CONSTITUTIONAL AMENDMENT AUTHORIZING CONGRESS TO PROHIBIT PHYSICAL DESECRATION OF THE FLAG OF THE UNITED STATES

Mr. SENSENBRENNER. Mr. Speaker, pursuant to House Resolution 189, I call up the joint resolution (H.J. Res. 36) proposing an amendment to the Constitution of the United States authorizing Congress to prohibit the physical desecration of the flag of the United States, and ask for its immediate consideration.

The Clerk read the title of the joint resolution.

The SPEAKER pro tempore (Mr. SIMPSON). Pursuant to House Resolution 189, the joint resolution is considered read for amendment.

The text of House Joint Resolution 36 is as follows:

H.J. Res. 36

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, (two-thirds of each House concurring therein),

SECTION I. CONSTITUTIONAL AMENDMENT

The following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States within seven years after the date of its submission for ratification:

"ARTICLE —

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

The SPEAKER pro tempore. After two hours of debate on the joint resolution, it shall be in order to consider an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States within seven years after the date of its submission for ratification

Mr. SENSENBRENNER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on H.J. Res. 36.

Mr. SENSENBRENNER. Mr. Speaker, if one does not have much to do today, this is a great way to spend the afternoon, discussing for the fifth time whether the Congress should amend the Constitution with reference to flag desecration. Now, the answer has been "no" all of these other times. So I ask the House rhetorically, why does not the other body take this measure up first, for once, instead of us? Is there some protocol not known to the ranking member of the committee? There are many other things that could be done in the interest of the seats which are being taken up today. Mr. Speaker, if one does not have much to do today, this is a great way to spend the afternoon, discussing for the fifth time whether the Congress should amend the Constitution with reference to flag desecration. Now, the answer has been "no" all of these other times. So I ask the House rhetorically, why does not the other body take this measure up first, for once, instead of us? Is there some protocol not known to the ranking member of the committee? There are many other things that could be done in the interest of the seats which are being taken up today.
opposed to this resolution because it goes against the ideals and elevates a symbol of freedom over freedom itself. I would like unanimous consent to say that for everybody that is going to want to say that, to make sure that everybody understands that those who oppose this measure are patriotic and are not by implication, direct or otherwise, supporting any kind of desecration of the flag. We do not do that. That is not what we are here for.

So that leaves two other points to be made, the same ones made before. The first is Justice Oliver Wendell Holmes. This is 1929. “The Constitution protects not only freedom for the thought and expression we agree with, but freedom for the thought we hate.” Okay, got that? All right. That is five times in my career that we go through this.

Then the final point that should be made is that, in 1989, the Supreme Court said that all the State laws in the country banning flag-burning and making it illegal are themselves illegal. Then the Congress tried to do it. And the Supreme Court, not the most progressive part of the Federal system, said, no, you cannot do it, Congress.

And now, for the fifth time, we do not even agree on it ourselves. We do not want to do it. Basically, the legislative body of the United States of America does not want to make an amendment to our Constitution appropriate to accomplish what State laws tried and what Justice Oliver Wendell Holmes talked about, and many others.

In effect, what we are trying to do is not to punish those who feel differently about these matters. The better course is to persuade them that they are wrong. We can imagine no more appropriate response to burning a flag than expressing one’s opposition. To us, to every single veterans’ group, to 80 percent of the American people, 49 States that had laws on the books was overruled of 200 years of history, 200 years of tradition, by a one-vote margin in our courts. Is it wrong because nine people in a 5 to 4 decision decided otherwise? Yes. That is why we are here today. We believe that it is wrong.

It is not hard to make this decision when one knows what their values are, and one cannot rule by “but.” People say, well, I deplore the burning of the American flag, but. It is not hard to make the decision when one knows their values and what they are by deed, heart, mind.

I have in this folder literally hundreds of letters from third graders, from fourth graders, from fifth graders about what the flag means to them. This is more than just a piece of cloth. It is more than just a piece of fabric. To my grandchildren, our grandparents have thought and talk about what it means to them. To watch somebody burn the American flag represents a destruction of those values, of those ideas and of those thoughts. That is why we are opposed to it.

I was witness to a young Hispanic that was protesting proposition 187. He was opposed to the proposition. But in his midst, there was a group of Hispanics that turned to burn the American flag. This young Hispanic grabbed the flag and protected it and was beaten by the group that was burning the American flag.

If we take a look at our Nation, every single grade, every state holds this flag, every veterans’ group. Mr. Speaker, 372 Members of this body, 372, voted for this amendment, and it will pass today. But yet, there is a group out there that will fight against it.

Mr. Speaker, if one has nothing more to do, watch us today! I hear that in every year turns back this work. To us, to every single veterans’ group, our Constitution of the United States and the privileges that are given.

I might say that I also stand here as an American who did not come to this Nation free. I realize the importance of changing laws, for this Constitution declared me as three-fifths of a person, and the early history of this flag had slavery.

In spite of all of that, in a tumultuous civil rights movement, I can frankly say, I love America. But I am warned and cautious about what America stands for. I believe that America stands for freedom of expression, freedom of choices, freedom of the ability to express one’s religion, and, as well, to express one’s opposition.

In the last 20 years, I do not think any one of us could count a time that we have seen a flag-burning. I would simply say that the very moving story of my colleague suggested that, in fact, there might be question as to whether or not desecrating a flag includes sewing it into one’s pocket, thinking about it, it counters what the flag stands for freedom and justice.

Let me read very briefly the words of a veteran, a constituent of mine who...
writes to urge us to oppose House Joint Resolution 36, the proposed constitutional amendment to outlaw desecration of the United States flag.

He agrees with other veterans, such as General Colin Powell and Senator John Glenn, that "...such legislation is an unnecessary intrusion and a threat to the rights and liberties I chose to defend during my military service. Those who favor the proposed amendment say they do so in honor of the flag, but in proposing to unravel the first amendment, they desecrate what the flag represents and what I swore to defend and risked dying for when I took my military oath of office, the Constitution and the principles of liberty and freedom."

Mr. Speaker, that is why I am here on the floor of the House, not to desecrate the flag or disrespect it, but to defend the principles of liberty and freedom. Do we need language to tell us how cherished and precious our flag is? Do we need to deny someone else their right to the opposition? I am the tenants of Christianity. It is not by the word we speak, but by our deeds. And if, in fact, our deeds are honoring the flag of the United States, then it will counter those deeds of someone else who we believe dishonors that flag, because we have the right to express our freedom and our beliefs, and they likewise have the right to express theirs.

I call upon this Congress, though I know this House has repeatedly voted three or four times on this particular resolution and it has not prevailed, but the Supreme Court, with which I have agreed and disagreed, twice has said the rules to eliminate the desecration of the symbol of the flag take away the rights under this Constitution and the principles we hold dear.

I would much rather defend, if I was given the privilege, the gentleman's right to speak in opposition to me, as opposed to upholding a cloth which I believe stands brightly and boldly on its own without intrusion by legislation which denies the privilege of the rights of freedom and dignity.

I submit for the RECORD the letter to which I referred earlier, as follows:

HOIL. SHEILA JACKSON LEE,
Cannon House Office Building, House of Representatives, Washington, DC.

REPRESENTATIVE JACKSON LEE: As your constituent, I strongly urge you to oppose HJ Res. 36/SJ Res. 7, the proposed constitutional amendment to outlaw desecration of the United States flag. I agree with other veterans such as General Colin Powell and Senator John Glenn that such legislation is an unnecessary intrusion and a threat to the rights I chose to defend during my military service. Those who favor the proposed amendment say they do so in honor of the flag. But in proposing to unravel the First Amendment, they choose to defame what the flag represents, and what I swore to defend— and risked dying for—when I took my military oath of office: the Constitution and its principles of liberty and freedom.

- While flag burning is rare, it can be a powerful and important form of speech. As a patriotic American, I may be deeply troubled by the content of this political speech.
- However, it is not a crime against this country and dishonors veterans that Congress annually attempts to take away our right to free expression.
- Again, I urge you to oppose HJ Res. 36/SJ Res. 7. Of the gallant Americans who fought and died in the service of our country within the last 200 years, it is clear that they did not die defending the flag. They died defending our freedom and the ideals upon which our country was founded. Don’t cheapen their sacrifice by supporting this misguided amendment.

I look forward to hearing your thoughts on this proposed constitutional amendment. Respectfully,

CHARLES A. SPAIN, JR.

Mr. Speaker, I rise, once again, in opposition to this amendment to the Constitution to prohibit physical desecration of the flag of the United States because it is unnecessary and is a flagrant chilling of free speech protected by the First Amendment.

Supporters of this constitutional amendment are responding to the 1989 and 1990 Supreme Court decisions that struck down state and federal statutes that barred flag desecration on constitutional grounds that they chilled our First Amendment right to free speech and expression. The Court was right then, and we should follow its example today.

Mr. Speaker, make no mistake about it: this amendment compromises the Bill of Rights, which is fundamental to our freedom of speech and expression. These are, perhaps, our most basic tenets and pillars of our American democratic system.

In West Virginia Board of Education v. Barnette, 319 U.S. 624 (1943), esteemed Justice Jackson wrote the following warning for those in government who would seek to force their ideas on Americans: "If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion or other matters of opinion or force citizens to confess by word or act their faith therein." Id., at 642. The resolution on the floor today amends the Bill of Rights for the first time in 210 years, and would set a precedent that Congress is willing to abridge the rights of all for the convenience of the few.

I urge my colleagues to vote against this amendment and to continue to stand firmly for the principles of liberty and freedom.

Again, I urge you to reject this proposed constitutional amendment. And I thank the gentleman for his leadership in pushing for this amendment to be argued and debated today on the floor of the House.

I want to thank the principal sponsor of this constitutional amendment, the gentleman from California (Mr. CUNNINGHAM), who spoke with such emotion and so eloquently just a few moments ago. No one is more qualified in actually putting his life on the line for his country than the gentleman from California (Mr. CUNNINGHAM). I want to thank him for that.

The flag is the most powerful symbol of the ideals upon which America was founded. It is a national symbol that helps to protect and preserve our unity, our freedom, and our liberty as Americans.

As our country has grown and welcomed those from diverse religious and cultural backgrounds, the flag’s power to unify our Nation has become even more evident, bringing together all Americans, young and old, to champion those principles upon which this country was built, principles for which our servicemen and women have fought and died, and principles that have moved so many individuals throughout history to leave their homes and families and travel to America to build a new life. A
symbol that binds a nation together, as our flag does, already fulfills a unique role in our democratic process.

Since 1989, there have been at least 86 reported incidences of flag desecration. These incidences have occurred in 29 States. They have occurred here in the District of Columbia. They have occurred in Puerto Rico. Since the U.S. Supreme Court ruled in Texas v. Johnson that burning an American flag as part of a political demonstration was expressive conduct protected by the first amendment to the United States Constitution, the States have been powerless to prevent the physical desecration of this most valued symbol.

In response to Johnson in September, 1989, Congress overwhelmingly passed the Flag Protection Act of 1989, which amended the Federal Flag Statute to prohibit the physical desecration of the flag. The amendment, as the Johnson and Eichman decisions, the only remedy left to Congress to protect the flag from acts of desecration is a constitutional amendment. Many would argue that we should not amend the Constitution for this purpose. This is the only way that we can protect the flag.

The amendment before the House would restore to Congress the authority to prohibit the physical desecration of the flag. The amendment, as the chairman stated, itself does not proscribe conduct. It merely empowers Congress to enact legislation to prohibit the physical desecration of the flag, and establishes boundaries within which it may legislate. Work on a statute will come at a later date, after the amendment is ratified by three-fourths of the States.

Vigilant protection of freedom of speech and, in particular, political speech is central to our political system. Until the Johnson and Eichman cases, however, in another five to four ruling in the U.S. Supreme Court, United States v. Eichman, they struck down that act as an infringement of expressive conduct protected by the first amendment.

Because of the Johnson and Eichman decisions, the only remedy left to Congress to protect the flag from acts of desecration is a constitutional amendment. Many would argue that we should not amend the Constitution for this purpose. This is the only way that we can protect the flag.

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The first amendment freedoms do not extend and should not be extended to grant an individual an unlimited right to engage in any form of desired conduct under the cloak of free expression. Both State and Federal criminal codes are full of examples of conduct that is prohibited in our country, regardless of whether it is cloaked in the first amendment.

Furthermore, obscenity laws, libel and slander laws, copyright laws, and even perjury laws, they all reflect the fact that some forms of expression and sometimes even the content of that expression may be regulated and even prohibited without violating the first amendment.

We cannot burn our draft cards. We cannot burn money. There are many acts we cannot perform. The flag protection amendment simply reflects society's interest in maintaining the flag as a national symbol by protecting it from acts of physical desecration. It will not interfere with an individual's ability to express his or her ideas, whatever they may be, by any other means.

This amendment has been approved by this Chamber twice and enjoys the support of a supermajority of the House of Representatives. It is supported by a majority of the United States Senators and 49 out of 50 State legislatures calling on Congress to pass the amendment and send it back to the States for ratification.

Perhaps, most importantly, the amendment is supported by an overwhelming majority of the American people. It is time for Congress to answer their calls to preserve and protect the one symbol that embodies all that our Nation represents.

For the veterans who risked their lives for our country and our freedoms, for our children who view our flag with admiration and devotion, and for every American who believes that our flag deserves protection, I urge my colleagues to support this important amendment.

Mr. CONYERS. Mr. Speaker, I am pleased to yield such time as she may consume to the gentleman from California (Ms. LOFGREN), an able member of the Committee on the Judiciary.

Ms. LOFGREN. Mr. Speaker, I think all of us have had this experience walking into the Capitol, especially at night when we are in session, and we see our beautiful American flag flying over the Capitol of the freest country in the world, and it is so moving it is almost hard to keep walking by.

I think no matter where one comes down on this amendment, there is not a single Member of Congress who thinks it is good or right to deface or destroy any one of our symbols, or any one of our symbols, any one of the symbols of the United States. If we felt that, we would not be elected to Congress. We would not be here serving the Nation in the freest legislative body in the world.

Every day, we start our legislative session with these words: "I pledge allegiance to the flag of the United States of America and to the Republic, for which it stands, one Nation, under God, with liberty and justice for all."

The flag stands for something. It stands for the freest country in the world. Our country is free for a lot of reasons. It is free because brave men and women went out and heard the call to protect us, to take up arms, and to protect us over the decades and centuries when our country was attacked by those who would not allow us to have our freedom.

But we are also free because we live under the rule of law. One of the most important aspects of that is the first amendment. Let me just refresh our memory on what the first amendment says.

It says: "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof, or abridging the freedom of speech or of the press or of the right of the people peaceably to assemble and to petition the government for a redress of grievances."

The Supreme Court, which has been the interpreter of our Constitution since the beginning of our Republic, has said that flag-burning is protected by the first amendment. These are not liberal, wild-eyed justices, but Justice Scalia, probably the most conservative member of the Supreme Court, signed the opinion saying that flag-burning is protected by the first amendment.

All of us, when we became Members of this body, took an oath of office. We said: "I do solemnly swear that I will support and defend the Constitution of the United States against all enemies, foreign and in this case domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office in which I am about to enter," and then we say, "so help me God."

I am not going to turn my back on the Constitution today.

Mr. TRAFICANT. Mr. Speaker, the Old Glory Condom Corporation lost the decision. They were not allowed to sell red, white, and blue condoms, so they appealed. They said their red, white, and blue condoms were a patriotic symbol, and, yes, Members guessed it, the U.S. Trademark Office of Appeals agreed. The panel said the Old Glory condom is not unconstitutional. One can wear it, but it is illegal to destroy it.

If that is not enough to constipate our veterans, two men from Columbus, Ohio, were recently charged with burning a gay pride flag during a parade. Think about it. It is illegal to burn leaves and trash in America. It is illegal to damage a mailbox. Now it is illegal to burn a gay pride flag. And it is completely legal and patriotic to wear a red, white, and blue condom.

Beam me up, Mr. Speaker. I think if we want to make a political statement, they should burn their brassieres, burn their boxer shorts, but leave Old Glory alone, period.
I support this resolution. It is about time. A people that do not honor and respect their flag do not honor and respect the people who fought to win our country. This is more than about a flag. The gentlewoman from California is right, we pledge allegiance to the flag and to the Nation for which it stands; the flag, which our veterans carried; the flag they carried down, only to have it picked up by somebody else, surely to be shot down again. It should not be treated like an Old Glory condom.

I also urge this House to take up H.R. 2242 that would make June 14, Flag Day, a national holiday. I think the flag should be set apart, and it is certainly not going to violate anybody's first amendment rights to do so.

Mr. CONYERS. Mr. Speaker, I am pleased to yield such time as he may consume to the gentleman from Massachusetts (Mr. FRANK), a senior member of the Judiciary.

Mr. FRANK. Mr. Speaker, the remarks of the gentleman from Ohio give us a chance to deal with the common misapprehension and misunderstanding that somehow we have more rights to burn a flag in a manner that we have to burn our things. That simply is not true, and in deed, presumably the person who burned a gay pride flag had burned someone else's gay pride flag. It is entirely legal, I am sure, for someone to burn their own gay pride flag. It is not legal to burn someone else's flag. If, in fact, we burn someone else's American flag, we are guilty of theft, destruction of property, vandalism; and that, of course, can be punished.

