areas that have great potential for new domestic energy supplies. The President recently closed most of the Federal OCS to any exploration until 2012.

The Clinton-Gore administration embraces the Kyoto Protocol which would impose staggering economic costs on the United States. The Protocol would require the U.S. to vastly reduce its use of fossil fuels like oil, natural gas and coal to achieve reductions in emissions of carbon dioxide—which is not a pollutant under the Clean Air Act and has not yet been proven to be the cause of climate change. The U.S. Senate voted 95–0 to reject it.

Clearly, there is a pattern.

It started in 1993 when the Clinton-Gore administration proposed a $73 billion 5-year tax to force U.S. use of fossil fuels down.

It continues with misguided Federal land use policies, environmental policies designed not necessarily to protect the environment but to kill fossil fuel use, and continues with administration support for the economically punitive Kyoto Protocol. This administration hates the fossil fuel industry and apparently the economic well-being these abundant and relatively cheap fuels have helped the U.S. economy achieve. These are the words of the Vice President:

> Higher taxes on fossil fuels . . . is one of the logical first steps in changing our policies in a manner consistent with a more responsible approach to the environment.

That is by Senator AL GORE, from ''Earth in the Balance,'' 1992, page 173.

To me it is pretty clear that this administration is unwilling to commit to a rational energy policy that will help America's families.

I yield the floor.

FLAG DESECRATION CONSTITUTIONAL AMENDMENT

The PRESIDING OFFICER. Under the previous order, the Senate will now proceed to consider S.J. Res. 14, which the clerk will report by title.

The legislative clerk read as follows:

> A joint resolution (S.J. Res. 14) proposing an amendment to the Constitution of the United States authorizing Congress to prohibit the physical desecration of the flag of the United States.

The Senate proceeded to consider the joint resolution.

Mr. GRAMS. Mr. President, the Constitution begins with the ringing words—''We the People''—for a reason. In our great nation, the people are empowered to decide the manner in which we are to be governed and the values we are to uphold. I join 80 percent of the American people in the belief the flag of the United States of America should be protected from physical desecration. And I am blessed to live in a nation where the will of the people can triumph over that of lawyers and judges.

In light of the U.S. Supreme Court decisions Texas v. Johnson (1989) and United States v. Eichman (1990), which essentially abrogated flag desecration statutes passed by the federal government and 48 states, a constitutional amendment is clearly necessary to protect our flag. This would take the issue of flag protection out of the Courts and back to the legislatures where it belongs. As Chief Justice Rehnquist stated in his dissent, ''Surely one of the high purposes of a democratic society is to legislate against conduct that is regarded as evil and profoundly offensive to the majority of people—whether it be murder, embezzlement, pollution, or flagburning.''

Mr. President, the fight to protect ''Old Glory'' is a fight to restore duty, honor, and love of country to their rightful place. As Justice Stevens noted, ''The flag uniquely symbolizes the ideas of liberty, equality, and tolerance.'' These are the values that form the bedrock of our nation. We are a nation comprised of individuals of varying races, creeds, and colors, with differing ideologies. We need to reinforce the values we hold in common in order for our nation to remain united, to remain strong.

Sadly, patriotism is on the decline. That's dangerous in a democracy. Just ask the military recruiters who can't find enough willing young people to fill the ranks of our military during this strong economy. What happened to the pride in serving your country? Where are the Americans willing to answer the call?

Protecting the flag reflects our desire to protect our nation from this erosion in patriotism. It signals that our government, as a reflection of the will of the people, believes all Americans should treat the flag with respect. The men and women of our armed forces who sacrificed for the flag should be shown they did not do so in vain. They fought, suffered, and died to preserve the very freedom and liberty which allow us to proclaim that desecrating the American flag goes too far and should be prohibited.

To say that our flag is just a piece of cloth—a rag that can be defiled and trampled upon and even burnt into ashes—is to dishonor every soldier who ever fought to protect it. Every star, every stripe on our flag was bought through their sacrifice.

The flag of the United States of America is a true, national treasure. Because of all that it symbolizes, we have always held our flag with the greatest esteem, with reverence. That is why we fly it so high above us. When the flag is aloft, it stands above political division and above partisanship.

