

duly constituted committee of the Senate.)

#### INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. MCCONNELL (for himself, Mr. BENNETT, Mr. CONRAD, and Mr. DORGAN):

S. 931. A bill to provide for the protection of the flag of the United States, and for other purposes; to the Committee on the Judiciary.

By Mr. CAMPBELL:

S. 932. A bill to prevent Federal agencies from pursuing policies of unjustifiable non-acquiescence in, and relitigation of, precedent established in the Federal judicial courts; to the Committee on the Judiciary.

By Mr. MURKOWSKI (for himself and Mr. STEVENS):

S. 933. A bill to amend the Internal Revenue Code of 1986 to clarify the tax treatment of Settlement Trusts established pursuant to the Alaska Native Claims Settlement Act; to the Committee on Finance.

By Mr. LEAHY (for himself, Mr. KENNEDY, Mr. SARBANES, Mr. KERRY, Mr. HARKIN, and Mrs. MURRAY):

S. 934. A bill to enhance rights and protections for victims of crime; to the Committee on the Judiciary.

By Mr. LUGAR:

S. 935. A bill to amend the National Agricultural Research, Extension, and Teaching Policy Act of 1977 to authorize research to promote the conversion of biomass into biobased industrial products, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. CLELAND (for himself and Mr. MOYNIHAN):

S.J. Res. 24. A joint resolution conferring status as an honorary veteran of the United States Armed Forces on Zachary Fisher; to the Committee on Veterans Affairs.

#### STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. MCCONNELL (for himself, Mr. BENNETT, Mr. CONRAD, and Mr. DORGAN):

S. 931. A bill to provide for the protection of the flag of the United States, and for other purposes; to the Committee on the Judiciary.

##### FLAG PROTECTION ACT OF 1999

Mr. MCCONNELL. Mr. President, the American flag is our most precious national symbol and the Constitution is our most revered national document. They both represent the ideas, values and traditions that unify us as a people and a nation. Brave men and women have fought and given their lives in defense of the freedom and way of life that they both represent.

Today, I am proud to introduce, along with my colleague from Utah, Senator BENNETT, and my colleagues from North Dakota, Senator CONRAD and Senator DORGAN, the Flag Protection Act of 1999. This legislation would ensure that acts of deliberately

confrontational flag-burnings are punished with stiff fines and even jail time. My bill will help prevent desecration of the flag, and at the same time, protect the Constitution.

Those malcontents who desecrate the flag do so to grab attention for themselves and to inflame the passions of patriotic Americans. And, speech that incites lawlessness or is intended to do so merits no First Amendment protection, as the Supreme Court has made abundantly clear. From Chaplinsky's "fighting words" doctrine in 1942 to Brandenburg's "incitement" test in 1969 to Wisconsin v. Mitchell's "physical assault" standard in 1993, the Supreme Court has never protected speech which causes or intends to cause physical harm to others.

And, that, Mr. President, is the basis for this legislation. My bill outlaws three types of illegal flag desecration. First, anyone who destroys or damages a U.S. flag with a clear intent to incite imminent violence or a breach of the peace may be punished by a fine of up to \$100,000, or up to one year in jail, or both.

Second, anyone who steals a flag that belongs to the United States and destroys or damages that flag may be fined up to \$250,000 or imprisoned up to 2 years, or both.

And third, anyone who steals a flag from U.S. property and destroys or damages that flag may also be fined up to \$250,000 or imprisoned up to 2 years, or both.

Some of my colleagues will argue that we've been down the statutory road before and the Supreme Court has rejected it. However, the Senate's previous statutory effort wasn't pegged to the well-established Supreme Court precedents in this area.

This bill differs from the statutes reviewed by the Supreme Court in the two leading cases: *Texas v. Johnson*, (1989) and *U.S. v. Eichman*, (1990).

In *Johnson*, the defendant violated a Texas law banning the desecration of a venerated object, including the flag, in a way that will offend one or more persons. *Johnson* took a stolen flag and burned it as part of a political protest staged outside the 1984 Republican convention in Dallas. The state of Texas argued that its interest in enforcing the law centered on preventing breaches of the peace. But the government, according to the Supreme Court, may not "assume every expression of a provocative idea will incite a riot. . . ." *Johnson*, according to the Court, was prosecuted for the expression of his particular ideas: dissatisfaction with government policies. And it is a bedrock principle underlying the First Amendment, said the Court, that an individual cannot be punished for expressing an idea that offends.

The *Johnson* decision started a national debate on flag-burning and as a result, Congress, in 1989, enacted the

Flag Protection Act. In seeking to safeguard the flag as the symbol of our nation, Congress took a different tack from the Texas legislature. The federal statute simply outlawed the mutilation or other desecration of the flag.

The Supreme Court, however, ruled in *Eichman* that the federal statute was unconstitutional. Specifically, the Court found that Congressional intent to protect the national symbol was insufficient to overcome the First Amendment protection for the expressive conduct exhibited by flag-burning.

Notwithstanding these decisions, the Court clearly left the door open for outlawing flag-burning that incites lawlessness: "the mere destruction or disfigurement of a particular physical manifestation of the symbol, without more, does not diminish or otherwise affect the symbol itself in any way."

But Mr. President, you don't have to take my word on it. The Congressional Research Service has offered legal opinions concluding that this initiative will withstand constitutional scrutiny:

The judicial precedents establish that the [Flag Protection and Free Speech Act], if enacted, while not reversing *Johnson* and *Eichman*, should survive constitutional attack on First Amendment grounds.

In addition, Bruce Fein, a former official in the Reagan Administration and respected constitutional scholar, concurs:

In holding flag desecration statutes unconstitutional in *Johnson*, the Court cast no doubt on the continuing vitality of *Brandenburg* and *Chaplinsky* as applied to expression through use or abuse of the flag. [The Flag Protection and Free Speech Act] falls well within the protective constitutional umbrella of *Brandenburg* and *Chaplinsky* . . . [and it] also avoids content-based discrimination which is generally frowned on by the First Amendment.

And several other constitutional specialists also agree that this initiative respects the First Amendment and will withstand constitutional challenge. A memo by Robert Peck, and Professors Robert O'Neil and Erwin Chemerinsky concludes that this legislation "conforms to constitutional requirements in both its purpose and its provisions."

And, these same three respected men have looked at the few State court cases which have been decided since we had this debate 3 years ago and have reiterated their original finding of constitutionality. In a recent memo, they explained:

Three years ago . . . [w]e expressed our strongly held opinion that [the Flag Protection and Free Speech Act] would be compatible with the U.S. Supreme Court's rulings in *Texas v. Johnson*, 491 U.S. 397 (1989) and *United States v. Eichman*, 496 U.S. 310 (1990). We write now to reiterate that position, finding that nothing that has occurred in the interim casts any doubt on our conclusion.

Mr. President, I ask unanimous consent that the full text of these various memos be printed in the RECORD. And, I note that some of the memos refer to S. 982 in the 105th Congress and some