The rationale of how they could see the tremendous decline in these high-paying blue collar jobs and the reality that they seem to think it is better to import is beyond me. That is specifically exporting our dollars and our jobs overseas.

I remind our colleagues, the hard rock mining industry provides approximately 120,000 direct and indirect jobs nationwide. This proposal of the administration could eliminate 60,000 to 70,000 jobs. It is shortsighted and, once again, the White House seems to be proving it really does not care about the men and women working in America's resource industries. When we import more minerals, again, we are exporting jobs and exporting dollars. Unfortunately, the administration seems to be putting politics before policy. It may look good in the press but it would simply destroy America's mining industry by putting a billion-dollar burden on their backs and still expect them to be competitive internationally.

THE FOREST SERVICE GRINCH STEALING CHRISTMAS IN ALASKA

Mr. MURKOWSKI. Mr. President, I have one more short statement relative to another policy of the administration. I want to speak briefly on an issue that affects my home State of Alaska. It is coming to a head during this holiday season, but unfortunately, unless there is a legislative solution the problem will not end with Christmas but it will be a gift that will keep on giving throughout the year 1996.

The gift is the policies that promote unemployment. The bearer of this unwelcome present seems to be the U.S. Forest Service. In fact, it is not too strong to say that in the small community of Wrangell, AK, a town I once lived in, the U.S. Forest Service is truly becoming the Grinch that stole Christmas and is stealing the hopes and dreams of many of the people in that community.

The Forest Service, under the Clinton administration, has canceled the contract that provided timber to the town's only year-round industry, a small sawmill. The Service has also been unresponsive in putting up independent sales to permit the sawmill to operate. For that reason, the timber industry in southeastern Alaska, an industry dependent upon wood from the Nation's largest national forest, the 17-million-acre Tongass National Forest, is being destroyed.

People live in the forest. Unlike in many areas where you have State and private timber, in our part of the country, towns such as Ketchikan, Wrangell, Petersburg, Juneau, and so forth, are all in the forest.

We have the situation, since the Clinton administration came to power more than 3 years ago, that more than 1,100 direct logging jobs have been lost, cutting timber employment by 42 percent. Environmental groups earlier this year claimed loudly that the economy in southeastern Alaska did not need a timber industry, that everything was doing fine. They should tell the folks back in Wrangell, that 2,500 population town. The local newspaper a week ago filed for bankruptcy. This would end a continuous publication, for 93 years, of the Wrangell Sentinel, the longest continually published newspaper in our State. The paper is only the latest victim of the revenue loss caused for all businesses when the sawmill closed, costing more than 200 jobs in the community.

Besides the newspaper, there have been jobs lost in the machine shop, the transportation company, the markets, even the fixture of the community bar, the Stikine Bar. The unthinkable has happened. The bar is shut down, putting 12 people out of work.

This is the real result of the shortsighted Forest Service policies. These are not policies that will help the environment. According to the Forest Service draft of a revised Tongass Land Management Plan in 1993, enough timber could have been cut in southeast to keep all these people working with little effect, if any, on the environment. We are only seeking to harvest just 10 percent of the Tongass over a 100-year regrowth cycle, while nearly half the forest old growth is fully protected. Alaskans are seeking just to log 1.7 million acres of that forest—while nearly 7 million acres are fully protected in wilderness or other restricted areas.

We are currently working on a temporary fix that may help Wrangell and other southeast towns that depend on timber to have a hope of a brighter future. Hopefully, Congress will approve the fix and I pray that the President will sign it in the Interior appropriations bill later this week.

It will present a hope during the holidays for the thousands whose future depends on some level of logging in southeastern Alaska in the Tongass.

But the real solution, if residents of southeastern Alaska are to dream of brighter days ahead, is for the Clinton administration to begin to think about the real pain they are causing real people in my State and to permit a rational, environmentally sound logging policy to resume in the Tongass National Forest. Logging is a renewable resource if properly managed. I remind the Forest Service that they said this set of circumstances would never happen; they would be able to maintain a modest supply of timber to allow the industry to sustain itself. That has not happened.

If the Forest Service insists on stealing the Christmas of the people in Wrangell, and other towns in 1995, then in 1996 a bill that I have been working on all year with Senator STEVENS and Representative YOUNG to honor the terms of the 1990 compromise over logging in the Tongass is going to be back before this body. It is a present I intend to deliver to Alaskans before another Christmas passes.

Mr. President, I thank the Chair for the time allotted me. I wish the President a good day.

FLAG DESECRATION CONSTITUTIONAL AMENDMENT

The Senate continued with the consideration of the joint resolution

Mr. BIDEN addressed the Chair.

The PRESIDING OFFICER. If the Senator will withhold we are returning to Senate Joint Resolution 31.

Mr. BIDEN. That is what I wish to speak to, Mr. President.

Mr. President, we have had some discussion this morning, we will have some more discussions this afternoon, and some discussion tomorrow as well, on a constitutional amendment to protect the flag.

Nothing symbolizes what we might call our national spirit like the flag. In times of crisis it inspires us to do more. In times of tranquility it moves us to do better. And, at all times it unifies us in the face of our diversity and of our difference.

There are those who believe that we should not, under any circumstances, and no matter how it is worded, write an amendment into the Constitution to protect the flag because they believe there is no way to do that without damaging an even more cherished right, our right to say whatever we wish to say when we wish to say it without the Government acting as a censor, without the Government choosing among our words, which are appropriate and which are not.

I understand their view and I respect it. I believe, as strongly as I believe anything about this debate, that those against the amendment in question are no less patriotic, no more un-American, no less American, no better, no worse than those who share the view that the amendment in question is an appropriate way to protect the flag, which really means to speak to our national spirit and consensus that exists in America about what we stand for. The so-called culture norms people often speak to.

I respect their motives and I respect their views. But they are not mine. Although it is arguably not necessary to enshrine in the Constitution a way of protecting the flag, I believe that written properly, I believe stated properly, it can in fact legitimately be placed in the Constitution without doing damage to any of the other elements of our Constitution. But I should say up front that the amendment in question, in my view, does not do that. I say this as one who has made it his business here on the floor, along with my friend from Vermont, whom I see on the floor, and others, of sometimes being out of step in the minds of many people in terms of protecting the civil liberties of persons in this country to say what they wish to say, to publish what we do not wish them to publish, and to take actions we find reprehensible. But the Senator from Vermont, myself, and

others believe they are guaranteed under the first amendment.

The first amendment does not say that you can only say things which reflect insight. The first amendment does not say you have to be bright. The first amendment does not say you have to be right. All the first amendment says is that you can say what you wish to say in relation to speech, and the Government cannot censor what you say no matter how, with notable exceptions, how much we do not like what is being said.

But I believe that the flag stands alone, and that is a legitimate way to protect our flag as the singular and unifying symbol of a diverse people in need—I would add in urgent need sometimes—of common ground. America is the most extraordinary nation on Earth.

I realize those who are here in the galleries who may be from other countries, or those who listen to this on CNN, or C–SPAN—if it is carried—will say, ''Isn't that a typical American assertion, a chauvinistic assertion?'' ''We are the most extraordinary nation on Earth.'' We are extraordinary in the sense not that we are better as individuals, not that we are smarter, not that we are wiser, more generous, or less venal than other people, but the genius of America is the American system, a system that takes into account our significant diversity which in other countries—that diversity I am referring to—and in other systems creates great strife.

We take that diversity, which in other countries creates strife, and we have turned it into strength. That is not very easy to do. People often fear diversity. The fact that we are black and white does not automatically generate fellowship and harmony. The fact that we are Christian, Jew, and Moslem does not send us running into one another's embrace to herald our differences. The fact of the matter is that people fear that which is different. It is a human condition.

Our diversity naturally pushes us apart, not together. But what holds us together as a nation, Mr. President, is not a common language, although I think that is necessary; not a common world view, which I do not think is necessary. What holds us together is a common commitment to a system of government, a covenant of goodwill, of tolerance, of equality, and freedom, that is enshrined in the Constitution. And the flag stands as the single most important symbol of that covenant. It is the story of all we have been and the symbol of what we wish to become.

To me, the flag is much more than the sum of the stars and the stripes. It sounds corny to say, and to listen to it sometimes, but it is also idealistic. I believe that it is important even more now than then for all Americans to feel like a family. Like all families we have our problems. We squabble with each other. We misunderstood each other. And we hurt each other in countless ways. But at the end of the day we still need to feel like a family under one roof bound together by shaped and shared values, and a shared sense of respect and tolerance.

It is the flag that symbolizes those shared values and which reminds us of how the shared covenant of respect and tolerance has to be maintained. It is the flag under which we as a diverse and sometimes divisive community can come together as one. And it is the flag that flies high and proud over our Nation's home.

But to say that the flag is worth protecting does not end our conversation. It is only, in my view, where we start, for we must ask how the flag should be protected. As we look to protect the flag, we must not lose sight of the first amendment and its guiding principles for, although the flag may stand alone, it should not and it cannot stand above our most cherished freedom of speech.

Here is what I mean. At heart of the first amendment lies a very basic notion; that is, the Government cannot muzzle a speaker because it dislikes what he or she says, or discriminate between your speech and mine because it agrees with me but disagrees with you. That sort of viewpoint discrimination is most importantly what the first amendment forbids.

As the Supreme Court has said, and I quote:

> Above all else, the first amendment means that government has no tolerance to restrict expression because of its message, its ideas, its subject matter, or its content. The essence of forbidden censorship is content control.

Just last term, the Supreme Court forcefully reiterated its intolerance for viewpoint discrimination in the majority opinion of Rosenberger versus the University of Virginia. Justices Rehnquist, Scalia, Thomas, Kennedy, and O'Connor—Rehnquist, Scalia, and Thomas not accused of being a liberal triumvirate—said:

> In the realm of private speech or expression, government regulation may not favor one speaker over another. When the government targets particular views taken by speakers on a subject, the violation of the first amendment is all the more blatant.

The Government can tell us we may not blast our opinions over a loudspeaker at 3 a.m. in the morning. It can tell us that we cannot distribute obscenity and that we cannot spread libelous statements about one another. But it cannot apply different rules based upon the viewpoint of the broadcast, the obscenity, or the libel. It cannot say you cannot engage in that obscenity because of the viewpoint of the expression, you cannot broadcast something because of the viewpoint you are expressing, or you cannot say that about another person because of the viewpoint that you are expressing. It cannot apply different rules to Democrats and Republican, hippies and yuppies, rich and poor, black and white, or any other division in this country.

It was on this point to protect the flag, while not doing violence to the core first amendment principle of viewpoint neutrality, that I wrote the Flag Protection Act of 1988. That act aimed to safeguard the physical integrity of the flag across the board by making it a Federal crime to mutilate, deface, physically defile, burn, maintain on the floor, or ground, or trample upon the American flag. It passed the Senate, was signed by the President, and it became law.

The statute focused solely on the exclusivity of the conduct of the actor, regardless of any idea the actor might have been trying to convey, regardless of whether he meant to cast contempt on the flag, regardless of whether anyone was offended by his actions.

The statute was written that way because, in my view and in the view of other of constitutional scholars, the Government's interest in preserving the flag is the same regardless of the particular idea that may have motivated any particular person to burn or mutilate the flag. Our interest in the flag is in the flag itself as the symbol of what we know in our hearts to be precious and rare and which flies high and proud over this place we call home, a precious and rare symbol of this Nation.

The flag's unique place in our national life means that we should preserve it against all manner of destruction. It does not matter whether the flag burner means to protest a war, or praise a war, or start a barbecue. It is the flag that is the treasured symbol—not the obnoxious speech nor the positive speech that accompanies the burning of the flag—that must be protected.

We are here today deciding whether to add the 28th amendment to the Constitution, with a thought, I believe, that the flag is worthy of constitutional protection. Although I believe it is worthy of constitutional protection, I nevertheless must oppose the constitutional amendment that is before us now. I oppose it because, in my view, it puts the flag on a collision course with the Bill of Rights.

Again, the purpose of these amendments is to protect the flag as if we are going to protect a tombstone, as if we are going to protect the national eagle, as if we are going to protect it as the most precious of those symbols. It does not matter to me whether someone comes with a sledgehammer and defiles a tombstone of a war hero by saying, ''I do this because I do not think this slate of granite warrants being on top of your sacred body.'' I do not care whether they do it when they smash it because they say, ''I do this because I protest you and the war that you fought in,'' and so on. The end result is the tombstone is destroyed.

That is the story I want to get across about the flag. If it is the flag we wish to protect and not amend the first amendment, not make choices among the types of speech we can engage in, then let us protect the flag—nothing

else. As I said, I do not care whether someone takes that flag and lights the flag and burns it in this Chamber offering it up as a sacred symbol for all who died in the name of this country or grabbed it and burned it because they are protesting the grotesque policy of the United States on such and such. The end result is the national symbol is burned. And when we go beyond protecting merely the symbol, we go to choosing, making choices among the types of speech we will allow Americans to engage in.

I oppose the amendment because it puts the flag on a collision course with the Bill of Rights. Let me expand on that. The proposed amendment gives the Congress and the 50 States the power to prohibit the physical desecration of the flag. And that word ''desecration'' is loaded. It is loaded with ambiguity. It is laden with value. And it will inevitably lead to trouble. To desecrate, like beauty, is in the eye of the beholder.

Here is what the dictionary says desecrate means:

To divert from a sacred to a profane use or purpose; to treat with sacrilege; to put to unworthy use.

So to determine whether an action desecrates, we must first make a value judgment about what the message the actor is trying to convey is. We usually talk about desecration in terms of our religious values—to desecrate a cross or a crucifix, to desecrate a menorah, to desecrate a temple, to desecrate a church, to desecrate a sacristy, to desecrate a host. Although I revere the flag, I do not put the flag on the same level as the sacred symbols of our varying religions. It is a different thing. We have never decided that any of our civil actions should rise to the level of spiritual undertaking. And so when you talk about desecration, you have to understand that you are applying and allowing the application of value judgments that we will attach to the actions of the actor who is desecrating the flag.

Does he mean to profane the flag? What does that mean? Obviously, we have to determine that subjectively, whether it profanes the flag. Does her action treat the flag irreverently or contemptuously? Is the flag being put to an unworthy use?

When we make those kinds of value judgments, we are not making the act of burning the flag a crime. We are making the message behind the act the crime. I will refer to this later. But is it in fact putting the flag to an unworthy use to put it on the side of a hot dog vendor's stand? Maybe that is all right. In one community, they may say that is a good idea.

How about the guy who runs the pornographic theater, and on one side of the marquee he puts some lewd and obscene or profane or pornographic title of a film being shown inside and on the other side he drapes the American flag. Is that putting it to an unworthy use?

How about the woman who buys the revealing thong bikini that is made in a flag. Is that profaning the flag? Is she to be arrested?

How about the woman who buys the $5,000 sequin dress that has a flag on it? Is that profaning the flag? Does it matter what her figure is like to determine what use the flag is being put to?

I rode in a parade recently in my home State, and it was a parade that was honoring the war dead. It was Memorial Day. We went by on Union Street in Wilmington, DE, the home of a black veteran, and he proudly had his flag flying on his front porch on a row house, and on the other side of the flag sewn perfectly so it was the exact same size was the African national symbol, black, red, and green. Is that profaning the flag? He meant it out of respect. He was a war veteran. If I am not mistaken, he had been president of one of our veterans organizations. Is that profaning the flag? Well, in Maine, maybe it would not be profaning the flag. In southern Delaware or Alabama it maybe would be viewed as profaning the flag.

