

The PRESIDING OFFICER (Mr. ABRAHAM). Is there objection?

Mr. BINGAMAN. Mr. President, I do object.

The PRESIDING OFFICER. Objection is heard.

# FLAG DESECRATION CONSTITUTIONAL AMENDMENT—MOTION TO PROCEED

Mr. DOLE. Mr. President, I move to proceed to the consideration of Senate Joint Resolution 31.

The PRESIDING OFFICER. Is there debate on the motion?

Mr. DOLE. Mr. President, I know there will be debate on the motion. I do not know how long the Senator from New Mexico wishes to debate. But I hope that we can go to the bill itself in the next couple of hours. This means we will have to be here longer this evening. We would like to complete action. We are going back to partial-birth abortion bill at 5 o'clock and will try to finish that tonight.

Hopefully, if there is some time or any requests for time on the amendments, we can continue that debate tonight and finish this bill by noon tomorrow.

I yield the floor.

Mr. BINGAMAN addressed the Chair.

The PRESIDING OFFICER. The Senator from New Mexico is recognized.

Mr. BINGAMAN. Mr. President, I did object to proceeding with the debate on the flag amendment because I believe that we have neglected some other very important constitutional duties. Specifically, we have neglected to provide our advice and consent of ratification of START II and also on confirming the nomination of ambassadors to nations, which include over a third of the world's population. That has now been delayed many months.

I have been told this morning that a deal which would allow for the Foreign Relations Committee to meet tomorrow and report the treaty and these nominations, which will allow the Senate to approve them next week and deal with the State Department authorization bill, as well, may be at hand. I would be delighted if that proves to be true, and I would gladly yield the floor and allow the Senate to proceed with debate on the flag amendment as soon as we can get some kind of unanimous-consent agreement to that effect.

But, for the moment, I think that I have no choice but to talk for a period here about the constitutional obligations we have to provide advice and consent on treaties and with regard to the appointment of ambassadors.

Mr. President, before we amend the Constitution, I hope we will not amend the first amendment, as proposed in the flag amendment, for the first time in the history of this Republic. I believe we should not go on to consider that before we get about the business of carrying out our current responsibilities under the Constitution.

Article II, section 2 of the Constitution deals with the powers of the President. The second paragraph says:

He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two-thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the Supreme Court, and all other Officers of the United States . . .

Mr. President, I have a couple of charts which I would like to refer to here just to make the points that need to be made. This first chart deals with the chronology of events related to the START II treaty. This treaty was signed by President Bush on January 3, 1993. It was submitted to the Senate by President Bush on January 15, 1993. That was almost 3 years ago.

Until last December when the issues were resolved that allowed the START I treaty to enter into course, perhaps it was appropriate not to proceed with the ratification of START II. Once that treaty was overcome, then everyone expected that the START II treaty would be dealt with by this body early this year—early in 1995.

The last hearing of the Foreign Affairs Committee on the treaty took place on March 29 of this year.

Senator LUGAR, at a conference the next day on March 30 said,

I chaired the final Foreign Relations subcommittee hearing in the Senate yesterday on the START II treaty. The committee will seek to mark up the treaty after the April recess. We will look to potential floor action during the middle of the month of May. It is a good treaty, but it is one thing to have reached agreements and understandings, another to have fully implemented.

Mr. President, next week we will be in mid-December, fully 7 months behind the schedule that was outlined by the senior Senator from Indiana, whom I greatly respect for his leadership on our policy toward Russia. I wish we had held to the original timetable. Obviously, we have not.

I fear the delay has only complicated the prospects for treaty ratification in the Russia Duma. We have provided an obvious excuse for inaction for 7 months now. We should not make that excuse, extend that excuse, for 8, 9, or 10 months.

As Senator LUGAR went on to point out in his March 30 speech,

To reach the START II limits by the year 2000 or 2003 will require enormous effort and cost, particularly on the Russian side. This will be difficult in the best of times but it is particularly challenging given the political and economic revolution engulfing Russia today.

The genius of the Nunn-Lugar cooperative reduction effort has been to face the facts squarely and try to help where we can in the Russian's effort to dismantle their nuclear stockpile. Months of inaction on our part cannot have improved the prospects for ratification in the Duma.

In the elections in Russia in less than 2 weeks we are likely to see a more

conservative Duma emerge, where one Start II ratification will be more difficult as a challenge for President Yeltsin.

Mr. President, I believe our delay in carrying out our constitutional duties on START II has consequences and they are potentially very bad consequences for our security and for our relations with Russia.

Similarly, I believe the delay in carrying out our constitutional duties on ambassadorial nominations has consequences.

I have a second chart here I want to go through. This is a list of the ambassadorial nominations that have been delayed. This is from the time that they were submitted to the Foreign Affairs Committee. We have the names of the ambassadors whose papers are entirely in order and who could be confirmed rapidly if the Foreign Affairs Committee were to hold a business meeting. There are 18 names on the list. We can go into them in some detail later on in the morning or later in the day.

Together, we have also listed, of course, the countries that they would be ambassadors to and the date that the nomination was sent here to the Senate.

Most of these people, 14 of them to be precise, are Foreign Service officers. Four of them, Jim Sasser, Sandra Kristoff, James Joseph, and John Gevirtz are noncareer political appointments. Many of these nominations have been ready to move since July.

Mr. President, the lives of these people and their families have been disrupted by our inaction. Our ability to carry on our diplomatic efforts with these nations and in these parts of the world have been disrupted, as well.

The signal that we send to the rest of the world when we fail to have ambassadors in key capitals is not a good signal. Look at the list of nations that we have here, Mr. President: China, Indonesia, Pakistan, Thailand, Cambodia, Malaysia, Sri Lanka, our Ambassador to the Asia Pacific Economic Cooperation Organization—APEC, which met recently, and we were not represented by an ambassador at that meeting. The Vice President attended in lieu of our President because of the difficulties here in getting agreement on a budget.

What sort of signal are we sending to Asia when we will not carry out our constitutional duties here in the Senate in a timely fashion? These nations include over a third of the world's population and some of the world's fastest growing economies. We have important and very critical interests in these nations, yet we cannot get around to confirming our ambassadors to them.

Many of the other nations listed are in Africa: South Africa, Cameroon, Rwanda, et cetera. Again, what sort of a signal are we sending? In the case of South Africa, again, the Vice President is there on a trip this week.

I am sure that our neglect of our responsibilities in the Senate is much

bigger news in those nations than it is here, but what we are doing or failing to do in my view is wrong and my point this morning is that we need to get agreement in the Senate to take action on these nominations and to take action on START II before we proceed with other less pressing business.

Mr. President, the proposal that the majority leader would like to move to today is the amendment to the Constitution dealing with flag burning. Whether a particular Senator opposes that amendment or favors it, I think all of us would have to agree that it is not urgent for the Senate to act on that proposal.

We have survived as a nation now for about 206 years without that amendment being adopted. I am a fairly regular reader of the newspaper. I read the newspaper this morning. I could find nothing in there indicating that people are burning flags around this country or around the world, in fact. Of course, the proposal is primarily aimed at those burning flags in this country.

The point is very simply, Mr. President, whether you favor or oppose the amendment, it is not urgent that we deal with it. We do not need to put aside other pressing important business in order to deal with the flag amendment today and tomorrow. I think it is much more important that we do the business of the Senate, and the business of the Senate very simply as set out in the Constitution which we are now talking about amending, the business of the Senate is to approve nominations—or disapprove.

I am not saying here I expect every Senator to come to the floor and vote for each of these Presidential nominees to be ambassador. It is possible that some of our colleagues would like to vote against them. That is fine. I am not insisting on a particular outcome.

I am saying that the Senate should have the chance to vote on these ambassadorial nominations and on the START II treaty before we conclude our business this year.

I understand that Senator HATCH is on the floor and he would like to speak for a period on the flag amendment. I certainly am willing to yield to him to do that since we will still be in a period debating whether or not to proceed to consideration of the bill.

I yield the floor.

Mr. HATCH. Mr. President, I thank my colleague. It was very gracious of him to do that, because I am concerned whether we are going to get to this amendment.

Let me, just for a moment, suggest the absence of a quorum with the understanding I will be recognized as soon as we come out of the quorum call.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. HATCH. Mr. President, I thank my colleague for being willing to yield me this time, because we were supposed to start on the flag amendment at 10 this morning. I do deeply regret that we are now on a filibuster against a constitutional amendment to prevent the desecration of the American flag. I think the American people should know that this is a filibuster.

We have had a filibuster on virtually every bill this year. At the height of Republican irritation at Democratic control of the Senate in the past, I cannot remember any year on which there have been filibusters on virtually everything of substance in any given year. Selected filibusters, yes—and I am the first to say that should be done. I am the first to uphold the filibuster rule. But not on everything.

To prevent us from even considering, or at least trying to prevent us from considering an amendment to protect the flag, which most Americans, at least 80 percent, favor, it seems to me is something I hope my colleagues on the other side will think through and change their ways, because this is not right. But I do appreciate my colleague allowing me this time to make a few comments about how important this amendment is.

It comes down to this. Will the Senate of the United States confuse liberty with license? Or will the Senate of the United States allow the people of the United States to have the right to protect their beloved national symbol, the American flag?

The Supreme Court, in 1989, in the first of two mistaken 5 to 4 decisions, stripped the American people of that right. This is a right the American people had for over 200 years. This is a right they had exercised in 48 States and in Congress. Seventy-three percent of my fellow Utahns favor a constitutional amendment to protect the flag.

Forty-nine State legislatures, including the Utah Legislature, have called upon Congress to pass a flag protection amendment. Here are 49 petitions—here are the voices of people reflected in their State legislatures; 49 petitions for this amendment. Three-hundred and twelve members of the other body have already voted for this constitutional amendment. This includes nearly half of the members of the other side of the aisle, including their leader, DICK GEPHARDT—a wonderful display of bipartisanship over there; one of the few we have had in this whole last 2 years. So, it does come down to the Senate, no doubt about it.