We had an incident described where someone disrupted the funeral of a man who had been shot by a police officer and burned a flag. That was a violation of law on many counts. So we are not here advocating a policy whereby we can burn a flag when we cannot burn anything else. Yes, there are many citi
cles and States and communities that have laws against burning in certain seasons. No, the flag is not an exemption to that. So let us put that to rest. It is not a case where we have more protection to burn other things. Any law against vandalism, disturbing the peace, theft, destruction of someone else's property, that applies whether it is a flag or anything else.

What we are opposed to, those who oppose this amendment, is the notion that because some people seek to express views that almost all of us find terribly obnoxious, in the most offensive possible way, namely, by burning a flag, that we should make it illegal. And here is why: first, this takes what I would call what is our most unconservative position. It takes a very expansive view of government. What it says is, that which the Government does not prohibit it condones.

We are told that if we do not make it illegal for people to burn the flag, we are somehow allowing that and maybe inspiring that. I hope we live in a society in which we make laws to protect people from being interfered with by others; but we do not take the view that whatever the Government does not outlaw, it is somehow condoning. This is an expansively, expansively expansive view of government that would erode liberty. So we ought to be clear that the absence of a law that says something is illegal is in no sense an approval of it.

People who say, yes, but still this is so offensive, burning a flag, desecrating a flag to express oneself, that we have to make it illegal. Okay, this is then the theory. The theory is that if we do not make it illegal to destroy or desecrate a particular symbol, we are devaluing that symbol. The problem with that is that it does not go far enough. The flag is a very dear symbol to many Americans; perhaps to most it is the most important symbol. But are there people in this society who we admire because they think some other symbol is more important? What about religious symbols? Must people be told in their hierarchy of symbolic value that State comes above church; that the embodiment of the Government somehow is entitled to more protection than the embodiment of their religious faith?

The Supreme Court did not just say we could burn a flag; it said also that we could burn a cross. There was a Supreme Court decision in which a conviction was overturned of someone who burned a cross. Now, once again, it had better have been his cross on his property. We cannot go burning someone else's cross. But the Supreme Court said that the burning of a cross is constitutionally protected.

What we will do today if we ratify this amendment, or send it for ratification, is to say we will protect the American flag but not the cross. Because once we have put forward the principle that, if the Government thinks something is terrible it should outlaw it, then what do we say to people who think it is terrible to burn a cross? The cross is a symbol of a powerful religion, a religion that has, undoubtedly, had more impact on humanity than any other; and people who burn it are turning this profound religious symbol of all of man's best instincts, of man's tribute to the best in the universe, people are turning it into a symbol of racism, because the burning of the cross has become associated with racism.

Now, the Supreme Court said that is okay. Do those of us who support this amendment think that it is despicable? But we think it is a mark of a free society that despicable people are allowed to express themselves in despicable ways, as long as they have not taken anybody else's property or otherwise injured anybody. We do not simply punish expression. But for those who want to ratify this amendment, do we now get an amendment that overturns the decision that says it is okay to burn a cross? Or do we say that we, the Government of the United States, protect the flag because that is a symbol of our Nation. The cross, that symbol of some of the most profound values human beings are capable of conceiving, it is okay to burn that? It is not only okay to burn that, it is okay to take that wonderful symbol and turn it into a reminder of the worst aspect of American history: racism.

So that is what we are dealing with today. We have a choice of saying that we will continue the situation in which the Supreme Court decision in which government intervenes when one individual's rights are threatened by another, in which we protect private property and we prevent disruption of the peace, but in which we say if some individual, choosing to be as vile as can be and give offense by his or her means of expression, chooses to burn his or her own flag on his or her own property, that we are going to penalize that criminally. But if that individual decides to burn a cross to symbolize racism, if that individual decides to destroy or deface any other symbol, no matter how profound, that is okay.

It seems to me that leaves us in an untenable position. Because either we believe that what an individual does to express himself or herself is not a matter for the law, or we say we value this one symbol but we devalue all the others. I think we are better off as a society letting people express themselves as freely as possible and having the hope that the person who is abusing the flag does not take it so far that we feel we have to take a.close.

Mr. SENSENBRENNER. Mr. Speaker, I yield 2 minutes to the gentleman from California (Mr. BACA).

Mr. BACA. Mr. Speaker, I stand in support of H.R. 36, to give Congress the power to outlaw flag burning. As a veteran, this issue is very important and close to my heart. As we look at it not only as a veteran but as we look at what has been said right now, people have talked about the constitutional amendment dealing with that is a symbol of our Nation. We have the right to liberty. We also have the right to interpret, when we look at the Constitution, to examine what our forefathers, who wrote the legislation
As a symbol, many of our veterans have fought for our country. Because of the sacrifices they have made, we enjoy peace and freedom today. Because of that symbol, many individuals have died. When we look at someone who has been buried and the flag is turned over to the family, it is that symbol that is turned over. When I turn around and look at the flag behind me, it is that symbol I salute. When I attend a service, it is that symbol I salute. When I see the changing of the colors, it is that symbol, it is what America is. It is what this country was founded on.

To everyone who has fought for us, from the beginning to now, in each and every one of our wars, it is a form of expression. It is one we should have. We should never ever desecrate the flag.

When we look at many of the veterans that are willing to sacrifice and stand up and fight for us, what have they done? Are we going to say that they have gone out and fought in every war and that we do not realize there is a symbol? When someone fell with that flag and someone else picked it up and they charged, why did they do that? Because it is a symbol of freedom, freedom of expression for our area.

We must stand up and protect the flag. And let me tell my colleagues, anyone who desecrates the flag, shame on us, shame on them. It is time for a change. We have to make the change to protect what America was built on; those freedoms that are very important to us. That is part of that freedom and that symbol represents every American, every individual in this country.

Mr. CONyers. Mr. Speaker, I am pleased to yield the balance of my time to the gentleman from New York (Mr. NADLER), the ranking member on the Subcommittee on the Constitution of the Committee on the Judiciary.

Mr. NADLER. Mr. Speaker, rise in opposition to this misguided constitutional amendment and urge my colleagues to vote against it.

We are faced today with a choice that will be, for many Members of this body, a difficult one. The choice, put simply, is between a symbol, a revered symbol, and the fundamental values it represents. The flag of the United States is a symbol. It is a symbol that has the power to move people deeply. When we see the picture of the flag being raised by the Marines over Mt. Suribachi or when we see it draped over a casket or when we see it being carried in the streets as a symbol of the fight for social justice, as it was by Dr. King and so many other courageous individuals over the years who fought to ensure that America would one day live up to its promise, it is hard not to be moved.

Indeed, Mr. Speaker, as we stand here today debating what would be the very first amendment to the Bill of Rights, I feel the flag hanging behind you in this Chamber and know that a very heavy responsibility weighs on every Member of this House.

We have heard and will hear many moving arguments about the sacrifices made for the flag. Of the people who have died for the flag, the soldiers, of the importance of the flag to so many Americans. But the real significance of the flag is those important values, the fundamental freedoms, and the way of life it represents. That is why so many have sacrificed so much. Not for the peace of colored cloth, but for those values. And we dishonor their sacrifice, we ensure that those sacrifices were made in vain if we now start down the road to undermine the freedoms the flag represents, allegedly to protect the flag.

Let us not revere the symbol over what it represents. Let us not render our flag a hollow symbol. It has been said that there is the sin of elevating the symbol over the substance. The substance we are talking about is liberty and freedom of expression. It is that that we must protect, and it is that which this amendment jeopardizes.

Mr. Speaker, veterans, General Colin Powell, religious leaders, and many other Americans understand how important our freedom of expression really is, even if that expression is sometimes politically unpopular. Even if it may offend people, even if it makes people angry, even if it costs votes. If those who came before us were willing to place their lives, their fortunes, and their sacred honor for those freedoms, I think we can risk some votes to secure their continuance.

We have debated this amendment many times. We all know the arguments. It might be easy to trivialize the question we have debated so many times, but this is serious business because we are talking about amending the first amendment, the queen of the amendments that have protected our freedoms since the beginning of our Nation.

If any Member has any doubts about whether this amendment is about protecting the flag or is really about constraining freedom of expression, they should ask themselves, what is the difference between burning an old tattered flag, which U.S. law and the American Legion tell us is the appropriate, respectful way to dispose of a flag, and burning it at a protest rally? There is only one difference, and that is the opinion, the political opinion, the message being conveyed, and we are criminalizing that message.

We have all, I would assume everyone in this Chamber has watched movies over the years, and we have seen movies in which actors play enemy soldiers, Nazi soldiers, Chinese Communist soldiers in Korea; and during that movie they desecrate the American flag, they tear it to bits or trample upon it or spit upon it or burn it. No one suggests we ought to arrest the actors. No one suggests the actors have committed a crime because they are playing a role. The only crime this amendment seeks to create is not for those actors to destroy the flag in some future movie, it is for someone to burn the flag or otherwise disrespect it in the course of a political protest.

That is why the Supreme Court, quite rightly, said we cannot make that illegal because it is the core political speech that we would be making illegal. It is not the flag at issue; it is the opinion being expressed.

Do my colleagues know current Federal law by using the flag in political ads. Is it the intent of the sponsors to crack down on that form of flag desecration? Mr. Speaker, our freedoms are more important than any one individual who wants to make a point by burning a flag. Our country has survived those few individuals who want to burn the flag.

Our country will rise above it in the future.

The real damage to the flag is that too many people may be willing to desecrate our Bill of Rights to make a political point. That is something that will be very hard for this Nation to rise above, and that is why this amendment must be defeated.

Mr. SENSENBRENNER. Mr. Speaker, I yield 1 minute to the gentleman from New Jersey (Mr. PASCRELL).

Mr. PASCRELL. Mr. Speaker, I rise today to pledge my enthusiastic support for the flag protection amendment. I will be darned if I am going to accept the technicalities that we talk about and we have heard this afternoon.

I know the law is technical, but we are bogged down in technicalities. There is a breeze, a gentle breeze going through these Chambers today. Seven hundred thousand brave men and women gave their lives since the beginning of this Republic. We ought to seize back the responsibilities given to us by the voters. We should never kowtow to any other branch of government, regardless of their decision.

The Supreme Court is not absolute. Only God is absolute on any decision. The fact that we quote Justice Scalia
makes me stronger in my conviction that we must pass this.

This is not just any other symbol to me, to my family, to my brothers. I am sorry. This is not just any other symbol. This is the symbol of democracy, Mr. Speaker. We are here to uphold that symbol. I am proud to stand with those who support this resolution.

Mr. CLEVERYS. Mr. Speaker, I yield 5 minutes to the distinguished gentleman from Arkansas (Mr. SNYDER).

Mr. SNYDER. Mr. Speaker, at the end of this month I have a law review article coming out in a University of Arkansas at Little Rock Law Review on the congressional oath of office. It is a rambling discussion probably guaranteed to put the reader to sleep, but it pulls together some of the history of the Congressional oath of office. I intend reading it next month and seek out their thoughts and criticisms.

In the course of that research, I ran across some vignettes from history that I think are relevant to this debate today. I would like to share with you some news stories taken from the New York Times in years of great strife worldwide.

The first one I would like to refer to would be from April 7, 1917. Headline: Diners Refuse to Stand When It Is Played. The decision we make today, it seems to me, will validate or question a democratic principle that went unchallenged for a long period of time.

There was much excitement in the main dining room at Rector's last night following the playing of the "Star Spangled Banner." Frederick S. Boyd, a former reporter on the New York Call, a Socialist newspaper, was dining with Miss Jessie Ashley and Miss May R. Towle, both lawyers and suffragists.

The three of those in the room remained seated. There were quiet, then loud and vehement protests, but they kept their chairs. The angry dinners surrounded Boyd and the two women and blows were struck back and forth, the women fighting valiantly to defend Boyd. He cried out he was an Englishman and did not have to get up, to defend Boyd. He cried out he was an Englishman and did not have to get up, but the crowd would not listen to explanation.

Boyd was beaten severely when Albert Dasburg, a head waiter, succeeded in reaching his side. Other waiters closed in and the fray was stopped. The angry dinners pulled together some of the history of the Congressional oath of office.


Riotous scenes attended a Socialist parade today which was announced as a peace demonstration. The ranks of the marchers were broke up by self-organized squads of uniformed soldiers and sailors, red flags and banners bearing socialistic mottos were trampled on, and literature and furnishings in the Socialist headquarters in Park Square were thrown into the street and burned.

At Scollay Square there was a similar scene. The American flag at the head of the line was seized by the attacking party, and the band, which had been playing "The Marseillaise," with some interruptions, was forced to play "The Star Spangled Banner," while cheers were given for the flag.

From April 5, 1912. Headline: Forced to Kiss the Flag. 100 Anarchists Are Then Driven from San Diego.

Nearly 100 industrial workers of the world, all of whom admitted they were anarchists, knelt on the ground and kissed the folds of an American flag at dawn today near San Onofre, a small settlement a short distance this side of the Orange County boundary line.

The ceremony, which was most unwillingly performed, was witnessed by 45 deputy constables and a large body of armed citizens of San Diego.

And the last one from March 26, 1918: Pro-Germans Mobbed in Middle West. Disturbances Start in Ohio and are Renewed in Illinois, Woman Among Victims.

Five businessmen of Delphos, a German settlement in western Allen County near here, accused of pro-Germanism, were hunted out by a volunteer vigilance committee of 400 men and 50 women of the town, taken into a brilliantly lighted downtown street and forced to kiss the American flag tonight under pain of being hanged from nearby telephone poles.

What do these stories have to do with this very important and heartfelt debate today so ably conducted by the chairman and ranking member?

The decision we make today, it seems to me, is a balancing, a weighing, of what best preserves freedom for Americans. There may well be a decrease in public deliberate incidents of flag desecration, acts that we all deplore, if this amendment becomes part of our Constitution, although they are already quite rare.

On the other side of the ledger, if this amendment becomes part of our Constitution, in my opinion it will become a constitutionally sanctioned tool for the majority to tyrannize the minority. As evidence by these anecdotes from a time of great divisiveness in our Nation's history, a time much different from today, captured here which ultimately is human beings with all of our strengths and weaknesses, will use this amendment to question the patriotism of vocal minorities, will use it to find means to legally suppress demonstrations which utilize the flag in an otherwise appropriate manner, except for the fact that the flag is carried by those speaking for an unpopular minority.

Mr. Speaker, I do not think our Constitution will be improved nor our freedoms protected by placing within it enhanced opportunity for minority views to be legally attacked ostensibly because of their misuse of the flag, but in reality because of views that many consider out of the mainstream.

Mr. SENSENBRENNER. Mr. Speaker, I yield 2 minutes to the gentleman from Mississippi (Mr. SHOWS).

Mr. SHOWS. Mr. Speaker, I rise today in support of House Joint Resolution 36, which would outlaw the physical desecration of the American flag.

Our flag represents the cherished freedoms Americans enjoy to the envy of other nations. To our Nation's veterans and military retirees, it is a constant reminder of the ultimate sacrifice they have made. Destroying our flag is an affront to all Americans, but to veterans and military retirees it is much more than that. Our veterans and military retirees have put their lives on the line for our country, and the American flag is one thing they can hold and say, "This is what I have defended with my life."

My father was a prisoner of war in World War II, captured at the Battle of the Bulge. He fought to protect our democratic freedoms. If I did not vote for this resolution today, I would whip me, and I am 54 years old.

Mr. Speaker, he did not fight to let Americans destroy the very symbol of their very freedoms that he was willing to die for. Destroying the flag is tantamount to physically assaulting those heroes who would lay down their lives for their country. It is against the law for one American to assault another, and so should it be against the law for one American to assault an entire class of American heroes.

Mr. Speaker, we need to honor American heroes and pass this resolution.

Mr. CONYERS. Mr. Speaker, I yield 8 minutes to the gentleman from New York (Mr. ACKERMAN).

Mr. ACKERMAN. Mr. Speaker, the Founding Fathers must be very puzzled looking down on us today. Instead of seeing us dealing with the very real challenges that face our Nation, they see us laboring again under this compulsion to amend the document that...
underpins our democracy. They see a house of dwarfs trying to give this gov-
ernment a new great power at the expense of our rights. The threat is the first time, to stifle dissenters and the way in which they dissent.

The threat must be great, they must be saying, to justify changing the Bill of Rights for the first time and de-
creasing rather than increasing the rights of the people. They see our be-
loved Bill of Rights being eroded into the Bill of Rights and Restrictions.

What is the threat? What is the threat, Mr. Speaker? I ask again, what is the threat? Is our democracy at risk? What is the crisis to the Republic? What is the challenge to our way of life? Where is our belief system being threatened? Are people jumping from behind parked cars, waving burning flags at you, trying to prevent us from getting to work and causing America to grind to a halt?

Mr. Speaker, do we really believe that we are under such a siege because of a few lose cannons? Do we need to change the Constitution to save our dem-
cracy, or are we simply offended?