Who makes those choices—the local constable, the local cop, the local censor? That is the crux of my objection to this amendment. It makes not the act but the message the crime. And in doing so it gives the Congress and the States license to discriminate between types of speech they like and types of speech they do not like. But you do not have to take my word for it.

Back in the bad old days, when I was chairman of the Judiciary Committee and subsequently as the ranking member, we held extensive hearings about the exact same amendment 5 and 6 years ago, and we heard from its authors, then members of the Bush administration, noble and honorable men, and they pulled no punches to this question. They admitted right out that the goal was to allow the Government to discriminate between bad flag burners and good flag burners.

More specifically, then Assistant Attorney General William Barr, who became Attorney General of the United States, and a fine one, in my view, in 1989 said that the message, ''Would permit the legislature to focus on the kind of conduct that is really offensive.'' He said that there is ''an infinite number of forms of desecration and that States would have substantial discretion in fashioning flag laws.''

One year later, Acting Assistant Attorney General Michael Luttig testified that the goal of the amendment was to ''punish only actors that were intending to convey contempt.''

Now, when I heard him say that, I wanted to make sure I did not misunderstand, so I asked Mr. Luttig point blank, would it be permissible under this amendment to pass laws discriminating between types of expression—not types of burning; you use the same match, same flag—but the type of expression that went along when you were burning the flag. Was that the purpose? And he said, ''That is correct. You could punish that desecration which you thought was intended to be disrespectful toward the flag and not that which in your judgment was not.''

If I am not mistaken, I remember the example I gave. I said, how about if there are two veterans at the war memorial, the Vietnam War Memorial, and they each go down and they have their own flag, and he kneels down before the wall, one of them, and one happens to be a woman. And she takes out the flag, very respectfully, puts it in an urn, puts a little lighter fluid on it and lights it, and says, ''I'm offering this flag up to purify the soul of my deceased husband whose name is on the wall and fought valiantly for his country in a noble effort.''

And another Vietnam veteran comes down and kneels down, takes out an urn, puts a flag in it, and puts lighter fluid on it and lights it, and says, ''I'm offering this flag up in anger for the wasted lives of my friends and brothers who are on this wall''—in anger—''for what my country did to them.''

If there is a park cop, a D.C. cop standing there, what does he do? And he says, ''Arrest the veteran who said he is burning this flag out of anger, but do not arrest the widow who is burning this flag to honor.''

That will be the first time in the history of the United States of America we passed a law that was constitutional—because, by definition, a constitutional amendment will be constitutional—that said, ''Government, you can choose to punish those who say things you don't like, and let those who say things you do like go for the same exact physical act that they engage in.''

Now, ladies and gentlemen, how does that stop? Where does that stop? Do we really want the Federal Government, let alone the 50 States, to be able to make those judgments that we have never allowed before? Lest anyone say to me that things have somehow changed this year, I point to the committee report that was just published by the Judiciary Committee. The majority views make it clear that viewpoint, neutrality—that issue I talked about earlier—is neither a goal nor an attribute of the proposed legislation.

Here is what the attending committee report to this constitutional amendment says: ''The committee,'' meaning the Judiciary Committee, ''does wish to empower Congress and the States to prohibit contemptuous or disrespectful physical treatment of the flag. The committee does not wish to compel the Congress and the States to penalize respectful treatment of the flag.''

You all think I am kidding about this? Any of the people in this Chamber who listened, you get 1,000 catalogs in the mail, everyone from L.L. Bean to, I do not know, all these catalogs. Look at the catalogs you get for swimsuits. Look at them—not even ones you asked to have sent to you—and you will see the swimsuits, men and women's are flags—a flag.

In some parts of my community, someone wearing a one-piece swimsuit with a flag on it would not be viewed as disrespectful, someone wearing a two-piece swimsuit would maybe not be, someone wearing a bikini may very well be. And you think—I know this is funny, but it is real. It is real. These are real things. You are going to empower some local cop, some local community, to make a judgment. If I show up in boxer shorts, a kind of swimsuit with a flag on it, no problem. If some young, 19-year-old, muscle-bound guy shows up in a bikini with it on, well, they may say that is kind of offensive, that is too revealing.

Is that the business we want to get into? And, by the way, what is a flag? Is the flag a decal? You stick a decal on the side of a hot-dog vendor stand. Well, what is that? What happens if they take these little flags, these little decal things they hand out and put pins on—some are stickers—and burn one of those? Is that desecrating the flag? Is that the business we want to get into as a nation?

Also, this year the proponents of this amendment highlighted the testimony of former Assistant Attorney General Charles Cooper. Here is what former Assistant Attorney General Charles Cooper had to say a few months ago.

[P]ublic sentiment is not neutral.

Parenthetically, I would note that is a profound observation.

[P]ublic sentiment is not ''neutral''; it is not indifferent to the circumstances surrounding conduct relating to the flag. If such conduct is dignified and respectful, I daresay that the American people and their elected representatives do not want to prohibit it; if such conduct is disrespectful and contemptuous of the flag, I believe that they do.

I believe that, too. It makes my blood boil when I read the testimony of that young guy standing on the floor on the steps of the capitol in Texas saying, ''Red, white, and blue, I spit on you,'' and burning a flag. They are the kind of things that—fortunately, most of us were not around—they are the kind of things that literally start fights with people who do not have a lot of self-control in circumstances like that. And I probably would fit in that category.

But what is the difference? We are going to allow—obviously, public sentiment is not neutral on anything. It is not neutral on what we say about—I happen to be a Roman Catholic. It is not neutral on how some of the far-right folks talk about my church. I do not like the way they talk about the Pope. I do not like the kind of comments they make. I find it offensive. I happen to be a member of the largest single denomination in the United States of America because 33 percent of us are Catholic. There are more Catholics in here than any other single denomination in the Congress, if I am not mistaken.

Should we pass a law saying, ''It offends me. It offends me. You can't say those things about my church''? Is that a good idea? That is content. That is content.

So when we talk about the public is not neutral, they are not neutral on anything. Should people have a right to stand up and offend us as some do and make pro-Communist speeches or what about these defiling Nazi types around this country? What about these militia guys, some of whom wear swastikas? I am not labeling all militia people, but some are. The white supremacists—it makes my blood boil when I hear what they say about our country, about Jews, about blacks. But, guess what, folks? They are entitled to say it. It offends all of us, 95 percent of us.

So if I decide, as Mr. Cooper says, public sentiment is not neutral, it is not neutral on that, it is not neutral on the Ku Klux Klan, it is not neutral on white supremacist organizations, it is overwhelmingly opposed, so because it is not neutral, we go with a majority sentiment? Are we prepared to say that? Are we prepared to outlaw their speech? Well, it would make me feel good. I would like to do it. But if we go for them today, who do we go for next?

How about the time when people stood up 40 years ago and made speeches about black equality, made speeches about the rights of blacks to participate in our society? The majority of folks in certain parts of the country, including my State, were not for that. Would they be able to pass a law in the State of Delaware saying you cannot say that? ''You're a rabble-rouser, talking about that 19 percent of my population that is black having equal rights.''

Probably a significant portion of the American public is offended by some of the more militant aspects of the gay and lesbian movement who stand up and make speeches about what their rights are. The fact that it is not neutral, that we are not neutral on that subject as a nation, then we have a right to outlaw it?

I believe that this whole argument misses—the argument made by those who talk about whether we are neutral on it or not, that we should be able to act on what we are not neutral about—misses the greatest constitutional point.

It misses, indeed, the genius of the first amendment. Here in America the majority, by and large, does not get to choose what can and cannot be said by the minority, or by anyone else for that matter. And the Government, more importantly, is constitutionally restrained from deciding what speech is good and what speech is bad. But that is precisely what the proponents of this amendment say it would do and should do. Let me be precise.

That is what the senatorial and congressional proponents of this amendment mean for it to do. I really do not believe the vast majority of the members of the American Legion and the vast majority of veterans groups and the vast majority of Americans know that it will do this. I do not think they thought that one through. But that is precisely what the proponents of the amendment say it would do and should do. They would have the flag emblazoned with the slogan ''Government is great'' treated differently than one that says, ''Government is rotten.''

Get that flag, put on it, ''The U.S. Government is great.'' Does that deface the flag? Put on the same flag, ''The U.S. Government is rotten,'' and what is that? Is that OK? Well, as a U.S. Senator who has occasionally had some scurrilous things said about him because I am part of the Government and because I am who I am, I sure would like to have the power to pass a law saying, ''You can't say bad things about me, I'm part of the Government, only good things about me. If they are bad things, you can't say them.''

I would like all the newspaper editors in America to understand that from now on, we may have an amendment that you cannot say anything bad about a U.S. Senator, notwithstanding the fact we deserve it and I deserve it.

Under this amendment, the State could send to jail the fringe artist displaying the flag on the floor of an art museum while giving its blessing to a veteran who displays the flag on the ground at a war memorial. That, I believe, is not content neutral.

The State could, as I said, arrest the widow who burns the flag to protest the war that took her husband's life while smiling on the widow who burns the flag in memory of her fallen husband. I believe this type of viewpoint discrimination exacts too high a constitutional price to protect the flag. As Justice Jackson so memorably put it in the flag statute case of 1943:

The very purpose of the Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials. . . If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion or other matters of opinion or force citizens to confess by word or act or faith therein.

What it boils down to is this: This amendment, as presently drafted, allows the Government to pick and choose, to make flag burning illegal only in certain situations involving only certain circumstances and only if carried out by certain people and only for the time in question, because 2 years later, 5 years later, 20 years later, 40 years later, it can change.

This discrimination is precisely and most profoundly what the first amendment forbids, and the amendment that works this kind of discrimination does not protect the flag, it censors speech.

Another problem with the amendment is that it fails to define the word ''flag.'' This would add yet another layer of difficulty in interpretation and application and open the door further to inconsistencies among the States. Again, each State would have considerable discretion to craft its own definition, and, again, the possibilities are nearly endless.

As Assistant Attorney General Barr testified, the legislation would be able to criminalize conduct dealing not only with the flag as we know it but with, and I quote, ''descriptions of the flag, such as posters, murals, pictures, buttons or other representations of the flag.''

Indeed, Mr. Barr, in speaking in favor of such a sweeping definition, said that it would, and I quote again, be: ''consistent with the Government's interest in preserving the flag's symbolic value because it recognizes that the desecration of representations of the flag damage that interest as much as the desecration of the flag itself.''

So in Maine, it might be a crime to draw a flag being fed into a shredding machine. In California, it might be a crime to wear a sequined dress in the pattern of a flag or a flag bikini or T-shirt. In Mississippi, the legislature might make it a crime to put a flag decal on the side of a hot dog vending machine.

This sort of disparity among State laws, whether it is over the meaning of ''desecration'' or the definition of ''flag,'' is especially inappropriate here where we are talking about the Nation's symbol. This is not the symbol of Mississippi or Delaware, Alabama, South Carolina, California, Maine, or Montana. It is the national symbol. The reason it is worth preserving is because it unifies this diverse Nation, and the notion that a single State can determine what that should be is, on its face, preposterous.

I understand that there is a possibility that the distinguished Senator from Alabama, Senator HEFLIN, and others, may have an amendment to amend this amendment to take out the right of the States to do this. I am not sure of that, but that is what I understand. That would be a positive step, because it is, on its face ludicrous—ludicrous—to allow each State to determine how much they are going to protect the national symbol.

Some States in the past, and I do not say this disrespectfully, decided it should not be our national symbol and decided to have another flag. I do not want any State telling me what that symbol should be and how it should be treated. It is a national symbol.

It is a symbol of the Nation, not of the States, and an amendment which will foster a crazy quilt of laws all across the map misses the point and an important one: It will be more divisive than unifying.

Why is it any less reprehensible to burn a flag in Louisiana than it is in Montana? Why should we be able to wear a flag T-shirt in a wet T-shirt contest in Arkansas or Delaware and not in Florida or California?

Moreover, constitutional rights and principles should know no geographic boundaries. A Delawarean should not be accorded greater freedom of speech than his neighbor across the way in Pennsylvania. A Californian should not have more due process rights than her cousin up north in the State of Washington.

If we want to protect the flag, we should have one national viewpoint-neutral standard. The Constitution, after all, stands for proud and broad principles, not a patchwork of 50 different and idiosyncratic ideas. I agree that we should honor the flag. We should hold it high in our hearts and in our law, but we should not dishonor the Constitution in the process.

With all due respect for my good friends, ORRIN HATCH and HOWELL HEFLIN, I think this amendment does violence to the core of the first amendment principle of viewpoint neutrality. This is the price that I am unwilling to pay. But more to the point, it is a price we do not have to pay to protect the flag. We can do both: Preserve the first amendment in viewpoint neutrality, and we can protect the flag and preserve the first amendment at the same time. And that is what the amendment I now propose seeks to do.

AMENDMENT NO. 3093

(Purpose: Proposing an amendment to the Constitution authorizing Congress to protect the physical integrity of the flag of the United States)

Mr. BIDEN. Mr. President, I send the amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Delaware [Mr. BIDEN] proposes an amendment numbered 3093.

Mr. BIDEN. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

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

The amendment is as follows:

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

''ARTICLE—

''SECTION 1. The Congress shall have power to enact the following law:

'' 'It shall be unlawful to burn, mutilate, or trample upon any flag of the United States.

'' 'This does not prohibit any conduct consisting of the disposal of the flag when it has become worn or soiled.'.

''SECTION 2. As used in this article, the term 'flag of the United States' means any flag of the United States adopted by Congress by law, or any part thereof, made of any substance, of any size, in a form that is commonly displayed.

''SECTION 3. The Congress shall have the power to prescribe appropriate penalties for the violation of a statute adopted pursuant to section 1.''.

Mr. BIDEN. Mr. President, I shall not seek to have a vote on the amendment at this time, under the order.

My amendment is simple and straightforward. It leaves no room for guesswork about what it will mean. It gives the Congress the power to enact—it is a constitutional amendment—it gives Congress the power to enact a specific viewpoint-neutral statute, a statute making it unlawful to burn, mutilate or trample upon any flag of the United States, period. It does not matter who burns, mutilates, or tramples the flag, and it does not matter why. Under my proposal, it would be unlawful to do the flag harm, no ifs, ands, or buts. It makes a single exception for disposing of the flag when it has become worn or soiled, and it says a flag is what we all know a flag to be, that which is commonly displayed and is defined by the Congress. It rules out things like pictures of flags, napkins with flags on them, and other representations of the flag.

My proposal also gives the Congress the power to write appropriate penalties for violating the statute. Let me say at the outset that I am the first to acknowledge that the restriction on flag burning is a restriction on expressive conduct. There are no two ways about it. When Gregory Johnson burned the flag at the Republican convention in 1984 and chanted the words ''America, red, white, and blue, I spit on you,'' he was trying to say something. It may have been no more than an ''inarticulate grunt or roar,'' as Chief Justice Rehnquist puts it, but it was communicative nonetheless.