Many of the Nation's law professors and editorial boards oppose this amendment. An intemperate American Bar Association and the American Civil Liberties Union oppose the amendment. Regrettably, President Clinton opposes this amendment, and I am sure that costs us a few votes. They may be critical votes on this particular amendment. If this goes down, it will be primarily, perhaps, because the President is opposed to it. But the

American people favor this amendment.

We live in a time when standards have eroded. Our sensibilities are increasingly bombarded by coarse and graphic speech and by angry and vulgar discourse. We and our children and grandchildren can routinely watch television shows that contain material we never saw or heard on movie screens not so many years ago, let alone on TV. I noticed our colleagues, Senators LIEBERMAN and NUNN, have expressed concerns about the erosion of standards in some aspects of daytime television. I need not dwell on what we and our children can watch at the movies these days. I need not dwell on the lyrics our children are listening to throughout our country, or that they can listen to.

Drugs, crime, and pornography debase our society to an extent that no one would have predicted just two generations ago. The breakdown in the family, the divisions among our citizens, threaten our progress as one people bound together by common purposes and values.

Civility and mutual respect—preconditions for the robust expression of diverse views in society—are in decline.

Absolutes are ridiculed. Values are deemed relative. Nothing is sacred. There are no limits. Anything goes.

Individual rights are cherished and constantly expanded, but responsibilities are shirked and scorned.

We seek to instill in our children a pride in our country—a pride that we hope will serve as a basis for good citizenship and for devotion to improving our country and adhering to its best interests as they can honestly see those interests; a pride in country that takes them beyond the question, "What's in it for me?" We seek to instill a pride in country that may one day be called upon as a basis for painful sacrifice in the country's interests, maybe even the ultimate sacrifice, as it was in the case of my brother, in the Second World War.

We hope our children will feel connected to the diverse people who are their fellow citizens—the people they will grow up to work with, cross paths with in daily life, and live among.

We ask our school children to pledge allegiance to the flag. But, the Supreme Court now dictates that we must tell them that the same flag is unworthy of legal protection when it is treated in the most vile, disrespectful, or contemptuous manner.

At the same time that we seek to foster pride in each rising generation, our country grows more and more diverse. Many of our people revel in their particular cultures and diverse national origins, and properly so. Others are alienated from their fellow citizens and from government altogether.

We have no monarchy, no state religion, no elite class—hereditary or otherwise—representing the Nation and its unity. We have the flag.

The American flag is the one symbol that unites a very diverse people in a way nothing else can, in peace or war. Despite our differences of party, politics, philosophy, religion, ethnic background, economic status, social status, or geographic region, the American flag forms a unique, common bond among us. Failure to protect the flag inevitably loosens this bond, no matter how much some may claim to the contrary. In my opinion, the defenders of this newly discovered, so-called right to desecrate the American flag do confuse liberty with license.

The issue really does boil down to this: isn't it ridiculous that the American people are unable to protect their flag, if they wish to do so? This one, unique symbol of our country? It might come as a shock to many, but the law does not have to be totally devoid of common sense. Of course, the amendment and implementing statutes must be carefully crafted and the lawyers consulted on this. But the underlying issue is not nearly as complicated as the legal mumbo—jumbo of the lawyers and elitists make it out to be.

Perhaps Paul Greenberg, editorial page editor of the *Arkansas Democrat Gazette*, summarized it best in a July 6, 1995 column:

"But didn't our intelligentsia explain to us yokels again and again that burning the flag of the United States isn't an action, but speech, and therefore a constitutionally protected right? That's what the Supreme Court decided, too, if only in one of its confused and confusing 5-to-4 splits. But the people don't seem to have caught on. They still insist that burning the flag is burning the flag, not making a speech. Stubborn lot, the people. Powerful thing, public opinion . . .

"It isn't the idea of desecrating the flag that the American people propose to ban. Any street-corner orator who takes a notion to should be able to stand on a soapbox and badmouth the American flag all day long—and apple pie and motherhood, too, if that's the way the speaker feels. It's a free country.

"It's actually burning Old Glory, it's defacing the Stars and Stripes, it's the physical desecration of the flag of the United States that oughta be against the law. And the people of the United States just can't seem to be talked out of that notion—or orated out of it, or lectured out of it, or condescended and patronized out of it.

"Maybe it's because the people can't shut their eyes to homely truths as easily as our Advanced Thinkers. How many legs does a dog have, Mr. Lincoln once asked, if you call its tail a leg? And he answered: still four. Calling a tail a leg doesn't make it one. Not even a symbolic leg. The people have this stubborn notion that calling something a constitutional right doesn't make it one, despite the best our theorists and pettifoggers can do.

"The people keep being told that their flag is just a symbol.

"Just a symbol.

"We live by symbols, said a Justice of the U.S. Supreme Court (Felix Frankfurter) . . . And if a nation lives by its symbols, it also dies with them.

"To turn aside when the American flag is defaced, with all that the flag means—yes, all that it symbolizes—is to ask too much of Americans. There are symbols and there are Symbols. There are some so rooted in history and custom, and in the heroic imagina-

tion of a nation, that they transcend the merely symbolic; they become presences. . . .

I think that is a pretty profound editorial.

The amendment before us does not itself protect the flag. It empowers Congress and the States to do so. The amendment reads: "The Congress and the States shall have power to prohibit the physical desecration of the flag of the United States."

That is a very simple statement, as constitutional amendments should be stated.

Now I wish we did not have to amend the Constitution to achieve our purpose. It should not be necessary. I believe that the Constitution permits Congress and the States to enact flag protection laws. But as our colleague Senator FEINSTEIN and others have well noted, the Supreme Court has given us no choice. Twice it has struck down statutes protecting the flag—in *Texas versus Johnson* in 1989, a Texas statute; and in *U.S. versus Eichman* in 1990, a Federal statute that we enacted in response to *Johnson*. This amendment would overturn both decisions.

I remember when we debated that on the floor. I said the court would strike that statute down which, of course, it has.

Now let me be clear what this debate is not about. This is not about who loves the flag more. President Clinton and other present opponents of legal protection of the flag, and opponents of this particular amendment, love the flag no less than supporters of the amendment. Patriots can disagree about this amendment.

This is also not about who believes in the first amendment more. Supporters of this amendment, no less than its opponents, believe in protecting the right of free speech. In my view, there is no clash between protecting the American flag and preserving freedom of speech. And, during all the years that flag protection statutes were on the books, freedom of speech in this country actually expanded under the law.

The amendment does not prescribe what shall be orthodox in politics, nationalism, or any matter of opinion. This amendment does not compel anyone, by word or act, to salute, honor, or respect the flag.

So what, then, is this debate really about? This debate concerns our judgment about what values are truly at stake. It is about our sense of national community. It is about whether it is important enough to ensure that the one unique symbol of all of us, under which many have fought and died, may be protected if the people feel strongly enough to do so.

This debate, then, is about letting the American people, so many of whom do respect, revere, and honor our flag, decide whether this indisputably unique symbol of our country is worthy of legal protection from those who would physically desecrate it. Right now, the Supreme Court mistakenly

has mistakenly stripped the people of their 200-year-old democratic right to make this decision.

The flag is the quickest and most intense way for those with an urgent cause to seek identification with their fellow citizens and American ideals and principles. Indeed, it is not uncommon for causes seeking popular support to rely on the flag as a silent but extremely powerful part of their appeal to fellow Americans. In a wonderful book, *"Star Spangled Banner, Our Nation and its Flag,"* by Margaret Sedeen, published by the National Geographic Society, one can see vivid reminders of this. On page 181, women suffragettes are shown in an open air car with placards proclaiming their cause and waving several American flags. Two pages later is another picture, and I will read its caption:

Holding the flag high as a banner for his cause, a marcher makes his way along the road from Selma to Montgomery, AL, in the spring of 1965, protesting continued efforts to deny most southern blacks their rights to register and vote. Within months of the march, Congress approved the Voting Rights Act of 1965.

Now, parenthetically, I should note that in between these two pages is a picture which will make the blood boil of every Member of this body. I will read that inscription:

On April 5, 1976, a white high school student, 1 of 200 antibusing demonstrators in Boston that day, used the flag as a lance to lunge at a black attorney who walked onto the scene.

This is a picture of the man. Mr. President, this is as vile a physical abuse of the flag as any flag burning you have ever seen. It is also a reminder to us that any amendment we adopt must be worded so as to permit legislative bodies to address the variety of disrespectful, physical mistreatments of the flag that can occur.

It is not possible to express fully all of the reasons the flag deserves such protection. As then Justice Rehnquist wrote in 1974: "The significance of the flag, and the deep emotional feelings it arouses in a large part of our citizenry, cannot be fully expressed in the two dimensions of a lawyer's brief or of a judicial opinion." [*Smith v. Goguen*, 415 U.S. 566 at 602 (1974) (Rehnquist, J., dissenting).] The notion that our law denies the American people the ability to protect their flag from physical desecration defies common sense.

This amendment empowers Congress and the States to protect only the American flag—and only from acts of physical desecration.

THIS CAUSE ORIGINATES WITH THE PEOPLE

The current movement for this amendment originates with the American people. It is right and proper that their elected representatives respond affirmatively.

I respect those who have a different view. But I also think that supporters of this amendment, who are Democrats and Republicans alike, deserve the same presumption of good faith in our motives.

So let me note at the outset that this has always been a bipartisan effort. On June 28, as mentioned earlier, nearly half of the Democrats in the House, including their leader, RICHARD GEPHARDT, voted for the amendment.