Under our flag, we are united.

Most Americans cannot understand why anyone would burn a flag. Most Americans cannot understand why the Senate would not act decisively and overwhelmingly to pass an amendment affording our flag the protection it deserves.

This simple piece of cloth is indeed worthy of Constitutional protection. I urge my colleagues to follow the will of ''We the People'' and accord the American flag the dignity it is due by supporting Senate Joint Resolution 14.

The PRESIDING OFFICER. Under the previous order, the Senator from Kentucky, Mr. MCCONNELL, is recognized to offer an amendment in the nature of a substitute.

AMENDMENT NO. 2889

(Purpose: To provide for the protection of the flag of the United States and free speech, and for other purposes)

Mr. MCCONNELL. Mr. President, I send an amendment to the desk pursuant to the order previously entered.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

> The Senator from Kentucky [Mr. MCCONNELL], for himself, Mr. BINGAMAN, Mr. BENNETT, Mr. CONRAD, Mr. DORGAN, Mr. DODD, Mr. TORRICELLI, Mr. BYRD, and Mr. LIEBERMAN, proposes an amendment numbered 2889.

Mr. MCCONNELL. 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:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Flag Protection and Free Speech Act of 1999''.

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress finds that—

(1) the flag of the United States is a unique symbol of national unity and represents the values of liberty, justice, and equality that make this Nation an example of freedom unmatched throughout the world;

(2) the Bill of Rights is a guarantee of those freedoms and should not be amended in a manner that could be interpreted to restrict freedom, a course that is regularly resorted to by authoritarian governments which fear freedom and not by free and democratic nations;

(3) abuse of the flag of the Untied States causes more than pain and distress to the overwhelming majority of the American people and may amount to fighting words or a direct threat to the physical and emotional well-being of individuals at whom the threat is targeted; and

(4) destruction of the flag of the United States can be intended to incite a violent response rather than make a political statement and such conduct is outside the protections afforded by the first amendment to the Constitution.

(b) PURPOSE.—The purpose of this Act is to provide the maximum protection against the use of the flag of the United States to promote violence while respecting the liberties that it symbolizes.

SEC. 3. PROTECTION OF THE FLAG OF THE UNITED STATES AGAINST USE FOR PROMOTING VIOLENCE.

(a) IN GENERAL.—Section 700 of title 18, United States Code, is amended to read as follows:

§ 700. Incitement; damage or destruction of property involving the flag of the United States

''(a) DEFINITION OF FLAG OF THE UNITED STATES.—In this section, the term 'flag of the United States' means any flag of the United States, or any part thereof, made of any substance, in any size, in a form that is

commonly displayed as a flag and that would be taken to be a flag by the reasonable observer.

''(b) ACTIONS PROMOTING VIOLENCE.—Any person who destroys or damages a flag of the United States with the primary purpose and intent to incite or produce imminent violence or a breach of the peace, and under circumstances in which the person knows that it is reasonably likely to produce imminent violence or a breach of the peace, shall be fined not more than $100,000, imprisoned not more than 1 year, or both.

''(c) DAMAGING A FLAG BELONGING TO THE UNITED STATES.—Any person who steals or knowingly converts to his or her use, or to the use of another, a flag of the United States belonging to the United States, and who intentionally destroys or damages that flag, shall be fined not more than $250,000, imprisoned not more than 2 years, or both.

''(d) DAMAGING A FLAG OF ANOTHER ON FEDERAL LAND.—Any person who, within any lands reserved for the use of the United States, or under the exclusive or concurrent jurisdiction of the United States, steals or knowingly converts to his or her use, or the use of another, a flag of the United States belonging to another person, and who intentionally destroys or damages that flag, shall be fined not more than $250,000, imprisoned not more than 2 years, or both.

''(e) CONSTRUCTION.—Nothing in this section shall be construed to indicate an intent on the part of Congress to deprive any State, territory, or possession of the Untied States, or the Commonwealth of Puerto Rico of jurisdiction over any offense over which it would have jurisdiction in the absence of this section.''.