The real threat to our society is not the occasional burning of a flag, but the permanent banning of the burners. The real threat is that some of us have now mistaken the flag for a religious icon to be worshipped as pagans would, rather than to be kept as the beloved symbol of our freedom that is to be cherished.

These rare but vile acts of desecra-
tion that have been cited by those who would propose changing our founding document do not threaten anybody. If a jerk burns a flag, America is not threatened. If a jerk burns a flag, de-
ocracy is not under siege. If a jerk burns a flag, Mr. Speaker, that jerk is not at risk and we are not threatened. My colleagues, we are offended; and to change our Constitution because someone offends us is in itself unconscionable.

Mr. Speaker, the courts have said that the flag stands for the right to burn the flag. The Nazis and the Fas-
cists and the Imperial Japanese Army combined could not diminish the con-
stitutional right of even one single American. Yet, in an act of cowardice, we are about to do what they could not.

Mr. Speaker, where are the patriots? Where are the patriots? Whatever hap-
pened to fighting to the death for the rights of someone with whom we dis-
agree? We now choose, instead, to react by taking away the right to protest. Even a despicable life-long malcontent has a right to disagree, and he has the right to disagree in an obnoxious fash-
ion if he wishes. That is the true test of free expression, and we are about to fail that test.

Real patriots choose freedom over symbolis
t. That is the ultimate con-
test between substance and form. Why does the flag need protecting? Is it an…

... en dangered species? Burning one flag or burning 1,000 flags does not endanger it. It is but a symbol. But change just one hair and you have the death knell of this great Nation, and it and we will never be the same.

We cannot destroy a symbol. Yes, people have burnt the flag, but, Mr. Speaker, it still exists. There it is, hanging right back of us. It re-
 presents our beliefs.

Poets and patriots will tell us men have died for the flag, but that lan-
guage itself is symbolic language. Peo-
ple do not die for symbols. They fight and they die for freedom. They fight and they die for democracy. They fight and they die for values. To fight and die for the flag is to fight and die for the cause in which we believe. Today some would have us change all of that. I say to all those last to our flag for that which it represents. It is different from all other flags. I notice in the amendment that we do not make it illegal to burn someone else's flag in someone else's country, and that is be-
cause our flag is different.

☐ 1345

No, not because of the colors or the shape or the design. They mostly have stars and some have stripes and scores and dozens are red, white, and blue.

Our flag is unique because it re-
 presents our unique values. It represents tolerance for dissent. This country was founded by dissenters that others found obnoxious.

What is a dissenter? In this case it is a social protestor who feels so strongly about an issue that he would stoop so low as to try to get under our skin, to try to rile us up to prove his point, and to have us react by making this great democratic community a micro-
dictatorship. How do we react? Dictators and dic-
tatorships make political prisoners of those who burn their Nation's flags, not democracies. We tolerate dissent and dissenters, even the despicable dis-
senters.

What is the flag, Mr. Speaker? The American flag? Yes, it is a piece of cloth. It is red, it is white and blue. It has 50 stars and 13 stripes. But if we pass this amendment and desecrators decide to start a cottage industry and make flags with 55 stars and burn them, will we rush to the floor to amend the Constitution again?

If they add a stripe or two and set it ablaze, surely it would look like our flag, but is it? Do we rush in and count the stripes before we determine whether or not we are constitutionally off-
fended? What if the stripes are orange instead of red? How do we interpret that? What mischief do we do here? If it is a full color, full-sized picture of a flag that they burn, is it a crime to desecrate a symbol of a symbol? What are we doing?

Our beloved flag represents this great Nation, Mr. Speaker. We love our flag because there is a republic for which it stands, made great by a Constitution that we have sworn to protect, a Con-
stitution given to our care by giants and about to be nibbled to death by dwarfs.

Mr. Speaker, I call upon the patriots of the House to rise and to defend the Constitution, to resist the temptation to drape ourselves in the flag and to hold sacred the Bill of Rights. Defend our Constitution. I urge the defeat of this ill-conceived amendment.

Mr. SENSENBRENNER. Mr. Speak-
er, I yield 5 minutes to the gentleman from Illinois (Mr. HYDE), the distin-
guished former chairman of the Com-
mittee on the Judiciary.

Mr. HYDE. Mr. Speaker, I do not in-
tend to ascribe cowardice or lack of pa-
triotism to people who disagree with a sign. The flag is a symbol. Vandal-
izing a No Parking sign is a mis-

...
Four Supreme Court justices agreed to learn our flag is even planted on the ground. To his joy he saw our flag was still there. And respect.

The flag is our connection to the past and proclaims our hopes and aspirations for the future. 

The American experiment rests, the truths expressed so profoundly in our country's birth certificate, the Declaration of Independence. "We hold these truths to be self-evident," Jefferson wrote. The truth that all are equal before the law. We share that, across race, gender, religion and frames of mind. Life and liberty are inalienable and inviolable. The truth that government is intended to facilitate and not impede the people's pursuit of happiness.

Adherence to these truths is the foundation of civil society, of democratic culture in America. And what is the symbol of our moral unity amidst our racial, ethnic, and religious diversity? Old Glory, the stars and stripes.

In seeking to provide constitutional protection for the flag, we are seeking to protect the moral unity that makes American democracy possible. We have spent the better part of the last 30 years telling each other, shouting to each other, all the things that divide us. It is time to start talking about the things that unite us, that make us all, together, Americans. The flag is the embodiment of the unity of the American people, a unity built on those things that unite us, that make us all, together, Americans. The flag is the transcendent symbol of all that needs to be made, that our flag is there. This is not a settled issue. Five to four Supreme Court justices come down on the side of the flag.

Mr. CONYERS. Mr. Speaker, I am pleased to yield 4 minutes to the gentleman from Texas (Mr. PAUL).

Mr. PAUL. I thank the gentleman for yielding me this time.

Mr. Speaker, I do not think what we are doing here today is a contest between who is the most patriotic. I do not think that is it at all. Nobody here in the debate is unpatriotic. But I think the debate is possibly defining patriotism.

But I am concerned that we are going to do something here today that Castro did in Cuba for 40 years. There is a prohibition against flag burning in Cuba. And one of the very first things that Red China did after it took over Hong Kong was to pass an amendment similar to this, to make sure there is no desecration of the Red Chinese flag. That is some of the company that we are keeping if we pass this amendment.

A gentleman earlier said that we need a law that says that someone might be committing flag burning. That is an amendment.

I agree with the former speaker who talked about responsibility. I agree it is about responsibility. But it also has something to do with rights. You cannot reject rights and say it is all responsibility and therefore we have to write another law. Responsibility implies a voluntary approach. You cannot achieve patriotism by authoritarianism, and that is what we are talking about.

I think we all agree with respect to the flag and respect for our country. It is all in how we intend to do this. And also this idea about veterans, because you are a veteran that you have more wisdom. I do not think so. I am a veteran, but I disagree with other veterans. Keith Krul, who was a past national commander of the American Legion had this to say:

"Our Nation was not founded on devotion to symbolic idols, but on principles, beliefs, and ideals expressed in the Constitution and its Bill of Rights. American veterans who have protected our banner in battle have not done so to protect a 'golden calf.' A patriot cannot be created by legislation."

He was the national commander of the American Legion. So I am not less patriotic because I take this different position.

Another Member earlier mentioned that this could possibly be a property rights issue. I think it has something to do with the first amendment and freedom of expression. That certainly is important, but I think property rights are very important here. If you have your own flag and what you do with it, there should be some recognition of that. But the retribution to that is, oh, no, the flag belongs to the country. The flag belongs to everybody. Not really. If you say that, you are a collectivist. That means you believe everybody owns everything. Who would manufacture the flags? Who would buy the flags? Who would take care of them? So there is an ownership. If the Federal Government owns a flag and you are on Federal property, even, without this amendment, you do not have the right to go and burn that flag. If you are causing civil disturbances, that is handled another way. But this whole idea that there could be a collective ownership of the flag, I think, is erroneous.

The first amendment, we must remember, is not there to protect non-controversial speech. It is to do exactly the opposite. So, therefore, if you are looking for controversy protection it is found in the first amendment. Let me just look at the words of the amendment. Congress, more power to the Congress. Congress will get power, not the States. That is the opposite of everything we believe in or at least profess to believe in on this side of the aisle.

To prohibit. How do you prohibit something? You would need an army on every street corner in the country. You cannot possibly prevent you do not have the right to go and burn. You can punish it but you cannot prohibit it. That word needs to be changed eventually if you ever think you are going to get this amendment passed.

Physical desecration. Physical, what does it mean? If one sits on it? Do you arrest them and put them in jail? Desecration is a word that was used for religious symbols. In other words, you are either going to lower the religious symbols or the state is going to uphold the state symbol to that of religion. So, therefore, the whole word of desecration is a word that was taken from religious symbols, not state symbols. Maybe it harks back to the time when the state and the church was one and the same.

I urge a "no" vote on this amendment.

Mr. Speaker, loyalty and conviction are admirable traits, but when misplaced both can lead to serious problems.

More than a decade ago, an obnoxious man in Dallas decided to perform an ugly act: the desecration of an American flag in public. His action violated a little-known state law prohibiting desecration of the flag. He was tried in state court and found guilty.

As always seems to be the case, though, the federal government intervened. After winning through the federal system, the Supreme Court—in direct contradiction to the Constitution's 10th Amendment—finally ruled against the state law.

Since then Congress has twice tried to overturn more than 213 years of history and legal
tradition by making flag desecration a federal crime. Just as surely as the Court was wrong in its disregard for the Tenth Amendment, by improperly assigning the restriction of the First Amendment to the states, so are attempts to federally restrict the odious (and very rare) practice of Americans desecrating the flag.

After all, the First Amendment clearly states that it is Congress that may "make no laws" and is prohibited from "abridging" the freedom of speech and expression. While some may not like it, under our Constitution state governments are free to restrict speech, expression, the press and even religious activities. Those states are restrained, in our federal system, by their own constitutions and electorates.

This system has served us well for more than two centuries. After all, our founding fathers correctly recognized that the federal government should be severely limited, and especially in matters of expression. They revolted against a government that prevented them from voicing their politically unpopular views regarding taxation, liberty and property rights.

As a result, the founders wanted to ensure that a properly constitutional federal government would not exist, and that no federal government of the United States would ever be able to restrict what government officials might find obnoxious, unpopular or unpatriotic. After all, the great patriots of our nation—George Washington, Thomas Jefferson, Patrick Henry, and Benjamin Franklin—were all considered disloyal pests by the British government.

Too often in this debate, the issue of patriotism is misplaced. This is well addressed by Keith Kruel, an Army veteran and a past national commander of the American Legion. He says that, "Our nation was not founded on international representation when working in the field of labor with my late father. Ms. CARSON of Indiana. Mr. Speaker, I certainly thank the honorable gentleman from Michigan (Mr. CONYERS) for yielding me time. I did have the benefit of working for his father as an international representative when John was still running around trying to find out whether or not he was going to Congress. So it is a pleasure to come, Mr. Speaker, to the floor and benefit from all of this historic and intellectual dialogue that preceded me.

I come here today to exercise a constitutional right granted to me as a citizen of the United States, and that is freedom of speech. I have a great deal of reverence for the United States flag. I want it to be a precious commodity, and am very saddened by those flags that are often lowered over capitol buildings in commemoration of some fallen hero, if you will. My adoration and respect, however, does not exceed my commitment to the integrity of the first amendment of the United States Constitution. Many of us learned in our educational experience of Patrick Henry, who said, "I may not agree with the words that you say, but certainly would defend your right to say it." As I recall, Patrick Henry was in fact one of the signers of the Constitution.

One of my first and foremost commitments as a Member here is on behalf of our country's veterans. My name, Julia Carson, is derived from a Korean War Marine, 100 percent service-connected veteran, who struggles now to even gain any type of mobility. He has told me that he recognizes his interests in preserving this flag. My son, Sam Carson, is a former member of the United States Marine Corps.

As a ranking member of the Committee on Veterans Affairs Subcommittee on Oversight and Investigation, I am working hard to address the needs of our veterans, to assure that the fight for freedom does not go unappreciated or uncompensated.

Great Americans such as Vietnam veteran and former Senator Kerry, former head of the Joint Chiefs of Staff and our current Secretary of State, the Honorable Colin Powell, have expressed their opposition to this amendment. These are great men who served this country with distinction.

General Powell has stated, "If they are destroying a flag that belongs to someone else, that is a punishable crime. But if it is a flag they own, I really don't want to amend the Constitution to prosecute someone for foolishly desecrating their own property. We should condemn them and pity them instead.

These men feel that in spite of their own commitment to the integrity of the American flag, they do not want their personal views to infringe on the rights of free speech of other Americans.

Francis Scott Key wrote, and we all recall that tune, "O'er the ramparts we watch'd, were so gallantly streaming. And the rockets' red glare, the bombs bursting in air, gave proof through the night that our flag was still there. Oh says, does that star spangled banner yet wave, o'er the land of the free and the home of the brave?"

It does still wave. Mr. Speaker, despite House Resolution 50. Our flag will still be there. The constitutional amendment proposed here today is totally unnecessary. That is why I am going to vote against it.

Mr. CONYERS. Mr. Speaker, I am pleased to yield 3 minutes to the gentlewoman from Indiana (Ms. CARSON) who, previous to her congressional experience, worked in the field of labor with my late father.
Mr. SENSENBERGER. Mr. Speaker, I yield 2 minutes to the distinguished gentleman from Texas (Mr. SAM JOHNSON).

Mr. SAM JOHNSON of Texas. Mr. Speaker, it is a tremendous honor for me to be here today to support the protection of our American heritage, a symbol we all cherish. Our American veterans fought in the many wars fought to win our freedom. I spent 7 long years as a POW in Vietnam, half of that in solitary confinement. I think you heard the gentleman from California (Mr. CUNNINGHAM) relate earlier the story of Mike Christian, who was beaten for making a flag. He sewed that flag to remind himself of home and the freedom that it stands for. It was a symbol and comfort to all of us. As POWs, we would pledge allegiance and salute it each day. That tiny, tiny flag sewn together meant so much to us, far, far away from home, more to describe.

I stand here today to honor all our military men and women who have fought throughout the years for this great Nation.

How about the Marine memorial, the Iwo Jima Memorial? Does that not mean something to you? I think that flag meant something to those boys that put it up there.

The Miller's Ford dealership in Plano, Texas built a huge flagpole and put an oversized flag on it. Do you know what? Some of the people said, It makes too much noise when the wind blows. It keeps us awake at night.

Do you know what Rick Middlekauff said? He said, ladies and gentlemen, that is the sound of freedom. And he left it up there, and they quit griping about it.

It is something that I think that we must respect. We must treat it with respect and protect it from desecration.

Mr. CONYERS. Mr. Speaker, I am pleased to yield 2 minutes to the gentleman from Michigan (Mr. SCHAKOWSKY).

Ms. SCHAKOWSKY. Mr. Speaker, I rise today as a proud and patriotic American to oppose this resolution. Here is what some of the veterans have said about this amendment.

Jack Heyman, Fort Myers Beach, Florida, a Korean War veteran, said, "I know of no American veteran who put his or her life on the line to protect the sanctity of the flag. That is not why we fulfilled our patriotic duty. We did so and stand to protect our country and our way of life and to ensure that our children enjoy the same freedoms for which we fought."

Mr. Heyman's great grandfather was a Pennsylvania Regular during the Civil War; his father served in the Navy during World War I; his brother fought in World War II; and one of his children served in the Army following the Vietnam War.

Bill McClosey, a Vietnam War veteran from Bethesda, Maryland, said, "Ultimately, Americans and our representatives must realize that when a flag goes up in flames, only a multi-colored cloth is destroyed. If our freedoms are lost, the true fabric of our Nation is frayed and weakened."

Brad Bustany, West Hollywood, California, a Gulf War veteran, said, "My military service was not about protecting the flag; it was about protecting the freedoms behind it. The flag amendment curtails free speech and expression in a way that should frighten us all."

And how will Congress begin defining what the flag and desecration even mean? Our flag is ubiquitous. It is found in such places as commerce, art and memorials. Will Congress bar display of the flag on apparel, defining it as desecration? Will flag bathing suits be desecration, and thus prohibited? How will Congress enforce such an amendment? Where will this begin and where will it end?

Freedom of speech, even when it hurts, and it does hurt many of us, is the truest test of our dedication to the principles that our flag represents. Punishing desecration of the flag declines the very freedom that makes this emblem so precious, so revered, and worth revering.

I urge my colleagues to vote no on this amendment and yes to upholding our Constitution and our democracy.

Mr. SENSENBERGER. Mr. Speaker, I yield 2 minutes to the gentleman from Virginia (Mr. GOODLATTE).

Mr. GOODLATTE. Mr. Speaker, I would like to thank the chairman of the Committee on the Judiciary for yielding me this time and for his leadership on this measure. I urge my colleagues to support this constitutional amendment.

Mr. CONYERS. Mr. Speaker, I am pleased to yield 2 minutes to the gentleman from Michigan (Mr. CLEMENT).

Mr. CLEMENT. Mr. Speaker, I might say, the people of New York would be proud of you up there today.

