do I not want it to happen. I don’t want to see it happen, either.

It doesn’t have to happen. We can stop it. But if we wait and we delay and delay, and we don’t send this message to the Attorney General that we mean business, then it happens. He would be happy to do it. Why, I will never know, but she has. We can stop it right here. We can stop it. I want my colleagues to know that if we don’t vote and this happens, then it is on our conscience. We can stop this; we have the opportunity to do it.

The INS and Justice Department to this day have not spoken to Elian Gonzalez.

Isn’t it interesting? I spoke to him. I met with him for 2 hours. Diane Sawyer has spoken to him. She spoke to him. Senator Bob Smith spoke to him. He is available. But Janet Reno can’t speak to him. Do you know why? He doesn’t have any rights. I say to anybody out there who has a 6-year-old child who has lived in this country in my time, but they are long past 6 now, and they were pretty smart—at 6 years old, you know what is going on.

Do you know what happened to this little boy? He didn’t happen to do many bads anywhere in the world. He saw his mother die, slip under the waves and drown. The last words that came out of her mouth to the other survivors were: Please get Elian to America. They have to stay? No. But there are certain things he can’t do. I am grateful for Senator Smith, or Senator so and so, this is how you voted. We heard you and you voted however you voted; we know how you felt about it. At least have the courage to cast your vote on this matter.

My legislation grants Elian’s family in Cuba permanent residency status. For the record, it includes Juan Miguel Gonzalez, Elian’s father, for permanent residency status in America; Nelys Carmeneta, Juan Miguel’s wife; Lianney Gonzalez, Juan Miguel’s son; Mariella Quintana, Elian’s maternal grandmother; Raquel Rodriguez, Elian’s maternal grandmother; and Juan Gonzalez, Elian’s grandfather. It grants all of them permanent residency. Does it mean that if they come to America, they have to stay? No. But if you care about Elian, then you have to come to America and talk to the family here.

I have been joined by members of Elian’s extended family that Juan Miguel Gonzalez, Elian’s father, has expressed an interest in coming to the U.S. a few months before Elian was supposed to arrive. The cold war is over, they say. It is over every place. I guess, but in the Senate because we want to say that Elian doesn’t have any rights and we want to let Fidel Castro dictate what happens. Why would we want to let Fidel Castro determine the fate of Elian Gonzalez? Let Juan Gonzalez come here. If Castro cares, let the Gonzalez family come here. We are not going to keep them. They can stay if they want and they can go home if they want. We just want them to come and meet with the family here in Miami.

I am deeply concerned about this arbitrary deadline. I repeat it again for emphasis: I am very concerned about this arbitrary deadline. I am concerned that such a deadline would be imposed because it is inflammatory to remove this parole status of Elian Gonzalez.

The goal in introducing this bill is to get the J ustice Department and the INS out of the case and turn it over to the Florida courts and make it a case for custody, so that any 6-year-old boy—if you think of America today, there are custody cases going on right now. If we speak not about a child doesn’t have any rights—how about a child abuse case? Children are interviewed by psychiatrists and psychologists all the time under allegations of child abuse. In custody battles and disputes, they hear from custody battles. They are heard every day. Yet Elian can’t be heard because of this decision—a regrettable decision—by the Attorney General.

I am going to end with a plea to the Attorney General: Please remove the arbitrary 9 a.m. deadline. Let the courts hear Elian Gonzalez’s appeal. This is America. We have courts to resolve custody issues. It is not an immigration issue. He didn’t immigrate into this country. He didn’t emigrate from Cuba. He left Cuba. He wanted to get out of there and so did his mother. His mother died, and you are punishing him because she died. The other two people survived—and you as well—are adults, and they are here for 13 months. They are here. No problem. But Elian doesn’t have any rights. Find a place in the law that says there is any age limit. At what age does he lose his rights? Is it 7, 8, 9, 13, or 14? Find it in the law, Madam Attorney General. It is not in there.