In the Senate, the lead cosponsor is Senator HEFLIN. The Democratic whip, Senator FORD, is a cosponsor, as are Senators FEINSTEIN, BAUCUS, ROCKEFELLER, JOHNSTON, BREAU, HOLLINGS, EXON, REID, and NUNN.

I am troubled, therefore, that some opponents of the amendment would accuse its congressional sponsors of trying to score political points by pursuing ratification of this amendment.

So why are we here today? A grassroots coalition, the Citizens Flag Alliance, led by the American Legion, has been working for some time in support of a constitutional amendment regarding flag desecration. The Citizens Flag Alliance consists of over 100 organizations, ranging from the Knights of Columbus; Grand Lodge, Fraternal Order of Police; and the National Grange to the Congressional Medal of Honor Society of the USA and the African-American Women's Clergy Association. These organizations represent millions of Americans. Over 200,000 individuals also belong to the Citizens Flag Alliance. The American Legion, and then the Citizens Flag Alliance as well, worked to obtain support for the amendment. Citizens organizations exist in every State. The Veterans of Foreign Wars also supports this amendment.

The Citizens Flag Alliance approached Senator HEFLIN and me last year, well before the November elections, and asked us to lead a bipartisan effort in the Senate. They told us they had reasonable hopes that President Clinton would support this amendment. Senator HEFLIN and I did not initiate this current effort. We would not be here now if the Citizens Flag Alliance had not initiated it. A similar bipartisan approach was made in the House of Representatives.

So why are we here today? We are here for the reasons expressed by Rose Lee, a Gold Star Wife and past president of the Gold Star Wives of America. Her husband died on active duty 23 years ago and she brought the flag that draped her husband's coffin to the June 6 hearing on this amendment. She testified, "It's not fair and it's not right that flags like this flag, handed to me by an Honor Guard 23 years ago, can be legally burned by someone in this country \* \* \* [It is] a dishonor to our husbands and an insult to their widows to allow this flag to be legally burned." Did she and the other Gold Star Wives who accompanied her to the hearing show up to play politics?

We are here for the reasons expressed by Joseph Pinon, assistant city manager of Miami Beach, FL, who fled Castro's Cuba, fought as a marine in Vietnam, and whose Marine unit refused to leave the flag behind at hill 695 when that unit had to withdraw under enemy

pressure. Did he testify in order to play politics?

We are here for reasons which reside in the hearts and minds of the American people, reasons which are not easy to put into words. The flag itself represents no political party or ideology.

Make no mistake: the American people resurrected this amendment. They will keep it alive until it is ratified.

There is more wisdom, judgment, understanding, and common sense among the American people on this matter than on our Nation's law faculties, editorial boards, and in the Clinton administration. Let me cite some of that common sense. In the 1989 Judiciary Committee hearings, R. Jack Powell, executive director of the Paralyzed Veterans of America, said it as well as anyone:

"The members of Paralyzed Veterans of America, all of whom have incurred catastrophic spinal cord injury or dysfunction, have shared the ultimate experience of citizenship under the flag: serving in defense of our Nation. The flag, for us, embodies that service and that sacrifice as a symbol of all the freedoms we cherish, including the First Amendment right of free speech and expression. Curiously, the Supreme Court in rendering its decision [in *Texas v. Johnson*] could not clearly ascertain how to determine whether the flag was a 'symbol' that was 'sufficiently special to warrant . . . unique status.' In our opinion and from our experience, there is no question as to the unique status and singular position the flag holds as the symbol of freedom, our Constitution and our Nation. As such it must be defended and provided special protection under the law."

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I am concerned that there is some impression, at least in the media and by some others that are around, that the idea of supporting the flag is some idea just of right-wing conservatives, and I have heard some Senators say, those veteran organizations, and that kind of thing.

In fact, the flag is the symbol of a constitution that allows Mr. Johnson to express his opinion. So, to destroy that symbol is again a step to destroy the idea that there is one nation on earth that allows their people to express their opinions, whether they happen to be socialist opinions or neo-Nazi opinions, or democratic opinions or republican opinions.

Now listen carefully to these further words from Mr. Powell:

Certainly, the idea of society is the banding together of individuals for the mutual protection of each individual. That includes, also, an idea that we have somehow lost in this country, and that is the reciprocal, willing giving up of unlimited individual freedom so that society can be cohesive and can work. It would seem that those who want most to talk about freedom ought to recognize the right of a society to say that there is a symbol, one symbol, which in standing for this great freedom for everyone of different opinions, different persuasions, different religions, and different backgrounds, society puts beyond the pale to trample with. [Testimony of R. Jack Powell, Sept. 13, 1989, at 432-437].

There is more wisdom and judgment in these few paragraphs than my colleagues will find in page after page of the Clinton administration's testimony, the arcane testimony of law professors opposed to the amendment, or

the thoughtless and intemperate outbursts of the American Bar Association.

The July 24, 1995, Washington Post published a letter from Max G. Bernhardt, of Silver Spring, MD. He said:

I'm certainly a liberal, although I've always made up my own mind on things and have never felt an obligation to accept anyone else's definition of what was and what was not the proper liberal position on any given issue. I can't for the life of me figure out why the proposed amendment to the Constitution outlawing desecration of the United States flag should evoke the furious opposition that it has.

There seem to be three principal arguments against it: First, it isn't needed because this isn't what people are doing anymore; second, it will have a chilling effect on the exercise of free expression; third, it will start us down the proverbial slippery slope to various other infringements on, and restrictions of, free speech and expression.

If we don't need it, then it won't matter one way or another if it's enacted, and no one has to worry about it being there as a part of the Constitution. I see no reason why desecration of our flag needs to be tolerated in the name of free speech. I cannot see how outlawing such acts adversely affects free expression—other than flag desecration itself—in any manner, shape, or form. Given the nature of the process required to enact an amendment to the Constitution, I see no reason to fear that enactment of this amendment will lead to the enactment of other constitutional amendments that might be adverse to free expression or other rights.

Far from destruction of the Bill of Rights, as depicted by Herblock in the July 2 Post, the only thing this amendment does is to outlaw desecration of the flag, which only by the most expansive interpretation of the First Amendment could have been established as legally permissible in the first place. It in no way affects anything else and should be enacted forthwith.

This individual displayed more common sense and understanding on this matter than one will find in editorials, cartoons, and pundits' offerings in the Washington Post, and other illustrious journalistic pieces and publications.

#### RESPONSE TO CRITICISMS

Let me give a response to some of the criticisms. The committee report fully addresses the legal and other arguments against the amendment. And I urge my colleagues to review it. I am prepared to address some of them later in the debate if I had to. Let me just make a few comments now.

In my view, this amendment, granting Congress and the States power to prohibit physical desecration of the flag, does not amend the first amendment. I believe the flag protection amendment overturns two Supreme Court decisions which have misconstrued the first amendment.

The first amendment's guarantee of freedom of speech has never been deemed absolute. Libel is not protected under the first amendment. Obscenity is not protected under the first amendment. Fighting words which provoke violence or breaches of the peace are not protected under the first amendment. A person cannot blare out his or her political views at 2 o'clock in the morning in a residential neighborhood and claim first amendment protection.

The view that the first amendment does not disable Congress and the States from prohibiting physical desecration of the flag has been shared across a wide spectrum.

Chief Justice Earl Warren wrote, "I believe that the states and the Federal government do have the power to protect the flag from acts of desecration and disgrace . . ." [*Street v. New York*, 394 U.S. 576, 605 (dissenting)]. Justice Hugo Black—generally regarded as a first amendment absolutist—stated, "It passes my belief that anything in the Federal Constitution bars a state from making the deliberate burning of the American flag an offense." [Id. at 610 (dissenting)]. Justice Abe Fortas wrote, "[T]he States and the Federal government have the power to protect the flag from acts of desecration committed in public . . ." [Id. at 615 (dissenting)]. According to Assistant Attorney General Dellinger, President Clinton agrees with Justice Black, but still opposes any amendment.

It is not the first amendment which protects physical desecration of the American flag. The Supreme Court misinterpreted the text of the first amendment, ignored 200 years of history, and superimposed its own evolving theories of the first amendment in 1989 in *Texas v. Johnson*. That just 20 years earlier civil libertarians such as Earl Warren and Abe Fortas, and a first amendment absolutist such as Hugo Black, took it as elementary that flag desecration laws are constitutional is a measure of how far the Supreme Court has moved in this area.

We have had flag desecration statutes for many decades—yet the avenues available for dissent have gotten larger, not smaller, over time. And I would agree with that. Indeed, I would point out that during the time these laws were first enacted in the 19th century, freedom of speech in general has been enlarged: the first amendment has been made applicable to the states via the 14th Amendment's due process clause [*Fiske v. Kansas*, 274 U.S. 380 (1927)]; commercial speech has been given protection [*Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council*, 425 U.S. 748 (1976)]; the public forum doctrine appeared in 1939 [*Hague v. CIO*, 370 U.S. 496 (1939)]; indeed, private shopping centers must make their property available for dissemination of literature [*Pruneyard Shopping Center v. Robins*, 447 U.S. 74 (1980)]; the overbreadth doctrine developed in 1940 [*Thornhill v. Alabama*, 310 U.S. 88 (1940)]; and the void for vagueness doctrine developed in 1972 [*Papachristou v. Jacksonville*, 405 U.S. 156 (1972)].

Yet, to listen to some of the critics of this amendment, one would believe ratification of the flag protection amendment would herald a new Dark Age.

#### NEED FOR THE AMENDMENT

Let me also address the underlying need for the amendment. The Clinton administration testified that, in light

of what it refers to as "only a few isolated instances [of flag burning], the flag is amply protected by its unique stature as an embodiment of national unity and ideals." With all due respect, I find that comment clearly wrong.