So let us be honest, any attempt to limit flag burning does limit symbolic conduct, but that was just as true back in 1989 when 91 Senators voted for my Flag Protection Act, which made it a Federal crime to burn, mutilate, or trample on the flag. Let us be honest about another thing. This first amendment does not give symbolic conduct, or any other kind of speech, for that matter, limitless protection. You cannot burn a draft card to protest the war, and you cannot sleep in Lafayette Park to protest the homelessness of America; you cannot spray paint your views on the Washington Monument; you cannot blast them from a sound truck in a residential neighborhood at 3 a.m. in the morning.

When we prohibit flag burning, we are not interfering with a person's freedom to express his or her ideas in any number of other ways. As four Justices noted in the Eichmann case—that is the one that declared my statute unconstitutional—it may well be true that other means of expression may be less effective in drawing attention to those ideas, but that is not itself a sufficient reason for immunizing flag burning. Presumably, a gigantic fireworks display or a parade of nude models in a public park might draw even more attention to a controversial message, but such methods of expression are nonetheless subject to regulation.

We limit the manner in which folks can express themselves all the time, as long as we limit everyone the same way. We cannot say that I can have a fireworks display and you cannot. We cannot say that one nude person could go through a park and another one cannot. We must treat all people the

same—as long as we do it the same way. But we do limit the ways in which we can express ourselves. And that, Mr. President, is precisely the point.

We cannot let someone make a speech on top of the Capitol in favor of American involvement in Bosnia but tell the person with a contrary view that he cannot go up there and make the same speech. But we can tell them both, and everyone else, that no speeches can be made from the top of the Capitol dome. We just cannot choose among the speakers. We can, thus, restrict the time, place, and manner by which people express themselves. The thing we cannot do is regulate the content of their expression and discriminate between the various viewpoints being expressed.

I think that we can and that we should tell everyone they cannot burn the flag. I agree with Justices Warren, Fortas, and Black that the right to burn the flag does not sit at the heart of the first amendment. But I also agree with Justice Scalia when he said, ''The Government may not regulate speech based on hostility or favoritism toward the underlying message expressed.'' The point of the first amendment is that the majority preferences must be expressed in some fashion other than silencing speech on the basis of content. Yes, I agree with Justices Scalia, Rehnquist, Thomas, Kennedy, and O'Connor in their strong and unequivocal condemnation of viewpoint discrimination just last term in the Rosenberg case. I remind my colleagues, nobody has ever accused Justice Rehnquist of being a radical or a liberal, or Justice Scalia of being a radical or a liberal, or Justice Thomas of being a liberal, and the list goes on. Flag burning may not sit at the heart of the first amendment, but the principle against viewpoint discrimination does sit at the heart of the first amendment.

This is one of those defining constitutional principles that sets America apart and, in so many ways, above other nations. Here, the Government cannot regulate speech based on the viewpoint of the speaker. Here, the Government cannot pick and choose between speech it likes and speech it does not like, and criminalize what it rejects but not what it respects.

That is the bedrock first amendment principle upon which my proposed amendment is based, and it is the principle—the core principle, in my view—that separates my proposal, my constitutional amendment, from the one proposed by Senators HATCH and HEFLIN.

Their amendment allows and, in fact, encourages viewpoint discrimination. Mine, flatly stated, prohibits it. Their amendment would send to jail a guy who burns the flag to protest the war, but not the guy who burns the flag to praise the war. My amendment would throw them both in jail, if that is what the Congress decides to legislate. Their amendment would make it a crime to walk on the flag at a college campus sit-in, but not at the war memorial. My amendment would criminalize both, if that is what the Congress legislated.

In my view, it does not matter why you burn or mutilate or trample on the flag; you should not do it, period. I do not care whether you mean to protest the war or praise the war or start a war. You should not do it. Our interest in the flag is in the flag itself as a unifying symbol. I might add, the person riding down Constitution Avenue watching the veteran burn the flag to memorialize his colleagues has no notion why he is doing it. All he knows is that the national symbol is being burned. Under their amendment, you would have to get close enough to hear what was being said in order to determine whether or not it should be allowed or not allowed. I find it no less demeaning that someone would, in order to pay respect to my deceased family, trample across our grave plots than I would if someone tramples across them to show disrespect. I do not want anybody trampling where my family is buried. I do not want anybody burning the flag, whether they are doing it to praise me or condemn me. They should not do it.

Our interest is in the flag—in the flag itself—not in advancing or silencing any particular idea that the flag destroyer might have in mind. But do not take my view for it, ask a Boy Scout. If a Scout sees a flag dip to the ground, he runs to pick it up, does he not? That is how I trained my boys and my daughter. That is how I was trained as a Scout from the time I was a little kid. It does not matter why it fell; do not let it touch the ground. He does not care why the flag is on the ground, he does not care who let it fall, he does not care what somebody might have been trying to say when they let the flag fall; all he knows is that the flag is something special and it should not be on the ground. And so it should be with all of us.

If the only justification for protecting this flag, Mr. President, and if it, in fact, is the unifying symbol of a diverse nation and it serves a greater Government purpose of holding us together or reminding us how we are the same and not different, if that is not the purpose, then this exercise is profane, the exercise we are undertaking is profane.

For what else is the reason? Interested in a cloth maker, we do not want them burned? Or we have a greater interest in cloth makers, so they can buy and sell more flags? What is the purpose?

It either unifies or does not; it either should be soiled or not soiled. We cannot have any other rationale that I can come up with. The flag is a cherished symbol, not as a vehicle for speech; it is a cherished symbol, period. That is why it should be protected.

That is what my amendment does. The amendment authorizes Congress, and Congress alone—not the States—for, as I said earlier, I do not want any other State defining to me what my national symbol means. This is a national symbol. This is the National Government, and the National Government should have unifying rules about the national symbol. That is what my amendment does. Only the National Government, speaking for the Nation as a whole, can speak to how we should treat that unifying symbol.

This means my amendment would not let some violate the physical integrity of the flag but not others. Under this amendment, no one will be able to do the flag harm. With viewpoint neutrality as its signpost, the amendment preserves the first amendment's cardinal value.

The amendment also ensures that the implementing legislation will be viewpoint neutral, and it makes sure that there will not be a patchwork of conflicting local flag protection laws. What will be a crime in Delaware will also be a crime in Utah. There will not be a place in the Nation you can go and legally burn my flag, our flag. We do not have a flag T-shirt contraband in Minnesota but it is all the rage down in Florida.

Under this amendment, unlike the Hatch-Heflin provision, we know what we are getting. We are getting legislation that protects the flag while at the same time preserves our speech; at the same time, presenting prosecutions and convictions based upon viewpoint discrimination.

To be sure, my amendment impacts first amendment values, but I believe, on balance, that it stands in the proud tradition of many legal scholars from Justices Harlan to Fortas, from Black to Stevens, from Chief Justice Warren to Justice Burger, who believe that flag protection and free expression are not incompatible.

I join them in believing that the singular symbol of our Nation ought to be protected. They recognize, as Justice Holmes once said, ''We live by symbols.'' We live by symbols. I share that view. We must protect both the flag and the first amendment. One is a symbol, the other is the heart of the Nation and who we are as a people.

We must protect the flag because it is a unique and unifying symbol of our Nation, and we must protect the first amendment because it is our single greatest guarantee of freedom in this country.

The amendment that I propose today does nothing more than authorize a single law protecting the flag. It does nothing less than respect the core first amendment values of neutrality and equality. We can protect both the flag and the liberties for which it stands, but, in my humble opinion, the Heflin-Hatch amendment sacrifices one for the other. I will at the appropriate time strongly urge my colleagues to reject their amendment and hopefully vote for mine, instead.

In conclusion, Mr. President, I also respect those who believe my amendment should not become part of the

Constitution. I respect them very much. What I do not think anyone can disagree with is that there is a fundamental distinction between the amendment in terms of its impact on the first amendment.

My objective here, as much as protecting the flag, is in fact to protect and guarantee the first amendment. As I say, there is no one on this floor since I have been here who has been more deeply involved in attempting to protect the flag than I have.

I authored the first statute that passed. I authored this amendment 5 years ago, but I do not take kindly to the notion that we are going to consider an amendment that may very well pass, that will, in fact, allow the Federal Government and State Governments for the first time to choose among the types of speech they wish us to be able to engage in: criminalize one, and not the other. If it is a national symbol, protect it, period.

I yield the floor.

The PRESIDING OFFICER (Mr. FRIST). The Senator from South Carolina.

Mr. THURMOND. Mr. President, the American people overwhelmingly support this proposed constitutional amendment Senate Joint Resolution 31. Poll after poll has shown that nearly 80 percent of all Americans favor legally protecting the American flag against acts of physical desecration. Forty-nine State legislatures have called upon Congress to pass and send to the States for ratification a flag-protection amendment. Three hundred and twelve Members of the other body have already voted for this amendment.

This is not a partisan issue. Ninety three Democratic Representatives, nearly half of the Democratic Members of the House, voted in favor of this amendment. The Democratic leader, DICK GEPHARDT voted ''yes,'' as did 2 Democratic whips, 2 cochairs of the Democratic Policy Committee, the chairman of the Democratic Congressional Campaign Committee, and 36 ranking committee and subcommittee members. It is truly nonpartisan. Here in the Senate, amendment cosponsors include both Republican and Democrats. Old Glory is not a Republican banner or a Democratic banner. The American flag is a symbol of our unity as a Nation—it represents all Americans, regardless of party or philosophy.

Last Thursday, December 7, was one of those days which holds a special place in our history; the anniversary of the attack on Pearl Harbor. It is a day when we are particularly mindful of the unique symbolism of the American flag.

The flag, which flies today and everyday over the remains of the U.S.S. *Arizona*, one of the ships sunk during the Japanese attack, and which has been preserved as a monument to those who perished in that attack, represents our Nation and all that it stands for; the freedoms and ideals that have inspired generations of brave Americans to fight, and in some cases, to give their lives, in its defense. More than 2,300 brave Americans made the ultimate sacrifice for that flag and the Nation it represents on that fateful day 54 years ago.

The flag is the one symbol that unites our very diverse people in a way nothing else can, in war or in peace. Whatever our differences of race, ethnic background, religion, social or economic status, geographic region, politics, or philosophy, the American flag forms a unique, common bond among us.

The American flag is more than a symbol of unity to the people of this Nation. For generations, it has served as a symbol of hope and of freedom to people around the world.

For over 200 years, the American people enjoyed the right to protect one unique national symbol, their flag, from acts of physical desecration. This right was exercised by the Congress and the 48 States which adopted flag protection statutes, until two wrongly decided, 5 to 4 Supreme Court decisions took away that right.

It is up to the Senate to decide whether to acquiesce in Supreme Court decisions which misconstrue the first amendment and leave our national symbol with no greater protection than an ordinary rag.

I believe that protecting our flag against acts of physical desecration does not infringe on constitutionally protected freedom of speech. I believe that Chief Justice Earl Warren, Justice Hugo Black, and Justice Abe Fortas were correct when they wrote that the first amendment, which those distinguished jurists so passionately defended, does not bar Congress from prohibiting physical desecration of the American flag.

Amending our Constitution is not an easy task, nor should it be undertaken lightly. With respect to enacting legal protection for the American flag, however, the decisions of the Supreme Court in the Johnson and Eichman cases make it absolutely clear that a constitutional amendment is the best approach. We have tried the statutory approach. In 1989, after the Johnson decision, Congress promptly enacted a flag protection statute; and the Supreme Court just as promptly struck it down in the Eichman case. I have great respect for my colleague, Senator MCCONNELL, who proposes to substitute for this amendment a flag protection statute. We share the goal of protecting our flag from physical desecration. But I respectfully suggest to my colleague that his approach, however sincere and well intentioned, will not accomplish that goal. In light of the decisions of the Supreme Court, I believe that a constitutional amendment is the best method available to the Senate and the American people for restoring legal protection to our flag.

I ask unanimous consent to have printed in the RECORD letters dated October 23, 1995, from two distinguished scholars, Richard Parker of the Harvard Law School and Stephen Presser of Northwestern University School of Law, on this point.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

HARVARD LAW SCHOOL,
Cambridge, MA, October 23, 1995.

DANIEL S. WHEELER,
Citizens Flag Alliance,
Indianapolis, IN.

DEAR DAN, Thank you for sending the portion of the Congressional Record for October 19 including the ''Flag Protection and Free Speech Act of 1995'' proposed by Senator McConnell on behalf of himself and Senators Bennett and Dorgan.

The proposed statute would be struck down by the Supreme Court. The statute, therefore, does *not* offer a viable alternative to an amendment of the Constitution allowing the representatives of the people—if they so choose—to protect the U.S. flag against ''physical desecration''. The truth is that the only way to enact the statute they propose would be to enact the constitutional amendment first.

The Congress tried once before to find an alternative to constitutional amendment. In 1989, after the Supreme Court struck down a Texas prohibition of flag desecration in the *Johnson* case, Congress was persuaded to try to write a ''neutral'' statute protecting the flag that, it hoped, would satisfy the Court's 5–4 majority. Congress enacted such a statute in October 1989. In June 1990, the Court's majority struck it down in the *Eichman* case. The Court made its view perfectly clear: No statute will pass muster if it singles out the flag of the United States for protection against contemptuous abuse. Such a statute, in the opinion of the five Justices, involves taking sides in favor of what is uniquely symbolized by the flag—our ''aspiration to national unity.'' This singling out of the flag for protection, they believe, violates the Constitution as it now stands.

Of course, Senator McConnell, speaking for Senator Bennett and Senator Dorgan, says they hope to satisfy the Court by confining punishment of ''[a]ny person who destroys or damages a flag'' (a) to those who do so with intent to ''incite or produce imminent violence or a breach of the peace'' and (b) to those who steal the flag they go on to ''destroy or damage'' from the United States or on certain federal lands. Because the First Amendment permits prohibition of ''fighting words'' and of theft generally, the Senators seem to believe that it also will be held to permit singling out flag abuse, within those two contexts, for particular prohibition.

This ploy won't work. By singling out the flag for protection against physical abuse, the proposed statute still ''takes sides'' in favor of what is symbolized by the flag. Senator McConnell, in his remarks on the floor of the Senate, made clear that this is indeed the intent behind the statute. He said he is ''disgusted by those who desecrate our symbol of freedom.'' ''[W]e should have zero tolerance for those who deface the flag,'' he proclaimed. Although he also said he hopes to satisfy the 5–4 majority of the Court that decided *Eichman*, that majority would look at his remarks and at the face of the proposed statute—and it definitely would *not* be satisfied.

In fact, there is a Court decision even more recent than *Eichman* that would doom the

proposed statute, in the absence of a new constitutional amendment authorizing prohibition of physical desecration of the flag. It is *R.A.V. v. St. Paul,* handed down in 1992. In that case, a 5-4 majority of the Justices struck down an ordinance that singled out particular offensive sorts of expression, within the general category of ''fighting words,'' for prohibition. This, the Court held, involved a taking of sides among sorts of messages and, so, was invalid. The fact that ''fighting words'' in general may be prohibited, the Court said, does *not* allow government to write and enforce laws that prohibit particular ideological sub-categories of ''fighting words.'' The statute proposed by the three Senators thus would be held to violate the Constitution as it is now written—not just arguably, but patently.

Senator McConnell spoke last Friday of respect for the Constitution. The question I would ask the three Senators, then, is this: Does proposing to enact a statute that is in patent violation of the Court's interpretation of that document show respect for it?