We have courts to resolve these matters. Let the Eleventh Circuit Court of Appeals hear Elian’s case before you attempt to send him back to Castro’s open arms. Don’t make the 6-year-old boy be paraded through the streets of Havana by Fidel Castro. Please, remove the arbitrary deadline. Let the Senate be heard. We will be heard, I promise, as early as Tuesday, perhaps Wednesday or Thursday—whenever we can work this through.

I appreciate the cooperation of the majority leader, who has been very helpful in this matter. I am grateful for that. But there are certain things he can control. Senators have rights to delay, and that is what is happening. Please, I say to the Attorney General, don’t try to impose that deadline. Remove it and let reason prevail.

FLAG DESECRATION CONSTITUTIONAL AMENDMENT—Continued

UNANIMOUS CONSENT AGREEMENT

Mr. Smith of New Hampshire. Mr. President, on behalf of the leader, I ask unanimous consent that, notwithstanding rule XXII, the following Senators be recognized for debate on the pending flag desecration legislation for the designated times, and following the use of time for yielding back a time, the joint resolution shall be read the third time and a vote on passage occur, all without any intervening action or debate. Those Senators are as follows: Senator Byrd

CONGRESSIONAL RECORD—SENATE
S1857

March 29, 2000
Mr. BYRD. Mr. President, we Americans are patriotic, and there are few acts more deeply offensive to us than the willful destruction of our flag. The flag, after all, is a unique symbol of national unity and a powerful source of national pride.

But the flag does not just represent the country and its history; in a very real sense it is a part of that history. Like the Constitution, the flag was handed down to us by the country's Founders, for it was the Second Continental Congress that, in 1777, established the Stars and Stripes as the national flag. From Tripoli in 1805 to Iwo Jima in 1945 to the Moon in 1969, the flag has been raised to commemorate some of America's proudest moments.

Millions of American men and women have marched off to battle behind that flag. I see the flag there. It is just to the right of the Presiding Officer here in the Chamber. What a beautiful—well, that flag! Miles more have sworn allegiance to the flag and "to the republic for which it stands." And, while historians may dispute this point, schoolchildren to this day are taught to revere Betsy Ross for having sewn the first flag. Anyone who doubts either the flag's importance or the reverence with which it is treated by the American people is woefully mistaken.

Mr. President, I yield to no-one in my respect, honor, and reverence for Old Glory. Nor do I yield to anyone in my commitment to our nation's veterans, who, for the benefit of all Americans, have given so much in defense of our country and in defense of our flag. Yet, despite my love for the flag, and despite my commitment to our Nation's veterans, I regret that I cannot support this amendment. I do not believe that the primary effect of this amendment would be more, not fewer, incidents of flag desecration; and because I feel that, rather than rushing into a constitutional amendment, we might be better served by allowing the Supreme Court the opportunity to revisit this issue.

What do I mean, Mr. President, when I say that this measure does not "be-long in the Constitution? Let me first begin by saying that I do not mean. I do not mean that protecting the flag is a trivial or unimportant goal of government. Nor do I mean that the flag deserves anything less than our complete reverence and our complete devotion. What I do mean, quite simply, is that a ban on flag desecration does not fit into—would, in fact, be out of place in—the skeletal document which lays out the basic organization and structure of the national government, determines federal relations, and protects fundamental liberties of the people, all of us. I think my meaning will be clearer if we take a closer look at the purposes that constitutional amendments are intended to serve. The Framers gave this matter some thought in their deliberations at Philadelphia in 1787. They considered and they rejected resolve No. 13 of the Virginia Plan of the Convention, among them Charles Pinkney of South Carolina, opposed any provision for Constitutional amendments to the Constitution. Recognizing, however, that occasional revisions might be necessary, the Convention finally agreed upon a compromise that deliberately made it difficult to amend the Constitution by requiring successive supermajorities. Article V sets up a cumbersome two-step amendment process. It is a cumbersome amendment process. It is cumbersome because the framers intended it to be cumbersome. The first step is approval either by two-thirds of Congress meaning both Houses or—and this has never been done—by a constitutional convention called for by two-thirds of the States. The second ratification by three-fourths of the States.