First, aside from the number of flag desecrations, our very refusal to take action to protect the American flag clearly devalues it. Our acquiescence in the Supreme Court's decisions reduces the flag's symbolic value. As a practical matter, the effect, however unintended, of our acquiescence equates the flag with a rag, at least as a matter of law, no matter what we feel in our hearts. Anyone in this country can buy a rag and the American flag and burn them both to dramatize a viewpoint. The law currently treats the two acts as the same. How one can say that this legal state of affairs does not devalue the flag is beyond me.

This concern is shared by others. Justice John Paul Stevens said in his *Johnson* dissent:

. . . in my considered judgment, sanctioning the public desecration of the flag will tarnish its value . . . That tarnish is not justified by the trivial burden on free expression occasioned by requiring that an available alternative mode of expression, including uttering words critical of the flag . . . be employed. [491 U.S. at 437].

Pro. Richard Parker of Harvard Law School testified:

"If it is permissible not just to heap verbal contempt on the flag, but to burn it, rip it and smear it with excrement—if such behavior is not only permitted in practice, but protected in law by the Supreme Court—then the flag is already decaying as the symbol of our aspiration to the unity underlying our freedom. The flag we fly in response is no longer the same thing. We are told . . . that someone can desecrate "a" flag but not "the" flag. To that, I simply say: Untrue. This is precisely the way that general symbols like general values are trashed, particular step by particular step. This is the way, imperceptibly, that commitments and ideals are lost."

I think Professor Parker's comments are pretty apropos here.

Indeed, disrespectful physical treatment of the flag need not involve protest. Just a short time ago, I saw a newsclip about a motorist at a gas station using an American flag to wipe the car's dipstick. A veteran called it to the police's attention but, of course, the individual cannot be prosecuted today. He can keep using it as he has, or perhaps he will next use it to wash his car.

Moreover, as a simple matter of law and reality, the flag is not protected from those who would burn, deface, trample, defile, or otherwise physically desecrate it.

Further, whether the 45-plus flags which were publicly reported desecrated between 1990 and 1994, and those which have occurred this year, represent too small a problem does not turn on the sheer number of these desecrations alone. When a flag desecration is reported in local print, radio, and television media, potentially millions, and if reported in the national media,

tens upon tens of millions of people, see or read or learn of these desecrations. How do my colleagues think, Rose Lee, for example, feels when she sees a flag desecration in California reported in the media? The impact is far greater than the number of flag desecrations.

One might also ask, even if espionage occurs rarely, should we have no statutes outlawing it? Arrests for treason are rare—but the crime is set out right there in the Constitution and in our statutes.

#### NO SLIPPERY SLOPE

Mr. President, there is absolutely no slippery slope here. The amendment is limited to authorizing States and the Federal Government to prohibit physical desecration of only the American flag. It does not suppress viewpoints, nor does it regulate any means of expression aside from physical desecration of the flag. It serves as no precedent for any other legislation or constitutional amendment on any other subject or mode of conduct, precisely because the flag is unique.

Some critics of the amendment ask, is our flag so fragile as to require legal protection? I have tried to explain why our national symbol should be legally protected. The better question is this: is our ability to express views so fragile in this country as to be unable to withstand the withdrawal of the flag from physical desecration? Of course not.

Ideas have many avenues of expression, including the use of marches, rallies, picketing, leaflets, placards, bullhorns, and so very much more.

Even one of the opponents of the amendment testifying at the subcommittee hearing, Bruce Fein, the conservative analyst, described the amendment as "a submicroscopic encroachment on free expression . . ." in response to written questions. A submicroscopic approach.

Pro. Cass M. Sunstein of the University of Chicago Law School, a vigorous opponent of the amendment, conceded:

There are reasons to think that as the basic symbol of nationhood the flag is sui generis and legitimately stands alone. Moreover, constitutional protection of the flag would prohibit only one, relatively unusual form of protest. Multiple other forms would remain available.

The administration's witness agreed with these remarks, in response to my written questions. Indeed, I think Professor Sunstein understated his first point—there is no doubt the flag stands alone as a national symbol.

Even if, contrary to my view, one agreed that the *Johnson* and *Eichman* cases were correctly decided under prior precedents, one could still support this amendment—if one believes protection of the flag from physical desecration is an important enough value.

#### CONTENT-NEUTRAL AMENDMENT IS WRONG

A few critics of the pending amendment believe that a constitutional amendment either must make illegal

all physical impairments of the integrity of the flag, such as by burning or mutilating, or that no physical desecration of the flag should be illegal. This is the approach of my friend from Delaware, who will offer such an amendment. This all-or-nothing approach to our fundamental governing document flies in the face of nearly a century of legislative protection of the flag. It is also wholly impractical.

In order to be truly content neutral, such an amendment must have no exceptions, even for the respectful disposal of a worn or soiled flag. Once such an exception is allowed, the veneer of content neutrality is stripped away. The Supreme Court in *Johnson* acknowledged this. A content-neutral amendment would forbid an American combat veteran from taking an American flag flown in battle and having printed on it the name of his unit and location of specific battles, in honor of his unit, the service his fellow soldiers, and the memory of the lost.

Then Assistant Attorney General for Legal Counsel William P. Barr testified before the Senate Judiciary Committee August 1, 1989 and brought a certain American flag with him. He said:

Now let me give you an example of . . . the kind of result that we get under the [content-neutral approach]. This is the actual flag carried in San Juan Hill. It was carried by the lead unit, the 13th Regiment U.S. Infantry, and they proudly emblazon their name right across the flag . . . 1,078 Americans died following this flag up San Juan Hill . . . Under [a content-neutral approach], you can't have regiments put their name on the flag, that's defacement . . . [Testimony, Assistant Attorney General William P. Barr, August 1, 1989, at 68].

We do wish to empower Congress and the States to prohibit the contemptuous or disrespectful physical treatment of the flag. We do not wish to compel Congress and the States to penalize respectful treatment of the flag. Such a so-called content-neutral amendment would place a straitjacket on the American people and deny them the right to protect the flag in the manner they have traditionally protected it.

A constitutional amendment which, in our fundamental law, would treat the placing of the name of a military unit on a flag as the equivalent of placing the words "Down with the fascist Federal Government" or racist remarks on the flag is not what the popular movement for protecting the flag is all about. I respectfully submit that such an approach ignores distinctions well understood by tens of millions of Americans.

Moreover, never in the 204 years of the first amendment has the free speech clause been construed as totally content neutral. For example, speech criticizing official conduct of a public official may be legally penalized if it is known to be false, or made in utter, reckless disregard for the truth, and damages the official's reputation. And this is actual speech, not action or conduct as in the case of desecrating the

flag. Moreover, one can express views at city hall, but if one does so obscenely, one can be arrested. This is not content neutrality. Indeed, I think it is fair to liken flag desecration to obscenity.

Of course, any law enacted pursuant to the pending amendment cannot bar physical desecration of the flag by one political party and permit it by the other, or ban its physical desecration by those in opposition to a government policy, but not by those who support the policy. As with other parts of the Constitution, the amendment will be interpreted in harmony with other provisions of the Constitution. Thus, a State cannot favor a flag desecrator who burns the flag protesting the Government's failure to topple Saddam Hussein over the flag desecrator complaining about American participation in the gulf war in the first place. The first amendment's prohibition on viewpoint discrimination will apply to statutes enacted under the pending amendment.

#### RIDICULOUS, OVERBLOWN ARGUMENTS

One more thing about this debate, Mr. President. I have rarely heard more overblown, ridiculous arguments made against a measure as I have heard regarding this amendment, which simply restores a power to the people they had held for 200 years, and exercised for about 100 years.

There are colleagues of mine on the Judiciary Committee who actually make the absurd suggestion that this amendment blurs the distinction between a free country and a tyranny. Tell that to the Gold Star Wives. Tell that to the Veterans of Foreign Wars. Forget about the fact that during the nearly 100 years that 48 States and Congress were adopting flag desecration statutes, we seemed, somehow, to avoid the descent into tyranny. Ironically, freedom of speech actually expanded in this country as I said. These colleagues actually make the ridiculous, nonsensical, thinly veiled suggestions that legal protection of the American flag is somehow similar to the Chinese Communist dictatorship's execution of dissidents in 1989, and that legal protection of the flag somehow makes us more like a Communist dictatorship. If you do not believe me, Mr. President, read their views in the committee report on page 74 and at footnote 11. Listening to some of these critics, one would think enactment of the pending amendment would curtail the ability of dissenters to be heard. One shudders to think about their lackadaisical attitude toward repression in America during all the years before the Supreme Court, in 1989, saved America from its decline and fall into totalitarianism. After all, notwithstanding the solemn fears they express, I am unaware that those colleagues in the Senate lifted one finger to plug this gaping hole in our freedom by trying to repeal the federal flag protection statute before 1989.

Some of my colleagues actually raise the utterly groundless, inherently un-

believable claim that the pending amendment could authorize a statute prohibiting the flying of the flag over a brothel. You do not believe me, Mr. President? You'll find that little gem on page 77 of the committee report. The things some of our colleagues worry about.

It is a good thing my colleagues expressing these views were not Members of the first Congress. Mr. President, given their concern about flags over brothels, I can only imagine the angst my colleagues would have expressed about the scope of the proposed fourth amendment's protections against unreasonable searches and seizures. I wonder how the phrase due process of law in the fifth amendment would have fared. The point is this, as we explain in the committee report: there is no cause to fear the terms of this amendment.

I urge my colleagues not to apply a higher standard to an amendment protecting the flag than the Framers themselves applied to the Bill of Rights. The words of this amendment are at least as precise, if not more so, than many terms in the Bill of Rights. And keep in mind what my colleague Senator HEFLIN has repeatedly said: This amendment does not prohibit any conduct. There will be implementing legislation. And such legislation will have to be sufficiently specific to withstand due process scrutiny. This amendment just says that the States and the Congress can determine that people cannot desecrate our flag.