Isn't the path that is most respectful of the Constitution the one originally specified by the founding fathers in Article V—the path of constitutional amendment?

The deepest question, however, is this: Do the three Senators believe the flag is no different from any other symbol—that it is not unique, not uniquely valuable? Or do they want to single out the flag and *take sides* in favor of what is uniquely symbolized by it? If that is their view, then they have only one real choice now: to support a narrowly-focused constitutional amendment that would permit us to do the thing that they tell us they believe we should do.

It is that simple.

Sincerely,

RICHARD D. PARKER,
Professor of Law.

RAOUL BERGER, PROFESSOR OF LEGAL HISTORY, NORTHWESTERN UNIVERSITY SCHOOL OF LAW,
Chicago, IL, October 23, 1995.

DAN WHEELER,
President, Citizens Flag Alliance, Indianapolis, IN.

DEAR DAN: You have asked me for my thoughts regarding the constitutionality and the wisdom of the statute to deal with flag desecration recently proposed by Senators McConnell, Bennett, and Dorgan, S. 1335, which appears in the Congressional Record for October 19, 1995. I must admit that I was surprised that three distinguished Senators could take the position that legislation on flag desecration could survive constitutional challenge, in light of the Supreme Court's decisive rejection of the statutory route in U.S. v. Eichman, 496 U.S. 310 (1990). You will remember that when a similar statutory approach was proposed by Senator Biden and others after the Johnson case, Judge Bork, Charles Cooper, and I testified before the Senate that no statute could pass Constitutional muster, and though Lawrence Tribe and others told the Senate that a flag protection statute would not be found unconstitutional, they were wrong, and we were proved right. It could not be clearer that the same thing would happen to the proposed statute once it were challenged in court.

The new proposed statute is grounded in Constitutional error in two ways. First, and most obvious, is the implication made in Section (2) of the ''Findings'' clause which suggests that the proposed Flag Protection Amendment is an alteration of the Bill of Rights. It is no such thing, as I and others testified before the House and Senate Subcommittees this summer. The proposed Amendment does nothing to alter the guarantee of the freedom of speech in the First Amendment. Once the Flag Protection Amendment becomes law, no one will find themselves unable to express any ideas; only one particularly odious act will have been barred, an act that is, after all, as Chief Justice Rehnquist suggested, more like ''an inarticulate grunt,'' than the expression of a political view. The Proposed Flag Protection Amendment merely returns Constitutional law to where it was in 1989, where it was before *Johnson,* and where it had been for over a hundred years. The Flag Protection Amendment, in other words, merely corrects the erroneous constitutional interpretation of the majority in the *Johnson* case. It returns us to the view that the Bill of Rights has nothing to say which bars flag protection legislation, a view that was not only held by Justice Rehnquist, but also by such well known defenders of the Bill of Rights as Hugo Black and Earl Warren, as I and others made clear in our Congressional testimony on the Amendment.

The second clear constitutional error made by the proposed statute is the assumption, also expressed in the ''Findings'' section, that the proposed statute can be successfully grounded in the ''fighting words'' doctrine, in the notion that the statute could (without a supporting Constitutional Amendment) be justified because flag desecration presents ''a direct threat to the physical and emotional well-being of individuals,'' or in the notion that flag desecration might be intended to ''incite a violent response.'' These justifications have already been clearly rejected by the Supreme Court. In the *Johnson* case itself, the court stated:

''The State's position, therefore, amounts to a claim that an audience that takes serious offense at particular expression is necessarily likely to disturb the peace and that the expression may be prohibited on this basis. . . Our precedents do not countenance such a presumption. On the contrary, they recognize that a principal ''function of free speech under our system of government is to invite dispute. It may indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger.'' . . . It would be odd indeed to conclude both that ''if it is the speaker's opinion that gives offense, that consequence is a reason for according it constitutional protection,''. . . and that the government may ban the expression of certain disagreeable ideas on the unsupported presumption that their very disagreeableness will provoke violence.''

Texas v. Johnson, 491 U.S., at 408–409 (1989) (citations and footnotes omitted). In other words, the very justification now offered by the three Senators for their legislation was the very position of Texas rejected in *Johnson*. In *Johnson* the court expressly rejected the application of the ''fighting words'' or imminent breach of the peace rationales offered by Texas (and offered by the three senators), and then went on to declare, ''No reasonable onlooker would have regarded Johnson's generalized expression of dissatisfaction with the policies of the Federal Government [his act of flag-burning] as a direct personal insult or an invitation to exchange fisticuffs.'' 491 U.S., at 409. The court would be bound to reach the same conclusion in any test of S. 1335.

Taken together U.S. v. Eichman and Texas v. Johnson, in my opinion, make as clear as can be that the Supreme Court would find S. 1335 to be an impermissible attempt to engage in the kind of content discrimination in expression that the Court has declared constitutionally invalid. I think that the Court's reasoning is faulty when what we are speaking of is preventing flag desecration, since I do not regard that as the kind of speech the Framers of the First Amendment sought to protect. Nevertheless, since the Court has been obdurate on this point, it is now clear that only a Constitutional Amendment can protect the flag in the manner Senators McConnell, Bennett, and Dorgan indicate that they clearly desire. My feeling is that rather than fearing such a Constitutional Amendment they should embrace it. It is a profound demonstration of the feeling of the American people, and is the people's time-honored way of correcting erroneous constitutional interpretations of the Supreme Court. The proposed Flag Protection Amendment is no infringement of the Bill of Rights, it is, instead, a wonderful exercise in the popular sovereignty the Bill of Rights was designed to protect.

Please forgive me for going on at such length. As you can tell, I feel strongly on this issue, and believe the Flag Protection Amendment is sorely needed. Please let me know if I can provide any further assistance.

With very best wishes,

STEPHEN B. PRESSER.

Mr. THURMOND. Mr. President, I believe it is time for the Senate to join with the House in heeding the will of the American people by passing this amendment and sending it to the States for ratification.

Mr. President, I ask unanimous consent that a list of 105 organizations of the Citizens Flag Alliance, supporting Senate Joint Resolution 31, be printed in the RECORD at this point.

There being no objection, the list was ordered to be printed in the RECORD, as follows:

CITIZENS FLAG ALLIANCE, INC.,
MEMBER ORGANIZATIONS

1. AMVETS (American Veterans of WWII, Korea and Vietnam).
2. African-American Women's Clergy Association.
3. Air Force Association.
4. Air Force Sergeants Association.
5. Alliance of Women Veterans.
6. American Diamond Veterans, National Association.
7. American GI Forum of the U.S.
8. American GI Forum of the U.S., Founding Chapter.
9. The American Legion.
10. American Legion Auxiliary.
11. American Merchant Marine Veterans.
12. American War Mothers.
13. Ancient Order of Hibernians.
14. Association of the U.S. Army.
15. Baltic Women's Council.
16. Benevolent & Protective Order of the Elks.
17. Bunker Hill Monument Association, Inc.
18. Catholic Family Life Insurance.
19. The Chosin Few.
20. Congressional Medal of Honor Society of the USA.
21. Croatian American Association.
22. Croatian Catholic Union.
23. Czech Catholic Union.
24. Czechoslovak Christian Democracy in the U.S.A.
25. Drum Corps Associates.
26. Enlisted Association National Guard U.S. (EANGUS).
27. Family Research Council.
28. Fleet Reserve Association.
29. The Forty & Eight (La Societe des Quarante Hommes et Huit Chevaux).
30. Fox Associates, Inc.
31. Gold Star Wives of America, Inc.
32. Grand Aerie, Fraternal Order of Eagles.
33. Grand Lodge Fraternal Order of Police.
34. Grand Lodge of Masons of Oklahoma.

35. Great Council of Texas, Order of Red Men.
36. Hugarian Association.
37. Hungarian Reformed Federation of America.
38. Italian Sons and Daughters of America.
39. Knights of Columbus.
Korean American Association of Greater Washington.
41. Laborers' International Union of N.A.
42. MBNA America.
43. Marine Corps League.
44. Marine Corps Mustang Association, Inc.
45. Marine Corps Reserve Officers Association.
46. Military Order of the Purple Heart of the USA.
47. Moose International.
48. National Alliance of Families.
49. National Association for Uniformed Services.
50. National Center for Public Policy Research.
51. National Cosmetology Association.
52. National Federation of American Hungarians, Inc.
53. National Federation of Hungarian-Americans.
54. National Federation of State High School Associations.
55. National Flag Foundation.
56. National Grange.
57. National Guard Association of the U.S.
58. National League of Families of Am. Prisoners and Missing in SE Asia.
59. National Officers Association (NOA).
60. National Organization of World War Nurses.
61. National Service Star Legion.
62. National Sojourners, Inc.
63. National Vietnam Veterans Coalition.
64. Native Daughters of the Golden West.
65. Native Sons of the Golden West.
66. Navajo Codetalkers Association.
67. Navy League of the U.S.
68. Navy Seabee Veterans of America.
69. Navy Seabee Veterans of America Auxiliary.
70. Non-Commissioned Officers Association.
71. PAC Craft Sailors Association.
72. Patrol Craft Sailors Association.
73. Polish American Congress.
74. Polish Army Veterans Association (S.W.A.P.).
75. Polish Falcons of America.
76. Polish Falcons of America—District II.
77. Polish Home Army.
78. Polish Legion of American Veterans, USA.
79. Polish National Alliance.
80. Polish National Union.
81. Polish Roman Catholic Union of North America.
82. Polish Scouting Organization.
83. Polish Western Association.
84. Polish Women's Alliance.
85. RR Donnelley & Sons, Company.
86. Robinson International.
87. Scottish Rite of Freemasonry—Northern Masonic Jurisdiction.
88. Scottish Rite of Freemasonry—Southern Jurisdiction.
89. Sons of The American Legion.
90. The Orchard Lakes Schools.
91. The Retired Enlisted Association (TREA).
92. The Travelers Protective Association.
93. The Uniformed Services Association (TUSA).
94. Ukrainian Gold Cross.
95. United Armed Forces Association.
96. U.S. Coast Guard Enlisted Association.
97. U.S. Marine Corps Combat Corresponents Association.
98. U.S. Pan Asian American Chamber of Commerce.
99. U.S.A. Letters, Inc.
100. U.S.C.G. Chief Petty Officers Association.
101. Veterans of the Vetnam War, Inc.
102. VietNow.
103. Women's Army Corps Veterans Association.
104. Women's Overseas Service League.
105. Woodmen of the World.
Total Count: 105.
June 26, 1995.

Mr. THURMOND. Mr. President, I hope Senators read this list of the Citizens Flag Alliance member organizations, like the AMVETS, the American Legion—not only the veterans organizations, but law enforcement organizations, religious organizations, and fraternal organizations all over this Nation, 105 of them. That is what I am putting in the RECORD. I hope the Senate will take occasion to read this list and that the Congress will pass this amendment without further debate.

I yield the floor.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. SIMON. Mr. President, if the Senator from Utah desires the floor, I will yield to him.

Mr. HATCH. Will the Senator yield? I ask unanimous consent the distinguished Senator from Illinois be granted 5 minutes, and I ask further unanimous consent I be then recognized to call up an amendment or modification and to speak to that for a few minutes. Then I ask unanimous consent the distinguished Senator from South Carolina be next recognized.

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

Mr. SIMON. Mr. President, I am proud of the flag. I remember one of the times when I was in the Armed Forces before I went overseas. When you were at a football game and they played the ''Star Spangled Banner'' and you could salute that flag in that uniform, you had to be cold hearted if you did not get a thrill out of it.

At my home in rural southern Illinois, you will see a flag flying. We are proud of that flag. But I strongly oppose a constitutional amendment.

What is the big problem? The Congressional Reference Bureau says, in 1994, three flags around the Nation were burned. In 1993, how many flags were burned around the Nation? Zero. If we adopt an amendment to the Constitution, there will be more flags burned in protest, not fewer. There will always be somebody who is so extreme that he or she is going to do it. And, if we ban the burning of the flag, what about the Constitution? You know, prior to the Civil War, in Massachusetts, because the Constitution permitted slavery, you had over 3,000 people gathered in the home State of my colleague from Massachusetts who gathered and burned the Constitution. Are we going to have another amendment to ban burning the Constitution?

What about the Bible? That is certainly sacred to millions of Americans. Are we going to make a constitutional amendment on that?

Take a look at the New York Times, June 22, 1989. ''Supreme Court, 5 to 4.'' I happened to disagree with that decision. Incidentally, Justice Hugo Black earlier disagreed with that idea. But by a 5 to 4 majority, including Justice Scalia in the majority, the Supreme Court said you can, as part of freedom of expression, burn the flag.

Right next to it on the front page of the New York Times it says, ''Chinese Execute Three in Public Display for Protest Role.'' That is what America is all about, that we can protest in freedom. I do not happen to like protests with burning the flag. But we can stand up and do that.

Mr. President, prior to your coming here, one of the most conservative men I ever served with in the U.S. Congress was Senator Gordon Humphrey of New Hampshire. He was more conservative than Senator THURMOND who just spoke and usually was listed as more conservative than Senator HELMS. He got up in opposition to this amendment on the floor. Listen to what Gordon Humphrey had to say.

I understand the revulsion and the disgust and the popular cry for remedy that arose out of the Johnson decision. I understand that very well. But it seems to me there are times when this body at least ought to be able to rise above popular passion and Gallup polls and political leverage for the next elections and do what is right for posterity. Lord knows, we do not do it with respect to the budget process or any fiscal matters. Let us at least do it with respect to our precious natural rights and the preservation of the Constitution.

Gordon Humphrey, one of the most conservative Members that Senator HATCH or Senator KENNEDY or Senator HEFLIN or Senator HOLLINGS or I served with.

You do not get patriotism by passing laws. We get patriotism by having the kind of government our Americans can be proud of. And, for all its flaws, I am proud of this Government and I am proud of the flag that represents that Government. But, to start, because three people last year burned a flag, and say we are going to rush in to having a constitutional amendment, that is ridiculous. That is not honoring the Constitution as we should.

Mr. President, I yield the floor. I thank my colleague from Utah for his courtesy.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. I thank my colleague from Illinois. I do not agree with him, but I thank him. He is ever so gracious.

AMENDMENT NO. 3094

(Purpose: To strike the authorization with respect to the States)

Mr. HATCH. Mr. President I send an amendment to the desk in the nature of a substitute for and on behalf of myself, Senator HEFLIN, and Senator FEINSTEIN.

I ask for its immediate consideration.

The PRESIDING OFFICER. Without objection, the pending amendment is laid aside.

The clerk will report.

The legislative clerk read as follows:

The Senator from Utah [Mr. HATCH], for himself, Mr. HEFLIN, and Mrs. FEINSTEIN, proposes an amendment numbered 3094.

Mr. HATCH. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

Strike all after the resolving clause and insert the following:

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

''ARTICLE —

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

Mr. HATCH. Mr. President, all this amendment does is delete the States from the original amendment. It will become the underlying amendment that others will try to amend.

So I ask unanimous consent that the amendment be agreed to.

I withhold that.

Mr. BYRD. Mr. President, reserving the right to object.

TRIBUTE TO SENATOR HEFLIN

Mr. HATCH. Let me just say this, Mr. President. I would like to spend a minute or two talking about my friend, Senator HEFLIN. Let me just ask my colleagues for their indulgence for a few moments.