(b) CLERICAL AMENDMENT.—The analysis for chapter 33 of title 18, United States Code, is amended by striking the item relating to section 700 and inserting the following:

''700. Incitement; damage or destruction of property involving the flag of the United States.''.

The PRESIDING OFFICER. Under the previous order, there shall be 2 hours for debate on the amendment equally divided, with an additional 30 minutes under the control of the Senator from West Virginia, Mr. BYRD.

Mr. MCCONNELL. Mr. President, the amendment that I sent to the desk is on behalf of myself, Senator BENNETT, Senator CONRAD, Senator DORGAN, Senator DODD, Senator TORRICELLI, Senator BINGAMAN, Senator BYRD, and Senator LIEBERMAN.

I am glad we are having this debate today. The American flag is our most precious national symbol, and we should be concerned about the desecration of that symbol.

This debate is also about the Constitution which is our most revered national document. Both the flag and the Constitution represent the ideas, values, and traditions that define our Nation. Brave Americans have fought and given their lives defending the truths these both represent. We should be concerned with defending both of them.

Today I am proud to offer, along with the colleagues I previously listed—Senator BENNETT, Senator CONRAD, Senator DORGAN, Senator DODD, Senator TORRICELLI, Senator BINGAMAN, Senator BYRD, and Senator LIEBERMAN—the Flag Protection Act as an amendment in the form of a substitute to the bill before us.

This amendment would ensure that acts of deliberately confrontational flag-burning are punished with stiff fines and even jail time. My amendment will help prevent desecration of the flag, and at the same time, protect the Constitution.

As all of us do, I revere the flag. Among my most prized possessions is the American flag which honored, as he was laid to rest, my father's service in World War II. That flag rests proudly on the marble mantle in my Senate office. Further, one of my first acts as chairman of the Rules Committee last year was to offer, along with the senior Senator from New Hampshire, Mr. SMITH, an amendment to the Standing Rules of the Senate to provide that we begin each day's business in the Senate Chamber with the Pledge of Allegiance to the flag.

I want to be perfectly clear, I have no sympathy for those who desecrate the flag. These malcontents are simply grabbing attention for themselves by inflaming the passions of patriotic Americans. There is no reason we should respect them or what they are saying.

Speech that incites lawlessness or is intended to do so merits no first amendment protection, as the Supreme Court has made abundantly clear. From Chaplinsky's ''fighting words'' doctrine in 1942 to Brandenburg's ''incitement'' test in 1969 to Wisconsin v. Mitchell's ''physical assault'' standard in 1993, the Supreme Court has never protected speech which causes or intends to cause physical harm to others.

That is the basis for this legislation. My amendment outlaws three types of illegal flag desecration. First, anyone who destroys or damages a U.S. flag with a clear intent to incite imminent violence or a breach of the peace may be punished by a fine of up to $100,000, or up to 1 year in jail, or both.

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

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

Some of my colleagues will argue that we have been down the statutory road before and the Supreme Court has rejected that road. However, those arguments are not valid with respect to this amendment I am now discussing. The Senate's previous statutory effort to address this issue wasn't tied to the explicit teachings and principles of the U.S. Supreme Court.

Put simply, my statutory approach for addressing flag desecration is completely compatible with the first amendment and in no way conflicts with the Supreme Court's relevant rulings in the two leading cases: Texas v. Johnson, (1989) and U.S. v. Eichman, (1990).

In the Eichman case, the court clearly left the door open for outlawing flag burning that incites lawlessness.

As is made clear by these distinctions in cases and the direction pondered by the Supreme Court in Eichman, my amendment will pass constitutional muster. But you don't have to take my word on it. The Congressional Research Service has offered legal opinions concluding that this initiative will withstand constitutional scrutiny. CRS said:

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

In addition, Bruce Fein, a former official in the Reagan administration and respected constitutional scholar, concurs. He said:

[The Flag Protection Act] falls well within the protective constitutional umbrella of Brandenburg and Chaplinsky . . . [and it] also avoids content-based discrimination which is generally frowned on by the First Amendment.