Mr. Speaker, I thank the gentleman from Michigan (Mr. CONYERS) very much. The gentleman has served the State of Michigan in such an exemplary way for so many years. And I might say about him too, I used to live in the State of Michigan, even though it did not change my accent.

This bill is not about one's freedom of speech; it is about one's respect for our country and the rights provided by it.

As a veteran of the U.S. Army and serving 29 years in the Army National Guard, I do not have to be told about the need to respect our flag. But there are many out there who take this symbol for granted. It seems as though they fail to recognize what has been sacrificed over the past 225 years of our existence.

The flag not only serves as a sacred symbol of the principles upon which our Nation was founded, it also represents the many sacrifices our veterans have made throughout the history of our Nation to protect our precious freedoms and preserve our democracy.

I fully support one's right to express himself or herself freely, but when it comes to Old Glory and displaying such a gross disrespect for something as precious as our national symbol of freedom, I feel it is necessary for Congress to draw the line.

In this country, whatever idea a flag represents, we have the right to express just as effectively in many other ways. Burning our flag communicates nothing but a lack of respect. We should not protect such horrid behavior, when our forefathers, our veterans and many patriotic citizens of our great land see it important to protect the freedom it symbolizes.

This amendment to protect our flag is an appropriate and powerful "thank
you” to every veteran who fought and died to defend this flag and the country for which it stands. This flag is a national asset.

The SPEAKER pro tempore (Mr. QUINN). The time of the gentleman from Tennessee has expired.

Mr. CONYERS. Mr. Speaker, I yield an additional minute to the gentleman from Tennessee (Mr. CLEMENT).

Mr. CLEMENT. Mr. Speaker, that is very gracious of the gentleman from Michigan (Mr. CONYERS), knowing the gentleman does not necessarily agree with my position totally, but he has always been fair as one of the great leaders in the House of Representatives.

This flag is a national asset, and I strongly believe it deserves our unquestioned respect and protection. I pledge my full support for this amendment, and I hope that my colleagues will vote to support its passage.

I have heard from a lot of veterans at home, but not just veterans. I have heard from people from all walks of life. Mr. Speaker, we have a lot to be proud of in this country. We celebrated our 200th birthday in 1976. I would ask my colleagues, do they know what the average longevity of the great democracies of the past is? It is 200 years. We celebrated our 200th birthday in 1976. But if we want to celebrate our 300th birthday, we have to recommit ourselves.

Mr. Speaker, what I said a while ago is the way I feel. Yes, one can protest. Yes, one can disagree. Yes, one can feel strongly on a particular issue. But one does not have to burn “Old Glory.” One can show one’s protest, one can show one’s patriotism in other ways. Support this amendment.

Mr. SENSENBRENNER. Mr. Speaker, I yield 2 minutes to the gentleman from Indiana (Mr. HOSTETTLER).

Mr. HOSTETTLER. Mr. Speaker, I thank the gentleman for yielding me this time.

Mr. Speaker, I rise in strong support of this proposed constitutional amendment. The need for such an amendment arises from a Supreme Court that has persistently stated that we must tolerate flag desecration as protected speech. Clearly, I believe the Supreme Court has it wrong.

This proposed amendment places the debate exactly where our framers intended for it to take place: in the town halls across America. It is the American people, not the Supreme Court, that have the ultimate responsibility to answer constitutional questions.

Mr. Speaker, I believe the flag is a unique symbol. When those who have given the last full measure of devotion are given the respect they deserve, we honor them by draping their coffin with a flag. They honor our country with their sacrifice, and we honor them with the flag.

Moreover, Mr. Speaker, I find the words of the Pledge of Allegiance telling. Just last week, President Bush had the opportunity to visit Ellis Island and to lead the crowd in the Pledge of Allegiance. Just as our immigrant forebears have done before: “I pledge allegiance to the flag of the United States of America, and to the Republic, for which it stands.” I would underscore that this simple phrase recited every morning in this very Chamber pledges our allegiance to the flag itself, not only to the Republic. The “and” separates the two phrases so that we pledge our devotion both to the flag and to our Republic.

Mr. Speaker, some argue that the ideals of the flag are the only things that matter. I find the words of the pledge enlightening, and I respectfully disagree.

The flag itself occupies a unique place in our Republic. It is the one symbol that merits our allegiance. Why do we continue to pledge our devotion and support to a flag if we are not willing to protect it from desecration?

Mr. Speaker, I urge my colleagues to support the proposed amendment.

Mr. SENSENBRENNER. Mr. Speaker, I yield 1 minute to the gentlewoman from Virginia (Mrs. JO ANN DAVIS).

Mrs. JO ANN DAVIS of Virginia. Mr. Speaker, I rise today in support of House Joint Resolution 36 proposing a constitutional amendment that would grant Congress the power to prohibit the physical desecration of the United States flag.

The American flag is a revered symbol of our country and of the principles of freedom and liberty we hold dear. I know for America’s war veterans the flag is valued as a symbol of the sacrifices they and their fellow service members made to defend our land. Indeed, hundreds of thousands of servicemen gave their lives defending our country, and we must never forget the price they paid for the freedoms we enjoy.

As a member of the House Committee on Armed Services, it is our priority to restore our military’s readiness and strength and also ensure that our veterans are treated with the respect and gratitude that is due them. That includes standing with them to defend the honor due to our national colors.

Mr. Speaker, I urge my colleagues to join me in support of this resolution.

Mr. SENSENBRENNER. Mr. Speaker, I yield 2 minutes to the gentleman from South Carolina (Mr. BROWN).

Mr. BROWN of South Carolina. Mr. Speaker, I rise in support of this important piece of legislation and I applaud the gentleman from California (Mr. CUNNINGHAM) for his tireless advocacy on this issue.

Justice John Paul Stevens, speaking for the Supreme Court minority opinion in the United States v. Eichman in 1990 stated, “Thus the government may, indeed, it should, protect the symbolic value of the flag without regard to the specific content of the flag
The American flag embodies the hopes, sacrifices, and freedoms of this great Nation and its people. The American flag is more than just a symbol, it is the fabric that binds our Nation, its citizens, and those brave individuals who have sacrificed to preserve our unity and our independence by other means. It may well be true that other means of expression may be less effective in drawing attention to those ideas, but that is not itself a sufficient reason for immunizing rising flag burning. Presumably, a gigantic fireworks display or a parade of nude models in a public park might draw even more attention to a controversial message, but such methods of expression are nonetheless subject to regulation.

There is a lot of talk about free speech, but passage of this will not prevent anyone from saying anything more than our law already does. If one does not like what the country is doing, or if one is upset about anything at all, one can stand on the street corner and say whatever comes to one's mind, and that right is protected. It is part of what makes this country great that we have this freedom; that, despite differences of opinion, we still manage to move on and respect what other people have to say.

But while we enjoy this freedom of speech today, there are still certain things we cannot do or say by law. We have laws against libel, slander, perjury, obscenity and indecent exposure in public. Just as it is within the realms of the Federal Government to limit this kind of conduct, it is also right for it to regulate a clear attack on its sovereignty and dignity by protecting our flag.

To me, our flag represents not only the sacrifices of those who came before us, but also the hope for our future generations. It is both the past and the present which makes us a great people and what so many Americans have fought so hard to preserve.

I am privileged to serve on the Veterans' Affairs Committee and to have such constructive interaction with so many current and retired members of our Armed Forces. We have more than 350,000 veterans in the State of South Carolina, many of whom are in my district. If I can go back home and tell them anything, I would say that I voted to make sure that their sacrifices were not forgotten. That the flag that serves as our national symbol of unity—and a symbol of what so many of their brethren gave their lives for—shall be revered, not desecrated.

Again, I urge you all to vote for this legislation.

Mr. SENSENBRUNNER. Mr. Speaker, I yield 2 minutes to the gentleman from New York (Mr. GRucci).

Mr. GRucci. Mr. Speaker, I rise today as an original cosponsor of the flag protection amendment, and I ask all of my colleagues to join 250 cosponsors and support the passage of H.J. Res. 36, the flag protection amendment.

Mr. Speaker, amending the Constitution is a very serious matter. I do not think wisely of those who burn our flag, but I respect their right to express themselves on any issue facing our country, on any candidate for office, on the performance or voting record of any incumbent officeholder this way. No one is in any way diminished by this constitutional amendment. What this constitutional amendment does is to give Congress the power to prohibit actions, not speech, that desecrates the flag of the United States of America.

Some also believe that the right to free speech is unlimited as a result of the first amendment. That is not the case at all. No one can shout "fire" in a crowded theater. No one can issue defamatory statements, whether verbally or in writing, without being called to account. There are limits on free speech, and 80 percent of the American people believe that a flag desecration constitutional amendment is a limit that we ought to have, not on speech but on actions.

When I think about the flag, I think about the men and women who died defending it and the families they left behind. When I think about the flag, I think about the Constitution of the United States and the rights it guarantees, as embodied by the flag.

I love the flag for all it represents, but I love the Constitution even more. The Constitution is not just a symbol, it is the very principles on which our Nation was founded. I urge my colleagues to vote against this resolution.

Mr. CONYERS. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. SENSENBRUNNER. Mr. Speaker, I yield myself the balance of my time.

Mr. Speaker, I think we have had a very vigorous debate that talks about the pros and cons of the flag protection constitutional amendment. I believe that all of the arguments that have been sincerely placed against this amendment really do not have merit and should be ignored, and this amendment should be passed.

First, we have had the argument that this amendment amends the Bill of Rights. It does no such thing. There is no statement in the text of the amendment that the first amendment is modified in any way, amended in any way, or repealed in any way.

Secondly, we have heard the argument that this should be protected free speech under the Constitution of the United States. But what we are talking about here is not speech, we are talking about actions and burning or otherwise desecrating the flag of the United States of America.

Nobody is right to express themselves on any issue facing our country, on any candidate for office, on the performance or voting record of any incumbent officeholder this way. No one is in any way diminished by this constitutional amendment. What this constitutional amendment does is to give Congress the power to prohibit actions, not speech, that desecrates the flag of the United States of America.
In a 5–4 decision, the Court provided that the
for the record.

I therefore submit this statement
keep me from being present to debate this bill
prior obligations to my constituents in St. Louis
rect a wrong of the Supreme Court.
of the States to ratify this amendment.
prove this amendment for the other
us today, by a two-thirds vote, to ap-
America is unconstitutional, the only
the United States. This should not be
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sions, but they are not infallible, and
are entitled deference to their deci-
in a co-equal branch of government,
Court.
Constitution to prohibit the desecration of the
fending it and the values it embodies.
much, they were willing to risk their lives de-
inside the flag. I believe our Nation's flag is the cen-
today in support of the Constitutional Amend-
flag.
want to avoid, the desecration of the American
amendment would lead to what supporters
burned. Perversely, the reaction to this
expression of political protest by burning the

The 11th amendment construing the
United States. This should not be
States of America. I find it abhorrent, distaste-
in the House of Representatives to protect this
port of this amendment is consistent with my
Protection Constitutional Amendment. My sup-
the eyes of both the Federal and State gov-
ernment overturned the Dred Scott de-
The sixteenth amendment, which allowed the Congress to impose
an income tax, overturned a decision that said that the Federal Income tax
violated the constitutional prohibition on not having proportional allocation
of taxes among the States.

So when the Supreme Court is wrong,
one of the checks and balances that the Congress
the States have is to amend the Constitution of the United States
to correct the errors of the Supreme Court.

Those nine people across the street,
in a co-equal branch of government,
are entitled deference to their deci-
sions, but they are not infallible, and
do they make mistakes. In the case of both the Johnson and the Eichman
case, they have made a mistake.

One of the checks and balances that the Framers of the Constitution placed
on the judicial branch of government is
to authorize the Congress and the States to amend the Constitution of the
United States. This should not be
done lightly, and it has not been done lightly.

But given the fact that the Supreme Court twice has said that any statute,
Federal or State, proposing criminal penalties for the physical desecration
of the flag of the United States of America is unconstitutional, the only
alternative we have as a nation is for
us today, by a two-thirds vote, to ap-
prove this amendment for the other
body to follow suit and three-quarters
of the States to ratify this amendment.

Today we have an opportunity to cor-
rect a wrong of the Supreme Court.
The House should do the right thing,
Mr. Speaker, and pass this constituti-
onal amendment.

Mr. GEPHARDT. Mr. Speaker, I would like
to express my support in protecting the san-
city of our Nation's greatest symbol of freedom
and liberty: the American flag. Regrett-
fully, prior objections to this amendment in my
constituents in St. Louis, kept me from being present to debate this bill
on the floor. I therefore submit this statement for
the record.

In 1989, the U.S. Supreme Court struck
down a Texas statute that provided criminal
sanctions for the burning of an American flag.
In a 5–4 decision, the Court provided that the
desecration of the flag was an act of free
expression, a freedom protected under the first
amendment of our Constitution.

On behalf of all the men and women who
fought and died for this nation, for their fami-
lies, and for all Americans, I join my col-
leagues in supporting H.J. Res. 36, the Flag
Protection Constitutional Amendment. My sup-
port of this amendment is consistent with my
votes cast in favor of past successful attempts
in the House of Representatives to protect this
American treasure.

I often meet with the many veterans from
my district, those who served our Nation cour-
ageously in World War II, Korea, and Viet-
nam. To them, the flag symbolizes their strug-
gle and triumph, flying as a constant reminder
of their bravery and our gratitude. I believe the
desecration of our flag jeopardizes that sym-

tolic value, and undermines the courage that
we must forever salute.

I support this amendment not as a Repub-
lican or Democrat, but as an American. I call
on all members, from both sides of the aisle,
to join together in American fashion to sup-
port this amendment and keep the symbol of
our American dream alive.

Mr. BLUMENTAER. Mr. Speaker, the pur-
pose of our constitution should be to establish
the structure of government and to protect the
fundamental rights of citizens. We have
amended the constitution only 17 times since
the establishment of the Bill of Rights in 1791.
The proposed amendment is not a funda-
mental right or an alteration of the structure
of government. Abandoning that principle leads
us to a slippery slope, which potentially cheap-
ens the process of amendments and could
weaken the constitutional framework.

I also oppose this amendment because of
the same reasons some of my friends support
it: because I respect the flag of the United
States of America. I find it abhorrent, distaste-
ful, and sad when it is desecrated. Since I've
been in Congress, to my knowledge, there has
not been a single flag burning in my commu-
nity, and probably in my whole state. Certainly
no one has brought it to my attention. I will
guarantee you the second we raise the act of
expression to status of a crime, we will have explo-
sion of instances where in fact the flag is
burned. Perversely, the reaction to this
amendment would lead to what supporters
want to avoid, the desecration of the American
flag.

Because its not needed, because it's con-
trary to the principles of the Constitutional ac-
tion, and because, sadly, it would encourage
desecration of our flag, I oppose the amend-
ment and urge my colleagues to do likewise.

Mr. BASSA. Mr. Speaker, once again, I rise
today in support of the Constitutional Amend-
ment prohibiting the physical desecration of
the flag. I believe our Nation's flag is the cen-
terpiece of our Nation's sovereignty and a
symbol that separates the United States from
other nations. It is important to remember the
ideals our flag represents—freedom, democ-
racy, and national pride. And one must also
remember the men and women, who loved the
freedom and liberty the flag represents so
much, they were willing to risk their lives de-
fending it in Foreign Wars.

I am proud to once again to be an original
co-sponsor of this legislation to amend the
Constitution to prohibit the desecration of the
flag—which the brave men and women of our
armed forces have repeatedly fought to de-
fend. All too often desecration of the flag is
used as a vehicle to voice differing opinions
between the branches of government. Our brothers, fathers, sisters and moth-
ers fought and died for our flag in the name of
free speech. I believe the right to deface
that symbol of freedom is not what they were
fighting to protect. Let our nation be unified
in the fact that there are some things too impor-
tant to defile, too important to sully, and chief
among them is our flag.

From the hands of Betsy Ross, through the
eyes of Francis Scott Key during the bombard-
ment of Fort McHenry, to the raising at Iwo
Jima, our flag has represented the hopes and
beliefs of generations of Americans. It symbol-
izes resolve. It symbolizes freedom. It symbol-
izes democracy. It symbolizes America, and it
deserves to be protected.

Mr. Speaker, I urge my colleagues to sup-
port the Flag Protection Constitutional Amend-
ment.

Mr. YOUNG of Florida. Mr. Speaker, I rise
today in support of House Joint Resolution 36,
legislation I have cosponsored to amend the
Constitution of the United States to authorize
Congress to prohibit the physical desecration of the American Flag.

Oh! Glory has served to remind American
"citizens of our soldiers who fought for free-
dom, liberty, and democracy here on our own
shores and throughout the world since the
Continental Congress adopted the Flag Reso-
lution of 1777. The very sight of the American
flag flying high has the ability to rouse unpar-
alleled pride and patriotism not only in the
people of the United States of America but in
freedom loving people throughout the world.

Countless men and women have put the
good of our country ahead of their own lives to pro-
tect the sanctity of liberty and democracy,
which our flag represents. We must never
allow ourselves to forget that the flag that flies
here in this chamber, above this great build-
ing, and throughout our nation is a reminder of
the enduring values for which these American
servicemen and women fought and may have
died.