Let me just end this by saying that some have wondered why we are putting forth this enormous effort to enact this amendment to protect the flag, a so-called mere symbol. The answer is simple. The nearly mystical connection between the American people and Old Glory really is that strong. That bond between our constituents and the flag is the bond on which our entire effort rests, the bond from which it draws its strength. That bond will keep this movement alive until a flag protection amendment is ratified, no mistake about it. We are fighting for the very values that the vast majority of the American people fear we are losing in this country.

This is an important amendment, as I think all constitutional amendments must and should be. It is an amendment that has been simple on its face. This is an amendment that we believe at least 66 Senators ought to vote for. In fact, I believe all 99 of us currently sitting in this body ought to vote for it.

Having said that, I am somewhat surprised that, needing only 34 votes to defeat this amendment, there would be those on the other side who would filibuster even the bringing up of this amendment on the floor. In fact, I would be surprised if they would filibuster the amendment itself once we defeat them on the motion to proceed. I cannot imagine why anybody, needing only 34 votes to defeat this, would

filibuster where you need 41 votes in order to stop the debate.

I really hope, with all my heart, that my friends on the other side will realize how important this is to the people of this country and will withdraw their filibuster and their efforts to stop the motion to proceed and will not filibuster the amendment itself, and will allow it to go to a constitutional vote, where all they have to get are 34 votes to defeat it. We have to get 66 votes on a constitutional amendment, and that is as it should be. Constitutional amendments should be very difficult to enact.

Our basic document is not a piece of legislation that can be amended at will. It requires a very long, arduous, difficult process. I am hopeful that we will have 66 votes on this amendment, or more; but if we do not, everybody here is going to be put on notice right here and now that this will be brought back until we do.

Mr. President, I thank my colleague for allowing me to make this lengthy but important statement on this issue.

I yield the floor back to him.

Mr. BINGAMAN addressed the Chair. The PRESIDING OFFICER (Mr. KYL). The Senator from New Mexico is recognized.

Mr. BINGAMAN. Mr. President, I understand that the Senator from Alabama, who is a cosponsor of the flag burning amendment, is somewhere nearby and wants to give a statement at some point here. Obviously, I will be glad to defer to him when he wants to make that statement.

Let me just state again what I said at the beginning of this discussion. That is, my objection to proceeding with the amendment is not because I think the Senate should not be able to vote on this issue. I do not support the amendment; I did not support it when it came up before. But I do not object to us going ahead and getting a vote. But I do believe that before we move to amend the Constitution, as is proposed here, we need to tend to the business of carrying out our duties as they are set out in the Constitution. Those duties are pretty clear, and we in the Senate have some very specific duties to carry out. Article II, section 2 of the Constitution says:

He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two-thirds of the Senators present concur . . .

So we have a responsibility to pass on treaties.

. . . and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the Supreme Court, and all other Officers of the United States . . .

So my position is, Mr. President, we ought to go about doing that which the Constitution requires of us before we proceed to amend the Constitution. Or we should at least get agreement as to a date when we are going to do that which the Constitution requires of us;

that is, passing on the President's nomination for these ambassadorial posts.

I have this list here. It is a long list, which I referred to earlier. I think it is one that clearly deserves our attention. As I pointed out in my earlier statement, it represents the people in the countries that these ambassadors will serve in, which represent about a third of the world's population. Why should we in the Senate be able to, day after day, week after week, look the other way and say it is not our responsibility, it is not our problem? It is our responsibility under the Constitution, Mr. President; it is our problem, and we need to get about the business of dealing with it.

Mr. President, I think it is interesting that this is coming up in this context. We are constantly hearing about the respect that we all have for the Constitution. I do not doubt that respect. I think, clearly, anyone who devotes his life to public service is demonstrating a real commitment to this country.

We all swear to an oath of office when we are sworn in here in the Senate, and it is an interesting oath, which I would like to read for people, just to refresh people's memory. The question which the Presiding Officer asks each of us is:

Do you solemnly swear that you will support and defend the Constitution of the United States against all enemies, foreign and domestic, that you will bear true faith and allegiance to the same, that you take this obligation freely without any mental reservation or purpose of evasion . . .

Here is the important part, I think, for purposes of this discussion, Mr. President.

. . . and that you will well and faithfully discharge the duties of the office which you are about to enter, so help you God.

Mr. President, well and faithfully discharging the duties of the office of a U.S. Senator today includes voting on the Ambassadors that the President has nominated to serve in these countries. Well and faithfully discharging the duties of the office of a U.S. Senator today means voting on the START II treaty, which has been here languishing in the Senate now for many months. So that is the point that I am trying to make.

Since the Senator from Alabama is not here wishing to speak, let me go ahead and make a few other points about, first of all, the START II treaty. START II is the second Strategic Arms Reduction Treaty. It was signed by President Bush on January 3, 1993, shortly before he left office. It is a landmark agreement. It will reduce nuclear arsenals in both the United States and the former Soviet Union by close to two-thirds.

This is not a minor item, Mr. President. This is not some detail that we have not gotten around to dealing with. This will reduce the nuclear arsenals in both the United States and the former Soviet Union by close to two-thirds.

START II is a vital successor to the first START Treaty, which was negotiated by President Ronald Reagan. Not only does START II reduce nuclear stockpiles in both Russia and the United States to between 3,000 to 3,500 warheads each, it also eliminates multiple independent reentry vehicles, MIRV's. Policymakers and military officials in both parties agree that START II is vital to U.S. strategic interests.

Mr. President, I know we are in a very major discussion and debate, nationally, about whether the United States should be involved in the NATO activity in Bosnia. I think that is important. I think it is a very important military initiative, diplomatic initiative that this administration is involved in. But I would say that at least as important is following through and ratifying START II and then seeing that it is properly implemented.

When the history of this century is written, Mr. President, our ability to move from the cold war down to a period where there is less threat and to a situation where less nuclear threat is going to be a determining factor in whether or not we have carried out our stewardship properly, I think it is the height of folly for us to lose sight of that important need and constantly be focusing on other matters here that are not time sensitive.

As I said earlier in the discussion, whether you believe that we ought to have a flag burning amendment or whether you disagree about the flag burning amendment, everyone has to concede that this is not an urgent matter.

We have been a nation now for 206 years. We have never had a flag burning amendment to the Constitution. There is not an epidemic of flag burning going on in this country, Mr. President.

I have scoured the newspapers to try to find examples of people out there burning flags. In our history there have been some examples. Clearly, it is not something that is urgent and that needs dealing with this week here in the U.S. Senate.

These other matters in my opinion do have some urgency about them. I will get into that in more detail later in the discussion.

Let me give some quotations about the START II treaty from various leaders in this country, former leaders, present leaders. President George Bush made the statement, "The START II treaty is clearly in the interests of the United States and represents a watershed in our efforts to stabilize the nuclear balance further reduce strategic offensive arms."

Senator JESSE HELMS, chairman of the Senate Foreign Affairs Committee said, on February 3 of this year, "I am persuaded that the 3,000 to 3,500 nuclear weapons allowed Russia and the United States in this START treaty does meet reasonable standards of safety."

The Heritage Foundation has a briefing book they provide to new Members



of Congress. That briefing book for this 104th Congress had in it a statement that said, "The START II treaty should serve U.S. interests and should be approved for ratification." That is the Heritage Foundation, one of the more conservative think tanks here in our Nation's Capital.

Former Chairman of the Joint Chiefs of Staff, Colin Powell, said, "With a U.S. force structure of about 3,500 nuclear weapons we have the capability to deter any actor in the other capital no matter what he has at his disposal." That was in July 1992.

The present Chairman of the Joint Chiefs of Staff who is testifying at this very moment in the Armed Services Committee, as the Presiding Officer well knows, said on May 25 of this year, "I strongly urge prompt Senate advice and consent on the ratification of START II."

Senator RICHARD LUGAR on October of 1992 said, "If new unfriendly regimes come to power, we want those regimes to be legally obligated to observe START limits."

Senator JOHN MCCAIN, who serves with us here and with great distinction on the Armed Services Committee, said on January 2, 1993, "With the conclusion of START II, the threat of nuclear war has been greatly reduced and our relationship with the former Soviet Union reestablished on a more secure basis."

Now, obviously, Senator MCCAIN was assuming we would ratify that treaty. If we fail to do so I think he may want to rethink that statement.

The former Secretary of State, Lawrence Eagleburger, made the following statement on June 17 of 1993:

No relationship is more important to the long-term security of the United States than our strategic relationship with Russia. Despite the new spirit of cooperation between us, Russia remains the only nation on Earth with the capability to devastate the United States. Any arms control agreement, even one as sweeping as START II, represents only one element of that relationship. While arms control is only one element of our relationship it remains an important one. START II, along with the initial START treaty remains overwhelmingly in our interest as we move into the post-cold war era. It offers enhanced stability, fosters transparency and openness and sounds the death knell for the first-strike strategies of a by-gone era.

That is a quotation by former Secretary of State Lawrence Eagleburger.

Finally, let me give a quotation by Lynton Brooks who was the chief negotiator of START II. He said on May 18, 1993—and I point out that was shortly after the first hearing on START II by the Senate Foreign Affairs Committee on this chronology. This is 1993 I am talking about, 2½ years ago, Mr. President. Lynton Brooks, our chief negotiator of START II said:

START II completes the work begun by START I. Building on the 9-year effort that led to the first START treaty, START II drastically reduced strategic defensive arms and restructures the remaining forces in a stabilizing manner appropriate for the post-

cold war world. Along with its predecessor companion, START I represents a codification of the new nonconfrontational relationship between the United States and the Russian federation. In short, START II is another major step toward a 21st century characterized by reduced threat and increased stability.