Several other constitutional specialists also agree that this initiative respects the first amendment and will withstand constitutional challenge. A memo by Robert Peck, formerly of the ACLU, and Professors Robert O'Neil and Erwin Chemerinsky concludes that this legislation ''conforms to constitutional requirements in both its purpose and its provisions.''

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

As I am sure you will hear later today, opponents of my amendment have asked a number of constitutional scholars to find constitutional concerns with my bill. One of the most revealing responses was from Professor William Van Alstyne, a professor at Duke Law School and a dean of constitutional law. Professor Van Alstyne wrote that although he is not in favor of any law or constitutional amendment punishing those who abuse the flag, he did not find any constitutional infirmity with my legislation.

In closing, I would like to share some thoughts recently conveyed by General Colin Powell, a great American. In a recent letter he so eloquently expressed his sentiments which explain my own. He wrote:

I understand how strongly so many . . . veterans and citizens feel about the flag and I understand the powerful sentiment in state legislatures for such an [constitutional] amendment. I feel the same sense of outrage. But I step back from amending the Constitution to relieve that outrage. The First Amendment exists to insure that freedom of speech and expression applies not just to that with which we agree or disagree, but also that which we find outrageous.

I would not amend that great shield of democracy to hammer a few miscreants. The flag will still be flying proudly long after they have slunk away.

There is nothing wrong with the Bill of Rights or the first amendment. It

has stood the test of time for 200 years. It would be unfortunate if we began tampering with the important and fundamental protections of the first amendment because of a tiny handful of malcontents. This is especially true when we have this viable, constitutional statutory alternative, which I have just offered, for dealing with those malcontents who would desecrate one of our Nation's most cherished symbols.

Mr. President, I ask unanimous consent that the full text of the various memos and letters I have referred to be printed in the RECORD. I note that some of the memos refer to S. 982 in the 105th Congress and some refer to S. 1335 in the 104th Congress. These bills were introduced in different sessions of Congress but they are, in fact, the same amendment.

I would also like to refer Senators and other interested parties to the CONGRESSIONAL RECORD for April 30, 1999, pages 54488–54489 and the following supporting memos and letters: statement of Bruce Fein, Esq. and statements of Robert S. Peck, Esq. et al.

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

FAIRFAX STATION, VA,
May 11, 1999.

Hon. MITCH MCCONNELL,
U.S. Senate, Washington, DC.

DEAR SENATOR MCCONNELL: Recently, Senator Hatch sent an inquiry to a number of constitutional scholars raising questions about the constitutionality of your bill, S. 931, the Flag Protection Act of 1999. One of those scholars, Professor William Van Alstyne, one of the deans of First Amendment law, wrote back that he found no constitutional infirmity in the legislation. In reaching that sound conclusion, Professor Van Alstyne allied himself with the Congressional Research Service and with Professor Robert O'Neil of the University of Virginia, who also serves as the Founding Director of an important First Amendment study center, the Thomas Jefferson Center for Free Expression, Professor Erwin Chemerinsky of the University of Southern California, former Associate Attorney General Bruce Fein and myself, a constitutional lawyer and law professor.

One letter received by Senator Hatch did raise several questions about the legislation. It was jointly signed by Professors Richard Parker and Laurence Tribe of Harvard. As you know, Professor Parker is an advisor to the Citizens Flag Alliance (CFA) and a supporter of the flag desecration constitutional amendment that is the CFA's entire reason for existence. In his advisory role, he has repeatedly staked out a position, inconsistent with the explicit teachings of the U.S. Supreme Court, that nothing short of a constitutional amendment is valid or appropriate. Professor Tribe, however, is an opponent of the constitutional amendment. His position, as articulated in this May 5 joint letter, is similarly at odds with existing precedent, as well as with testimony that Professor Tribe himself has previously given in Congress. *See* Hate Crimes Sentencing Enhancement Act of 1992: Hearings on H.R. 4797 Before the Subcomm. on Crime and Criminal Justice of the House Comm. on the Judiciary, 102d Cong., 2d Sess. 7 *et seq.* (1992) (statement and testimony of Professor Laurence Tribe). As this letter details, the concerns raised by Professors Parker and Tribe should not give any pause to you or to the bill's other supporters; S. 931 remains compatible with the First Amendment and does not conflict with the U.S. Supreme Court's relevant rulings.