Not only does our great flag symbolize the
tireless struggle of our armed services for de-
mocracy both here and abroad, but it also
serves as a bright beacon of hope to op-
pressed people throughout the world who
dream of living under a democratic govern-
ment as great and as resilient as out own.
The American flag flies for all Americans, regard-
less of race, creed, or religion. It is a symbol of
the American dream, of honor, justice, and
equality. The flag is a commitment to our chil-
dren and grandchildren that they will have
the same freedoms, liberties, and opportunities
that we have. The Stars and Stripes inspires
pride in the accomplishments of our noble
country, and it should be regarded with re-
spect and admiration for the important role it
plays in the lives of Americans. When the
desecration of Oh! Glory is used as a protest,
far more than a single flag is being violated.
The devotion of American citizens to our great
nation is being battered. Many Americans
have died defending our flag and what it rep-
resents.

Mr. Speaker, may the American flag forever
soar proudly above our glorious nation. May it
always be a source of courage and inspiration.
for those who carry it into battle, a symbol of hope for the downtrodden of foreign lands, and a reminder that we are the land of the free only because we are the home of the brave.

Mr. SWEENEY. Mr. Speaker, I rise today in support of House Joint Resolution 36—The Flag Protection Constitutional Amendment.

In doing so, I rise to defend and protect the very symbol of our nation’s unyielding promise of hope and opportunity.

I rise to defend the memory of countless Americans, both men and women, who sacrificed their lives fighting for their country in time of war so that the values and ideals represented by our nation’s symbol could be protected.

I rise to defend the integrity and the mission of our men and women in the armed forces today, who stand in defense of our Nation’s Flag on American soil as well as foreign soil around the world, so that the very symbol of their commitment to those American values will not be compromised.

The desecration, destruction and disrespect of our nation’s Flag are contemptible acts against our nation’s principles.

The protection of our National Symbol from desecration is an essential part of preserving our Nation’s sense of duty, citizenship and allegiance to a community fabric unlike that of any other nation.

We must protect our Constitution from those seeking to distort it while cloaking themselves in a disguise of free speech. The American people cry out for us to do so. Forty-nine state legislatures have appealed to this Congress to pass a Flag protection constitutional amendment.

In conclusion, Mr. Speaker, I remind my colleagues that this a nation that promises more than just life, liberty and the pursuit of happiness. It is a nation that offers as its foundation of principles the dignity, respect and self-sacrifice for the ideals upon which it was built.

I urge passage of this resolution because it is the right thing for the Flag, and because it is the right thing for the United States of America.

Mr. KLECZKA. Mr. Speaker, the American flag is a visible symbol of all the elements that make our nation great. A strong military, a system of checks and balances, a government by and for the people. Underlying these ideals is the Constitution and the Bill of Rights, perhaps the most perfect document yet created by man in pursuit of a fair and just government.

Central to the Constitution are the rights and freedoms delineated in the Bill of Rights, which has yet to be amended, although over 200 years have passed since these tenets were drafted. Every American is familiar with the first of these amendments, which states unequivocally that Congress shall make no law respecting an establishment of religion or abridge the freedom of speech.

As former Commander of the American Legion Keith A. Kreul states, “Our nation was not founded on devotion to symbolic idols, but on principles, beliefs and ideals expressed in the Constitution and the Bill of Rights. American veterans who have protected our banner in battle have not done so to protect a ‘golden calf.’ Instead, they carried the banner forward with reverence for what it represents—our beliefs and freedom for all. Therein lies the beauty of our flag.”

Instead, they carried the banner forward to protect the Constitution and the Bill of Rights. America was not founded on devotion to symbolic idols, but on the voices one’s dissent of their government is a quality that separates our great nation from others. The United States of America has a long and proud history of providing this right to its citizens, and I do not believe that the voice of freedom should be muzzled. The amendment to the Constitution before us today, which would allow Congress to prohibit the desecration of our flag, effectively says that we are afraid of a very small number of people who choose under the rights granted them in the Constitution to defile this cherished symbol.

While the desecration of our flag generates an almost universal reaction of disgust by Americans, we are strong enough as a nation to allow individuals to express themselves in this manner, and stronger still to resist the urge to stamp out free speech that challenges us.

There have been only a very small number of incidents of flag burning over the course of our history. In fact, between 1777 and 1989, there were only 45 reported incidents, and in the years since, fewer than 10 incidents have been reported annually. This hardly merits the first ever change to the Bill of Rights, much less any action that could restrict our most coveted freedom.

This resolution is essentially a solution in search of a problem. I oppose this proposed amendment, which diminishes the flag’s value by taking away from the freedoms that it represents.

Mr. FILNER. Mr. Speaker, we all love, cherish and respect our flag. Our flag is a symbol of our great nation, a symbol of our fundamental values of freedom, liberty, justice and opportunity.

And it is those values we must protect.

I stand today with Jim Warner, a Vietnam veteran and former prisoner of war, who said: “Repealing the amendment would not mean that we agree with those who burned our flag, or even that they have been forgiven. It would, instead, tell the world that freedom of expression means freedom, even for those expressions we find repugnant.”

I stand today with the San Diego Union-Tribune, my hometown paper, which has editorialized against “the drastic step of amending the Constitution because of the abhorrent conduct of that lone demonstrator and the handful of others who seek attention from time to time by burning the flag.”

Compromising the Bill of Rights, which has stood the test of time, is not the action needed to ensure the strength of our nation. We must do that through proper education of our children—nurturing their love and patriotism of our country—and respect for our flag and national symbols.

We can choose the easy path and simply make a law and outlaw an action. Or we can take the difficult and correct path of guiding our citizens back to the ideals of our founding fathers. The more difficult path puts true meaning back into our respect for the flag.

I choose the more meaningful path, the one that will guarantee that our flag will fly proudly—and our Bill of Rights will continue unchanged—for generations to come.

Mr. SMITH of New Jersey. Mr. Speaker, as Chairman of the Veterans’ Affairs Committee, I rise today to join with the vast majority of American citizens who support an amendment to the Constitution to protect the Flag of the United States from physical desecration. It was just over 12 years ago that the Supreme Court, in a narrow 5-to-4 decision, ruled that all Federal and State statutes prohibiting the physical desecration of the flag were unconstitutional.

The flag of the United States of America needs to be protected as a sign of our freedom. I believe that flag desecration is a slap in the face to the millions of American veterans who fought and died to protect the flag, and the democracy and liberty for which it symbolizes.

Over the years of our Republic’s existence, countless men have marched into battle under the banner of Old Glory. Many have died or were injured in the line of duty, either in their unit from falling into enemy hands. The number of accounts of heroism to protect the flag in the heat of battle are so numerous that they cannot be counted. But let me recount just one true tale of such bravery.

Many of my colleagues have seen the movie, Glory, which tells the story of the 54th Massachusetts Colored Infantry—an African American unit which fought at Fort Wagner, South Carolina, in July 1863. One soldier who saw action in this battle was Sergeant William Carney, a 23-year-old ex-slave. During the action, the color bearer of the 54th Massachusetts was wounded. Dropping his weapon, Sergeant Carney picked up the flag before it hit the ground. He marched forward with his unit. However, in the subsequent engagement, the 54th Massachusetts suffered staggering casualties in a frontal assault on a fortified position, and his unit was forced to pull back.

Sergeant Carney, at great risk to his safety, retrieved the flag so it would not fall into Confederate hands. Crossing a marsh in waist-high water, he was shot in the chest, and in his right arm. Yet still he held onto the flag. He was then shot in the leg. Still, he clenched the flag tightly to his chest, protecting it from harm and capture. Another bullet grazed his head. A passing soldier from a different unit offered to relieve him, but he refused, saying “No one but a member of the 54th will ever carry these colors.” Sergeant Carney, bleeding from multiple gunshot wounds, returned the flag to his camp, telling his comrades, “Boys, I only did my duty. Our flag never touched the ground.”

William Carney was later awarded the Medal of Honor for his extraordinary heroism under enemy fire. He was the first African American in American history to earn the nation’s highest honor for bravery in combat.

To this very day, military units still field a color guard to honor the flag. The flag has served, and continues to serve, as a source of inspiration, courage, and purpose. I ask my colleagues: how can we justify allowing the flag to be blatantly desecrated or burned, when so many of our brave soldiers have died, been wounded, or took enormous risks to protect that flag? What could we possibly say to these persons, now that the Supreme Court has allowed the flag to be desecrated? That their sacrifice was in vain? That they were stupid and silly to
have ever taken such risks? That they sweat ed, ducked bullets, and bled to protect the flag from harm so some social miscreant could just trash it a few years later.

How can a symbol continue to be so endur ing, and function to inspire such deeds of hero ism, when we allow it to be desecrated? My colleagues, I submit that if we do not take ac tion to protect our flag, it will simply become one more element in the ongoing coarsening of our society. If we do not respect the flag, it will send a subtle, yet powerful, message that nothing is worth respecting. Flag burning is not free speech. It is an act of hatred and nihilism. It is not a call for reform. It is a dis grace. The right to dissent does not include the right to desecrate. To desecrate the flag crosses a line of ugliness.

I know people the world over who cherish the American flag and the hope it has held for people in different crises around the globe. Freedom is not free. The cherished freedoms, rights, and liberties we all enjoy today were purchased only through the enormous sacrifices of the men and women in our military today—veterans, past and present. If we allow our flag to be desecrated, and fail to protect it, we dishonor the sacrifice and their service. Mr. Speaker, the Court was wrong in deciding the Texas v. Johnson case. It was wrong one year later when it reaffirmed this position in another 5-to-4 decision in United States v. Eichman. The amendment to the constitution we are considering today will restore the flag to its proper position as a symbol of our Nation, without restricting the freedom of expression it affords our citizens. I would hope that all of my colleagues would join with me in support of this amendment.

Mr. MURTHA. Mr. Speaker, I'm proud to have joined with Congressman DUKE CUNNINGHAM in introducing this Constitutional Amendment to prohibit the desecration of the American Flag.

The American Flag is recognized around the world as a symbol of freedom, equal opportu nity, and religious tolerance. Many thousands of Americans fought and suffered and died in ways too numerous to list in order to establish and preserve the rights we sometimes take for granted, rights which are symbolized by our Flag. It is a solemn and sacred symbol of the many sacrifices made by our Founding Fathers and our Veterans throughout several wars as they fought to estab lish and protect the founding principles of our great Nation.

Most Americans, Veterans in particular, feel deeply insulted when they see our Flag being desecrated. It is in their honor and in their memory that we have championed this effort to protect and honor this symbol.

We are a free Nation. No one would disagree that free speech is indeed a cherished right and integral part of our Constitution that has kept this Nation strong and its Citizens free from tyranny. Burning and destruction of the flag is not speech. It is an act. An act that inflicts insult—insult that strikes at the very core of who we are as Americans and why so many of us fought—and many died—for this country.

There are, in fact, words and acts that we as a free Nation have deemed to be outside the scope of the First Amendment—they include words and acts that incite violence; slander; libel; and copyright infringement. Surely among these, which we have rightly deter mined diminish rather than reinforce our free dom, we can add the burning of our Flag—an act that strikes at the very core of our national being.

No, this is not a debate about free speech. Our flag stands for free speech and always will.

Over 100 years ago some words were written that most of us remember reciting in school. They sum up what we vote on today: I pledge allegiance to the Flag of the United States of America and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

Let us join today in overwhelmingly passing this amendment to revere, preserve and pro tect our Flag, the symbol of our country, the embodiment of our principles, and the emblem of our people.

Mr. SIMMONS. Mr. Speaker, I rise today in strong support of House Joint Resolution 36, the Constitutional Amendment to prohibit flag desecration.

Our flag is the strongest symbol of the American character and its values. It tells the story of victories won—and battles lost—in de fending the principles of freedom and demo cracy.

These are stories of real men and women who have selflessly served this nation in de fending that freedom. Any many of them traded their lives for it. Gettysburg, San Juan Hill,
Iwo Jima, Korea, Da Nang, Persian Gulf—our men and women had one common bond: the American flag.

The American flag belongs to them, as it belongs to all of us. Supreme Court Justice Paul Stevens reminded us of the significance of our flag when he wrote:

A country’s flag is a symbol of more than nationhood and national unity. It also signifies the ideas that characterize the society that has chosen that emblem as well as the special history that has animated the growth and power of those ideas . . . . So it is with the American flag. It is more than a proud symbol of courage, the determination, and the gifts of a nation that transformed 13 fledgling colonies into a world power. It is a symbol of freedom, of equal opportunity, of religious tolerance, and of goodwill for other peoples who share our aspirations.

Critics of the amendment believe it interferes with freedom of speech. I disagree. Americans enjoy more freedoms than any other people in the world. They have access to public television. They can write letters to the editors to express their beliefs, or call in to radio stations. Americans can stand on the steps of the nation’s capitol building to demonstrate their cause.

They do not need to desecrate our noble flag to make their statement, and I do not believe protecting the flag from desecration deprives Americans of the opportunity to speak freely. And let us be clear: speech, not desecration, is protected by the Constitution. Our Founding Fathers understood freedom of speech and freedom of the press because in a democracy, words are used to debate and persuade, and to educate. A democracy must protect free and open debate, regardless of how disagreeable some might find the views of others. Prohibiting flag desecration does not undermine that tradition.

The proposed amendment would protect the flag from desecration, not from burning. As a member of the American Legion, I have supervised the disposal of over 7,000 unserviceable flags. But this burning is done with ceremony and respect. This is not flag desecration.

Over 70 percent of the American people want the opportunity to vote to protect their flag. Numerous organizations, including the Medal of Honor Recipients for the Flag, the American Legion, the American War Mothers, the American G.I. Forum, and the African-American Women’s Clergy Association all support this amendment.

Forty-nine states have passed resolutions calling for constitutional protection for the flag. In the previous Congress, the House of Representatives overwhelmingly passed this amendment by a vote of 310–114, and will rightfully pass it again this year.

Mr. Speaker, I am proud to be an original cosponsor of H.J. Res. 36 and ask that my colleagues join me in the House of Representatives in supporting this important resolution that means so much to so many.

Mr. COLLINS. Mr. Speaker, I rise today to offer my strong support for House Joint Resolution 36, which I have cosponsored, and thank my colleague, Mr. Cunningham, for his continued work in enacting this important symbol of our freedom, the United States flag.

The vast majority of my constituents in Georgia’s Third District have contacted me and stated that they share this belief that among the countless ways to show dissent, the desecration of the flag should not be one of them.

Opponents of this amendment state that it would reduce our First Amendment freedoms. This is simply not so. Rather this amendment would serve to restore the protection our flag had been accorded over most of our nation’s history.

The American flag represents not only our freedom but serves as a constant reminder of the ideals embodied in our Declaration of Independence that countless Americans have served to defend, preserve and protect over our nation’s 225 year history.

In the Declaration of Independence, the founders acknowledged that we are created equal and that we have been endowed by our Creator with certain rights to life, liberty and the pursuit of happiness.

These are the ideals for which countless Americans have fought, bled and died and it is these ideals upon which our Constitution is founded. It is these ideals which we are elected to preserve. Today, we can renew our affirmation of these principles, so clearly stated in the Declaration of Independence, by preserving the most visible symbol of our Republic.

Upon three separate occasions, this House has rightfully voted to protect our nation’s flag. Today, the United States House of Representatives will again affirm its commitment to protect this symbol of our great nation.

For the thousands of Americans who have fought and died for our country, the flag is more than a piece of cloth.

Mr. STARK. Mr. Speaker, I rise today in strong opposition to H.J. Res. 36 “The Flag Protection Constitutional Amendment.” This constitutional amendment would undermine the very principles for which the flag stands—freedom and democracy.

The First Amendment to the Constitution reads as follows: “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.”

By writing the First Amendment, our nation’s founders made sure that the Constitution protected the right of all citizens to object to the workings of their government. Freedom of expression is what makes the United States of America so strong and great—it is the bedrock of our nation and has made our democracy a model for the rest of the world.

The Supreme Court has twice upheld a citizen’s right to burn the flag as symbolic speech protected by the Constitution. If this Flag Protection Amendment were enacted, it would be the first time in our history that the Bill of Rights was amended to limit America’s freedom of expression.

While the idea of someone burning or destroying an American flag is upsetting, the consequences of taking away that right are far more grave. Once we start limiting our citizens’ freedom of expression, we walk down a dark road inconsistent with our history and our founding principles. Our government’s toleration of criticism is one of our nation’s greatest strengths.

This amendment isn’t a matter of patriotism, it is a matter of protecting the rights of all of our citizens, particularly the right to dissent. Let us uphold our commitment to freedom and democracy. Let us uphold our commitment to the principles upon which our nation has flourished for over 200 years. Vote no on this amendment.

Mr. GRAVES. Mr. Speaker, it is an honor to rise today to support House Joint Resolution 36. The flag protection Constitutional amendment. I also want to extend my appreciation to our veterans and the men and women in our armed forces for their service to our nation and their vigilance and sacrifice in both times of peace and war.