That is an indication, Mr. President, that there is very strong bipartisan support for the ratification of this treaty. If this was an issue that there was great division on I would probably not be here today urging that we get a time certain to vote on START II.

Leaders on both sides of the aisle have indicated the importance of moving ahead. I can see no justification for us continuing to deal with matters that are less time sensitive such as the proposed constitutional amendment while this matter and the confirmation of these ambassadorial nominations continues to be delayed.

Let me also put a few more things in the RECORD or call then to the attention of my colleagues here, Mr. President. We have a letter here from Jennifer Weeks who is the Arms Control and International Security Program Director of the Union of Concerned Scientists. This is a letter dated November 9 of this year to Senators.

I am sure that the Presiding Officer and each Senator received a similar letter. It says:

I am writing to bring to your attention the article by Russian ambassador Yuri K. Nazarkin on the START II nuclear reduction treaty which is printed on the reverse side of this page. START II currently pending in the Senate Foreign Affairs Committee and the Russian Duma would reduce Russia's deployed strategic nuclear arsenal by 5,000 warheads. It also would eliminate all of Russia's 10 warhead SS-18 missiles, a longstanding U.S. policy goal.

But as Nazarkin points out, if the Senate does not act promptly to ratify START II, there is little hope that Russia will approve the treaty. START II was submitted to the Senate by President Bush. It has strong bipartisan support and the Union of Concerned Scientists strongly support START II and urges the Senate to move swiftly to ratify this crucial treaty.

I will not read the full text of that article, Mr. President, but let me just quote from Ambassador Nazarkin a couple of statements he made:

START II represents a real opportunity to lower the nuclear danger that plagued our sense of security during the cold war. Once the agreement is ratified and enters into force American and Russian strategic nuclear forces are to be reduced by about 70 percent from their cold war peaks. It is certain that further delay on the American side will be used in Russia as an argument to defer ratification.

Now Ambassador Nazarkin headed the Soviet delegation to the conference on disarmament in 1987 through 1989 and the nuclear and space talks including START from 1989 to 1991 and participated in the preparation of START II. He is the senior adviser to the Moscow Center of the Carnegie Endowment for International Peace.

Mr. President, let me just be a little more precise about how we get the reductions or what reductions are called for in START II. The START II treaty will eliminate, according to this information I have here—he cited a figure of 5,000. This information is that it will eliminate around 4,000 strategic nuclear weapons from the arsenal of the former Soviet Union. This includes the centerpiece of the Russian arsenal which is the SS-18. Any intercontinental ballistic missile which carries more than a single warhead will be eliminated under the treaty. The following is a list of delivery systems and their payloads, which are expected to be destroyed under the treaty. Let me go through this list very briefly so people understand what we are discussing here.

The SS-18. I think those who have followed defense issues and our arms competition with Russia over the last several decades know the importance of the SS-18 as part of the threat that we face. This treaty would eliminate 188 launchers and 1,880 warheads of that type.

The SS-19. This treaty would eliminate 170 launchers and 1,020 warheads of that type.

The SS-24, 46 launchers, 460 warheads.

SLBM's, sea-launched ballistic missiles. We would see 600 of those eliminated.

Submarine-launched ballistic missiles. As I understand it, the limit there is 1,750 submarine-launched ballistic missiles. The current Russian arsenal is estimated at about 2,350.

So, it is time, in my view, that we proceed to ratify this treaty. It is time, certainly, that we at least get a chance to vote on it. Some of my colleagues here, who are not on the floor at this moment, have spoken out recently in favor of action on START II. Let me just quote some of them, because I have been quoting a great many others who are not here in the Senate. Let me just quote some of those who are here and indicate my agreement with their statements.

Senator LUGAR, on October 31 of this year, talked about both the Chemical Weapons Convention and START II.

Senator NUNN, on October 31, said, "We must also make maximum use of arms control agreements such as START II and the international treaties and conventions such as the Non-Proliferation Treaty, the Biological Weapons Convention, and the Chemical Weapons Convention."

Mr. President, I should clarify, for anybody who is interested, that I am not here insisting that we get a time certain to vote on the Chemical Weapons Convention. I do believe it would be advisable for us to move quickly to consider that, but there are some questions that have been raised. I understand the chairman of the Foreign Relations Committee wishes to have additional hearings and explore those questions, and I certainly wish to defer to



his judgment on that and do not, at this time, believe it is essential that the Senate try to get to this issue. My concern on START II is that the hearings have concluded. They concluded 7 months ago and we still have not been able to get the issue before the Senate for a vote.

On October 31 of this year, Senator SARBANES made the following statement. He said, referring to the chairman of the Foreign Relations Committee:

The chairman is refusing to take action on a number of other very important matters before the committee, a number of very significant treaties. We have completed hearings on the START II treaty. Agreement has been reached on all the substantive issues related to that treaty. No business meeting has been scheduled to consider it.

Senator FEINSTEIN spoke on the 1st of November this last month and said:

The START II treaty, signed by the Bush administration and not yet ratified by the Congress, is the farthest reaching arms reduction treaty ever signed in the history of this Nation. I know of no significant opposition to the ratification of the START II treaty. Nonetheless, the committee is unable to begin consideration of it. This is wrong.

There is a group that calls themselves the U.S. START II Committee. They have sent a letter, dated November 13, to all Senators. Let me just read that letter into the RECORD in case some Senators have not had a chance to see that. It says:

DEAR SENATOR: The United States Senate is about to adjourn without addressing the single most important issue of international affairs. Worse, a lost opportunity now may mean that the chance for nuclear arms control could be postponed for a decade.

The Senate needs to ratify START II. This is why what we believe to be a distinguished group of citizens, experts in arms control, with both military and foreign policy experience, has joined together to urge Senate action yet this fall.

We all know the history of START II and what it does: the single most dramatic reduction in the nuclear arsenals of both the United States and the Russian Federation. Another significant step back from the history of the relations between the two countries for the last forty-five years.

Equally important, potentially, the treaty serves as an example to other countries seeking to acquire this nuclear capability that there is an alternative to ownership of weapons of mass destruction: disarmament.

Our conversations with Russian leaders have made it plain that if we fail to ratify this year, there is a significant reduction in the likelihood that Russia will act on this treaty next year. Years of work that have spanned both Republican and Democratic Administrations, years of a genuinely bipartisan effort, will be lost.

The last speech that then Prime Minister Winston Churchill gave to the House of Commons foresaw this day. The Prime Minister, confronting a cold and hostile Soviet Union, with both worlds then confronting each other with missiles and bombs, stated that "someday we will be allowed to emerge from the terrible era in which we are required to reside."

We urge the Senate and you, individually, to take up START II before adjournment and ratify the treaty.

Sincerely,

U.S. Committee for START II

DAVE NAGLE,  
Chair, Freedom Support Coalition.  
LINDSAY MATTISON,  
Director, International Center

Mr. President, one of the things we always look at here in the Congress, perhaps too much in my view, is to see what the public reaction is. So we do have some indication of what the public thinks about the whole notion of START II. Mr. President, 68.4 percent of the public that was polled by a national security news service poll of over 1,000 Americans, which was conducted between April 21 and 25 of this year—68 percent thought that the U.S. Senate should ratify START II, 20.1 percent opposed ratification, another 11 percent expressed no opinion.

A similar question that was asked in that same poll showed that 82.3 percent of Americans believe that the United States and Russia should agree to negotiate deep reductions in their nuclear weapons. Only 11 percent opposed doing so, while 6 percent expressed no opinion on that subject.

So this is not just a group of academics who think we should get on with the business of reducing the nuclear arsenal in Russia as well as here. I would say, the START II treaty is very well designed to bring about major reductions on the Russian side. This is not a unilateral disarmament kind of treaty. There is nobody, Republican or Democrat, that I have heard, who argues that this treaty is unbalanced in that regard. This is a treaty that is very much in our interest and very much in the Soviet interest as well.

Mr. President, let me also just refer to some of the editorials that have been written on this subject around the country in recent weeks. There is an editorial in the Friday, November 3, edition of the Boston Globe. It is entitled "Two Treaties Held Hostage." I will just read portions of that for Members.

During their Presidential terms, Ronald Reagan and George Bush had the good sense to negotiate two arms control treaties crucial to U.S. national security—the Strategic Arms Reduction Treaty, START II, and the Chemical Weapons Convention. Bush and Boris Yeltsin signed the treaty on chemical weapons January 3, and Bush submitted it to the Senate as one of his final acts of statesmanship. It is sad to say that ratification of these two badly needed treaties is being sabotaged by Republican Senators Jesse Helms of North Carolina and Bob Dole of Kansas. Their deliberate thwarting of the ratification process is perverse, not merely because they are undoing the wise work of Republican Commanders in Chief but because their motives seem to be petty and personal and political.

That is a statement in the editorial, Mr. President, which I do not necessarily subscribe to. But I do think it gives the flavor for the editorial comment which is out there.

The Washington Post wrote on the 16th of November "Poison Gas and Sen. Helms" is the name of their editorial. It goes on with:

Nearly three years ago, under President Bush, the United States signed a treaty banning chemical weapons, the most powerful comprehensive arms control agreement ever negotiated. It is making no progress toward ratification by this country because the chairman of the Foreign Relations Committee does not like it. Although it was written under American and Republican leadership, there is now a real chance that it could go into operation without American participation.

They are talking about the Chemical Weapons Convention in that case.

There is a New York Times editorial dated the 8th of November entitled "Jesse Helms' Hostages."

It says:

Because of the obstinacy of Senator Helms of North Carolina, the United States does not have an Ambassador in Beijing at this time.

That is an issue I want to address in a few minutes.

\* \* \* the United States does not have an Ambassador in Beijing at this time and relations with China have reached their most delicate and dangerous point in more than 20 years.