I will answer the issues raised by Professors Parker and Tribe one at a time.

Lack of Congressional Authority—Relying on the Supreme Court's decision in *Lopez*, which struck down the Gun-Free School Zones Act of 1990, Professors Parker and Tribe assert that Congress ''probably lacks affirmative authority'' to pass laws prohibiting use of the flag to incite violence. Not only is their statement couched in uncertainty (''probably''), but seems to suggest that Congress could neither pass a law prohibiting violent crimes, as it has done in a number of instances already, nor any laws relating to the flag. If the latter were true, then Congress could not have passed the statute that designates the familiar scheme of stars and stripes as the flag of the United States. If the federal government has no legal interest in the flag that symbolizes our Nation, then it is difficult to imagine what legal interest it has at all.

In discussing this issue, it is important to note that the professors' reliance on *Lopez* is misplaced. *Lopez* was a Commerce Clause decision. In that case, the Supreme Court held that the problem of guns in schools did not have a sufficient nexus to interstate commerce to allow Congress to invoke federal authority; the guns-and-schools issue, it said remains a state matter, as it has traditionally. Unlike the law struck down in *Lopez*, your bill does not rest on the commerce power, but instead relies on the unique nature of the flag and the inherent federal interest in it. Only the federal government has the authority to define what constitutes a flag of the United States. And it retains the primary interest in defining what constitutes proper use of the flag. No one could plausibly contend that the asserted interests more properly and traditionally reside within state authority.

Moreover, nothing in the Supreme Court's *Flag Burning Cases* suggest that the federal government may not assert such an interest in the flag. In fact, the Court implicitly recognized what it thought unnecessary to articulate: that government has a real interest in the uses to which the flag might be put. It indicated, in words that have real meaning for the proposed statute, that the First Amendment would not be violated by a law that prosecuted a person who drags ''a flag through the mud, knowing that this conduct is likely to offend others, and yet have no thought of expressing any idea.'' *Texas v. Johnson*, 491 U.S. 397, 403 n.3 (1989). Note that this articulation of a constitutional approach to regulating flag-related conduct is extremely similar to S. 931's treatment of flag-related conduct that is intended and likely to result in imminent violence.

The *Johnson* Court went on to say that it would not have struck down the Texas flag desecration law if the government had been able to assert truthfully that it was motivated in its prosecution by a realistic concern for preventing violence. *Id.* at 399. This statement, by itself, should be viewed as definitive authority in favor of the constitutionality of S. 931. As Ohio's Supreme Court held, relying on *Johnson*, punishing use of the flag to incite violence poses no constitutional problem. *Ohio v. Lessin*, 620 N.E.2d 72 (Ohio 1993), *cert. denied*, 510 U.S. 11194 (1994). The U.S. Supreme Court was given an opportunity to correct the Ohio decision, if correction was needed, but chose not to take the case. Maryland has also enacted a flag statute aimed at dealing with violence without any adverse court ruling as to its constitutionality. Md. Ann. Code art. 27, §83 (1990). If states can enact such a law, there is certainly no bar on congressional enactment, where the federal authorizing interest is significantly greater and such a statute would be a valid exercise of the police power.

Section 3(b).—Professors Parker and Tribe also claim that the bill's punishment for use of the flag to incite violence draws an impermissible content-based line because it effectively suppresses, through threat of punishment, those forms of expressive use of the flag that are intended and likely to incite violence. This is a remarkable assertion because, if correct it would render all incitement and conspiracy statutes that rely on criminal communications invalid. Yet, as demonstrated by the *Johnson* Court's language quoted above, the Supreme Court anticipated a statute along the lines of S. 931 and found it valid.