Given the hurdles set up by Article V, it should come as no surprise that so few amendments to the Constitution have been made. The Amendment Process has been amended only twenty-seven in all, and the first ten were ratified en bloc in 1791—209 years ago. In the two hundred and nine years since ratification of the Bill of Rights, there have been just 17 additional amendments. Think of that. If we disregard the 18th and the 21st Amendments, marking the beginning and end of Prohibition, we are left with only 15 amendments in 209 years! The 18th amendment was wiped out and the 21stamendment by the 21st amendment. These mark the beginning and end of Prohibition.

So, as I say, we are left with actually only 15 amendments in 209 years. Just think of it. In 209 years, despite all of the political, economic, and social changes this country has experienced over the course of more than two centuries; despite the advent of electricity, which lights this Chamber, and despite the advent of the internal combustion engine; despite two world wars and several smaller wars; despite the discovery of modes of communication and transportation beyond the wildest fancies of the most visionary framers, this document, the Constitution of the United States, has been amended only 15 times. If you want to count the 21st amendment, 16 times would be the total number.

Truly, the Constitution is an extraordinary work of wisdom and foresight handed down from George Washington and James Madison. It may be forgiven for referring to the product of their labor as "little short of a miracle." Gladstone may well have gotten
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it right when in 1887 he declared the Constitution to be the most wonderful work ever struck off at a given time by the brain and purpose of man.

As for those 15 amendments I have just mentioned, these can generally be divided into two main categories. One category consists of those amendments that deal with the structure and organization of the three branches of Government, the laying out of the three separate branches—the legislative, the executive, and the judiciary. I would add that they do not include the 11th amendment. Of course, those were included in the original Constitution, the separation of powers, in the first, second, and third articles—the legislative, executive, and judicial. As to the amendments, the 15 amendments plus the first 10, these include the 11th amendment, preventing the Federal courts from hearing suits against States by citizens of other States; the 12th amendment, regarding the election of the President and the Vice President; the 17th amendment, establishing the direct elections of Senators; the 20th amendment, regulating Presidential terms and related matters; the 22nd amendment, limiting a President to two terms; the 25th amendment, regarding Presidential succession; and the 27th amendment, deferring congressional pay raises until after an intervening election.

There is very little need for me to attempt to justify the inclusion of these provisions in the Constitution. However, we may feel about them personally, their subject matter, the structure of the Federal Government, fits in perfectly with that of articles I through IV.

There is good reason to suspect the framers themselves thought that most, if not all, amendments would address structural matters. In No. 85 of the Federalist Papers, Alexander Hamilton expressed his view: A thorough conviction that any constitutional amendments which “may, upon mature consideration, be thought useful, will be applicable to the organization of the government and not to the mass of its powers.”

Hear that again: Hamilton expressed a thorough conviction that any constitutional amendments which “may, upon mature consideration, be thought useful, will be applicable to the organization of the government and not to the mass of its powers.”

In Hamilton’s mind, any amendments would deal with the structure, the organization, of the Government.

The second category consists of those constitutional amendments that narrow the powers of government and expand or protect fundamental personal rights. These include the 13th amendment banning slavery, the 14th amendment, which extended citizenship to all persons born or naturalized in the United States and subject to the jurisdiction thereof” and guaranteed all citizens certain basic protections, and the 15th, 19th, 23rd, 24th, and 26th amendments, each of which extended the vote to new groups of citizens.

Clearly, the flag desecration amendment fits into neither category. For constitutional purposes, it is neither fish nor fowl. It does not address a fundamental right, it would deal with Federal relations between the National and State governments—in other words, the Federal system; it extends, rather than narrows, the powers of government; and it does not protect a basic civil right.

