

for American aerospace workers after it became clear that negotiations with the Europeans were going nowhere. As a result, the WTO is now considering the subsidies case through its dispute settlement body.

The Senate is on record against Airbus subsidies. On April 11, 2005, the Senate unanimously passed S. Con. Res. 25. That is a resolution which called for European governments to reject launch aid for the A350 and for President Bush to take any action that he “considers appropriate to protect the interests of the United States in fair competition in the large commercial aircraft market.” The resolution also specifically encouraged the U.S. Trade Representative to file a WTO case unless the EU eliminates launch aid for the A350 and all future models.

The production of large civilian aircraft is now a mature industry in both the United States and Europe. It is now time that market forces—market forces, not government aid—determine the future course of this industry.

That crossroad I mentioned is coming up on us quickly. One road will leave American workers in a fight for their jobs, with the game stacked against them. The other road will give us a fair playing field where American workers can win through their hard work and American ingenuity. I hope for our country’s future that we choose the right course, and it begins by sending a clear message from our government to Europe that the United States will not tolerate another round of illegal subsidies that kill American jobs. The clock is running, and the choice is ours.

Mr. President, I yield the floor, and I suggest the absence of a quorum.

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

The assistant legislative clerk proceeded to call the roll.

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 President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

FLAG DESECRATION CONSTITUTIONAL AMENDMENT

Mr. JEFFORDS. Mr. President, I rise today in opposition to a constitutional amendment that would ban flag burning and other acts of desecration.

As I said during the recent debate on the Federal marriage amendment, I am very troubled by priorities put forth by the Senate majority. Our domestic programs are facing serious budget cuts. Millions of Americans are without health insurance. Gas prices are out of control while our Nation’s reliance on foreign oil shows no sign of easing. And we still have no strategy for the war in Iraq. However, the Senate leadership has chosen to spend a portion of our limited days in session to bring up a constitutional amendment to ban flag burning.

Once again, we seem to be searching for a solution in need of a problem, and I am afraid the reason we are spending time on this topic is only for political gain.

As a veteran with 30 years in the U.S. Navy and the U.S. Naval Reserve, I know the pride that members of our Armed Forces feel when they see our flag, wherever they may be in the world. I share the great respect that Vermonters and Americans have for that symbol. I personally detest the notion that anyone would choose to burn a flag as a form of self-expression.

Members of the military put their lives on the line every day to defend the rights guaranteed by the U.S. Constitution. It is disrespectful of these sacrifices to desecrate the flag.

However, in my opinion, our commitment to free speech must be strong enough to protect the rights of those who express unpopular ideas or who choose such a distasteful means of expression. This concept is at the core of what we stand for as Americans.

Mr. President, I have given this constitutional amendment a great deal of thought. I must continue to oppose this amendment because I do not think we should amend the Bill of Rights unless our basic values as a nation are seriously threatened. In my view, a few incidents of flag burning, as upsetting as they may be, do not meet this high standard.

Mr. President, I yield the floor, and I suggest the absence of a quorum.

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

The assistant legislative clerk proceeded to call the roll.

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

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mrs. FEINSTEIN. Mr. President, it is my understanding we are in morning business.

The ACTING PRESIDENT pro tempore. The Senator is correct.

Mrs. FEINSTEIN. But that it would be acceptable for me to speak on the pending business, which is the flag amendment.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

FLAG PROTECTION AMENDMENT

Mrs. FEINSTEIN. Mr. President, I rise as the main Democratic sponsor of this amendment. I have given this a lot of thought for a long time. I believe what we have before us is language that is essentially content neutral. It is on conduct—not speech. I will make that argument later on in my remarks, but I begin my remarks with how I came to believe that the American flag is something very special.

For those of us who are westerners, the Pacific battles of World War II had very special significance.

Reporters were not embedded, there was no television coverage, and the war in the Pacific was terrible—*island battle after island battle*—the death march at Guadalcanal, Tarawa, and onward.

On the morning of February 24, 1945, I was a 12-year-old. I picked up a copy of the San Francisco Chronicle. There on the cover was the now iconic photograph done by a Chronicle photographer by the name of Joe Rosenthal, and it was a photograph of U.S. marines struggling to raise Old Glory on a promontory, a rocky promontory above Iwo Jima.

For me—at that time as a 12-year-old—and for the Nation, the photo was a bolt of electricity that boosted morale amidst the brutal suffering of the Pacific campaign.

The war was based on such solid ground and victory was so hard-pressed that when the flag unfurled on the rocky promontory on Iwo Jima, its symbolism of everything courageous about my country was etched into my mind for all time. This photo cemented my views of the flag for all time.

In a 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.

Supreme Court Justice Felix Frankfurter called the flag “The symbol of our national life.” I, too, have always looked at the flag as the symbol of our democracy, our shared values, our commitment to justice, our remembrance to those who have sacrificed to defend these principles.

For our veterans, the flag represents the democracy and freedom they fought so hard to protect. Today there are almost 300,000 troops serving overseas, putting their lives on the line every day to fight for the fundamental principles that our flag symbolizes.

The flag’s design carries our history. My proudest possession is a 13-star flag. When you look at this flag, now faded and worn, you see the detail of the 200-year-old hand stitching—and the significance of every star and stripe.

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. Even the number of stripes has meaning—13 for 13 colonies.

Our flag is 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 directs 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.

The U.S. flag should never touch anything beneath it: neither ground, floor,

water, or merchandise. The flag must be lit at night. It 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.

The flag flies over our 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.