Contrary to the implication made by the professors that line-drawing by Congress is unconstitutional, all laws draw lines. In the First Amendment area, the Supreme Court has both recognized this reality and mandated that such lines be drawn with utmost precision so that it is limited to those evils that legislation may properly address. *See, e.g., NAACP v. Button*, 371 U.S. 415, 433 (1963). In fact, the courts have long experience upholding laws that punish certain types of conduct that contains aspects of expression. In *Cox v. Louisiana*, 379 U.S. 559 (1965), for example, the Supreme Court upheld a statute that criminalized picketing or parading near a state courthouse ''with the intent of interfering with, obstructing, or impeding the administration of justice.'' Picketing and parading are indisputably forms of expressive conduct that are accorded full First Amendment protection, yet could be made criminal when the governmental interest is overriding, as it is when that interest is the prevention of violence as it is in S. 931. Even earlier, the Court had upheld a prohibition on picketing intended to further unlawful objectives. *International Brotherhood of Electrical Workers v. NLRB*, 341 U.S. 674 (1951). S. 931 is indistinguishable from the laws upheld by these quite solid precedents.

Similarly, anti-discrimination laws are not invalid just because the discriminating party wishes to express racial or sexual opinions. *See Hishon v. King & Spaulding*, 467 U.S. 69, 78 (1984), *See also United States v. J.H.H.*, 22 F.3d 821, 826 (8th Cir. 1994) (upholding civil rights laws prohibiting conduct intended to deprive victims of their legal rights).

By relying on *R.A.V. v. St. Paul*, 505 U.S. 377 (1992), for a broad proposition that government has no power to criminalize conduct that contains elements of expression, the two professors make the same error that was made by the Wisconsin Supreme Court and corrected by the U.S. Supreme Court. In striking down a hate-crime sentencing enhancement law on First Amendment grounds, the Wisconsin court asserted that the U.S. Supreme Court's *R.A.V.* decision preordained the result. The U.S. Supreme Court then unanimously reversed the Wisconsin court. It recognized, as Professors Parker and Tribe assert about S. 931, that the ''Wisconsin statute singles out for enhancement bias-inspired conduct,'' but found that this singling out posed no First Amendment issue because such ''conduct is thought to inflict greater individual and societal harm, *Wisconsin v. Mitchell*, 508 U.S. 476 487–88 (1993). Among those legitimate concerns for harm that validated the law which the Supreme Court enumerated were: a concern for inspiring retaliatory crimes, the distinct emotional harms visited upon victims, and the likelihood that community unrest would be engendered. *Id.* at 488. The Court further

found that the ''desire to redress these perceived harms provides an adequate explanation for its penalty-enhancement provision over and above mere disagreement with offenders' beliefs or biases.'' *Id.*

S. 931 similarly focuses on conduct (incitement to violence through the instrumentality of a flag) with substantial potential harms that include the ones listed by the *Mitchell* Court. In his congressional testimony on hate crimes sentencing enhancement, Professor Tribe saw no constitutional dilemma with a law that punished those who target their victims by race or gender with longer sentences even if the criminal act might be interpreted as an expression of racial hatred. Hate Crimes Sentencing Enhancement Act of 1992. Hearings on H.R. 4797 Before the Subcomm. on Crime and Criminal Justice of the House Comm. on the Judiciary, 102d Cong., 2d Sess. 7–30 (1992) (statement and testimony of Professor Laurence Tribe). In taking his position in defense of the use of bias motivation as a sentencing factor and calling it properly narrow even though it singled out a particular form of opinion, he anticipated the *Mitchell* Court's finding of greater societal harm. Somehow, this time around with respect to S. 931, Professor Tribe seems blinded to the greater societal harm that is inherent in the use of a symbol of freedom and national unity to provoke violence and unrest. I cannot imagine the Court turning a blind eye to the distinctive harms involved in using the national flag to incite violence. As the *Mitchell* Court recognized, there is a considerable difference between laws that control conduct and those directed at controlling speech. *Mitchell,* 508 U.S. at 486–90.