Look at your Constitution. Look at the Constitution and the amendments thereto which, to all intents and purposes, are part of the Constitution. You will see that the Constitution overall narrows the powers of government; it does not extend those powers. Indeed, some opponents of this amendment that is before us argue that it restricts personal liberty.

The 13th amendment forbidding slavery may be viewed as the only amendment regulating the conduct of individuals. The 13th amendment was the product of a bitter, fiercely contested Civil War, the War Between the States, and it was necessary to end one of the most loathsome and shameful institutions in history. Thus, the 13th amendment, was an exceptional amendment. It was necessitated by exceptional circumstances.

There was, of course, one notable attempt to regulate private conduct via a constitutional amendment. I have already referred to that, the 18th amendment, instituting Prohibition, which also deviated from the model of constitutional amendments I have laid out—with disastrous results. Like the flag desecration amendment, the 18th amendment sought to restrict private conduct in the name of a greater social good. Like the flag desecration amendment, the 18th amendment had a commendable goal. Nonetheless, the 18th amendment was a mistake and it took us 15 years to rectify it. True, the mistake was rectified in 1933, but the damage was already done. The 21st amendment ended Prohibition, but it could not erase the preceding 15 years in which a constitutional provision—not a statute, a constitutional provision, a portion of the highest law in the land—was routinely ignored and violated.

You see, once that 18th amendment was ratified into the Constitution, it took 15 years to unlock it, to undo it, to repeal it.

Prohibition not only made criminals and scofflaws of countless Americans, it also placed them in violation of the Constitution. I can remember the revenue officers, when they came to the coal camps and the coal camps were scoured around the hills and the mountains looking for the moonshine stills. I can remember those revenuers. That was a terrible mistake, and, while the blemish to the Constitution has since faded, the lesson must not be learned.

Thus, a constitutional amendment against flag burning may very well prove to be counterproductive, just as did the Prohibition amendment. If this were to happen, our Constitution would be diminished and flag burning would continue—would continue.

In the final analysis, it is the Constitution—not the flag—that is the problem and guardian of the people’s liberties. Respect for that Constitution should not be undermined by amendments, however well intentioned, that cannot be enforced. I fought the constitutional amendment to balance the budget for the same reasons that Madison said it could not—would not be enforced, and that as a result of lack of enforcement, the people’s faith in the Constitution would be undermined. I say the same thing here. It will not be enforced.

It is like the Commandment that says: “Thou shalt not kill;” but killing goes on every day right here in the Nation’s Capital.

“Thou shalt not steal;” but stealing continues.

I have come to believe strongly that constitutional amendments, as Madison said, should be saved “for certain and extraordinary occasions.” I am not saying the Constitution should never be amended. I am not saying that Madison was not right. But Madison said that constitutional amendments should be saved for “certain and extraordinary occasions.”

Critics may accuse me of being overly conservative, but I am not right. I have learned from study and from my own recent experience with the proposed constitutional amendment to balance the budget that tinkering with the careful system of checks and balances and the separation of powers contained in the Constitution, can have far-reaching and sometimes unexpected consequences. When it comes to revising the most basic text in our Federal system, when it comes to improving upon the handiwork of Washington and Madison and Hamilton and James Wilson and Roger Sherman and Gouverneur Morris and Benjamin Franklin and others at the convention; when it comes to setting a pen to the sacred charter of our liberties that my colleagues and I have sworn at the desk to uphold and defend—then, yes, I am conservative.

While I do not rule out the possibility that I might offer an amendment some day, as I have done in the past. I have learned a lot in these last years in the Senate—they should be reserved, as Madison said, for compelling circumstances when alternatives are unavailable.

Polls are no substitute for reasoned analysis and independent thought. Polls were very much in evidence during the balanced budget amendment debate, and we see the same thing here today. Who would oppose a balanced budget? Those of us who voted against the balanced budget amendment did not oppose a balanced budget. We were opposed to what that amendment would do to the Constitution of the United States; what it would do to the
faith and confidence of the American people in their Constitution.