The American flag embodies many different things to different people. To me, the flag represents the many men and women in our Nation’s history who have selflessly served and died defending our country and its freedoms. Mrs. ROUKEMA. Mr. Speaker, I rise in strong support of the Flag Protection Amendment.

Why are we here today. The Congress of the United States has already acted to pass flag protection legislation. However, a majority of the Supreme Court—by the narrowest of margins—has ruled that Congress does not possess the authority to legislate in this important area. It has twice overturned laws that prohibit flag burning. In both cases, the decision has been handed down by a narrow margin of 5 to 4.

I happen to disagree with the Court. So do such distinguished constitutionalists as Justices Stevens and White. They hold that burning of the U.S. flag is not an expression protected by the First Amendment. Indeed, they believe that flag burning is an action, and a repugnant one. Therein lies the distinction. Burning a flag is conduct, not speech.

Still, we need to pass this Constitutional amendment today and begin the process of ratification. Only then, can Congress honor its responsibility to protect this sacred national symbol.

I believe strongly in this amendment, although I believe it to be an issue on which patriotic Americans of good faith can, and do, have different opinions. I believe that burning a flag endangers no one. Using that standard, one would then assume that we would not see the inherent violation of democracy of throwing blood on the U.S. Capitol.
painting a swastika on a synagogue, or defacing a national monument. These actions also endanger no one. And, yet, laws have been wisely enacted to prohibit these actions. How can we not protect our country's most treasured symbol from such actions?

The American flag was created to honor our country. Let us pass this Constitutional amendment created to protect the honor of our flag.

Support this joint resolution. Support the amendment. Protect the flag.

Mr. KIND. Mr. Speaker, again we are brought together to debate the rights of a free people against the horror and meaning of our national flag—to debate the necessity of providing legal protection to the most honored and recognized symbol of freedom in the world. This is not a matter to be approached carelessly, and I appreciate this opportunity to reaffirm my faith in the Constitution and the wisdom of our Founding Fathers.

If there is one bright shining star in our Constitutional constellation, it is the First Amendment of the Bill of Rights. That is the amendment that embodies the very essence upon which our democracy was founded because it stands like a beacon that anyone in this country can stand up and criticize this government and its policies without fear of prosecution. But here we are yet again in the 107th Congress debating an amendment that would seriously weaken the First Amendment and Freedom of expression in this country.

There are few things that evoke more emotion, passion, pride or patriotism than the American flag; I recognize that. But I am forced to question the need for a Constitutional amendment to remedy a problem that doesn’t seem to exist, or provide legal protection to something that doesn’t seem endangered. As a matter of occurrence, the recorded incidence of public flag desecration is extremely rare. While this explanation, on its face, is not sufficient to oppose to this amendment, it illustrates an inherent respect for the flag and a recognition of what it means to American history and the individuals who gave their life in protection of the freedoms and way of life we cherish everyday. To attempt to enforce this understanding through legal means serves to diminish, not reinforce, that reverence for something that doesn’t seem endangered. This protection of freedom is what advanced citizenship is about. It is about the rights and liberties embodied in the Constitution that will ensure that anyone in this country can stand up and criticize this government and its policies without fear of prosecution. But here we are yet again in the 107th Congress debating an amendment that would seriously weaken the First Amendment and Freedom of expression in this country.

On this matter, I also agree with the statements of former General and current Secretary of State Colin Powell. When asked for his views on the amendment before us, Secretary Powell stated, “... the First Amendment exists to insure that freedom of speech and expression applies not just to that with which we agree or disagree, but also that with which we disapprove. It is by the First Amendment that we have created the great shield of democracy to hammer a few miscreants. This flag will be flying proudly long after they have slunk away. ...”

In another opinion, I urge my colleagues to hear, former Senator, and American hero, John Glenn, stated in his opposition to this amendment before the Senate Judiciary Committee in the 106th Congress, “That commitment to freedom is encapsulated and encoded in our Bill of Rights, perhaps the most envied and imitated document anywhere in this world. The Bill of Rights is what makes our country unique. It is what has made us a shining beacon of hope, liberty, of inspiration to oppressed peoples around the world for over 200 years.”

We must cherish the history and meaning of our flag. The American flag is freedom of expression. It is the ultimate sacrifice for freedom, liberty, and justice worth the risk.

Thus, we as a Congress have the opportunity to do what is right. We have a responsibility to honor the memory of those who have died for our freedom and to say to those who live, “we will not let your sacrifice be in vain.” The American flag and the principles for which it flies are deserving of honor and protection. Today we need to pass this legislation and send a clear message that we will not tolerate desecration of the American flag.

Mr. OXLEY. Mr. Speaker, I stand in strong support of H. J. Res. 36, which calls for a constitutional amendment to allow Congress to protect the American flag from the desecration of our constituents and protect our nation’s flag.

Old Glory is not just another piece of cloth—nor is it a political tool for one side or another to use in debate. Our flag is the most visible symbol of the nation, a unifying force in times of peace and war. Americans from both sides of the political spectrum back the action we are taking today in sending this issue to the states. Since the Supreme Court invalidated state flag protection laws in 1989, 49 state legislatures have passed resolutions petitioning Congress to propose this amendment. Mr. Speaker, my hometown of Findlay, Ohio, is known as Flag City USA. Main Street and other major downtown thoroughfares are lined with flags in a patriotic salute to our great nation. Arlington, Ohio, which I am also privileged to represent, enjoys the designation Flag Village USA. The messages I receive from Findlay, Arlington, and throughout the Fourth Ohio District are clear: the American people favor the protection of Old Glory by staggering margins.

I am proud to be an original cosponsor of DUKE CUNNINGHAM’s joint resolution, and recognize him for his longstanding, unwavering leadership on this issue. I urge my colleagues to support their constituents and vote in favor of sending this amendment to the states.
Mr. UDALL of Colorado. Mr. Speaker, I cannot support this resolution.

I am not in support of burning the flag. But I am concerned about weakening the first amendment, one of the most important things for which the flag itself stands.

As the Denver Post put it just last month, the American flag represents freedom. Many men and women fought and died for this country and its constitutional freedoms under the flag. They didn’t give their lives for the flag; they died for this country and the freedom it guarantees under the Bill of Rights. Those who choose to desecrate the flag can’t take away its meaning. In fact, it is our constitutional freedoms that allow them their reprehensible activity.

I completely agree. So, like Secretary of State Colin Powell, former Senator John Glenn, and others who have testified against it, I will oppose this resolution.

For the benefit of our colleagues, I am attaching the Denver Post’s editorial on this subject:

**FLAG AMENDMENT SHOULD DIE**

Monday, June 25, 2001—Although a proposed constitutional amendment to ban desecration of the American flag continues to lose steam, it nonetheless is once again being considered in the U.S. House.

The amendment, one of the most contentious free speech issues before Congress, would allow penalties to be imposed on individuals or groups who burn or otherwise desecrate the flag.

In past years, the amendment has succeeded in passing the House only to be killed, disappointingly, on the Senate floor.

The American flag represents freedom. Many men and women fought and died for this country and its constitutional freedoms under the flag. They didn’t give their lives for the flag; they died for this country and the freedom it guarantees under the Bill of Rights. Those who choose to desecrate the flag can’t take away its meaning. In fact, it is our constitutional freedoms that allow them their reprehensible activity.

American war heroes like Secretary of State Colin Powell and former Sen. John Glenn strongly oppose this amendment. Glenn has warned that “it would be a hollow victory indeed if we preserved the symbol of our Nation’s flag.

Across the river from here is a memorial to the valiant efforts of our soldiers to raise the flag at two Jima. It was not just a piece of cloth that rose on that day over 50 years ago. It was the physical embodiment of all we are as Americans, treasure the triumph of liberty over totalitarianism; the duty to pass the torch of liberty to our children undimmed.

The flag is a symbol worth defending. I urge the adoption of the flag protection amendment. Mr. CRENSHAW. Mr. speaker, I rise today in support of H.J. Res. 36, which would give the Congress the power to prevent the desecration of our Nation’s flag.

The American flag is a national treasure and our Nation’s ultimate symbol of freedom. The American flag represents all that unites us as Americans. It represents the triumph of liberty over totalitarianism; the duty to pass the torch of liberty to our children undimmed.

This amendment is adopted, it will be the first time in the entire history of the United States that we have cut back on our liberties as Americans as defined in the Bill of Rights.

Today, we are forced to make a difficult decision. There is regrettably enormous political pressure for us to constrain rights set forth in the Constitution to protect the symbol of this nation. This vote is not a litmus test of one’s patriotism. What we are choosing today is be part of that story of 50 States descended from the original 13 colonies. I love it. I revere it. And I have proudly served it in war and peace.

However, today I rise in opposition to H.J. Res. 36, the flag amendment, which for the first time in over 200 years would amend our Bill of Rights.

Mr. Speaker, throughout our history, millions of Americans have served under this flag during wartime; some have sacrificed their lives for what this flag stands for: our unity, our country. I have reservations about the propriety of our flag as a national symbol. I have proudly served under our glorious flag in the Army of the United States during wartime, as a private citizen, and as an elected public official. And like many of my colleagues, I treasure this flag and fully share these emotions it involves.

But while our flag may symbolize all that is great about our country, I swore an oath to uphold the great document which defines our country, the Constitution of the United States. The Constitution is not as visible as is our wonderful flag, and oftentimes we forget the glory and majesty of this magnificent document—our most fundamental law and rule of order. This document defines our rights, liberties, and the structure of our government. Written in a few short weeks and months in 1787, it created a more perfect framework for government and unity and, indeed, the rights of the people in this great republic.

The principles spelled out in this document define how an American is different from a citizen of any other nation in the world. And it is because of the principles—these same principles I swore an oath to uphold—that I must oppose this amendment. If this amendment is adopted, it will be the first time in the entire history of the United States that we have cut back on our liberties as Americans as defined in the Bill of Rights.

Prior to the time the Supreme Court spoke on this matter, and defined acts of physical desecration to the flag under certain conditions as acts of free speech protected by the Constitution, I would have happily supported legislation which would protect the flag. While I have our relations about the propriety of our flag, the principles of these decisions, the Supreme Court is, under our great Constitution, empowered to define Constitutional rights and assure the protection of all the rights of free citizens in the United States.

Today, we are forced to make a difficult decision. There is regrettably enormous political pressure for us to constrain rights set forth in the Constitution to protect the symbol of this nation. This vote is not a litmus test of one’s patriotism. What we are choosing today is being asked to support a symbol of our country and the soul of our nation.

When I vote today, I will vote to support and defend the Constitution in all its majesty and glory, recognizing that to defile or dishonor the
flag is a great wrong; but recognizing that the defense of the Constitution, and the rights guaranteed under it, is the ultimate responsibility of every American.

I urge my colleagues to honor our flag by honoring a greater treasure to Americans, our Constitution. Vote down this bill.

Mr. GEKAS. Mr. Speaker, it unifies our soldiers in battle and provides the recognition and morale they need to protect our freedom. It unifies our citizens in times of trouble and gives us reason to reflect on and celebrate our freedom. It is our American flag and for these reasons and more it is a symbol—perhaps the ultimate symbol—of our freedom. That freedom has not come easily and has not always grown peacefully, but throughout 200 years of history, our flag has always held the value and meaning of the United States and continues to command respect and admiration around the world.

Freedom is America’s greatest and most recognized attribute. It is symbolized by our flag and evident in the way our flag is treated and handled. If we afford our flag our deepest respect, we are cherishing our freedom and praising our nation. When we fail to recognize the significance of our flag, we will fail to recognize the significance not only of our freedom, but also of the potential for freedom around the world.

Let us recognize the thoughtful objections of our opponents and their concern for such an amendment offending the first amendment freedoms. We note that protecting the flag—the symbol of our country—truly protects and respects all our freedoms.

We can not take our freedom for granted. We must teach our children and our future leaders the importance of our freedom and the American flag. Millions of soldiers have fought for our flag and for all that it symbolizes. Many of them have died and many more have been injured. We can not forget that their courage and sacrifice was not only to guarantee their freedom, but also to guarantee ours. Furthermore, they did not fight so that we could allow the flag to lose its symbolic importance and deserving respect—the opposite, in fact. They fought to strengthen the value that America holds and that the flag represents.

Some nations have a unifying symbol that originates from their royalty such as a crown or scepter. Other nations have a unifying symbol such as a crest, cross, or other religious symbol. The United States’ unifying symbol is her flag, and that originates from nowhere but our unending desire to uphold our freedom and to secure it for all peoples in all nations. From Fort McHenry to Iwo Jima, from Hawaii to Maine, from the Earth to the Moon and beyond the bounds of our solar system, this flag has always stood and continues to stand as our strongest unifying symbol—a symbol of history’s greatest and freest nation.

It is time for the value we hold in the American flag to be reflected in our laws. By doing so, we are formally addressing the significance of the flag and the significance of denigrating our flag. Even more importantly, we are formally addressing the significance of freedom.

Mr. FRELINGHUYSEN. Mr. Speaker, I rise today in support of our American flag, and as a proud original cosponsor of House Joint Resolution 36 to prohibit the physical desecration of our most cherished national symbol.

The American flag is probably the most recognized symbol in the world. Wherever it flies, it represents freedom. Millions of Americans who served our nation in war have carried our flag into battle. They have been killed or injured just for wearing it on their uniform, because our flag represents freedom and liberty, the most feared powers known to tyranny. Where there is liberty, there is hope. And hope extinguishes the darkness of hatred, fear and oppression.

America is not a perfect nation. But to the world, our flag represents that which is right in our nation. To Americans, it represents what Chief Justice Charles Evans Hughes referred to as our “National unity, our national endeavor, our national aspiration.” It is a remembrance of past struggles in which we have persevered to remain as one nation under God, in a no small measure, because of all that those who would desecrate our flag and all it represents show no respect for the brave men and women for whom the ideals and honor of this nation were dearer than life.

Mr. Speaker, this bill will not make individuals who would desecrate our flag love our nation or those who sacrificed to secure the freedoms we have today. But, by protecting our flag, we will give Americans a unified voice for decrying these reprehensive acts.

I urge my colleagues to support this amendment.

Mr. FORBES. Mr. Speaker, I rise in strong support of Housing Joint Resolution 36, which would allow Congress to take action to protect the American flag from desecration.

In fact, one of my very first acts upon being sworn in just last month was to cosponsor this important resolution. Some very respected people have called the flag a mere piece of cloth. But, I have spoken to many of the men and women who fought and had comrades die for that piece of cloth and all that it symbolizes. To those patriots, it is much more than just another piece of cloth.

A quick review of America’s history of jurisprudence indicates that our nation has a long tradition of protecting the flag. It was not until recently, in 1989, that a closely divided Supreme Court interpreted our Constitution to allow for the physical desecration of the flag. Congress has tried to restore the interpretation that gave some protection to the flag. But it is only through a Constitutional amendment that we will be able to do so without fear that the courts will again erase our good work.

It is important, Mr. Chairman, that this is simply a first step on a long road that we take today to protect the flag. Even once the Congress passes this resolution and it is ratified by the states, this language only gives Congress the authority to pass a law to protect the flag. That will be the appropriate time to debate the specifics of how we will protect the flag. Items such as what constitutes desecration and how do we prosecute the offenders will be better discussed then.

So, I urge my colleagues to stand with the men and women who have patriotically served their country under the American flag and to support this resolution. If for no other reason, we should protect the flag out of respect for those individuals who sacrificed so much so that we might even have this debate today. But, we should also do so out of our own sense of patriotism and pride.

Mr. GILMAN. Mr. Speaker, as a proud American, World War II Veteran, and as a Member of Congress; I rise in strong support of H.J. Res. 36, the Flag Protection Amendment of which I am a cosponsor.

Mr. Speaker, in the 106th Congress, a resolution to propose an anti-desecration amendment to the United States Constitution passed in the House by a vote of 305 to 124. Regrettably our colleagues in the Senate failed to bring it to the floor. It required only 60 votes necessary to sustain the amendment.

Mr. Speaker, “Old Glory,” is more than a symbol of our great nation. It is the foundation of our great nation! Our flag, atop masts throughout our Nation and throughout the world is a beacon of liberty, freedom and democracy. It adorns the uniforms of our dedicated men and women of the Armed Services, we honor our flag by saluting it at sports events, we “pledge allegiance to the flag of the United States of America . . .” we fly it at half-mast to show our respect for our fallen great Americans, and it adorns their caskets as well. We vividly recall a young John Fitzgerald Kennedy, Jr., saluting his slain father, President John Fitzgerald Kennedy, as the flag draped caisson made its way to Arlington National Cemetery, or our flag being placed on the moon, or atop the highest peaks in the world, that were conquered by proud Americans.

Mr. Speaker, to say that the desecration of our flag is protected by the First Amendment is to forget that freedom of expression is not absolute. As Chief Justice Rehnquist stated in his eloquent and patriotic dissent in Texas v. Johnson, which I urge my colleagues and all Americans to read, and which I will enter into the Congressional Record, there are categories of the lewd and obscene, the profane, the libelous, and the “fighting words”—those words which their very utterance inflict injury or tend to incite an immediate breach of the peace, that do not enjoy 1st Amendment protection. Just as one cannot yell ‘fire’ in a crowded theater, and claim immunity under the First Amendment’s freedom of speech; one must never be able to desecrate our flag and claim immunity under the First Amendment!