I will at this point go ahead and talk some about the importance of getting these ambassadors appointed, Mr. President.

I had the good fortune to travel to China, to Korea, and to Japan earlier this year. I did so on a trip under the auspices of the Armed Services Committee, and I did so at a time when relations between the United States and China were clearly strained. Some of that strain remains in that relationship, but some of it, hopefully, has been reduced. But one thing I was struck with on the trip to Beijing and to China was that this Nation, which is, of course, the most populous Nation in the world, has a very fast growing economy, has a tremendous influence over everything that happens in the Far East and, of course, much that happens in other parts of the world as well. We have no Ambassador. When you go to our Embassy there, the personnel there do their best to accommodate your needs, to keep the doors open, and to keep business going as usual. But the simple fact is we have no spokesman there representing our administration, our Government, our country, our President. That is a detriment to us. It has been a detriment to us for several months now.

I think it is particularly unfortunate myself—this is just a personal view of mine—that we are not going ahead and voting on the ambassadorship for China, because one of our former colleagues was nominated by the President to serve in that capacity. He has had hearings. I believe he has strong bipartisan support for serving in that position, as he should have because he had a very distinguished career here in the Senate. But I can tell you that the issues that we tried to address there could much better be addressed if we had a Presidential appointee representing us in our Embassy in Beijing. This is too important a job and too important a position for us to just leave vacant month after month, week after

week, on the assumption that it does not really matter. It needs to matter to us. It matters very much, I believe, to the executive branch of our Government. I believe it matters a great deal to the Government officials that might be in Beijing.

I urged them to return their Ambassador. Relations in August when I was in Beijing were strained to such an extent that the Chinese Government had withdrawn their American Ambassador, asked their Ambassador to come back to China for a period of time. My urging to the Foreign Minister and to other Chinese officials I spoke to was that they return their Ambassador to Washington and that they signal to our Government as quickly as possible that they would like us to move ahead with the appointment and the confirmation of Jim Sasser as our Government's representative and Ambassador in Beijing.

I would say to their credit—I do not know; I am sure they had urgings from a great many other sources and a great many other individuals—but to their credit, in response to whatever set of circumstances, they went ahead and did exactly what I was urging them to do and what I am sure others were urging them to do; that is, they returned their Ambassador to Washington in order to improve the lines of communication, and they signaled to our administration that they would like the administration to go ahead and appoint Senator Sasser to this important position.

The administration, of course, followed through quickly indicating that Senator Sasser was their nominee. The hearings were held. We now wait. We now wait for some additional action presumably.

According to the chart which I have here, Mr. President, the nomination was sent to the Senate on the 25th of September. The reason I think it is important we raise this issue this morning is that the Congress is approaching the end of its actions in the first session of the 104th Congress. When we do adjourn that first session of the 104th Congress, it will be clearly several weeks before we begin again in the new year to transact business here in the Senate. If we do not get this matter dealt with now, if we do not get a ratification of not only Senator Sasser as the nominee to serve in China, but if we do not get a ratification of each of these, if we do not go ahead and approve the nominations for each of these important countries, it will clearly be next spring before any action will be taken by the Senate.

I think that is in derogation of our duties, Mr. President. I think we have a duty by virtue of our position as Senators to go ahead and pass judgment on the nominees that the President sends forward. If people want to vote no, I have no problem with that. Everyone gets elected to vote his or her conscience. If people want to come on the Senate floor and vote against any of these nominees, I think they should

clearly do that. My only point is we need to have an opportunity to express the will of the Senate and get on with it. If these nominees are acceptable to a majority of Senators, we should approve them. If these nominees are not acceptable to a majority of Senators, we should disapprove them and allow the administration to appoint an alternative to serve in these important positions.

Let me talk a little about this trip to Asia which I did take earlier this year and which I felt was a very instructive and informative trip. We had three major themes that we were trying to learn about. One was regional security issues. There has been great concern raised about nuclear tests, about possible missile technology exports from China, about concerns about China's defense expenditures and weapons modernization and potential threats to other countries in that region.

There were this summer live ammo military tests in the Taiwan Straits. There have been some aggressive behavior in the Spratly Islands in the South China Sea.

Those were all the very real national security issues, regional security issues that we wanted to explore, and we did have a chance to do that with several governmental officials.

We also wanted to explore trade because we have an enormous problem in our trade relations with China. Anyone who has not paid attention to our trade relations with China cannot be adequately informed about our trade situation today in the world.

In 1994, the United States, according to our Government's figures, had a trade deficit with China of \$29 billion. The anticipated trade deficit for this year, 1995, is \$36 billion, and the expectation is that in 1996, the trade deficit could rise to as high as \$50 billion.

So what we see is that China is fast replacing Japan as the No. 1 trade problem that the United States has. We had a \$60 billion trade deficit last year with Japan. Everyone recognizes that that is a serious problem. We have had various initiatives to try to deal with it. Unfortunately, in the case of China, we are just now beginning to awake to the fact that trade is a serious problem. So that was another issue we wanted to look at and did get a chance to look at very seriously.

Technology development, that is another area where the policies of the Chinese Government I think are ones that we need to be aware of and concerned about. Clearly, their Government policy is to target particular technologies and develop those technologies, to trade market access for technology transfer. That is, if a United States company wants access to the Chinese market, they are required to give up technology, their rights to technology to get that access.

Obviously, electro property rights are another major part of the technology development issue.

But let me just talk a little more about the trade problem, Mr. Presi-

dent, because I think that perhaps highlights it as much as anything.

I have a good friend who is a co-owner of a company in my home State which produces wallets, leather wallets, and they employ about 250 people in the southern and west mesa side of Albuquerque to make these wallets. These jobs are decent paying jobs. They are primarily jobs held by women and many of the employees, many of the employees of this company are single women who are trying to raise families at the same time that they hold these jobs.

I received a press clipping about 2 or 3 weeks ago indicating that that plant in Albuquerque employing those 250 people was about to close, that they had announced they would close the plant and those 250 people, primarily women, who work in that plant—I have visited the plant several times—would be out of work, those jobs would be gone.

So I called my friend and said, what is the problem? Why are we having to close the plant in Albuquerque and put 250 women out of work? The answer was, we are no longer cost competitive, or part of the answer at least was that we are no longer cost competitive with China. In China, they will do the work much cheaper. There is no limitation on their ability to import into this country the finished products, and from just looking at the bottom line there are great incentives provided by the Chinese Government for us to locate more and more manufacturing there, and those manufacturing jobs there are displacing United States manufacturing jobs.

That is an old story. That is a story that many people have told in one form or another around this Senate ever since I have been here over the last decade or so.

We have to find some solutions to that. Part of the solution to that is to get serious about our trade deficit with China. We need to recognize that this deficit cannot be allowed to grow from \$29 to \$36 to \$50 billion year after year after year, indefinitely. At the rate of growth that is now involved, we are clearly by the end of this decade going to have a bigger trade deficit with China than we have with Japan. It is not a trade deficit that will go away quickly because they are manufacturing, they are displacing manufacturing that goes on today in this country. They are manufacturing and selling into this country. And we are not able to sell into that country to near the extent we should.

That is a problem that needs to be on the front burner of our U.S. Trade Representative's office, on the front burner of the Department of Commerce. It is to some extent, but I believe very strongly that it would be on the front burner to an even greater extent if we had an Ambassador in Beijing who could make the point that this issue is important to us, who could represent our Government in meetings in that

capital, and clearly we do ourselves a disservice by not going ahead and approving that nomination.

Mr. President, I have not visited the other countries on this list. I believe it is fair to say I visited none of the other countries on this list. But there are some very important trading partners and very important allies that are also represented. Let me just point out some of those.

In Malaysia, we have a nominee there whose nomination was sent to the Senate on June 13. I know of no objection that has been raised to that nomination. Here it is nearly December 13, and yet no action. We have not been given a chance to vote. If there is an objection, we should hear it; we should debate it; and we should vote our conscience one way or another. I have not heard of any.

In Cambodia, we have a nominee there which was sent to the Senate for consideration again on June 13. Again, I know of no reason why that nominee is not an acceptable nominee. Everything I have heard would indicate to me that he is an acceptable nominee, but we have not been given a chance to vote.

In the case of Thailand, again on June 21, a nominee was sent to us for the Ambassador to Thailand. I know of no objection that has been raised to that nominee being appointed, but we are not doing our duty and voting on the issue.

In the case of Indonesia, there I do want to just make a very short statement about our nominee. The President's nominee is Stapleton Roy, who I am sure is well known to many Members of this Senate. He was formerly the Ambassador representing our country in Beijing. He did a superb job. He is eminently respected by everybody in diplomatic circles, and I think he is a superb appointment for that position.

Again, his nomination was sent up on June 28. No action. I have heard of no complaints about his appropriateness for the position. In fact, everything I have heard is praiseworthy. I had the good fortune to meet with Stapleton Roy before we took our trip to China. I say to colleagues, he was extremely helpful in pointing out issues that we needed to explore with Chinese officials because of his great knowledge of United States-China policy and his great experience in that regard.

In the case of Pakistan, Pakistan is a very important country in the world today. We have a great many sensitive issues that we are dealing with. We have votes here on the Senate floor. In the case when the defense bill was on the floor, I remember several votes about our policy toward Pakistan. I think everyone recognizes the importance of having an ambassador representing this Government in Pakistan.

Oman. That is another very important ally of this country in the Persian Gulf area. And clearly we need to have an ambassador there. That ambassa-

dorial nomination, again, was sent on June 28.

Lebanon. Our country has a proud and longstanding relationship with Lebanon. Many of the outstanding people in my State, leaders in the business community, leaders in all the important communities in my State have great pride in their Lebanese heritage. We should clearly have an ambassador to Lebanon. I have heard nobody suggest that this was not the proper ambassador.