Who would oppose protecting the flag? Nobody here certainly. But the Senate, in particular, was intended by the framers to be an oasis of cool, deliberation, far away from the hasty and heated rhetoric that characterizes so many political exchanges.

The writers of the Constitution were remarkable men. Such a gathering probably never before sat down within the four corners of the Earth. That was the miracle that took place in Philadelphia, that those minds, and many of them were young—Franklin was 81, but Pinckney was 29; Gouverneur Morris was 35; Madison was 36; Hamilton was 39—that so many brilliant minds sat down in one place at a given moment in time. The clock of time had struck. Had it been 5 years earlier, they would not have experienced to the full the flaws of the Articles of Confederation, so they would not have felt the need. Had it been 5 years later, they would have seen all of the ills, the extremes of the French Revolution, the deaths at the guillotine. They would have been repelled in horror by what happened there, the excesses of those were the miracles: the right place, the right time, and the right men.

The framers of the Constitution were indeed remarkable men, and their words are often as wise and relevant today as they were centuries ago. Thus, Madison wrote in Federalist 49 that “a constitutional road to the decision of the people ought to be marked out and kept open, for certain great and extraordinary occasions.”

Currently, there appears to be no such “great and extraordinary” occasion that calls for a 28th constitutional amendment.

Madison also warned against the reference of constitutional questions to the decision of the whole society. “Do not do it too often,” he said. “Do not send amendments to the American people too often.”

In the Federalist 49, he said: “... as every appeal to the people would carry an implication of some defect in the government, frequent appeals would, in great measure, deprive the government of that veneration which time bestows on everything, and without which perhaps the wisest and freest governments would not possess the requisite stability.”

Madison further said: “The danger of disturbing the public tranquility by interesting too strongly the public passions is to legislate against serious objection against a frequent reference of constitutional questions to the decision of the whole society. ... But the greatest objection of all is that the decisions which would probably result from such appeals would not answer the purpose of maintaining constitutional equilibrium of the government.

That was James Madison warning us against referring to the American people constitutional amendments too often.

Flag destruction is, fortunately, only a rare occurrence. While our culture may have become increasingly coarse and vulgar at times—and it certainly has, there is no question about that—most Americans respect the flag and most Americans voluntarily refrain from abusing it.

I do not want to give the same attention to the question of the opportunity to defy the Constitution as well. By one act, they would then be able to desecrate and destroy the flag and at the same time to defy—defy—the Constitution of the United States. This is more than a matter of symmetry and is of the question of respect for the founding document of this Republic and the supreme law of the land.

Any disrespect for the Constitution is a repudiation of the most basic principles and laws of the country. And now you say let’s put into the Constitution some verbiage that cannot be enforced, that will not be enforced; cannot be. It will be defied by some.

Let me say that again. Any disrespect for the Constitution is a repudiation of the Constitution and the laws of the country. We are talking about the supreme law of the land. The law here can be changed—passed today and changed before the beginning of the next Congress next year. But not a constitutional amendment. While it is welded into the Constitution, it will take years to repeal it, to take it out, to remove it, as we saw in the case of amendment No. 18, the prohibition amendment.

I shrink from the possibility of providing a tiny minority of rabble-rousers with the ammunition to fire upon the most important and beloved document in the country.

As I suggested a bit earlier, we already made the mistake once before of inserting into the Constitution a restriction on private conduct that could not be enforced. The Constitution suffered terribly under Prohibition. It would also have suffered under a balanced budget amendment, other unenforceable and litigation-inducing provision that many of my colleagues wished to insert into the Constitution. Just as I opposed the balanced budget amendment out of a desire to protect the Constitution from further abasement, so, too, I must oppose a flag desecration amendment. It, too, would be unenforceable.