Mr. Speaker, during World War II, when those courageous Marines placed our flag atop a makeshift flag pole atop Mt. Suribachi, Iwo Jima, at the cost of more than 6,000 lives of our brave Marines, President Roosevelt, in saluting their courage, stated, “when uncommon valor was a common virtue.” I urge that
all those who believe that the American Flag can be desecrated in the name of the First Amendment go and walk through the hallowed grounds of Arlington, Virginia, where the two Jima Memorial is situated honoring those brave Marines on that day. To see our flag flying in the breeze makes us all proud to be Americans!

Mr. Speaker, I urge my colleagues to fully support H.J. Res. 36, protecting the honor and integrity of our flag.

Mr. NETHERCUTT. Mr. Speaker, I rise to express my support for this proposed Constitutional Amendment.

Our founding fathers' war-time soliloquies championed freedom in opposition to tyranny and oppression. However, in deciding to revolt and in establishing a government based on liberal beliefs, the founding fathers were aware of the dangerous tendencies of excessive liberty—including freedom of expression. On numerous occasions, they called for the maintenance that certain forms of speech are not protected—that freedom and liberty are not license.

Those who desecrate the flag often claim they do so for at least one of two reasons. First, they are advocating the destruction of government. This argument makes it very easy to support the proposed amendment, and the Supreme Court has held that this is not protected speech.

Second, perpetrators of this act claim to be supporting ideals of America's past that have disappeared. This claim is also an invalid justification. The flag not only represents the current state of America, but it also represents the past. It is America in its totality. It is a symbol of the collective expression of all our policies, the wars we have fought and the justification for so many honorable deaths. These deaths were in defense of many ideals, one of which is not unrestricted freedom of speech. What the flag stands for cannot be divided in parts one's convenience and used to protect someone's pet理想 or one's early adopter appeal. It is an expression of the whole. When a flag is destroyed, the perpetrator destroys all the ideals the flag represents.

This Congress has the power to set a new precedent. There is substantial public support for this initiative. The Greek philosopher Plato wrote in his famous work Republic, "Extreme freedom can't be expected to lead to anything but a change to extreme slavery, whether for a private individual or for a city."

I believe that respect for our national symbol is a minimal restriction on excessive political and artistic expression in our nation. I urge my colleagues to support this Constitutional Amendment.

Mr. PUTNAM. Mr. Speaker, I rise today to request the support of this body for the passage of H.J. Res. 36—the Flag Protection Amendment. This legislation will clarify once and for all that the language of Title 4 United States Code, section 8, "No disrespect should be shown to the flag of the United States of America; the flag should not be dipped to any person or thing" is the law of the land, as well as the law of the heart of America.

Some opponents of this legislation say that we cannot infringe on the First Amendment and the right to free speech. Others argue that the wording of the First Amendment is sacred, and we must not adjust the Bill of Rights to include this protection. But, I ask you to take a moment and think about the Founding Fathers. "Had they known that one day this would be in question? How could they have imagined that the flag of the country they pledged their lives, fortunes and sacred honor to bring into being would be burned as an act of "speech" by people who enjoy the protections of the Nation they sacrificed so much to build? There is no evidence they thought desecrating the flag would be speech, protected by the First Amendment. They would have known, and we must recognize, that destroying the flag is an action, not speech.

Mr. JUSTICE WHITE. Mr. Speaker, I am fortunate to have many veterans residing in my district. When thinking of what I was to say to you today, my thoughts turned to them. We are a nation standing strong today because those heroes kept the flag flying in spite of the hardship and sacrifice of war. The flag gave them strength when they were far from home. Our history is full of testimony that the image that kept our troops moving forward and prisoners enduring their captivity was the red, the white, and the blue. Surely the flag is as much a monument to their sacrifice as any tablet of stone or plaque of bronze; and should it not, then, as Justice White suggested receive the same protection as other monuments?

By adding this amendment to the Constitution, we are not taking away the freedoms that our flag symbolizes, rather we are protecting our most compelling monument to those who died—and lived—to make those freedoms possible. I urge you to vote "yes" to H.J. Res. 36.

Mr. KERN. Mr. Speaker, I rise today as we consider an important piece of legislation to protect the symbol of freedom known around the world—the United States flag. Our American flag is more than just fabric and stitching. It represents the sacrifices made by generations of Americans to ensure the liberties that we enjoy each day. The fundamental principles of freedom, opportunity, and faith are woven into old glory. On porches and main streets throughout Indiana and our great nation, Americans display the stars and stripes as a symbol of their patriotic pride for our country. From the revolutionary war to modern times, the United States flag has been and continues to serve as the primary symbol of freedom and justice in the world. As a national treasure, I believe that our flag deserves our highest respect. For this reason, I ask my colleagues to support this legislation to protect the great symbol of freedom—the United States flag.

Mr. HOLT. Mr. Speaker, I rise today in opposition to this amendment.

Just as everyone here today, I view the American flag as a sign of pride, and I am deeply offended when people burn or otherwise abuse this precious national symbol.

When I was in school, not only did we pledge allegiance to the flag every morning, but we were also honored to be selected to raise or lower the flag in front of my school. Each one of us took on this task with the utmost seriousness and respect.

I believe that we should still be teaching young people to respect the flag and what it represents.

Our Constitution is the document that provides the basis for our great country. For two centuries and a decade, the Constitution—the greatest invention of humans—has allowed our diverse people to live together, to balance our various interests, and to thrive. It has provided each citizen with broad, basic rights.

It doesn’t fly majestically in front of government buildings. We do not pledge allegiance to it each day. Yet, it is the source of our freedom.

It tells us that we are free to assemble peacefully. We are free to petition our government. But as offensive as flag desecration is, I do not believe we would need to respect our flag.

I believe that the vast majority of Americans already respect our flag.

The issue before us is whether our Constitution should be amended so that the Federal Government can prosecute the handful of Americans who show contempt for the flag.

Proponents of this constitutional amendment argue that we need to respect our flag. I oppose this amendment because I believe that while attempting to preserve the symbol of the freedoms we enjoy in this country, it actually would harm the substance of these freedoms.

Mr. LEVIN. Mr. Speaker, I do not approve of people burning the U.S. flag. The flag serves as a proud symbol of our country, denoting our founding principles of freedom, and democracy. But as offensive as flag desecration is, I do not believe we can protect the flag by weakening the Constitution.

One of this country’s most cherished principles is that of free speech as found in the First Amendment. As Justice Oliver Wendell Holmes once wrote, "The Constitution protects not only freedom for the thought and expression we agree with, but freedom for the thought we hate, the conduct and action we seriously dislike."

Should this amendment be approved, it could open a Pandora’s box prohibiting other activities. Who is to say restrictions won’t be placed on desecrating religious symbols or texts, or even the Constitution and Declaration.
of Independence? The possibilities are limitless and all would stand in opposition to what the founding fathers intended by giving citizens the right of freedom of speech.

Mr. Speaker, I would never condone burning the American flag. But carving out exceptions to the First Amendment is a slippery slope we should not venture down.

The SPEAKER pro tempore (Mr. QUINN). All time for general debate has expired.

AMENDMENT IN THE NATURE OF A SUBSTITUTE OFFERED BY MR. WATT OF NORTH CAROLINA

Mr. WATT of North Carolina. Mr. Speaker, I offer an amendment in the nature of a substitute.

The SPEAKER pro tempore. The Clerk will designate the amendment in the nature of a substitute.

The text of the amendment in the nature of a substitute is as follows:

Amendment in the nature of a substitute offered by Mr. WATT of North Carolina: Strike all after the resolving clause and insert the following:

That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States within seven years after the date of its submission for ratification:

"ARTICLE —

"Not inconsistent with the first article of amendment to this Constitution, the Congress shall have power to prohibit the physical desecration of the flag of the United States."

The SPEAKER pro tempore. Pursuant to House Resolution 189, the gentleman from North Carolina (Mr. WATT) and a Member opposed each will control 30 minutes.

Is the gentleman from Wisconsin (Mr. SENSENBRENNER) opposed to the amendment in the nature of a substitute?

Mr. SENSENBRENNER. Mr. Speaker, I rise in opposition to the amendment in the nature of a substitute.

The SPEAKER pro tempore. The gentleman from Wisconsin (Mr. SENSENBRENNER) will be recognized in opposition.

The Chair recognizes the gentleman from North Carolina (Mr. WATT).

Mr. WATT of North Carolina. Mr. Speaker, I yield 2 minutes to the gentleman from Texas (Mr. GREEN), outside of the debate on this amendment, to speak on general debate.

Mr. GREEN of Texas. Mr. Speaker, I thank my colleague and classmate, the gentleman from North Carolina, for yielding time to me.

Like our system goes here in Congress, I have a markup going on in the Committee on Energy and Commerce on the energy bill, and have been running back and forth. I appreciate the courtesy of the gentleman, my colleague, in yielding time to me.

Mr. Speaker, I rise today in support of the resolution and as a proud co-sponsor of the original resolution to protect one of our Nation's most sacred and beloved symbols, our flag, from desecration.

This is the fourth consecutive Congress that we have taken up this resolution. I hope this time our colleagues in the Senate will join us in passing this amendment and sending it on to the States for ratification.

Our flag is a symbol of the men and women who have fought and died for our country. Their sacrifice is represented by that flag. To millions of Americans, the flag is more than just colored dye and cotton, it is the physical manifestation of our pride, our honor, and our dignity both here and around the world.

To see it stomped, burned, or otherwise desecrated is an affront to ordinary hardworking Americans. We cannot do anything about someone doing it in other parts of the world, but we can do something about it in our own country.

To those who argue that this sacred symbol is just a piece of cloth, I challenge them to remember some of the ways our flag is used: leading our athletes during opening ceremonies for the Olympics, flying at half staff to mark national tragedies, and covering the remains of our brave soldiers and service personnel who have given their lives for our country.

When the flag is desecrated, so, too, are the moments in these memories. I hope my colleagues will join me in voting for this resolution.

Mr. WATT of North Carolina. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the underlying proposed constitutional amendment that is the subject of this debate, and which has been the subject of general debate for now almost 2 hours, reads: "The Congress shall have power to prohibit the physical desecration of the flag of the United States."

The proposed amendment in the nature of a substitute, which I am offering to the underlying proposed constitutional amendment, reads: "Not inconsistent with the first article of amendment to this Constitution, the Congress shall have power to prohibit the physical desecration of the flag of the United States."

We should be clear that many people think that the desecration, the burning of a flag, is a part of an expression against the United States, against some action of the United States, and is a protected means of speech. The Supreme Court has so held, and if the Supreme Court did not hold such, I think that we would be in a position where we could selectively decide who could burn a flag and who could not burn a flag based on whether we agreed with the expression that they were intending to make or whether we disagreed with the expression they intended to make.

As we will hear, I am sure, from the gentleman from Virginia (Mr. SCOTT), who has studied this issue at some length, there are many, many occasions where the United States flag is burning. It is part of the ritual for doing away with a flag in a graceful way. That is an expression of our respect for the flag, before our flag is burned, before it is used in a designated way to dispose of the flag.

On the other hand, when people rise and make a statement against the United States government, many of them, some of them, have chosen to make that expression against the United States by burning the flag.

So when we talk about desecration of a flag or burning of a flag, one means of burning the flag would be protected when we agreed or the majority agreed with the expression that was being made.

The other means, when we disagreed with the expression that the protestor or person who was making a statement against the United States was making, then we would, in effect, be stopping that person from exercising their freedom of speech.

The problem comes that if we put the proposed constitutional amendment in our Constitution as it is written, the Supreme Court is going to come to a very serious fork in the road. One amendment would say that we prohibit the physical desecration of the flag, and the Supreme Court has already held that in some cases that is constitutionally protected free speech. The first amendment will still be on the books, so the Supreme Court will have to decide which one of these constitutional amendments, the first amendment or this proposed constitutional amendment which we are debating, will it give precedence to.

The amendment in the nature of a substitute resolves that dispute. It basically says that if one can do away with if Congress can pass a law that prohibits the physical desecration of the flag of the United States in such a way that it does not impinge, does not discriminate against people who are expressing their views, then it can do so. But if the Congress passes a law which does impinge on the freedom of expression, then it should be clear that the first amendment to the Constitution, which has served this Nation well for low so many years, should be the controlling amendment to the Constitution.

And so it is in that context that we offer this substitute.

I wanted to give this opening statement so that everybody would understand that we are trying to resolve a potential dispute between two potentially conflicting provisions in the Constitution.

Mr. Speaker, having kind of framed the issue in that way, I reserve the balance of my time.
Mr. SENSENBERGER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in opposition to the amendment in the nature of a substitute by the gentleman from North Carolina (Mr. WATT). And so that the membership is clear what the gentleman from North Carolina (Mr. WATT) is trying to do, I would like to read his proposed constitutional amendment: "Not inconsistent with the first article of amendment to this constitution, the Congress shall have the power to prohibit the physical desecration of the flag of the United States."

Now, the only difference between the substitute of the gentleman from North Carolina and House Joint Resolution 36 is the phrase "not inconsistent with the first article of amendment to this constitution." What the substitute does is to punt this issue right back to the Supreme Court of the United States, because the Court twice, in a 5 to 4 decision in the Johnson and Eichman cases, allowed flag desecration based on first amendment grounds.

This is kind of a not-so-subtle way of saying that the Supreme Court was right, because if we send this whole issue back to the Supreme Court, they will use the precedent that they established in 1989 and 1990 as controlling and allow flag desecration to go on. But I think there is a greater issue involved than just the issue of whether or not the Constitution should be amended to prohibit flag desecration, and that is whether or not this House of Representatives should go along with unraveling the elaborate system of checks and balances put into our Constitution by the framers in order to prevent the growth of government from becoming too powerful.

As I said during the general debate, Mr. Speaker, the amendment procedure for the Constitution of the United States was, in part, designed to prevent the growth of government from becoming too powerful.

Three of the 17 amendments that were proposed following the Bill of Rights, and ratified by the States, overturned court decisions that were determined not to be good law by the Congress and by three-quarters of the State legislatures.

Now, if the gentleman from North Carolina and the supporters of his amendment want to toss this matter back to the courts, then just defeat the amendment that we are debating today. Because that will mean that the court decisions in Johnson and Eichman will be the controlling law until the Supreme Court changes its mind and either overrules or modifies its decisions.

I believe that the House of Representatives today should hit this issue head on. If my colleagues do not want a constitutional amendment to protect the flag from physical desecration, then vote it down on the merits on the floor, but do not put this House on record saying that if we agree with the Supreme Court decision then we should amend the Constitution in order to ratify that Supreme Court decision, because that is what the substitute offered by the gentleman from North Carolina does.

Vote down the Watt substitute, pass the original amendment that has been reported by the Committee on the Judiciary.

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

Mr. WATT of North Carolina. Mr. Speaker, I yield such time as he may consume to the gentleman from Virginia (Mr. SCOTT).

Mr. SCOTT. Mr. Speaker, I rise in support of the Watt amendment, and I thank the gentleman for yielding me this time.

Once again it is around the 4th of July, and we are discussing the current version of what is often referred to as the "flag burning amendment." The gentleman from North Carolina has offered a meaningful alternative, one that will continue to protect the rights of free speech under the first amendment and is consistent with the opinions of former Senator John Glenn and Secretary of State Colin Powell, both of whom have spoken out in support of protecting the right of free speech and against the underlying amendment in its present form.

The Supreme Court has considered the restrictions which are permissible by the Government under the first amendment. For example, with respect to speech, time, place and matter may generally be regulated, while content-based restrictions which are permissible by the Government from physical desecration, the Government can restrict the particulars of the march: what time it is held, where it is held, how loud it can be. But it cannot restrict what people are marching about. We cannot allow some marchers and ban others just because we disagree with the message.

The only exception to the prohibition on regulation of content are situations, for example, where speech creates an imminent threat of violence. Burning a flag will not necessarily create an imminent threat of violence, particularly if someone is burning his own flag in his own back yard. Yet this is precisely the behavior prohibited by the underlying amendment.

We should all understand that flags are burned every day in this country. Indeed, flag burning is considered the proper way to retire a flag. And every year around Flag Day or the 4th of July, flags are burned en masse in order to retire them. When those flags are burned, those attending the ceremony or doing the burning say something respectful about the flag. Flag burning under those circumstances is considered appropriate and would remain legal under this amendment. However, when protestors burn a flag in exactly the same manner, but when accompanied by words of protest, well, the underlying amendment would make that instance of flag burning illegal.

So, if we say something nice while burning a flag, that is okay; but if something is said which offends the local sheriff as the flag is burned, then it would be illegal. This is nothing less than an attempt to suppress speech, and government officials should not be in the position of deciding which speech is good and which speech is bad. I believe the Watt amendment will help remedy this problem by requiring the criminalization of flag burning related to crimes must be consistent with the flag to dispose of the flag from physical desecration, accompanied by words of protest, well, the underlying amendment would make that instance of flag burning illegal.