I could go on down the list. Many of these countries are in Africa. Again, I have not visited them, but I believe that it is important for us to have ambassadors there. South Africa is a clear example. It is important enough that our Vice President is there this week on a trip. I have had the good fortune, as I know many Senators have, of hearing Nelson Mandela speak to joint meetings of the Congress. I believe I have heard him now twice on trips that he has taken to this country. That relationship between the United States and South Africa is a very important relationship during these important years as that nation moves out of and renounces apartheid, moves on to an open society. Clearly we need to have someone there representing U.S. interests.

Mr. President, there are many other issues that I could go into, and I am glad to as the day proceeds, because I think these are important issues that we need to have before us. But at this point I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. ASHCROFT). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. HEFLIN. 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. HEFLIN. Mr. President, today I rise to show my support for this resolution that is designed to prohibit the desecration of the American flag. It is clear that a constitutional amendment is necessary to ensure the validity of any statute banning flag desecration. Forty-nine States have passed memorializing resolutions calling on Congress to take this action and forward this issue for consideration to the States.

Earlier this session, this resolution was voted out of the Judiciary Committee by a bipartisan vote. I expect the same bipartisan support when the whole Senate votes on this resolution.

The movement for this bill has been unfairly attributed to political parties using it for political gain. This is untrue. The impetus for this amendment comes from over 85 grassroots organizations, such as the Citizens Flag Alliance and the American Legion. These groups have worked unceasingly to return to the protection of the flag by means of a constitutional amendment. Their work has resulted in 49 State legislatures passing resolutions petition-

ing Congress to act and decide this issue through the ratification process.

There are those who feel that the first amendment rights ought to prevail, and they consider that this is a form of protest expression. If you look at the Constitution, the first amendment talks about freedom of speech and freedom of the press. Both are forms of expression, and they make a distinction between speech and press.

However, regardless of whether there is some distinction in regard to various forms of expression, I think we have to look to the history of staunch defenders of civil liberties and of the first amendment rights. The two names that come to mind the most are Hugo Black and Earl Warren. These Supreme Court justices were very clear in their writings that the first amendment did not apply to flag desecration. In fact, at a Judiciary Committee hearing on this issue, we had the Assistant Attorney General for Legal Counsel, the Honorable Walter Dellinger, who served as a professor of law at Duke University, testify against the amendment.

He recited, when I raised the issue about Justice Black and Chief Justice Warren, how fervently they felt that prohibiting did not violate the first amendment. Mr. Dellinger said at the time that he was the law clerk for Justice Hugo Black, "you know, law clerks always want to know what goes on in conference." So they, therefore, will get their ears close to a keyhole and listen in to hear sounds of voices from within that sometimes quietly but effectively creep out. He said he would put his ear to the keyhole and listen to what was going on in conference to try and hear what the Justices were saying in their arguments. He recited that there was no question that Hugo Black and Earl Warren were fervent in their position, very strong in their position that first amendment rights were not being violated by the fact that you had statutes which protected the flag.

They wrote in *Street versus New York*, a case that was not directly in point, and expressed themselves very clearly in regard to this particular issue.

Mr. Dellinger informed us at the hearing that flag desecration brought these two eminent jurists together with the opinion that "the States and the Federal Government do have the power to protect the flag from acts of desecration and disgrace."

The American flag is the symbol that unites us and symbolizes everything that we have fought for and died for over the years. Honoring the flag is an integral part of American life. The Pledge of Allegiance that is given is a pledge of allegiance to the flag. I think this is very important to realize, because the flag is the unifier that brings together our diverse, pluralistic views.

We sing the "Star Spangled Banner," and the "Star Spangled Banner" speaks of the fact that it flies over

"the land of the free and the home of the brave." So I think our flag is a great unifier. Respect for the flag begins at an early age, and is constantly reinforced throughout our life. We sing the national anthem at special events, begin school days with the Pledge of Allegiance, and stand at attention at Veterans Day parades when our soldiers proudly march through the streets holding high the flag that they protect.

Few things stir more emotion and patriotism for us as the Iwo Jima Memorial which depicts the marines risking their lives to raise our flag. I served in the Pacific in World War II, so it is hard for me to conceive that we have reached a point in our history where there is such casual disregard for the flag that some citizens would desecrate it.

Opponents have raised several legitimate concerns over the amendment. One of these is whether the amendment would carve out an exception to the first amendment. This amendment would simply overturn two erroneous decisions of the Supreme Court which misconstrued the first amendment. In one of those cases, Justice John Paul Stevens' dissent summed up the symbol of the flag best in the case of *Texas versus Johnson* decision, which was handed down in 1989 and unfortunately, allowed flag desecration. Justice Stevens said:

It is a symbol of equal opportunity, of religious tolerance, of good will for other people who share our aspirations. The symbol carries its message to dissidents both at home and abroad who may have no interest at all in our national unity or survival.

By protecting this one unique national symbol, we have not reduced our freedom of speech. The first amendment has been interpreted broadly by the courts over the years, but it has never been deemed absolute. It does not protect "fighting words" or yelling "fire" in a crowded theater. Prior to 1989, Americans' right to express their views was not curtailed by the laws of 48 States, which prohibited flag desecration. Other matters, such as obscenity, defamation, or other restrictions on freedom of speech, such as the destruction of a draft card, have been held by courts not to come within the purview of the first amendment.

Another concern which has been raised is that there is no need for an amendment. The number of times the desecration of the flag is documented is not the point. The law should not turn simply on the number of cases; it should turn on what effect there is on the flag as a symbol of the unity and freedom of our country each time it is desecrated. This flag is devalued when there exists no legal means to protect the flag from those who would desecrate it in order to express their views.

I believe this amendment will not deter flag desecration in all cases. In some cases, it may even spur a handful of people to burn flags in order to test its purpose. But by allowing the flag

the protection of a constitutional amendment, we reiterate our belief that we ourselves value the flag as a symbol of what America stands for.

Our society is increasingly pluralistic, and being an American means many different things. As we highlight our differences in this changing world, we must remember what unites us. Without unity, there would be no America. The flag is a great unifier that brings together Democrats and Republicans, conservatives and liberals, and people from all walks of life and different persuasions. The flag crosses religious belief, race, cultural heritage, geography, and age. To disregard the power and the importance of our flag is to take us down a path that we would be wise not to follow.

I think we should support this constitutional amendment, and I feel that it is important that we do so. I believe that the vast majority of the American people support the amendment. In fact, a 1995 Gallup Poll was taken, which asked whether the American people thought that we should have the right to determine by vote whether or not the flag should be protected from desecration. Eighty-one percent of the people said "yes." Asked whether they thought such an amendment would jeopardize their right to freedom of speech, 76 percent answered that it would not jeopardize their freedom of speech.

So I feel that there is great support for this effort across the land, and I hope my colleagues will join us in adopting this constitutional amendment, which will give great importance to America and to the flag that unites us, because the flag that we pledge allegiance to is a pledge also to our Republic and to our belief in this great country of ours.

I yield the floor.

Mr. GRAMM addressed the Chair.

The PRESIDING OFFICER. The Senator from Texas is recognized.

#### DISCUSSIONS ON THE BUDGET AND BOSNIA

Mr. GRAMM. Mr. President, I see that we have no other colleagues on the floor ready to speak on this subject, so I would like to speak both about Bosnia and about the budget negotiations that are going on here in the Capitol. I would like to talk about both because I think they are very important.

Mr. President, I am opposed to sending American troops to Bosnia. I have not reached this conclusion quickly; I listened to President Bush and the Bush administration debate this issue at some length and followed that debate pretty closely. They reached the conclusion that sending ground troops to Bosnia was a mistake. My consistent position during that debate was that I also opposed sending ground troops to Bosnia.

I have now had 3 years, counting the Presidential campaign in 1992, to listen

to President Clinton try to make the case that we should send American ground troops into Bosnia. I am perfectly aware—and I say it with no criticism intended—that the President is a very effective salesman. I have concluded that his failure to convince me, and his failure to convince the country, on the issue of sending ground troops to Bosnia is not the result of his lack of ability as a salesman. I think it has resulted from the fact that this position cannot credibly be sold.

I have always tried to use three tests in deciding whether to send Americans into combat or into harm's way. I have applied those tests in the past and I have applied them to sending ground troops to Bosnia:

First, do we have a vital national interest? In the Persian Gulf, we had a military dictator who was working to build chemical and nuclear weapons, and who had invaded a neighboring country. His military aggression threatened two vital allies of the United States—Israel and Saudi Arabia. And so, clearly, in the Persian Gulf we had a vital national interest.

I have been to the region that we are discussing today. I have talked to our military at some length. Like virtually every other person in the country who keeps up with what is happening in our country and around the world, I am aware of the terrible misery that has plagued all of what used to be Yugoslavia, and especially the misery in Bosnia. But I have concluded that we do not have a vital national interest in this region.

The second question that I tried to ask is: Can our intervention be decisive in promoting our vital interests? It is one thing to have a vital national interest; it is another thing to be able to be decisive in promoting that interest.

In the Persian Gulf war, we had the military capacity to promote our vital national interest.

We also had a clearly defined objective: drive Saddam Hussein out of Kuwait. We were able to put together an alliance and a plan that was as detailed about how we were going to end the war and get out of the Middle East, as it was about how we were going to intervene.

I concluded in the Persian Gulf that we did have the capacity through our intervention to promote our vital interests. Certainly history has proven that to have been the case.

I do not believe, however, that we have this capacity in Bosnia. I am very concerned about putting young Americans into the line of fire as a buffer force between two warring factions which have broken every cease-fire and have violated almost every treaty over the past 500 years.

Now we have proposals, both from the administration and from the leadership of the Senate, which say that we should not only serve as a buffer force between those warring factions, but remarkably, in my humble opinion, that at the same time we