If one provision of the Constitution proves to be unenforceable, what about the other provisions? Just as I am resolved to protect both the Constitution and the flag, I am determined that we not make martyrs of those villains who would sully—who would sully—the Stars and Stripes. Why should we let these malefactors portray themselves as courageous iconoclasts, sacrificed at the altar of public complacency and intolerance? It is possible, I believe, to craft statutory protection for the flag that can withstand a constitutional attack. One approach is in the form of a substitute that was offered by Senator McConnell, the Flag Protection Act of 1999, could, in the opinion of the American Law Division of the Library of Congress, withstand such scrutiny. In the words of that opinion, “subsections (b) and (c) appear to present no constitutional difficulties, based on judicial precedents, either facially or as applied.” Further, the court noted that not only had the precedent from the Supreme Court’s precedents, subsection (a) is quite likely to pass constitutional muster.” The opinion closes by noting, “In conclusion, the judicial precedents establish that the bill, if enacted, withstands constitutional scrutiny. J. Eichman and J. O’Connor, should survive constitutional attack on First Amendment grounds.”

The first case to which I just referred, of Texas v. Johnson, arose from an incident during the 1984 Republican Convention in Dallas, Texas, in which Gregory Lee Johnson participated in a political demonstration and burned an American flag while protestors chanted. Johnson was convicted of desecration of a venerated object in violation of a Texas statute and a State Court of Appeals affirmed the decision. However, the Texas Court of Criminal Appeals reversed the decision, holding that burning the flag was expressive conduct for which the State could not, under the First Amendment, punish Johnson in these circumstances. The Supreme Court, in a 5-4 decision, upheld the lower court’s decision.

But in the dissent by Chief Justice Rehnquist, J. Justices White, and J. Justice O’Connor, they noted, “the Texas statute deprived Johnson of only one rather inarticulate symbolic form of protest—a form of protest that was profoundly offensive to many—and left him with a full panoply of other symbols and every conceivable form of verbal expression to express his deep disapproval of national policy.” The justices also observed, “Surely one of the high purposes of a democratic society is to legislate against conduct that is regarded as evil and profoundly offensive to the majority of people—whether it be murder, embezzlement, pollution, or flag burning.”

After the Johnson decision, Congress passed the Flag Protection Act of 1999, criminalizing the conduct of anyone who “knowingly mutilates, defaces, physically defiles, burns, maintains on the floor or ground, or tramples upon” a United States flag, except conduct related to the desecration or “soiled” flag. Subsequently, several people, among them Shawn D. Eichman, were prosecuted in District Courts. In each case, the appellees moved to dismiss the charges on the ground that the Act violated the First Amendment. In the District Courts, following the precedent set by the Johnson case, held the Act unconstitutional as applied and dismissed the charges. The Supreme Court, in a 5-4 decision, upheld the decision. However, the dissent authored by J. Justice Stevens, with whom the Chief Justice, J. Justice White, and J. Justice O’Connor joined, the justices noted...
that “it is equally well settled that certain methods of expression may be prohibited if (a) the prohibition is supported by a legitimate societal interest that is unrelated to the suppression of ideas the speaker desires to express; (b) the prohibition does not entail undue interference with the speaker’s freedom to express those ideas by other means; and (c) the interest in allowing the speaker complete freedom of choice among alternative methods of expression is less important than the societal interest the prohibition serves.”

Given the closeness of the votes in Johnson and Eichman—given the preemption against amending the Constitution whenever other alternatives are available—and given the powerful arguments made by Chief Justice Rehnquist and Justice Stevens in their dissents—perhaps the better course of action is to allow the Court sufficient time to reconsider its views on this controversial topic.

The Court has already changed its composition since the Eichman decision eight years ago. Four of the Justices who decided that case, including three who voted with the majority, have been replaced. Who can say whether the Court will find itself swayed by the persuasive arguments that Messrs. Rehnquist and Stevens have put forth? Instead of our adding a new, 28th Amendment to the Constitution, would it not be preferable for the Court, on closer inspection of the issue, to reconsider its views on its own?