Now, there would still be other problems, like what is a flag? Is a picture of a flag, a flag? What is desecration and what does that mean? Who gets to decide when an expression constitutes desecration? And what other symbols, like Bibles or copies of the Constitution, should also be protected? Those problems still remain, but I ask my colleagues to join me in supporting this amendment.

Mr. SENSENBERGER. Mr. Speaker, I yield such time as he may consume to the gentleman from Ohio (Mr. CHABOT).

Mr. CHABOT. Mr. Speaker, I thank the gentleman for yielding me this time, and I rise in opposition to the substitute amendment of the gentleman from North Carolina (Mr. WATT).

The gentleman from Virginia (Mr. SCOTT) has, in essence, indicated that it is going to be difficult, if not impossible, to differentiate between appropriate burning of the flag or proper burning of the flag and an inappropriate or desecrating of the flag. This argument has been made other times. How do we differentiate between the two? This is done by tradition and by practice. For 100 years, our courts and the American people were able to tell the difference between desecration and the proper disposal of worn flags.

In the absence of a provision of some way to dispose of American flags, we would have to maintain them into perpetuity. It did not present a problem before, it has not throughout our Nation's history, and there is no reason to think it would be a problem now. In 1989, Congress passed the Flag Protection Act and was able to define desecration and flag. Additionally, the U.S. Code defines the terms and it always has.

In any event, we trust the good common sense of the American people and the fairness of the courts to resolve any unforeseen problems. And, ultimately, that is what would happen if there was a disagreement on whether...
something was an appropriate disposal of a flag in one person’s mind or desecration in the other. This is a step in the wrong direction in the past. We should be able to easily differentiate between a ceremony that many of us have gone to on Memorial Day, for example. Many of us go back into our districts and participate in those ceremonies. That is clearly different than a person who goes out and desecrates a flag or sets it on fire, as has happened.

Again, some have argued this does not happen any more. It has happened 86 times in the recent past, in 29 States and in the District of Columbia and in Puerto Rico, for example. We are able to differentiate, just as we are able to differentiate, for example, a surgeon who has a scalpel and operates on a person to assist them, to do something, to cure or the claret of a person who comes with a knife and stabbing a person with it. It is easy to differentiate between the two, just as it is easy to differentiate between appropriate disposal of the flag and not appropriate disposal.

The gentleman’s substitute amendment, again, says “not inconsistent with the first article of amendment of this constitution.” We already know what this Supreme Court, at least five of the justices of the Supreme Court, think about desecration of the flag. We know that they think that it amounts to expression and that that is protected by the first amendment in that 5 to 4 decision. And since this language would come first in the amendment, it would be controlling. So, in essence, if we would pass the substitute amendment of the gentleman from North Carolina as he proposes, it would appear that we are passing an amendment to our flag, to stop desecration of the flag in this country; but in essence, we would be passing absolutely nothing. It would be a sham. For that reason, I oppose the amendment.

Mr. WATT of North Carolina. Mr. Speaker, I yield 5 minutes to the gentleman from Virginia (Mr. MORAN).

Mr. MORAN of Virginia. Mr. Speaker, I rise in opposition to this well-intentioned amendment. When I was first elected to the House, I cosponsored the flag burning bill that was introduced. And many of the same reasons that proponents of the amendment have expressed today. It is disturbing to think of someone burning the flag of the United States. It is an action that holds in contempt the greatness of this Nation and all those who gave up their lives defending this symbol of freedom that our flag represents. It is an act for cowards.

And yet looking back, I was moved by my heart more than my head. History informs us that the strength of America is derived from its basic ideals, one of the most important of which is tolerance for the full expression of ideas, even the most obnoxious ones.

For more than 2 centuries, the first amendment to the Constitution has safeguarded the right of our people to write or publish almost anything without interference, to practice their religion freely and to protest against the Government in almost every way imaginable. It is a sign of our strength that, unlike so many repressive nations on earth, ours is a country with a constitution and a body of laws that accommodates a wide-ranging public debate. We must not become the first Congress in U.S. history to chill public debate by tampering with the first amendment.

Mr. Speaker, H. L. Mencken once said, “The trouble with fighting for human freedom is that one spends most of one’s time defending scoundrels.” For it is against scoundrels that oppressive laws are first aimed. And oppression must be stopped at the beginning if it is to be stopped at all.” Flag burners are generally scoundrels. On that much we would agree. But we ought not give them any more attention than they deserve.

Mr. Speaker, former Senator Chuck Robb sacrificed his political career by doing such things as voting against this amendment in order to defend the very freedoms that the American flag represents.

In his Senate floor statement last year, he described how he had been prepared to give up his life in the Vietnam War in order to protect the very freedoms that this constitutional amendment would suppress. He did wind up giving up his political career by showing the courage to vote against this amendment.

Not having fought in a war, I should do no less than Senator Robb did in defense of the freedom he and so many of my peers were willing to defend with their lives.

This amendment should be defeated. I think the substitute amendment is appropriate. It should be supported. But this amendment should be defeated in our national interest, regardless of the consequences to our personal and political interests.

Mr. SENSENBRENNER: Mr. Speaker, I yield 3 minutes to the gentleman from Florida (Mr. STEARNS).

Mr. STEARNS. Mr. Speaker, I rise against the substitute offered by the gentleman from North Carolina (Mr. WATT).

We have seen this debate before where our side has proposed the flag constitutional amendment and we have seen your side always provide a substitute. Generally, your substitute has been a method to give you the ability to vote for it and still go back to your constituents and say that you believe that the physical desecration of the flag of the United States is bad. That is what your amendment is, quite simply.

Speaker, you were really sincere about this debate, you would not have seen your side always provide a substitute.

I am sure that my colleagues would be willing to explain why they would have that in if, in fact, they felt that the Congress should have the power to prohibit the physical desecration of the flag of the United States. But the fact that you put that in with a contingency would show that you do not really have your heart in this debate. This is really, in my opinion, just the opportunity for those who are in swing districts to have the opportunity to vote for something and vote against it.

When we look at what we have offered in the original flag constitutional amendment, H.J.Res. 36, we are simply saying that our flag is not just a piece of cloth, we are saying it is something more. To desecrate the memory of thousands of Americans who have sacrificed their lives to keep that banner flying intact. So it is to desecrate everything this country stands for.

I would remind the Members who do not support our original amendment and support the substitute that we also note in our laws we protect our money from desecration, destruction. So if that is true for our money, why is that not true for the flag?

Obviously there is a debate on this all the time and we cannot get complete support on this, but I think in this case that we can talk and talk and talk about flag amendment rights and everything but clearly that your amendment is just really subterfuge to try to protect Members who want to have it both ways.

Supreme Court Justice John Paul Stevens claims that the act of flag burning has nothing to do with disagreeable ideas, but rather involves conduct that diminishes the value of an important national asset. The act of flag burning is meant to provoke and arouse and not to reason. Flag burning is simply an act of cultural and patrician destruction.

The American people revere the flag of the United States as a unique symbol of our Nation, representing our commonly held belief in liberty and justice. Regardless of our ethnic, racial or religious diversity, the flag represents oneness as a people. The American flag has inspired men and women to accomplish causes that won our independence, made our Nation great and, of course, advanced our values throughout the world which the rest of the country is adopting. Mr. Speaker, I say we should defeat this substitute.

Mr. WATT of North Carolina. Mr. Speaker, I yield myself such time as I may consume.
First of all, let me address the comments made by my colleague, the gentleman from Florida (Mr. STEARNS), and most respectfully to him, that for those of us who have different opinions about what the first amendment covers than yours, it does not mean that we do not have political heart. It just means we have a difference of opinion. Those of us who have stood for the first amendment to the Constitution are people like myself who, in the practice of law, actively defended the right of the Ku Klux Klan to march.

Mr. Speaker, maybe my colleagues can say I do not have any heart. Maybe my colleagues can say I am looking for political cover. But when I go back into my community and stand up for the right of the KKK to march and express themselves, I think that gives some indication of what I feel about the first amendment and the right that all of us, I think, are fighting to protect, which is the right of people to express themselves, whether we agree with what they are saying or disagree with what they are saying.

This is not about seeking political cover. This is about protecting the Constitution that we are operating under and have been operating under for years and years. Mr. Speaker, I want to make that clear to the gentleman. This is not, as the gentleman characterized it, a political exercise. And the gentleman should also be clear that this is not the Republican side versus our side, that is the Democratic side. The last time I checked, there were people of goodwill, both Republicans and Democrats, on both sides of the aisle on this issue.

The one thing that I think we all agree on is that we believe in this country. We believe in the principles on which it was founded, and we will all fight and defend those principles. I finally got to that point with the gentleman from California (Mr. CUNNINGHAM), my good friend, who is in the Chamber. We got past that. Let us not call names.

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

Mr. WATT of North Carolina. I yield to the gentleman from Florida.

Mr. STEARNS. Mr. Speaker, could the gentleman give an example where his mind the authors of this substitute give a specific example where the first amendment would be in conflict with physical desecration of the flag?

Mr. WATT of North Carolina. Re-claiming my time. Mr. Speaker, I have a very limited amount of time. Had the gentleman been on the floor at the outset of this debate, he would have heard what this amendment is all about. The only thing that now is to go back and restate it. It is in the record, though, I will just stand on the record.

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

Mr. SENSENBRENNER. Mr. Speaker, I have no further requests for time, and I reserve the balance of my time to close.

Mr. WATT of North Carolina. Mr. Speaker, I yield myself such time as I may consume.

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

Mr. WATT of North Carolina. I yield to the gentleman from Virginia.

Mr. SCOTT. Mr. Speaker, I ask the gentleman to yield so I can respond briefly to the gentleman from Florida (Mr. STEARNS) because I think it is important to know about the importance of the first amendment.

When we talk about some burning would be legal and some would not, if someone is being arrested because of the message, if someone is burning the flag would not be legal. And, you know, what about the Vietnam War, would that be desecration? If someone says something in protest of the Vietnam War, would that be desecration? It is the same act. If the local sheriff happens to be of a particular view, would they want to arrest the burner because he is offended.

Mr. Speaker, that is why it is important that we have the first clause in the Watt amendment. It would have to be consistent with the first amendment. The first amendment would say that one cannot restrict by virtue of the content. We can restrict the way the flag is burned, the time the flag is burned, but not the message delivered when the burning is going on.

Mr. WATT of North Carolina. Mr. Speaker, I thank the gentleman for his intervention.

Mr. Speaker, in closing, first of all, I want to respond to the comments of the gentleman from Wisconsin (Mr. SCOTT) because I think it is important to know about the importance of the first amendment. Mr. SENSENBRENNER that he made in his opening statement, that the effect of this proposed substitute would be to punt this proposed issue back to the United States Supreme Court.

It is interesting that the chairman of the Committee on the Judiciary would say that, because, by passing the underlying proposal, we do not do away with the first amendment to the Constitution. The Supreme Court is going to have to reconcile this proposed constitutional amendment with the first amendment as it stands now; and so the notion that we are somehow, by not putting the language that we have proposed in the constitutional amendment, are going to save ourselves from the United States Supreme Court in interpreting the first amendment is just not the case.

At some point this issue is going back to the Supreme Court, whether it goes back under my substitute or to the Watt amendment, I do not feel we are going to save anything. We can say to ourselves we have resolved this issue, but if in fact it is speech to burn a flag in the course of a demonstration or protest expressing one's self, if it was protected by the first amendment before this proposed constitutional amendment, then that act is still going to be protected by the first amendment unless the effect of this is to repeal the first amendment. So it is not as if we are doing away with the first amendment. In any event, this all must be resolved. I do not think there is any credibility in that analysis. This issue is going back to the Supreme Court, and the Supreme Court will reconcile whatever amendment we make.

I am just trying to make it clear that in my order of priorities I want the first amendment to the Constitution, which has been on the books for all these years that our country has been around, to still be the preeminent constitutional amendment to the Constitution. I do not want something that this Congress has done in the heat of some political moment to supersede that.

Second, I want to close by just saying how much I have come to welcome this debate. When we first started doing this 5 or 6 years ago, I actually resented having to do this every year. Now I actually think that it is a good debate for our country.

Mr. Speaker, 5 or 6 years ago when I first started debating this, I used to think, as the gentleman from Florida (Mr. STEARNS) now thinks, that everybody on the opposite side of this issue was unAmerican because they did not believe in the first amendment.

Mr. Speaker, folks used to come in the Chamber and they would shout at me that I was unAmerican because I did not support what they wanted; and I would shout at them that they were unAmerican because they did not believe in what I believed in.

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

I think about 2 or 3 years into the debate, it became apparent to me that everybody on all sides of this issue is a patriot. And I think we finally got to that resolution last year or the year before last when we had a very, very dignified debate that allowed everybody to express their opinions on this proposed constitutional amendment, on the proposed substitute, and everybody went away understanding more fully what free speech and expression is all about and why we value our country as we do regardless of where we stand on this issue.

There is dignity in this debate. It is not a partisan debate. It is not a racial debate. It is not a philosophical debate. This is all about what you think this country stands for and what you think the first amendment stands for. I applaud my colleagues for engaging in this dignified debate.

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

Mr. SENSENBRENNER. Mr. Speaker, I yield myself the balance of my time.
Mr. Speaker, I am willing to stipulate that whoever has debated this question today, on either side of this patriotic and non partisan issue, there is a legitimate difference of opinion on whether or not we should propose a constitutional amendment for the States to consider and ratify to protect the United States flag from physical desecration. I think that the case is overwhelming on why we ought to do that.

I would just like to cite one legal decision from my home State, in the case of the State of Wisconsin v. Matthew C. Janssen, Supreme Court of Wisconsin, decided on June 25, 1998, where the State Supreme Court, citing the Johnson and Eichman cases as precedent, declared unconstitutional the Wisconsin flag desecration statute in the case where the defendant defecated on the American flag. And there the court determined that because the defendant claimed that this disgusting act was a political expression, he could not be criminally prosecuted because the statute was unconstitutional.

Now, if there ever was a reason why we should overturn the Johnson and Eichman cases, this decision of the Wisconsin Supreme Court, I believe, is a case in point. I think that whether the Eichman cases, this decision of the State of Wisconsin v. Matthew C. Janssen, Supreme Court of Wisconsin, declared unconstitutional the American flag. And there the court determined that because the defendant claimed that this disgusting act was a political expression, he could not be criminally prosecuted because the statute was unconstitutional.

For example, the Supreme Court in 1974 declared unconstitutionally vague a statute that criminalized treating the flag contemptuously and did not uphold the conviction of an individual wearing a flag patch on his pants.

So unless we clarify H.J. Res. 36, the legislation would allow such a prosecution despite that statute's vagueness.

Finally, it is insufficient to respond to these concerns by asserting that the courts can easily work out the meaning of terms in the same way that they have given meaning to other terms in the Bill of Rights such as "due process."

Unlike the other provisions of the Bill of Rights, H.J. Res. 36 represents an open-ended and unchartered invasion of our rights and liberties rather than a back-up mechanism to prevent the government from usurping our rights.

I urge the Members to support the substitute and oppose altering the Bill of Rights.

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

Mr. CONYERS. Mr. Speaker, I strongly support the substitute offered by Mr. WATT.

This substitute goes to the heart of what we're debating. If the sponsors of H.J. Res. 36 really believe that this provision does not supersede the First Amendment, they ought to have no problem supporting this substitute.

And if H.J. Res. 36 does supersede the First Amendment, then the sponsors should have the courage to admit it—so the American people can make an informed decision about this issue.

In my view it is clear that H.J. Res. 36 directly alters the free speech protections of the First Amendment. There can be no doubt that "symbolic speech" relating to the flag falls squarely within the ambit of traditionally protected speech.

Our nation was born in the dramatic symbolic speeches of the Boston Tea Party, and our courts have long recognized that expressive speech associated with the flag is protected under the First Amendment.

Also, the substitute offered by Mr. WATT.

Some have suggested that the amendment goes so far as to allow the criminalization of wearing clothing with the flag on it. This goes well beyond overturning the Johnson case and indicates that the flag desecration amendment could permit prosecution under statutes that were otherwise unconstitutionally void of vagueness.

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Messrs. McIntyre, DeMint, Thompson of California, Pickering, Stark, McDermott, Serrano, and Ms. Lofgren, Ms. Velazquez, and Mrs. Davis of California changed their vote from “yea” to “nay.”

The amendment in the nature of a substitute was rejected.

The result of the vote was announced as above recorded.

The Speaker pro tempore of the House, Mr. Lind. The question is on engrossment and third reading of the joint resolution.

The joint resolution was ordered to be engrossed and read a third time, and was read the third time.

The Speaker pro tempore. The question is on the passage of the joint resolution.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

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

The yeas and nays were ordered.

The vote was taken by electronic device and was—yeas 298, nays 125, not voting 10, as follows:

Concord, 298
Hansom, 29
Langston, 298
Platts, 298
Serrano, 298
Taylor (MS), 298
Taylor (NC), 298
Thompson (CA), 298
Thompson (CT), 298

[The remainder of the roll call is not transcribed in full.]