. The families of our fallen servicemembers—our true heroes—should not be subjected to protests, hate-filled phone calls, and other obscenities. No one should experience that, especially not after losing a loved one. That is why I support this bill that will help protect the families of our fallen servicemembers from unwelcome protestors.

Our servicemembers embody the exact opposite of hate by sacrificing their lives so that we can keep ours. I pay tribute to them, and I wholeheartedly support this legislation.

Mr. ORTIZ. Mr. Speaker, I rise today in support of the Respect for America's Fallen Heroes Act—of which I am a proud co-sponsor.

Like so many of my colleagues, I was horrified that members of Topeka, Kansas, based Westboro Baptist Church were verbally abusing—and interrupting—the funerals of service members who gave the last full measure of devotion to this Nation. My constituents and I have been revolted by this offensive activity.

It matters not what your individual position is on either war we are currently prosecuting—in Iraq or Afghanistan—certainly we can all agree protesting at military funerals is a cruel and unnecessary hardship on our military families during their most difficult hour.

I respect the first amendment rights of protesters, and I do not believe this legislation would restrict that right. The restrictions placed in this bill would allow families the privacy to conduct funerals, while still preserving the constitutional right of political protest either before or after family funerals conducted within the National Cemetery System.

We can best respect fallen service members by respecting the principles for which they made the supreme sacrifice. Today's bill respects them by honoring those principles of freedom—even when a callous few ineffectively attempt to demean their dignity—and it allows their families to grieve without being victimized by those who feel the need to denigrate fallen soldiers and their families at a most private moment.

I ask that all our States pass similar legislation at their State cemeteries, and I urge my colleagues to vote yes on this bill.

Mr. ADERHOLT. Mr. Speaker, I rise today in strong support of H.R. 5037, offered by my colleague from Michigan. We owe a tremendous debt of gratitude not only to the fallen soldier, sailor, airman, or Marine, but to their families as well. At their darkest hour, their grief does not need to be exploited by those trying to make a political point. This intentional disruption of a brief period of time meant to honor a fallen hero goes against the very fiber of American decency. Free speech and public protests are a right; however, taunting and tormenting families at the very moment they bury

heir dead is not a right; it is abhorrent. This bill gives the family members of our fallen heroes the respect that they are owed, and the peace that they deserve as they bury their loved ones. I urge my colleagues to vote yes on this bill, and I hope it is then acted on quickly by the Senate and signed into law by the President.

Mr. BUYER. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The gentleman from Texas also has another 5 minutes.

Mr. REYES. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Indiana (Mr. BUYER) that the House suspend the rules and pass the bill, H.R. 5037.

The question was taken.

The SPEAKER pro tempore. In the opinion of the Chair, two-thirds of those present have voted in the affirmative.

Mr. BUYER. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX and the Chair's prior announcement, further proceedings on this question will be postponed.

GENERAL LEAVE

Mr. BUYER. Mr. Speaker, I ask that all Members may have 5 legislative days in which to revise and extend their remarks and to include extra-neous material on H.R. 5037.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Indiana?

There was no objection.

JACK C. MONTGOMERY DEPARTMENT OF VETERANS AFFAIRS MEDICAL CENTER

Mr. BUYER. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 3829) to designate the Department of Veterans Affairs Medical Center in Muskogee, Oklahoma, as the Jack C. Montgomery Department of Veterans Affairs Medical Center.

The Clerk read as follows:

H.R. 3829

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. JACK C. MONTGOMERY DEPARTMENT OF VETERANS AFFAIRS MEDICAL CENTER.

(a) IN GENERAL.—The Department of Veterans Affairs medical center in Muskogee, Oklahoma, shall after the date of the enactment of this Act be known and designated as the “Jack C. Montgomery Department of Veterans Affairs Medical Center”.

(b) REFERENCES.—Any reference in any law, regulation, map, document, record, or other paper of the United States to the medical center referred to in subsection (a) shall be considered to be a reference to the Jack C. Montgomery Department of Veterans Affairs Medical Center.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from In-

diana (Mr. BUYER) and the gentleman from Maine (Mr. MICHAUD) each will control 20 minutes.

The Chair recognizes the gentleman from Indiana.

Mr. BUYER. Mr. Speaker, I yield myself such time as I may consume.

(Mr. BUYER asked and was given permission to revise and extend his Remarks.)