Last December, I traveled to Iraq and met with some of the brave men and women in the armed forces that are serving there. We flew out of Baghdad on a C-130 that we shared with a flag-draped coffin accompanied by a military escort.

The young man or woman in that coffin gave their life under the banner of this flag.

In 1974, Justice Byron White wrote that:

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.

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 echo the opinion of Justice White: "The flag is itself a monument, subject to similar protection."

The American flag is our monument in cloth.

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

There is a sturdy historical and legal foundation for special protection for the flag. 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.

On June 14, 1777, the Continental Congress passed the first Flag Act:

Resolved, That the flag of the United States be made of thirteen stripes, alternate red and white; that the union be thirteen stars, white in a blue field, representing a new Constellation.

Historically, the flag has been protected by statute. In 1989, 48 of our 50 States had statutes restricting flag desecration. However, that protection ended in 1989.

That year the Supreme Court, by a vote of 5 to 4, struck down a Texas State law prohibiting the desecration of American flags in a manner that would be offensive to others in the *Texas v. Johnson* case.

Although the Court held that the government has "a legitimate interest

in making efforts to 'preserv[e] the national flag as an unalloyed symbol of our country,' it nevertheless concluded that burning the flag constituted speech under the first amendment, and that the Texas statute outlawing flag desecration was an impermissible regulation of the content of a person's speech.

Supreme Court Justice John Paul Stevens wrote in his dissent in *Johnson* that the flag is:

a symbol of our freedom, of equal opportunity, of religious tolerance, and of good will for other peoples who share our aspirations.

I agree with Justice Stevens.

In response to the *Johnson* case, Congress passed the Flag Protection Act of 1989, which sought to ban flag desecration in a "content-neutral" way that would be permitted by the courts. Nevertheless, the Supreme Court struck down that Federal statute as well.

In that case, *United States v. Eichman*, the Supreme Court, by another 5-to-4 vote, held that although the Federal statute prohibiting flag desecration did not limit speech based on content, which had been found unconstitutional in *Johnson*, the statute still violated the first amendment because Congress's intent in passing the statute was "related to the suppression of free expression."

The Supreme Court has spoken, and I do not wish to quarrel with its decisions.

However, the *Johnson* and *Eichman* decisions make it clear that without a constitutional amendment no Federal statute protecting the flag will survive judicial review.

Consequently, the only avenue available for restoring protection to the flag is to amend the Constitution. Otherwise, any legislation passed by Congress or State legislatures will simply be struck down.

The Constitution itself prescribes instructions for its amendment when necessary for the good of the Nation. And the Constitution is, after all, a living text that has been amended 27 times since its creation.

I do not take amending the Constitution lightly. It is a serious business and we need to tread carefully. However, the change we seek to make is narrow, it is limited, and it is necessary.

Some critics say we must choose between trampling on the flag and trampling on the first amendment. I strongly disagree.

The freedom of speech enshrined in the first amendment is a cornerstone of our great Nation.

However, there is no idea or thought expressed by the burning of the American flag that cannot be expressed equally well in another manner. While I might disagree with those who protest, I defend their right to do so.

Protecting the flag will not prevent anyone from expressing his or her point of view, regardless of what that point of view may be.

Indeed, the Supreme Court has recognized many instances in which speech

is not protected, such as obscenity and "fighting words." I believe that desecrating an American flag falls into the same category.

Limiting this very specific conduct will leave both the flag and speech safe.

Amending the Constitution for this narrow and necessary purpose is an implicit recognition of the depth and breadth of the first amendment. What could more clearly signal the scope and strength of our freedom of speech than the fact that even protecting our Nation's symbol from desecration requires a constitutional amendment?

I would like to assure those with reservations about amending the Constitution that the path we are taking is no slippery slope.

There will be no stampede of constitutional amendments that could erode our freedom of speech. There will be no litany of restrictions.

There has been much confusion surrounding this amendment.

It does not prohibit flag burning, as is so often stated. This amendment would, quite simply, enable the Congress—you and I and our 98 other Members, Mr. President, as well as the 435 Members of the House of Representatives, and the President of the United States—to set the protocols governing our flag and protecting it as it has been protected throughout most of this Nation's history.

In other words, we will hold hearings. We will devise legislation. We will debate that legislation on the floor of both bodies. The purpose is to enable this body and the other body to establish a protocol for the handling of the American flag. No more, no less. It is content neutral. It does not ban desecration, burning, defiling, or anything else.

Let me read the text of the amendment:

The Congress shall have the power to prohibit the physical desecration of the flag of the United States.

Just as 48 States debated this prior to 1989, and just as 48 States made a decision and passed legislation, the Congress of the United States would now have the power.

That is it. No more. No less.

The resolution—if passed by three-quarters of the 50 State legislatures—would merely return to Congress its historical power to prohibit the physical desecration of the flag.

The amendment will enable Congress to have a full and fair debate on the appropriate protections for the flag.

As President Woodrow Wilson, who proclaimed the first Flag Day in 1916, said:

This flag, which we honor and under which we serve, is the emblem of our unity, our power, our thought and purpose as a nation. It has no other character than that which we give it from generation to generation. . . . Though silent, it speaks to us—speaks to us of the past, of the men and women who went before us, and of the records they wrote upon it.

In honor of this emblem of America, I ask that this body permit us to give

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

I yield the floor.

I suggest the absence of a quorum.

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

The assistant legislative clerk proceeded to call the roll.

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

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

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

FLAG DESECRATION AMENDMENT

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

The assistant legislative clerk read as follows:

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

The PRESIDING OFFICER. The Senator from Utah.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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