I would like to express my appreciation to my colleague from Alabama, Senator HOWELL HEFLIN. This is the Hatch-Heflin amendment and Senator HEFLIN and his staff have worked very hard in its favor.

Many of us know HOWELL HEFLIN as a fine lawyer, judge, and Senator. I am not sure my colleagues are aware of another side of the man. I know that others in the Senate served in the military. I know Senator THURMOND, for example, took part in the Normandy invasion and fought in both the European and Pacific theaters. He parachuted behind the lines in those days, and he is a hero to all of us.

HOWELL HEFLIN won the Silver Star as a Marine officer in World War II and later, in the same conflict, was wounded in the hand and leg.

The Birmingham News of October 10, 1944, has quite a story on our colleague, noting that ''he is home again in Alabama to modestly and reluctantly tell the stories of a Marine first lieutenant's not-to-be-envied life in the Pacific.'' Nearly 50 years later, in a 1994 D-day story in the Washington Times, the reporter remarked, ''When discussing these battles, the senator never uses the personal pronoun. It's always 'we,' referring to the Marines who fought beside him. He is clearly made uncomfortable when asked to comment on his personal valor.''

You can blame our two staffs, Senator HEFLIN, and I believe our colleagues and the listening audience should know this about our colleague: This is signed by James Forrestal, Secretary of the Navy, from the citation in presenting the Silver Star to him:

For conspicuous gallantry and intrepidity as Commanding Officer of an Assault Platoon attached to a company of the First Battalion, Ninth Marines, Third Marine Division, during the Battle of Piva Forks, Bougainville, Solomon Islands, on November 25, 1943. When his men were subjected to intense fire from hostile mortars and automatic weapons while advancing on a strongly organized and defended Japanese position, First Lieutenant Heflin promptly and skillfully deployed his platoon and courageously led it through difficult jungle terrain under a barrage of grenades and gunfire to the edge of the enemy's position. Directing his troops in a vigorous, prolonged battle, he frequently exposed himself to devastating fire at close range in order to control the attack more effectively and, by his unflinching determination and aggressive fighting spirit, contributed materially to the defeat of the enemy and the attainment of his company's objective. First Lieutenant Heflin's expert leadership and fearless conduct under extremely hazardous conditions were in keeping with the highest traditions of the United States Naval Service.

One of his fellow marines from Alabama in the same division, Conrad Fowler, tells a story in the February 12, 1995, Birmingham News. The young HEFLIN was among the first wave to storm Guam, the year following Bougainville. There, he was wounded as I mentioned earlier, and Mr. Fowler helped evacuate him.

Howell was a big guy and we found four of the biggest Marines we could find to carry his stretcher, said Mr. Fowler. The last I saw of them they were going over a hill toward the beach, and Howell was limping along with a stick, and the four Marines were following him, carrying the empty stretcher.

Here is the bottom line. We can say, nearly 52 years later, as he approaches the close of his public service next year, that the words used to describe HOWELL HEFLIN at the outset of his service to his country have marked the man throughout his life: ''unflinching determination''; ''aggressive fighting spirit''; ''expert leadership''; and, ''fearless conduct.''

I want him to know how much I appreciate working with him in the Senate and on the Judiciary Committee. and, in particular, on this very important amendment that I think would set the tone in this country and would establish a debate on values all over this country that is long overdue.

COMPROMISE

Mr. HATCH. Having said that, Mr. President, on behalf of Senator HEFLIN, Senator FEINSTEIN, and myself, what we have offered here is a compromise. It deletes the States from the amendment. Only Congress will be given power to protect the flag, if this amendment is adopted.

If the amendment I have offered is adopted, the revised amendment would read as follows:

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

This means that only Congress will define the flag of the United States. Only Congress will determine what conduct is illegal. There will not be 50 or 51 different laws protecting the flag, just one. So those who are concerned about a multiplicity of flag protection laws, those who are unwilling to let State legislators handle this issue—the amendment just offered will meet those concerns. We have, frankly, gone a long way with this amendment. Frankly, I did not want to make this concession. Restoring the state of the law prior to the Supreme Court's errors in Johnson and Eichman seems perfectly appropriate to this Senator, and quite a few of my colleagues. But I am faced with the task of trying to assemble 66 votes, and I could not count on those votes with Senate Joint Resolution 31 as introduced. We have a better chance if we limit power to protect the flag to Congress. This would, if ratified, still authorize meaningful protection for the flag.

With some reluctance, the American Legion and the Citizens Flag Alliance support the amendment. Sometimes compromise is necessary in order to try to get the votes needed to pass a particular measure. We are trying to gain the necessary support for a flag protection amendment by seeking to delete the States from the amendment. I believe the flag protection amendment supporters in the other body would accept such a compromise.

I urge all of the cosponsors and other supporters of Senate Joint Resolution 31 as introduced, to support this amendment. I ask the opponents of Senate Joint Resolution 31 as introduced to bend a little, as well. Let us send a revised amendment to the other body and to the States and offer the flag protection at the Federal level.

I also hope that President Clinton will reconsider his opposition to a constitutional amendment protecting. We have gone more than halfway on this.

COMPROMISE II

Mr. President, under the substitute I have offered, along with Senators HEFLIN and FEINSTEIN, only Congress can write a statute protecting the American flag. With reluctance, the American Legion and the Citizens Flag Alliance have endorsed this substitute.

For those of my colleagues who have been worried about letting the American people have the power to protect the flag through their State legislatures, they need worry no longer. For those of my colleagues who do not trust State legislators to protect the American flag in a reasonable way, their concerns are over with this amendment.

My question to those colleagues is this: Do you trust yourselves to write a reasonable statute protecting the American flag? If the amendment is ratified, there are ample safeguards. Here in the Senate, members of the Judiciary Committee on both sides of the aisle are going to be vigilant in writing the statute sent to the floor. The cloture rule provides ample protection to

a minority of Senators who disapprove of any such statute pending on the Senate floor. The President can veto a measure he does not like, requiring a two-thirds vote. We already know how difficult it is to try to get such a vote on this issue.

Some of my colleagues are concerned about flag bathing suits. This was, in my view, an exaggerated concern at best, but I have not heard any of the congressional supporters of the amendment express a desire to cover bathing suits. Senators KENNEDY, LEAHY, SIMON, and FEINGOLD raised the question in the committee views: ''Would desecration include flying the flag over a brothel?'' That is on page 77 of their views. Since the amendment talks about physical desecration of the flag, this concern was, frankly, totally misplaced to begin with. But since they will have a say in writing the only statute authorized by the substitute amendment, I hope their concerns have been substantially reduced.

This is not the time and place to consider what a Federal statute will look like and I have not given it much consideration because it is premature to do so. But I do pledge that we will have fair consideration concerning a proposed statute, if Congress and the States ratify the amendment.

Mr. President, we have made a major concession. With the deletion of the States from the amendment, continued opposition to the amendment means just one thing: It is simply not important enough to protect the American flag by amendment, even with one uniform Federal standard throughout the Nation. I hope that some of my colleagues who have opposed this amendment in the past will seriously reconsider their opposition. I think this is a compromise everyone can defend.

The notion that physical desecration of the American flag is a fundamental right is an invention of five Supreme Court Justices who made a mistake. If just one Justice had come out the other way, we would not even be on the floor of the Senate debating this issue today.

And something else would also be true: The liberties of the American people, including freedom of speech, would be intact. Our liberties seemed to survive the 1 Federal statute and 48 State statutes protecting the flag remarkably well. But to listen to the overwrought, overblown, and misplaced concerns of the critics of the amendment, one would think we were living in the Dark Ages prior to 1989, when the Supreme Court effectively struck them all down. What nonsense. Indeed, the irony is, as I pointed out last Wednesday, during the time these flag protection statutes were put on the books, the parameters of freedom of speech actually expanded in this country.

We can protect the flag, preserve our liberties, and give voice to a fundamental value Americans hold dear, protection of the flag that represents them, their ideals, their principles, their history, and their future.

One final note, Mr. President. And that is, what is wrong with letting the American people make the determination here? Should three-quarters of the States ratify this amendment, what is wrong with trusting Congress to write a reasonable statute that would determine once and for all what physical desecration is all about? We can do it, and we can do it right without infringing upon scarves or swimming suits or sweaters or ties or any number of other items which can be worn with great pride and belief in the flag of the United States.

Mr. President, I ask unanimous consent—and I understand this has been agreed to by both sides—I ask unanimous consent that our amendment, the Hatch-Heflin-Feinstein amendment be agreed to and that it be considered as original text for purposes of further amendment so these other amendments can be considered.

Mr. BYRD. Mr. President, reserving the right to object, and I will not object——

Mr. HATCH. I thank the Senator.

Mr. BYRD. Mr. President, under my reservation, it is my understanding that Mr. HOLLINGS has gotten unanimous consent to speak immediately following the conclusion of Mr. HATCH's remarks.

I ask unanimous consent that at the conclusion of the remarks by Mr. HOLLINGS, I may be recognized for not to exceed 45 minutes to speak out of order.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. BYRD. I have no objection to the previous request. I have been asked by Mr. KENNEDY to request that at the conclusion of my remarks he, Mr. KENNEDY, be recognized for not to exceed 10 minutes.

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

Mr. BYRD. I thank all Senators.

Mr. HATCH. I ask that my unanimous-consent request be agreed to.

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

So the amendment (No. 3094) was agreed to.

Mrs. FEINSTEIN addressed the Chair.

Mr. HATCH. I urge the amendment be agreed to.

The PRESIDING OFFICER. The amendment has been agreed to by unanimous consent.

Mr. HATCH. It has been agreed to. All right. Then I move to reconsider.

Mr. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. HATCH. Mr. President, I ask unanimous consent that immediately following the remarks of Senator KENNEDY, who will follow Senator HOLLINGS and Senator BYRD, Senator FEINSTEIN be given an opportunity to speak.

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

Mr. HATCH. I thank my colleagues.

Mr. HOLLINGS addressed the Chair.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. HOLLINGS. Mr. President, I have before us this afternoon two opportunities that could be looked upon by my distinguished colleague from West Virginia as not an opportunity at all.

We have debated the balanced budget amendment to the Constitution already for a month this year. And on Friday, when we were formulating a unanimous-consent agreement, I was asked by our distinguished staff if I had amendments. I said I had two amendments. They cautioned that I would perhaps have to be prepared to debate them on Monday. I said I would be delighted. They said it could be under a time limitation. I said that would be very much agreeable to this particular Senator.

A point of order could be raised perhaps about the relevancy of my amendment, and if it were and I was ruled not to be in order, I would have to appeal that in order to get a vote.

This particular Senator has waited all year long. I have carried around in my pocket the amendment itself. I know the distinguished Speaker of the House has his contract. The distinguished Senator from West Virginia has the Constitution that he carries around in his pocket. There he is. And I have dutifully—in order to bring the truth to the American public—carried around an amendment to the Constitution for a balanced budget that did not repeal the formal statutory law signed by President Bush, section 13301 of the code of laws of the United States.

Under the Budget Act, it would not repeal that law but provide, of course, for a balanced budget. Specifically, Mr. President, if you looked at Section 7, under Senate Joint Resolution 1, that we debated for a month, you can see that all outlays and all revenues be included of the U.S. Government. And that repeals, if you please, that section of the code, which I ask unanimous consent to be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

Subtitle C—Social Security

SEC. 13301. OFF-BUDGET STATUS OF OASDI TRUST FUNDS.

(a) EXCLUSION OF SOCIAL SECURITY FROM ALL BUDGETS.—Notwithstanding any other provision of law, the receipts and disbursements of the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund shall not be counted as new budget authority, outlays, receipts, or deficit or surplus for purposes of—

(1) the budget of the United States Government as submitted by the President,

(2) the congressional budget, or

(3) the Balanced Budget and Emergency Deficit Control Act of 1985.

(b) EXCLUSION OF SOCIAL SECURITY FROM CONGRESSIONAL BUDGET.—Section 301(a) of the Congressional Budget Act of 1974 is

amended by adding at the end the following: ''The concurrent resolution shall not include the outlays and revenue totals of the old age, survivors, and disability insurance program established under title II of the Social Security Act or the related provisions of the Internal Revenue Code of 1986 in the surplus or deficit totals required by this subsection or in any other surplus or deficit totals required by this title.''.

Mr. HOLLINGS. Now, Mr. President, I am reading, of course, from my proposed constitutional amendment—and it is important that this reading be made formal here—that ''outlays of the Federal Old Age and Survivors Insurance Trust Fund and Federal Disability Insurance Trust Fund, as and if modified to preserve the solvency of the funds used to provide Old Age, Survivors and Disability benefits, shall not be counted as receipts or outlays for the purpose of this article.''

There is no question, Mr. President, that the intent of the Congress is in that particular regard. Very recently, on November 13, I believe it was, we voted just exactly that particular instruction. On November 13, by a vote of 97 to 2, we voted to instruct the conferees on the budget that Social Security trust funds not be used.

So the Senators themselves have affirmed that less than a month ago.

I ask unanimous consent that rollcall vote be printed in the RECORD.

There being no objection, the vote was ordered to be printed in the RECORD, as follows:

VOTE OF NOVEMBER 13, 1995

[Rollcall Vote No. 572 Leg.]

YEAS—97

Abraham	Feingold	Mack
Akaka	Feinstein	McCain
Ashcroft	Ford	McConnell
Baucus	Frist	Mikulski
Bennett	Glenn	Moseley-Braun
Biden	Gorton	Moynihan
Bingaman	Graham	Murkowski
Bond	Grams	Murray
Boxer	Grassley	Nickles
Bradley	Gregg	Nunn
Breaux	Harkin	Pell
Brown	Hatch	Pressler
Bryan	Hatfield	Pryor
Bumpers	Heflin	Reid
Burns	Helms	Robb
Byrd	Hollings	Rockefeller
Campbell	Hutchison	Roth
Chafee	Inhofe	Santorum
Coats	Inouye	Sarbanes
Cochran	Jeffords	Shelby
Cohen	Johnston	Simon
Conrad	Kassebaum	Simpson
Coverdell	Kempthorne	Smith
Craig	Kennedy	Snowe
D'Amato	Kerrey	Specter
Daschle	Kerry	Stevens
DeWine	Kohl	Thomas
Dodd	Kyl	Thompson
Dole	Lautenberg	Thurmond
Domenici	Leahy	Warner
Dorgan	Levin	Wellstone
Exon	Lieberman	
Faircloth	Lott	

NOT VOTING—2

Gramm	Lugar

Mr. HOLLINGS. I ask also unanimous consent that the record of the Budget Committee vote on July 10, 1990, on the protection of Social Security be printed in the RECORD.

There being no objection, the vote was ordered to be printed in the RECORD, as follows:

HOLLINGS MOTION TO REPORT THE SOCIAL SECURITY PRESERVATION ACT

The Committee agreed to the Hollings motion to report the Social Security Preservation Act by a vote of 20 yeas to 1 nay:

Yeas:

Mr. Sasser, Mr. Hollings, Mr. Johnston, Mr. Riegle, Mr. Exon, Mr. Lautenberg, Mr. Simon, Mr. Sanford, Mr. Wirth, Mr. Fowler, Mr. Conrad, Mr. Dodd, Mr. Robb, Mr. Domenici, Mr. Boschwitz, Mr. Symms, Mr. Grassley, Mr. Kasten, Mr. Nickles, Mr. Bond.