Like many Americans, I was shocked by the Johnson and Eichman decisions overturning statutory protection for the flag. Now, that shock has subsided, and while I still question the correctness of those decisions, I no longer believe that a constitutional amendment is the best response to these horrific acts. The intervening years have allowed me to rethink my initial reaction to the Court’s decisions, and while my love for the flag has not waned, neither have my respect for and devotion to the Constitution. If anything, the spate of proposed constitutional amendments in recent years—chief among them the misguided balanced budget amendment—and my continued studies of constitutional history have only increased my love for this magnificent document and my determination to prevent its abuse.

Even so, it is with every time I read the Bible—I find something, it seems, that is new and intriguing and awe-inspiring. I have always promised my constituents that I will represent them to the best of my ability and with an open mind and an honest heart. Today, head and heart have convinced me to reconsider my beliefs. As Benjamin Franklin, the oldest man at the Constitutional Convention, put it, in addressing his fellow colleagues at Philadelphia, “As they look back upon the Constitutions of the United States, they will think of the Constitutions of the United States—this is what he said—‘For having lived long, I have experienced many instances of being obliged by better information or fuller consideration, to change opinions even on important subjects, which I once thought right, but found to be otherwise.’

That has happened to me on several occasions. Certainly, it is true in the present instance, that my opinion has waned, neither have my respect for and devotion to the Constitution, and while my love for the flag has not waned, neither have my respect for and devotion to the Constitution. If anything, the spate of proposed constitutional amendments in recent years—chief among them the misguided balanced budget amendment—and my continued studies of constitutional history have only increased my love for this magnificent document and my determination to prevent its abuse.

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I want to say again that I changed my mind because of long and serious study, not only of the Constitution of the United States, but also of the Articles of Confederation which was the first Constitution of the U.S., my study of the Federalist Papers, my study of the history of our country, and the history of the colonies, the history of England, the struggles of Englishmen, and my studies of the ancient Romans. Because of these studies, in the beginning of our Republic, in the ratifying conventions, in the Constitutional amendment to balance the budget and then with respect to the line-item veto, which I hate with a passion, and which the Supreme Court of the U.S. overthrew, I came to know more about American constitutionalism, about the history of the Constitution, about the ratifying conventions, than I ever knew before. And it is the result of that long and serious study of constitutionalism in America, constitutionalism that had its roots not just at the Constitutional Convention of 1787, but in the states before the Constitution, and in the colonies before the Constitution, and in the colonies before the states, and in the Biblical covenants binding the nations back 1,000-2,000 years. I have come to this conclusion, and I believe that I can best serve my country today by voting against this amendment.

The flag lives because the Constitution lives, without which there would be no American Republic, without which there would be no American Senate, without which there would be no United States of America, only the Balkanized States of America. Without that Constitution, there would be no American liberty, no American flag.

That flag is the symbol of our Nation. In a way, we might say that that flag is the symbol of all we hold dear. That flag is the emblem of our Nation’s history. That flag is the symbol of our Nation’s values. We love that flag. But we must love the Constitution more. For the Constitution is not just a symbol, it is the thing itself. It yields the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. LEAHY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.
The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LEAHY. Mr. President, one of the privileges of serving in the Senate is the chance to hear debates—some good, some not so good. Periodically, we hear greatness in speeches. The Senate just heard greatness.

I think all Senators would agree, whether they are for or against this constitutional amendment, that when the historic debate is over, when the history books are written, the speech of the distinguished senior Senator from West Virginia, Mr. Byrd, will be in that recounting. This is the type of speech that students of constitutional history, students of the Constitution itself—and this Senator wishes there were more—will look to, and they will read and reread.