□ 1615

Mr. BUYER. Mr. Speaker, Jack C. Montgomery, a Cherokee from Oklahoma, was one of five Native Americans who were awarded the highest military honor in the 20th century, the Medal of Honor, and a first lieutenant with the 45th Infantry Division, the Thunderbirds.

On February 22, 1944, near Padiglione, Italy, Montgomery's rifle platoon was under fire by three echelons of enemy forces when he single-handedly attacked all three positions, taking prisoners in the process. As a result of his valor, Lieutenant Montgomery's actions demoralized the enemy and inspired his men to defeat the enemy forces.

In addition to being awarded the Medal of Honor, Lieutenant Montgomery was also awarded the Silver Star, the Bronze Star Medal and the Purple Heart with an Oak Leaf Cluster. On his release from the Army after World War II, Mr. Montgomery began a career with the Veterans Administration in Muskogee, Oklahoma, where he remained in service for most of his life.

It is appropriate that we name the VA Medical Center in Muskogee for this American hero who not only served his country in wartime, but also continued his service to this Nation through his work in the Veterans Administration.

Mr. Montgomery is survived by his wife, Joyce; and it is our hope to have this legislation passed by the Senate and signed by the President in a timely manner. This legislation is cosponsored and supported by the entire Oklahoma delegation and also has the support of the State's major veterans service organizations.

Mr. Speaker, I particularly would like to thank my colleague, Mr. BOREN, who represents the Second Congressional District of Oklahoma, for introducing this most appropriate legislation.

Mr. Speaker, I reserve the balance of my time.

Mr. MICHAUD. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I would like to thank Congressman DAN BOREN, who represents the Second Congressional District of Oklahoma, for his leadership in introducing H.R. 3829. I would also like to thank Chairman BUYER and Ranking Member EVANS for helping to bring this legislation to the floor.

H.R. 3829 pays tribute to World War II hero Jack C. Montgomery by designating the Department of Veterans Affairs Medical Center in Muskogee,

Oklahoma, as the Jack C. Montgomery Department of Veterans Affairs Medical Center.

Jack Montgomery is a recipient of the Medal of Honor, the highest award for valor and combat bestowed upon an individual serving in the armed services. For his distinguished service, he was also recognized by the Silver Star, the Bronze Star and the Purple Heart with Cluster.

During World War II, Jack Montgomery served as a first lieutenant in the United States Army's 45th Infantry Division. On February 22, 1944, in Italy, he fearlessly risked his life above and beyond the call of duty by single-handedly attacking three strong enemy infantry positions that threatened the rifle platoons under his command. His fearless, aggressive and brave action that morning accounted for a total of 11 enemy dead, 32 prisoners and an unknown number wounded. Late that night, while supporting an adjacent unit, he was seriously wounded by mortar fragments.

The citation accommodating his Medal of Honor recognized that his courage and heroism inspired his men to a degree beyond estimation. Upon his release from the Army, he began a career in the Veterans Administration, Muskogee, Oklahoma.

It is fitting that Congress designate the Muskogee VA Medical Center to Jack C. Montgomery, Department of Veterans Affairs Medical Center. I rise in support of this legislation and urge my colleagues to do the same.

Mr. Speaker, I yield 5 minutes to the gentleman from Oklahoma, a gentleman who cares very dearly about veterans and a fellow Blue Dog, Congressman DAN BOREN.

Mr. BOREN. Mr. Speaker, I rise today in support of H.R. 3829. This bill will designate the Department of Veterans Affairs Medical Center in my hometown of Muskogee, Oklahoma, as the Jack C. Montgomery Department of Veterans Affairs Medical Center. Mr. Speaker, I think of very few other Americans who deserve to have an honor such as this bestowed upon them, and I am proud to sponsor this bill.

Jack C. Montgomery is a true American hero. His story of service to his country begins while attending Bacone College in Muskogee. During this time, he felt the call to serve his country during World War II, and enlisted in the 45th Division Thunderbirds of the Oklahoma National Guard.

Shortly thereafter, Lieutenant Montgomery found himself with members of the 45th near Padiglione, Italy on February 22, 1944. On this day, Lieutenant Montgomery's rifle platoon came under the fire of three echelons of enemy forces. Under enemy fire, Jack Montgomery single-handedly attacked all three enemy echelons. As a result of his courage, Lieutenant Montgomery's actions demoralized the enemy troops and inspired his men to defeat and capture 32 Axis troops.