Nays:

Mr. Gramm.

Mr. HOLLINGS. I am trying to save time for my colleagues.

And I ask also unanimous consent that the record vote that occurred on October 18, 1990, a vote of 98 to 2, approving that Social Security protection be printed in the RECORD.

There being no objection, the vote was ordered to be printed in the RECORD, as follows:

HOLLINGS-HEINZ, ET AL., AMENDMENT WHICH EXCLUDES THE SOCIAL SECURITY TRUST FUNDS FROM THE BUDGET DEFICIT CALCULATION, BEGINNING IN FISCAL YEAR 1991

YEAS (98)

Democrats (55 or 100%):

Adams, Akaka, Baucus, Bentsen, Biden, Bingaman, Boren, Bradley, Breaux, Bryan, Bumpers, Burdick, Byrd, Conrad, Cranston, Daschle, DeConcini, Dixon, Dodd, Exon, Ford, Fowler, Glenn, Gore, Graham, Harkin, Heflin, Hollings, Inouye, Johnston, Kennedy, Kerrey, Kerry, Kohl, Lautenberg, Leahy, Levin, Lieberman, Metzenbaum, Mikulski, Mitchell, Moynihan, Nunn, Pell, Pryor, Reid, Riegle, Robb, Rockefeller, Sanford, Sarbanes, Sasser, Shelby, Simon, Wirth.

Republicans (43 or 96%):

Bond, Boschwitz, Burns, Chafee, Coats, Cochran, Cohen, D'Amato, Danforth, Dole, Domenici, Durenberger, Garn, Gorton, Gramm, Grassley, Hatch, Hatfield, Heinz, Helms, Humphrey, Jeffords, Kassebaum, Kasten, Lott, Lugar, Mack, McCain, McClure, McConnell, Murkowski, Nickles, Packwood, Pressler, Roth, Rudman, Simpson, Specter, Stevens, Symms, Thurmond, Warner, Wilson.

NAYS (2)

Democrats (0 or 0%)

Republicans (2 or 4%)

Armstrong, Wallop.

Mr. HOLLINGS. The reason I do that is so that you shall know how Members vote—not just how they speak but how they cast their formal votes.

There has been raised, at the particular time back in February, the idea, of course, that the trust funds need not be protected further, that we could always do it by statute.

I ask unanimous consent at this particular point that the letter from the American Law Division of the Congressional Research Service dated February 6, 1995, be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

CONGRESSIONAL RESEARCH SERVICE,
THE LIBRARY OF CONGRESS,
Washington, DC, February 6, 1995.

To: Senator Dianne Feinstein
Attention: Mark Kadesh
From: American Law Division
Subject: Whether the Social Security Trust Funds Can Be Excluded From the Calculations Required by the Proposed Balanced Budget Amendment

This is to respond to your request to evaluate whether Congress could by statute or resolution provide that certain outlays or receipts would not be included within the term ''total outlays and receipts'' as used in the proposed Balance Budget Amendment. Specifically, you requested an analysis as to whether the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund could be exempted from the calculation necessary to determine compliance with the constitutional amendment proposed in H.J. Res. 1, which provides that total expenditures will not exceed total outlays.[1]

Section 1 of H.J. Res. 1, as placed on the Senate Calendar, provides that total outlays for any fiscal year will not exceed total receipts for fiscal year, unless authorized by three-fifths of the whole number of each House of Congress. The resolution also states that total receipts shall include all receipts of the United States Government except those derived from borrowing, and that total outlays shall include all outlays of the United States Government except for those used for repayment of debt principal. These requirements can be waived during periods of war or serious threats to national security.

Under the proposed language, it would appear that the receipts received by the United States which go to the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund would be included in the calculations of total receipts, and that payments from those funds would similarly be considered in the calculation of total outlays. This is confirmed by the House Report issued with H.J. Res. 1.[2] Thus, if the proposed amendment was ratified, then Congress would appear to be without the authority to exclude the Social Security Trust Funds from the calculations of total receipts and outlays under section 1 of the amendment.[3]

KENNETH R. THOMAS,
Legislative Attorney,
American Law Division.

FOOTNOTES

[1] H.J. Res. 1, 104th Congress, 1st Sess. (January 27, 1995) provides the following proposed constitutional amendment—

Section 1. Total outlays for any fiscal year shall not exceed total receipts for that fiscal year, unless three-fifths of the whole number of each House of Congress shall provide by law for a specific excess of outlays over receipts by a rollcall vote.

Section 2. The limit on the debt of the United States held by the public shall not be increased, unless three-fifths of the whole number of each House shall provide by law for such an increase by a rollcall vote.

Section 3. Prior to each fiscal year, the President shall transmit to the Congress a proposed budget for the United States Government for that fiscal year in which total outlays do not exceed total receipts.

Section 4. No bill to increase revenue shall become law unless approved by a majority of the whole number of each House by a rollcall vote.

Section 5. The Congress may waive the provisions of this article for any fiscal year in which a declaration of war is in effect. The provisions of this article may be waived for any fiscal year in which the United States is engaged in military conflict which causes an imminent and serious military threat to national security and is so declared by a joint resolution, adopted by a majority of the whole number of each House, which becomes law.

Section 6. The Congress shall enforce and implement this article by appropriate legislation, which may rely on estimates of outlays and receipts.

Section 7. Total receipts shall include all receipts of the United States Government except those derived from borrowing. Total outlays shall include all outlays of the United States Government except for those for repayment of debt principal.

Section 8. This article shall take effect beginning with fiscal year 2002 or with the second fiscal year beginning after its ratification, whichever is later.

[2] House Rept. 104–3, 104th Congress, 1st Session states the following:

''The committee concluded that exempting Social Security from computations of receipts and outlays

Footnotes at end of letter.

would not be helpful to Social Security beneficiaries. Although Social Security accounts are running a surplus at this time, the situation is expected to change in the future with a Social Security related deficit developing. If we exclude Social Security from balanced budget computations, Congress will not have to make adjustments elsewhere in the budget to compensate for this projected deficit. . . .'' Id. at 11.

It should also be noted that an amendment by Representative Frank to exempt the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund from total receipts and total outlays was defeated in committee by a 16–19 rollcall vote. Id. at 14. A similar amendment by Representative Conyers was defeated in the House, 141 Cong. Rec. H741 (daily ed. January 23, 1995), as was an amendment by Representative Wise. Id. at H731.

[3]Although the Congress is given the authority to implement this article by appropriate legislation, there is no indication that the Congress would have the authority to pass legislation which conflicts with the provisions of the amendment.

Mr. HOLLINGS. There are two sentences I will read again, trying to save time. ''If the proposed amendment was ratified''—that is, Senate Joint Resolution 1—''then Congress would appear to be without authority to exclude the Social Security trust funds from the calculations of total receipts and outlays under section 1 of the amendment.''

Then down at the bottom a footnote: ''Although the Congress is given the authority to implement this article by appropriate legislation, there is no indication that Congress would have the authority to pass legislation which conflicts with the provision of this amendment.''

So that is why it is very, very important to several on this side of the aisle—because we were in a very, very heated exchange relative, of course, to the particular balanced budget amendment to the Constitution. And thereby on March 1, five of us on the Democratic side of the aisle sent a letter to the majority leader, ROBERT DOLE, the principal author of Senate Joint Resolution 1, stating that we were ready, willing, and prepared to vote to pass the constitutional amendment to balance the budget where that Social Security protection not be repealed.

I ask unanimous consent that a copy of the letter dated March 1 be printed in the RECORD at this particular point.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

MARCH 1, 1995.

Hon. ROBERT J. DOLE,
Majority Leader, U.S. Senate, Washington, DC.

DEAR MR. LEADER, we have received from Senator Domenici's office a proposal to address our concerns about using the Social Security trust funds to balance the Federal budget. We have reviewed this proposal, and after consultations with legal counsel, believe that this statutory approach does not adequately protect Social Security. Specifically, Constitutional experts from the Congressional Research Service advise us that the Constitutional language of the amendment will supersede any statutory constraint.

We want you to know that all of us have voted for, and are prepared to vote again for a balanced budget amendment. In that spirit, we have attached a version of the balanced budget amendment that we believe can resolve the impasse over the Social Security issue.

To us, the fundamental question is, whether the Federal Government will be able to raid the Social Security trust funds. Our proposal modifies those put forth by Senators Reid and Feinstein to address objections raised by some Members of the Majority. Specifically, our proposal closes a perceived loophole in the Reid and Feinstein language regarding future uses of the Social Security trust funds for purposes other than those for which the system was designed.

If the Majority Party can support this solution, then we are confident that the Senate can pass the balanced budget amendment with more than 70 votes. If not, then we see no reason to delay further the vote on final passage of the amendent.

Sincerely,

BYRON L. DORGAN.
ERNEST F. HOLLINGS.
WENDELL H. FORD.
HARRY M. REID.
DIANNE FEINSTEIN.

Mr. HOLLINGS. So, Mr. President, it is quite obvious if the true intent is to really pass an amendment to the Constitution requiring a balanced budget, it can be done here in the next 24 hours. There is no problem. It is a wonderful opportunity, because we have the amendment drawn in the proper fashion with two particular changes to Senate Joint Resolution 1. The one change, of course, was the Nunn amendment about the judicial power not to put balanced budget questions before the judiciary but to retain them within the congressional branches; and, second, of course, to reiterate the statutory law protecting the Federal old age and survivors insurance trust fund and federal disability insurance trust fund.

Why do I read those words out so specifically? With an intent, Mr. President. Again, referring to the balanced budget constitutional amendment report by the Committee on the Judiciary over on the House side, you will find in that report this sentence:

Since Congress possesses the legislative authority to change the Social Security program, specifically referring to ''Social Security'' in the Constitution could create a giant loophole allowing Congress to call anything Social Security and thus evade balanced budget requirements.

This particular amendment presented for the vote of my colleagues here does not use ''Social Security'' expressed. On the contrary, it is the technical formative law of the United States of America that passed in 1935 and up until 1969 was a trust fund and off budget.

That was our point that we were making in 1990. We were obscuring the size of the deficit. In fact, Mr. President, it would be well at this particular point, I believe, to include, if you please, a table of the various deficits.

I have before me a table of the deficits for the years beginning in 1945 going all the way down, the U.S. budget in outlays and trust funds, the real deficit, the gross Federal debt and the gross interest cost under the various Presidents.

From 1945 until 1996, we have gone from outlays of $92,700,000,000 to now outlays for this fiscal year 1996 of $1,602,000,000,000. You can see how it has grown like Topsy. I remember the last balanced budget. To bring it into the perspective of the distinguished Chair, when Johnson balanced the budget back in 1968–69, the entire outlay in 1968–69 at that particular time was $178,100,000,000. Can you imagine, $178,100,000,000 for guns and butter, for the war in Vietnam and for the Great Society. And paid for with what? With a surplus at that particular time of $300 million. That is—no. That $300 million was used from the trust fund. I am looking at the statute in error here. Let me look at it accurately. So $300 million was used from the trust funds. That still left a balance of $2.9 trillion. If trust funds were not used really to balance that budget, we had a surplus of $3.2 billion.

Here was an entire budget for the Social Security, Medicare, guns and butter, war in Vietnam, defense, and all, welfare and all the other programs. We are expending, instead of the $178 billion, we are expending $348 billion this year just on interest costs for nothing. There is the real problem. And that problem is obscured in large measure by the use of Social Security trust funds, exactly the opposite as contended by my colleagues in that particular House report.

For example, Mr. President, look at the Judiciary Committee report of a balanced budget constitutional amendment as submitted at that particular time over on the House side in January—on January 18 of this particular year. And here is the sentence that will blow your mind. ''If we exclude Social Security from balanced budget computations, Congress will not have to make adjustments elsewhere in the budget to compensate for the projected deficit.''

If you have got that kind of logic and thought, we need custodial care for the Members around here. ''If we exclude Social Security from the balanced budget computations, Congress will not have to make adjustments elsewhere in the budget.'' Come on. If we exclude Social Security, that is where we will have to make adjustments elsewhere in the budget to compensate. And that is exactly the point that we have been trying to make time and time again that we seem to try to hide behind. The truth of the matter is, we are hiding this minute behind $481 billion owed Social Security.

If the particular budget now in conference and now in negotiation between the White House and the Congress is enacted in the next 10 minutes, by the year 2002, we will owe Social Security $1,117,000,000,000. In other words, in the year 2002, they could well turn and say, ''Whoopee, we have now preserved and protected Medicare.'' And then when we look around at Social Security, we say, ''Heavens above, we have run it into the hole with over $1,117,000,000,000.''

Who is going to raise taxes $1 trillion? Who is going to cut benefits $1

trillion? That is why I have been trying to get attention of my colleagues that we have truth in budgeting. And that is why we have the amendment drawn at this particular time where people on both sides of the aisle—I voted for a constitutional amendment, cosponsored it with my senior colleague back in the 1980's, voted for it several times.

But when I realized the import of section 7 under the Dole Senate Joint Resolution 1 that it was going to repeal the statutory law that I helped cosponsor, along with Senator MOYNIHAN and Senator Heinz, I could not go in two different directions at the same time.

As a person somewhat experienced in budgets, I was able, as Governor back in 1959, to get the first AAA credit rating for our State. I participated in the balanced budget work of 1968–69. I chaired on behalf of the Congress, both Houses, the first reconciliation budget conference, the first reconciliation bill signed into law where we cut back already appropriated funds in December 1980 under President Carter. And I put in the budget freeze. I have cosponsored, with Senators Gramm and Rudman, the Gramm–Rudman-Hollings initiative. And I have been very alert, as possibly as I can be, to make certain that we have truth in budgeting.

And so it is that we have now proposed this particular amendment. I could go on at length as to the debate itself before I present the amendment.

I have this one particular phrase of our majority whip, the distinguished Senator from Mississippi. In February, on national TV, Senator TRENT LOTT stated, and I quote:

> Nobody—Republican, Democrat, conservative, liberal, moderate—is even thinking about using Social Security to balance the budget.

Let us hope that is the truth. I think a vote on this particular constitutional amendment to balance the budget would give truth to that particular statement. We will see exactly how they vote.

AMENDMENT NO. 3095

(Purpose: To propose a balanced budget amendment to the Constitution)

Mr. HOLLINGS. Mr. President, I have another amendment. Let me send this one up under the unanimous-consent agreement and ask the clerk to report. I think I have explained it.

The PRESIDING OFFICER. The clerk will report the amendment.

The bill clerk read as follows:

> The Senator from South Carolina [Mr. HOLLINGS] proposes an amendment numbered 3095.