We sometimes forget that every 6 years, those of us who are fortunate to serve here, to serve more than once, take a very specific oath of office. I can think of times when various people have administered this oath, usually the Vice President of the United States. But I recall watching the distinguished junior Senator from West Virginia administer that oath on a couple of occasions in his role as President pro tempore of the Senate.

There was one big difference when he administered it than when all the various Vice Presidents, Republican or Democrat, administered it. The difference is, they had a card before them and they read the oath. The Senator from West Virginia didn't need a card before him. The Senator from West Virginia would stand there, tell them to raise their right hand, and he would administer the oath. There was no prompting. There was no teleprompter. There was no card. There was a phrase that carries the history of the United States Senate there, when he would do it.

I mention that oath because we swear we will uphold the Constitution, we will protect the Constitution. There could be no more solemn duty that we are protecting the Constitution of this country, we are protecting the country itself. In this debate, that really is the issue.

I have said over and over again, I do not want to see the first amending of the U.S. Constitution. We did it to provide sanctions for those who would desecrate America's flag. I just have not been able to make the leap of saying let's change our framework of the Constitution. I thank the Senator from West Virginia for his enormous contribution today.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. DORGAN. Mr. President, let me briefly comment on the remarks made by the senior Senator from West Virginia. I know from having visited with him about this subject over some long while that he found this to be a difficult subject, not a simple subject, not an easy issue to resolve. I felt the same way about this issue. He spoke about the U.S. Constitution at great length today and all Members of the Senate will learn from this.

I have told my colleagues previously that on the 200th birthday of the writing of the Constitution I was one of the 55 Americans who went into that room where the Constitution was written 200 years ago. I went into that room 55 years prior to that, when 55 men went into that room and wrote a Constitution. Two hundred years later, 55 people—men, women, minorities—went into that room. I was privileged to have been selected to be one of them.

I have told the story before and people say, yes, let's change the framework of the Constitution. I thank the Senator from West Virginia.

Mr. GORTON. Mr. President, I rise to respond to the remarks just made by the senior Senator from Vermont and the senior Senator from North Dakota for their remarks. I also thank them for the courage they have displayed time and time again in protecting this founding document. I thank them for the inspiring leadership that the rest of us have had from watching them and listening to them. They, indeed, have done a tremendous service to the country, to the Senate, and to the Constitution. I thank them both from the bottom of my heart.

The PRESIDING OFFICER. The Senator from Washington is recognized.

Mr. GORTON. Mr. President, I ask unanimous consent that I be permitted to speak as in morning business, the time charged under closure.

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

PRESCRIPTION DRUG COSTS

Mr. GORTON. Mr. President, good health is one of life's greatest blessings. Over the last 25 years, there has been a tremendous change for the better in the delivery of health care. New drugs have been developed to provide better treatments for cancer, allergies, depression, and many other debilitating conditions. In short, prescription drugs can help people live longer, lead healthier, happier, more productive lives—and can help lower the overall cost of health care. We all applaud.

The United States leads the world in the development of new drugs. Almost half of the new drugs developed in the last 25 years were created in the USA. But the process is expensive to develop. Only one of every five candidate medicines will turn out to be effective, be approved by the FDA and make it to

Mr. GORTON. Mr. President, I have the honor of serving with him for just over 25 years. There is hardly a day goes by that I do not learn something from the distinguished Senator from West Virginia. Today the Nation learned from the Senator.

Mr. DORGAN. Mr. President, will the Senator yield?

Mr. LEAHY. I am happy to yield to the Senator from North Dakota.

The PRESIDING OFFICER (Mr. CRapo). The Senator from North Dakota is recognized.

Mr. DORGAN. Mr. President, let me briefly comment on the remarks made by the senior Senator from West Virginia. I know from having visited with him about this subject over some long while that he found this to be a difficult subject, not a simple subject, not an easy issue to resolve. I felt the same way about this issue. He spoke about the U.S. Constitution at great length today and all Members of the Senate will learn from this.

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