Section 3(c).—The two professors part company, however, on whether the government may especially punish the destruction of certain kinds of government property, in this instance, government-owned flags. Professor Tribe, consistent with his hate-crime testimony and the Court's holding in *Mitchell,* recognizes that a special form of emotional harm might be at issue and that this translation of the government's interest into law could be constitutional.[1] Professor Parker takes the opposite view because he finds the same flaw throughout the bill: the singling out of the flag as something of especial interest to the federal government. For the same reasons stated in defense of Section 3(b), this argument fails.

Section 3(d).—Perhaps most remarkable of all is the two professors' assertion that S. 931 cannot constitutionally punish theft and destruction of another's U.S. flag on federal property. Certainly, the theft and destruction of property on federal land is well within the police power of the federal government to punish. In their constitutional analysis of this section, the professors wonder what especial federal interest there is in protecting U.S. flags from theft and destruction on federal land over, to use one of their examples, ''great-grandmothers' wedding dresses.'' To pose the question, though, is to answer it. There is, as the *Johnson* and *Eichman* Courts conceded, a definite and unique interest on the part of government in the flag of the United States. For people to be invited onto government property, perhaps, for example, to celebrate Armed Forces Day when they are likely to engage in flag-waving, and be subjected to theft and destruction of property produces a special and distinctive harm that it is well within the government's authority to punish. It is difficult to imagine the argument that might be made to justify a similar federal interest in a treasured family heirloom, such as a wedding dress, that somehow made it onto federal property, was stolen and then destroyed there.

Contrary to the letter drafted by the two distinguished professors, the constitutionality of S. 931 should not give any Member of Congress pause. The Supreme Court has virtually invited Congress to pass such an Act and indicated its validity. Because wise constitutional counsel and the lessons of history indicate that amending our Constitution should not be undertaken when a statutory resolution is available, it is imperative that Congress give serious consideration to S. 931 rather than embark on a constitutional journey that holds implications for our freedoms that even the most foresighted cannot anticipate.

Sincerely,

ROBERT S. PECK, Esq.

DUKE UNIVERSITY,
SCHOOL OF LAW,
Durham, NC, March 31, 1999.

Senator ORRIN G. HATCH,
Chairman, Senate Judiciary Committee,
Dirksen Senate Office Bldg., Washington, DC.

DEAR SENATOR HATCH: I have reviewed S. 1335 styled ''The Flag Protection and Free Speech Act of 1995.'' I have also reviewed the November 8, 1995 Memorandum of the Congressional Research Service, and the recent letters you received from Professors Stephen Presser and Paul Cassell offering comments and observations on the proposed act. My observations, such as they are, are these—

I. If the principal provisions of this proposed bill are narrowly construed—as I believe they might well be[1]—then I am inclined to agree more nearly with the analysis provided by the Memorandum of the Congressional Research Service than with that provided by my able colleagues at Northwestern (Steve Presser) and Utah (Paul Cassell). In brief, as narrowly construed and rigorously applied, the principal section of the act (§3(a)) may not be inconsistent with the First Amendment and may withstand judicial scrutiny when reviewed in the courts. I say this because as thus narrowly construed and applied, §3(a) may apply only in circumstances in which it would meet the requirements the Supreme Court itself has laid down in the principal case applicable to more general laws of this same sort.[2] Herein is how that analysis is likely to proceed:

A. Specifically, §3(a) proposes to amend §700 of title 18 (the Criminal Code of the United States). It does so, however, by subjecting to criminal prosecution only such person who—destroys or damages a flag of the United States *with the primary purpose and intent to incite or produce imminent violence or a breach of the peace, and in circumstances where the person knows it is reasonably likely to produce imminent violence or a breach of the peace.*

Fairly (albeit strictly) read, the statute thus may require both of the following matters to be proved in any case brought pursuant to this section—and both of these matters must, as in any other criminal case, be proved beyond reasonable doubt:

1. That ''the primary purpose'' (i.e., the principal objective[3]) sought by the defendant was to incite ''violence or a breach of the peace'' and, indeed, that it was his specific intent to do just that;

2. That when he acted primarily to bring about that result (and only secondarily, if at all, to achieve some other aim), moreover, the circumstances were such that it was at least ''reasonably likely'' in fact his actions would have precisely that consequence (as he fully intended) even as he himself fully understood.