Mr. HOLLINGS. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

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

The amendment is as follows:

> After the first article add the following:
>
> ''ARTICLE —
>
> ''SECTION 1. Total outlays for any fiscal year shall not exceed total receipts for that fiscal year, unless three-fifths of the whole number of each House of Congress shall provide by law for a specific excess of outlays over receipts by a rollcall vote.
>
> ''SECTION 2. The limit on the debt of the United States held by the public shall not be increased, unless three-fifths of the whole number of each House shall provide by law for such an increase by a rollcall vote.
>
> ''SECTION 3. Prior to each fiscal year, the President shall transmit to the Congress a proposed budget for the United States government for that fiscal year, in which total outlays do not exceed total receipts.
>
> ''SECTION 4. No bill to increase revenue shall become law unless approved by a majority of the whole number of each House by a rollcall vote.
>
> ''SECTION 5. The Congress may waive the provisions of this article for any fiscal year in which a declaration of war is in effect. The provisions of this article may be waived for any fiscal year in which the United States is engaged in military conflict which causes an imminent and serious military threat to national security and is so declared by a joint resolution, adopted by a majority of the whole number of each House, which becomes law.
>
> ''SECTION 6. The Congress shall enforce and implement this article by appropriate legislation, which may rely on estimates of outlays and receipts. The judicial power of the United States shall not extend to any case or controversy arising under this article except as may be specifically authorized by legislation adopted pursuant to this section.
>
> ''SECTION 7. Total receipts shall include all receipts of the United States government except those derived from borrowing. Total outlays shall include all outlays of the United States government except those for repayment of debt principal. The receipts (including attributable interest) and outlays of the Federal Old-Age and Survivors Insurance Trust Fund and Federal Disability Insurance Trust Fund (as and if modified to preserve the solvency of the funds) used to provide old age, survivors, and disabilities benefits shall not be counted as receipts or outlays for the purpose of this article.
>
> ''SECTION 8. This article shall take effect beginning with fiscal year 2002 or with the second fiscal year beginning after its ratification, whichever is later.''

Mr. HOLLINGS. Mr. President, once again, by way of emphasis, it is word for word Senator DOLE's House Joint Resolution 1, with the exception of the Nunn amendment which is included therein with respect to the limitation on judicial power on balanced budgets and, second, the Dole section 7, the language that would encompass a repeal of section 13301 of the Budget Act. Specifically, I repeal the repeal. I have provided and continue the protection of 13301.

AMENDMENT NO. 3096

(Purpose: To propose a balanced budget amendment to the Constitution)

Mr. HOLLINGS. Mr. President, there is another wonderful subject we have debated ad nauseam, except with respect abortion. This is one you can really do something about if you really want to limit spending in campaigns as one cancer to public service. Ask the 12 Senators now retiring. They would agree in a sentence, Mr. President, that the one cancer to public service is money, and if you want to control the money, then let us get back to the 1974 act as intended.

There never was any dispute at that particular time. I remember the history well. It so happened in the 1968 race of President Nixon that he had thereafter a Secretary of Commerce, Maurice Stans, who went around and allocated almost like the United Fund: Your fair share.

He came to South Carolina to the textile industry and said, ''Your fair share for the Nixon campaign is $350,000,'' and so textile entities gathered up $35,000 apiece and sent it to Washington to qualify. Other individuals gave a half million dollars. A gentleman from Chicago gave $2 million.

It was thereafter that Secretary of Treasury Connally came to President Nixon and said,

> Mr. President, there have been substantial contributions made in your behalf and you have not had a chance to even meet some of them, much less thank them personally. I would like to give a barbecue on the ranch down in Texas where you can meet and thank them.

President Nixon thought that was a wonderful idea, and on that particular weekend, as they turned into the Connally ranch, there was a Brinks truck with that prankster Dick Tuck from the Kennedy campaign. They had that all embellished in the news and newspapers and otherwise, and everybody in Washington said, ''Heavens above, the Government is up for sale. We have to do something about it.''

So in good spirit, both Republicans and Democrats joined hands into the Federal Elections Campaign Practices Act of 1974. At that particular time, we said, ''Look, every dollar in and every dollar out is recorded. You cannot give more than $1,000. You cannot, as a PAC, give more than $5,000. You cannot take cash.'' And, for voters in a particular State like Tennessee and South Carolina, we were limited per registered voters. In South Carolina, I remember we were limited to around $600,000. The last race I ran for reelection, in 1992, was $3.5 million. It goes up, up, and away.

Right now, every Senator every week has to collect at least $13,000. If you have not collected your $13,000 for your campaign 6 years out, you are behind the curve. You are behind the curve. That statement ought to embarrass all in America.

We have had for 20 years, like a dog chasing its tail around this place, every kind of fanciful idea about how to give public moneys, most of it coming from Common Cause who will not listen. They have a PAC. Most PAC's give money. Common Cause gives you a fit. They have no idea of giving up their particular power, and so they will not go along with limiting the actual expenditures. Oh, we had the opportunity back in 1988. A majority of Senators voted for that one-line constitutional amendment: ''Congress is hereby empowered to regulate or control expenditures in Federal elections.''

With that one line, we can get back to the original intent of 1974 and actually limit spending. That was passed by an overwhelming bipartisan vote, and

everyone realizes the then distinguished Senator from New York, Senator Jim Buckley, thought otherwise. He sued the Senate and Secretary Valeo.

Under the Buckley versus Valeo decision, anyone of good mind and spirit would say this is the most flawed decision ever raised. Why do I say that? The Buckley versus Valeo decision of the U.S. Supreme Court equated money with speech.

If you thought you had the freedom of speech, you would certainly have the freedom of money. And you are exactly right, if you are rich, you have that freedom. But if you are poor, you do not have it, because they immediately went on with the limitations.

More particularly, Mr. President, you can take away your opponent's speech if you are affluent and the opponent is not. Specifically, if your opponent has $50,000 and you have $1 million, you wait until October 10 when people finally get their minds and attention on campaigns, getting ready for the election, then you fill up the airwaves, both radio and TV, the billboards, the yard signs, the newspaper advertising. And by November 1, a week ahead of the election, your family will ask, ''What is the matter, aren't you interested? You are not even answering.''

You do not have the money to answer. You can take away the speech. It is the worst decision that you can possibly think of, particularly in light of the Constitution itself.

If you read article I, section 4 of the Constitution—and I will read just exactly this:

> The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of choosing Senators.

So, if we have the power at any time by law to alter the manner, it appears to this particular Senator we certainly can take the most grievous practice we have in this land of money in politics and put a control on it. We control the time, the place, the components of a candidacy and otherwise, and you can go on down the list.

Mr. President, I rise today to address a problem with which we are all too familiar—the ever increasing cost of campaign spending. The need for limits on campaign expenditures is more urgent than ever, with the total cost of congressional campaigns skyrocketing from $446 million in 1990 to well over $590 million in 1994. For nearly a quarter of a century, Congress has tried to tackle runaway campaign spending; again and again, Congress has failed.

Let us resolve not to repeat the mistakes of past campaign finance reform efforts, which have bogged down in partisanship as Democrats and Republicans each tried to gore the other's sacred cows. During the 103d Congress there was a sign that we could move beyond this partisan bickering, when the Senate in a bipartisan fashion expressed its support for a limit on campaign expenditures. In May 1993, a nonbinding sense-of-the-Senate resolution was agreed to which advocated the adoption of a constitutional amendment empowering Congress and the States to limit campaign expenditures. During the 104th Congress, let's take the next step and adopt such a constitutional amendment—a simple, straightforward, nonpartisan solution.

As Prof. Gerald G. Ashdown has written in the New England Law Review, amending the Constitution to allow Congress to regulate campaign expenditures is ''the most theoretically attractive of the approaches-to-reform since, from a broad free speech perspective, the decision in Buckley is misguided and has worsened the campaign finance atmosphere.'' Adds Professor Ashdown: ''If Congress could constitutionally limit the campaign expenditures of individuals, candidates, and committees, along with contributions, most of the troubles * * * would be eliminated.''

Right to the point, in its landmark 1976 ruling in Buckley versus Valeo, the Supreme Court mistakenly equated a candidate's right to spend unlimited sums of money with his right to free speech. In the face of spirited dissents, the Court drew a bizarre distinction between campaign contributions on the grounds that ''* * * the governmental interest in preventing corruption and the appearance of corruption outweighs considerations of free speech.''

I have never been able to fathom why that same test—the governmental interest in preventing corruption and the appearance of corruption—does not overwhelmingly justify limits on campaign spending. However, it seems to me that the Court committed a far graver error by striking down spending limits as a threat to free speech. The fact is, spending limits in Federal campaigns would act to restore the free speech that has been eroded by the Buckley decision.

After all, as a practical reality, what Buckley says is: Yes, if you have personal wealth, then you have access to television, you have freedom of speech. But if you do not have personal wealth, then you are denied access to television. Instead of freedom of speech, you have only the freedom to shut up.

So let us be done with this phony charge that spending limits are somehow an attack on freedom of speech. As Justice Byron White points out, clear as a bell, in his dissent, both contribution limits and spending limits are neutral as to the content of speech and are not motivated by fear of the consequences of the political speech in general.

Mr. President, every Senator realizes that television advertising is the name of the game in modern American politics. In warfare, if you control the air, you control the battlefield. In politics, if you control the airwaves, you control the tenor and focus of a campaign.

Probably 80 percent of campaign communications take place through the medium of television. And most of that TV airtime comes at a dear price. In South Carolina, you're talking between $1,000 and $2,000 for 30 seconds of primetime advertising. In New York City, it's anywhere from $30,000 to $40,000 for the same 30 seconds.

The hard fact of life for a candidate is that if you're not on TV, you're not truly in the race. Wealthy challengers as well as incumbents flushed with money go directly to the TV studio. Those without personal wealth are sidetracked to the time-consuming pursuit of cash.

The Buckley decision created a double bind. It upheld restrictions on campaign contributions, but struck down restrictions on how much candidates with deep pockets can spend. The Court ignored the practical reality that if my opponent has only $50,000 to spend in a race and I have $1 million, then I can effectively deprive him of his speech. By failing to respond to my advertising, my cash-poor opponent will appear unwilling to speak up in his own defense.

Justice Thurgood Marshall zeroed in on this disparity in his dissent to Buckley. By striking down the limit on what a candidate can spend, Justice Marshall said, ''It would appear to follow that the candidate with a substantial personal fortune at his disposal is off to a significant head start.''

Indeed, Justice Marshall went further: He argued that by upholding the limitations on contributions but striking down limits on overall spending, the Court put an additional premium on a candidate's personal wealth.

Justice Marshall was dead right. Our urgent task is to right the injustice of Buckley versus Valeo by empowering Congress to place caps on Federal campaign spending. We are all painfully aware of the uncontrolled escalation of campaign spending. The average cost of a winning Senate race was $1.2 million in 1980, rising to $2.1 million in 1984, and skyrocketing to $3.1 million in 1986, $3.7 million in 1988, and up to $4.1 million this past year. To raise that kind of money, the average Senator must raise over $13,200 a week, every week of his or her 6-year term. Overall spending in congressional races increased from $403 million in 1990 to more than $590 million in 1994—almost a 50-percent increase in 4 short years.

This obsession with money distracts us from the people's business. At worst, it corrupts and degrades the entire political process. Fundraisers used to be arranged so they didn't conflict with the Senate schedule; nowadays, the Senate schedule is regularly shifted to accommodate fundraisers.

I have run for statewide office 16 times in South Carolina. You establish a certain campaign routine, say, shaking hands at a mill shift in Greer, visiting a big country store outside of Belton, and so on. Over the years, they look for you and expect you to come

around. But in recent years, those mill visits and dropping by the country store have become a casualty of the system. There is very little time for them. We're out chasing dollars.

During my 1986 reelection campaign, I found myself raising money to get on TV to raise money to get on TV to raise money to get on TV. It's a vicious cycle.

After the election, I held a series of town meetings across the State. Friends asked, ''Why are you doing these town meetings: You just got elected. You've got 6 years.'' To which I answered, ''I'm doing it because it's my first chance to really get out and meet with the people who elected me. I didn't get much of a chance during the campaign. I was too busy chasing bucks.'' I had a similar experience in 1992.

I remember Senator Richard Russell saying: ''They give you a 6-year term in this U.S. Senate: 2 years to be a statesman, the next 2 years to be a politician, and the last 2 years to be a demagog.'' Regrettably, we are no longer afforded even 2 years as statesmen. We proceed straight to politics and demagoguery right after the election because of the imperatives of raising money.

My proposed constitutional amendment would change all this. It would empower Congress to impose reasonable spending limits on Federal campaigns. For instance, we could impose a limit of, say, $800,000 per Senate candidate in a small State like South Carolina—a far cry from the millions spent by my opponent and me in 1992. And bear in mind that direct expenditures account for only a portion of total spending. For instance, my 1992 opponent's direct expenditures were supplemented by hundreds of thousands of dollars in expenditures by independent organizations and by the State and local Republican Party. When you total up spending from all sources, my challenger and I spent roughly the same amount in 1992.

And incidentally, Mr. President, let's be done with the canard that spending limits would be a boon to incumbents, who supposedly already have name recognition and standing with the public and therefore begin with a built-in advantage over challengers. Nonsense. I hardly need to remind my Senate colleagues of the high rate of mortality in upper Chamber elections. And as to the alleged invulnerability of incumbents in the House, I would simply note that more than 50 percent of the House membership has been replaced since the 1990 elections.

I can tell you from experience that any advantages of incumbency are more than counterbalanced by the obvious disadvantages of incumbency, specifically the disadvantage of defending hundreds of controversial votes in Congress.

I also agree with University of Virginia political scientist Larry Sabato, who has suggested a doctrine of sufficiency with regard to campaign spending. Professor Sabato puts it this way: ''While challengers tend to be underfunded, they can compete effectively if they are capable and have sufficient money to present themselves and their messages.''

Moreover, Mr. President, I submit that once we have overall spending limits, it will matter little whether a candidate gets money from industry groups, or from PAC's, or from individuals. It is still a reasonable—''sufficient,'' to use Professor Sabato's term—amount any way you cut it. Spending will be under control, and we will be able to account for every dollar going out.

On the issue of PAC's, Mr. President, let me say that I have never believed that PAC's per se are an evil in the current system. On the contrary, PAC's are a very healthy instrumentality of politics. PAC's have brought people into the political process: nurses, educators, small business people, senior citizens, unionists, you name it. They permit people of modest means and limited individual influence to band together with others of mutual interest so their message is heard and known.

For years we have encouraged these people to get involved, to participate. Yet now that they are participating, we turn around and say, ''Oh, no, your influence is corrupting, your money is tainted.'' This is wrong. The evil to be corrected is not the abundance of participation but the superabundance of money. The culprit is runaway campaign spending.

To a distressing degree, elections are determined not in the political marketplace but in the financial marketplace. Our elections are supposed to be contests of ideas, but too often they degenerate into megadollar derbies, paper chases through the board rooms of corporations and special interests.

Mr. President, I repeat, campaign spending must be brought under control. The constitutional amendment I have proposed would permit Congress to impose fair, responsible, workable limits on Federal campaign expenditures.

Such a reform would have four important impacts. First, it would end the mindless pursuits of ever-fatter campaign war chests. Second, it would free candidates from their current obsession with fundraising and allow them to focus more on issues and ideas; once elected to office, we wouldn't have to spend 20 percent of our time raising money to keep our seats. Third, it would curb the influence of special interests. And fourth, it would create a more level playing field for our Federal campaigns—a competitive environment where personal wealth does not give candidates an insurmountable advantage.

Finally, Mr. President, a word about the advantages of the amend-the-Constitution approach that I propose. Recent history amply demonstrates the practicality and viability of this constitutional route. Certainly, it is not coincidence that all five of the most recent amendments to the Constitution have dealt with Federal election issues. In elections, the process drives and shapes the end result. Election laws can skew election results, whether you're talking about a poll tax depriving minorities of their right to vote, or the absence of campaign spending limits giving an unfair advantage to wealthy candidates. These are profound issues which go to the heart of our democracy, and it is entirely appropriate that they be addressed through a constitutional amendment.

And let's not be distracted by the argument that the amend-the-Constitution approach will take too long. Take too long? We have been dithering on this campaign finance issue since the early 1970's, and we haven't advanced the ball a single yard. It has been a quarter of a century, and no legislative solution has done the job.

The last five constitutional amendments took an average of 17 months to be adopted. There is no reason why we cannot pass this joint resolution, submit it to the States for a vote, and ratify the amendment in time for it to govern the 1996 election. Indeed, the amend-the-Constitution approach could prove more expeditious than the alternative legislative approach. Bear in mind that the various public financing bills that have been proposed would all be vulnerable to a Presidential veto. In contrast, this joint resolution, once passed by the Congress, goes directly to the States for ratification. Once ratified, it becomes the law of the land, and it is not subject to veto or Supreme Court challenge.

And, by the way, I reject the argument that if we were to pass and ratify this amendment, Democrats and Republicans would be unable to hammer out a mutually acceptable formula of campaign expenditure limits. A Democratic Congress and Republican President did exactly that in 1974, and we can certainly do it again.

Mr. President, this joint resolution will address the campaign finance mess directly, decisively, and with finality. The Supreme Court has chosen to ignore the overwhelming importance of media advertising in today's campaigns. In the Buckley decision, it prescribed a bogus if-you-have-the-money-you-can-talk version of free speech. In its place, I urge passage of this joint resolution, the freedom of speech in political campaigns amendment. Let us ensure equal freedom of expression for all who seek Federal office.

Mr. President, we have the Committee on the Constitutional System. I will read the first sentence by the distinguished chairman at the time, Lloyd N. Cutler:

Along with Senator Nancy Kassebaum of Kansas and Mr. Douglas Dillon, I am a cochairman of the Committee on the Constitutional System, a group of several hundred present and former legislators, executive branch officials, political party officials, professors, and civic leaders, who are interested

in analyzing and correcting some of the weaknesses that have developed in our political system.

I will skip over some just to read the conclusion on the third page.

I ask unanimous consent that the entire testimony of Lloyd Cutler be printed in the RECORD at this point.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

STATEMENT OF LLOYD N. CUTLER

My name is Lloyd N. Cutler. Along with Senator Nancy Kassebaum of Kansas and Mr. Douglas Dillon, I am a Co-Chairman of the Committee on the Constitutional System, a group of several hundred present and former legislators, executive branch officials, political party officials, professors and civic leaders who are interested in analyzing and correcting some of the weaknesses that have developed in our political system.

On of the most glaring weaknesses, of course, is the rapidly escalating cost of political campaigns, and the growing dependence of incumbents and candidates on money from interest groups who except the receipent to vote in favor of their particular interests. Incumbents and candidates must devote large portions of their time to begging for money; they are often tempted to vote the conflicting interests of their contributors and to create a hodgepodge of conflicting and indefensible policies; and in turn public frustration with these policies creates cynicism and contempt for the entire political process.

A serious attempt to deal with the campaign financing problem was made in the Federal Election Campaign Act of 1974 and the 1976 amendments, which set maximum limits on the amounts of individual contributions and on the aggregate expenditures of candidates and so-called independent committees supporting such candidates. The constitutionally of these provisions was challenged in the famous case of Buckley v. Valeo, 424 U.S. 1, in which I had the honor of sharing the argument in support of the statute with Professor Archibald Cox. While the Supreme Court sustained the constitutionality of the limits on contributions, it struck down the provision limiting expenditures for candidates and independent committees supporting such candidates. It found an inseparable connection between an expenditure limit and the extent of a candidate's or committee's political speech, which did not exist in the case of a limit on the size of each contribution by a non-speaker unaccompanied by any limit on the aggregate amount a candidate could raise. It also found little if any proven connection between corruption and the size of a candidate's aggregate expenditures, as distinguished from the size of individual contributions to a candidate.

The Court did, however, approve the Presidential Campaign Financing Fund created by the 1976 amendments, including the condition it imposed barring any presidential nominee who accepted the public funds from spending more than a specified limit.

However, it remains unconstitutional for Congress to place any limits on expenditures by independent committees on behalf of a candidate.

In recent presidential elections these independent expenditures on behalf of one candidate exceeded the amount of federal funding he accepted.

Moreover, so long as the Congress remains deadlocked on proposed legislation for the public financing of Congressional campaigns, it is not possible to use the public financing device as a means of limiting Congressional campaign expenditures.

Accordingly, the Committee on the Constitutional System has come to the conclusion that the only effective way to limit the explosive growth of campaign financing is to adopt a constitutional amendment. The amendment would be a very simple one consisting of only 46 words. It would state merely that ''Congress shall have power to set reasonable limits on campaign expenditures by or in support of any candidate in a primary or general election for federal office. The States shall have the same power with respect to campaign expenditures in elections for state and local offices''.

Our proposed amendment would enable Congress to set limits not only on direct expenditures by candidates and their own committees, but also on expenditures by so-called independent committees in support of such a candidate. The details of the actual limits would be contained in future legislation and could be changed from time to time as Congress in its judgment sees fit.

It may of course be argued that the proposed amendment, by authorizing reasonable limits on expenditures, would necessarily set limits on the quantity of speech on behalf of a candidate and that any limits, no matter how ample, is undesirable. But in our view the evidence is overwhelming by now that unlimited campaign expenditures will eventually grow to the point where they consume so much of our political energies and so fracture our political consensus that they will make the political process incapable of governing effectively. Even the Congress has found that unlimited speech can destroy the power to govern; that is why the House of Representatives has imposed time limits on Members' speeches for decades and why the Senate has adopted a rule permitting 60 senators to end a filibuster. One might fairly paraphrase Lord Acton's famous aphorism about power by saying, ''All political money corrupts; unlimited political money corrupts absolutely.''

Finally, Mr. Chairman, I would not be discouraged from taking the amendment route by any feeling that constitutional amendments take too long to get ratified. The fact is that the great majority of amendments submitted by Congress to the states during the last 50 years have been ratified within twenty months after they were submitted. All polls show that the public strongly supports limits on campaign expenditures. The principal delay will be in getting the amendment through Congress. Since that is going to be a difficult task, we ought to start immediately. Unlimited campaign expenditures and the political diseases they cause are going to increase at least as rapidly as new cases of AIDS, and it is high time to start getting serious about the problem.

Mr. Chairman, on three past occasions we the people have amended the Constitution to correct weaknesses in that rightly revered document as interpreted by the Supreme Court. On at least two of those occasions—the Dred Scott decision and the decision striking down federal income taxes, history has subsequently confirmed that the amendments were essential to our development as a healthy, just and powerful society. A third such challenge is now before us. The time has come to meet it.

For a fuller discussion of the case for a constitutional amendment, I am attaching an article written shortly before his death by Congressman Jonathan Bingham, my college and law school classmate and, in my view, one of the finest public servants of our times.

Mr. HOLLINGS. Mr. President, I read this sentence on the third page:

Accordingly, the Committee on the Constitutional System has come to the conclusion that the only effective way to limit the explosive growth of campaign financing is to adopt a constitutional amendment.

Mr. President, I take the position—for those who are interested in the Bill of Rights and the first amendment and the freedom of speech—that the Supreme Court erroneously amended the Constitution, or deteriorated the value and worth of the freedom of speech under the Constitution and the Bill of Rights.

So what we are trying to do is not treat lightly, by any manner or means, the Constitution or amendments. Others will get up and say we have had 3,564 amendments offered and here comes another. Not at all. We have tried in Congress after Congress after Congress, for over 20-some years now, to correct this particular flawed decision of Buckley versus Valeo, and get back to controlling spending in politics. The one way to do it is take the amendment that I have, which I will send to the desk. This amendment would provide the authority for both the United States and the several States within their particular jurisdiction, because it was asked to be amended accordingly at the time we debated it last, on how the States also ought to have this particular authority.

The last 10 amendments to the Constitution—their time for ratification has been 20 months. There is no doubt in this particular Senator's mind that this could easily be ratified next November 1996. Then the Congress could come back and they could get to this bundling problem, this third party problem, and they can get to all the little tricks in politics, national committees, individual committees, and everything else of that kind, and we can legislate the honest intent of a majority of Democrats and Republicans in a former session, getting back to what we intended in 1974. We said on the floor of this body that you cannot buy this election anymore. Instead, under Buckley versus Valeo, that is the only way.

We have a candidate right now for President who has never run for anything, and he has one idea about the flat tax that will give himself a tax cut, and he is buying up $25 million of airwaves in the Republican primaries. That would ordinarily be an embarrassment. The fact that it is accepted has embarrassed this particular Senator.

We have to get away from that kind of nonsense. Just because you are rich and you can buy up time and you have never even been in a campaign, and others have been in there 2, 3 years, you can get up there in 2 months and run No. 2—just by money? A flat tax is no unique idea. Come on. So that is what is occurring. We ought to all be embarrassed, and we ought to jump at the chance of correcting it.

Mr. President, I ask unanimous consent that the pending amendment be temporarily laid aside.

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

Mr. HOLLINGS. Mr. President, I send the amendment to the desk.

The PRESIDING OFFICER (Mr. KYL). The clerk will report.

The bill clerk read as follows:

The Senator from South Carolina [Mr. HOLLINGS] proposes an amendment numbered 3096.

Mr. HOLLINGS. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

After the first article add the following:

''ARTICLE —

''SECTION 1. Congress shall have power to set reasonable limits on expenditures made in support of or in opposition to the nomination or election of any person to Federal office.

''SECTION 2. Each State shall have power to set reasonable limits on expenditures made in support of or in opposition to the nomination or election of any person to State office.

''SECTION 3. Each local government of general jurisdiction shall have power to set reasonable limits on expenditures made in support of or in opposition to the nomination or election of any person to office in that government. No State shall have power to limit the power established by this section.

''SECTION 4. Congress shall have power to implement and enforce this article by appropriate legislation.''.

Mr. HOLLINGS. Mr. President, I yield the floor.

Mr. BYRD addressed the Chair.

The PRESIDING OFFICER. Under the previous order, the Senator from West Virginia is recognized.

UNITED STATES LEADERSHIP IN BOSNIA

Mr. BYRD. Mr. President, I have been recognized to speak out of order.

Mr. President, President Clinton has made a difficult and courageous decision to accept a role in leading a NATO deployment of forces to implement the peace treaty that the parties to the Bosnia conflict have initialed and that they will soon sign. It was only through strong, persistent, and courageous leadership that these parties reached an agreement to end their atrocious, murderous, ethnic savagery at all.

What is crystal clear is that our European allies, half a century after the end of World War II, are dependent on the United States for leadership on the European Continent. This is a result of the continuous commitment of America to defend Europe against possible aggression by the Soviet empire for many, many years, and of the United States, being willing to provide the glue of military and economic leadership on the European Continent. This reliance on the United States is testimony, one might surmise, to a job that the United States did almost too well, too unselfishly, and under administrations of both political parties.

The argument can be made and will be made that this conflict in Bosnia is a European conflict, and that Europeans should police it without asking the United States to take the lead. That is a logical argument. I agree with it. But what is logical, unfortunately, is not reality in that sense.

The probable effect on the future of NATO—indeed, of Europe itself—of a decision by America not to lead this force can be gleaned from the history of the first half of this century, when the United States refused to take a leadership role, but then was later pushed into entering a European conflict and suffered heavy casualties in the process. I have lived through that. History is clear.

So to those who would say that this conflict is Europe's business and that America need not be involved, they certainly have a point, but there is the history that I have been talking about, and there is in the history of this century a warning about the possible, even probable, results of that view in this situation that we are facing.

This vital military relationship with Europe also affects U.S. vital interests in other areas of the world, as well as in Europe. How will other nations depend on the United States, on our word, if we walk away from NATO by not participating in this unique NATO mission? Our security relationships with NATO, with Asian nations, and elsewhere, are intimately tied through our trading, banking, and diplomatic relationships. U.S. military leadership and security agreements create a strong base upon which to build fertile economic and diplomatic relationships. It is a mistake to view this current situation as some sort of stand-alone problem.

The outcome of U.S. failure to support NATO in this operation could affect U.S. interests in other parts of the world and at other times in history. The risks of not attempting to stabilize the conflict in the Balkans, resulting in the war's spreading outside the immediate theater of conflict that would be a likely consequence, are substantial and troubling. Left unchecked, the Bosnian conflict could spread to Macedonia and Albania, dragging NATO allies Greece and Turkey into an escalating ethnic conflict. That would be disastrous for the future with respect to the interests of NATO and certainly with respect to our own overall security interests.

I do not think I need to point out the damage to the NATO alliance that would result from such an eventuality. U.S. troops are still on watch over Iraq, which remains a threat to Kuwait and Saudi Arabia. Should Iraq move against Kuwait once again, would we be able to count on our allies to stand with us against Iraq a second time?

Whether we like it or not, as we are fond of saying, the United States is the world's sole remaining superpower. I find it ironic that some Senators who promote robust defense budgets, even at the expense of not funding needed domestic infrastructure, educational, and other needs, still shrink from endorsing a role for the United States which has been requested by the NATO alliance. Given our power, given the unbroken leading role we have played in Europe throughout the entire second half of this century, indeed, given the size of our military budget—I am not altogether supportive of that particular size inasmuch it is representative of the $7 billion increase over and above the President's budget, which I think is too much at this particular time—it cannot be much of a surprise that European powers are heavily dependent on the United States to lead NATO in implementing a peace treaty in Bosnia. It is, in fact, the case that NATO is now vigorous, and, as Secretary of Defense Perry testified before the Senate Armed Services Committee on Wednesday, December 5 of this year, more united than ever before. Indeed, it is a major development that the French have now agreed to participate in the NATO Military Committee, reversing a standoffish position that has so often characterized France's relationship with NATO since the day of General Charles de Gaulle. It is both notable and telling that while there has been a lot of fiery rhetoric in Congress about not placing U.S. troops under the command of foreign military officers, none of our NATO allies, and none of the other nations sending troops to Bosnia, has expressed any reservation about putting their soldiers under U.S. command. Even the Russian troops who will serve under the U.S. lst Armored Division around Tuzla have had great difficulty, as a matter of fact had greater difficulty in putting themselves under NATO command than under U.S. command. This is another testament, it seems to me, to U.S. leadership.

President Clinton and the United States accepted a leadership role in Bosnia only reluctantly. We all can recall the cries of outrage from across the United States a year or two ago, as media coverage of wartime atrocities in Bosnia were beamed into our living rooms. Pictures of refugees fleeing burned-out homes, pictures of skeletal prisoners of war recounting tales of torture and suffering, of sobbing women admitting to the rapes they endured, pictures of stoic faces of United Nations observers chained to ammunition bunkers—all of these images led to cries for action by the United States, cries for immediate military reprisals from across the United States.

This was the reaction driven by the media, driven by the electronic eye, and perhaps it is too bad in a sense that we are to be driven and are to let ourselves be driven by that electronic eye, by that television tube.

But the President did not commit U.S. troops to such an effort, and in my opinion he would have been on dubious constitutional grounds had he done so. I know there are those who would say he is the Commander in Chief and that he has that authority. I am not going into that argument at this point but I am prepared to, and may do so before many days have passed—that is a very dubious ground of constitutionality. He