3. Likewise, however, according to the plain implication of its own terms as thus understood, nothing in this section[4] is meant otherwise to subject one to prosecution merely for destroying or damaging a flag of the United States—no matter how offensive or objectionable others may find any such act to be. And, specifically, to make this latter matter quite clear in a relevant fashion, §2(a)(4) (which immediately precedes §3(a))—expressly distinguishes any and all cases where one destroys or damages a flag when one does so to ''make a political statement,'' rather then merely ''to incite a violent response.''[5]

4. Subsection (a)(3) of §2, separately declares that ''abuse of the flag . . . may amount to fighting words,'' which doubtless is true (i.e., it *may,* just as the provision thus also equally acknowledges, however, that *it may not*.) To avoid constitutional difficulties—difficulties that would arise from any broader understanding of this provision—it would be appropriate to interpret this provision merely to declare that abuse of the flag may be a means chosen deliberately to provoke a violent reaction and *if undertaken just for that purpose* then—as in the instance of ''fighting words'' (e.g., when ''fighting words'' are themselves used not as a form of political statement but, rather, in order to provoke a violent reaction)—it is the author's understanding that such conduct *when intended to incite a violent response rather than to make a political statement* is outside the protections afforded by the first amendment. Again, taken this was, the observation may be substantially correct—but in being correct, it also covers very little ground.[6]

B. Necessarily, all of this should mean[7] that even if the circumstances were such that violence (or a breach of peace) could reasonably be expected to result as a consequence of the defendant's actions, so long as it was not his primary purpose or intent to induce or incite it—when he burned or destroyed a flag[8]—he is *not* to be subject to *any* penalty under this law. Specifically, if this is correct, all merely ''reactive'' violence—violence *not* sought as the immediate object by the defendant (who burns a flag as a political statement or as a public, politically demonstrative act of protest) but violence by those who, say, are but observors or passersby made angry or indignant by what they regard as outrageous behavior by him, for example, is thus *not* to be utilized as sufficient reason to seek his imprisonment rather than theirs.—Or so, at least, I believe the statute can be interpreted to provide. And if (and probably *only* if) it is so interpreted as I believe it thus *can* be understood, I think it will survive in the courts.[9]

II. The vast majority of all instances when the American flag has been used in some fashion others find offensive (and some may be inclined to react to it in ways involving violence or a breach of the peace) have been so overwhelmingly merely an inseparable part of some kind of obvious political statement, however, that a criminal statute reaching such a use of the flag (including defacing or burning a flag) *only* when ''primarily . . . intended to incite a violent response rather than [to] make a political statement,'' will cover very little. For example, so far as I can determine, it will cover *no* instance of public flag ''desecration'' of *any* of the *many* (allegedly) offensive kinds of ''flag abuse'' that have been a fairly commonplace feature of our political landscape during the past fifty years in point of fact. And unless these past practices suddenly take a different turn, therefore, whatever

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[1] He hesitates in his opinion, in part because he mistakenly distinguishes the federal government (which has no emotions) from the people that constitute that government (who do have emotions). The assertion of an interest on behalf of the people, as the *Mitchell* Court made evident, is a valid one by the government.

Footnontes at end of letter.

the pretensions of the sponsors of the bill might be, there will be little or no real work for this proposed act to do.[10]

But permit me to get quite specific about this last observation, since it may seem counterintuitive. Still, there is frankly no question that this observation is fully applicable, by way of example, both to the events involved in *Texas* v. *Johnson*[11] and to those also involved in *United States* v *Eichman*,[12] which events and cases previous bills (and now this bill) were evidently meant to respond to in some fashion, but that this bill could by its own terms *not affect at all*.[13] And I press this observation, because precisely to the extent the bill *has* been drafted—and *can* be construed—to avoid the constitutional infirmities of prior, failed, ''flag protection'' acts—by being very narrowly drawn as the sponsors have striven to do, it merely indicates limitations in no way reflecting on its drafters, but merely what the First Amendment itself protects—and will continue to protect unless itself altered, amended, or abridged.

A. So, for example, in *Texas* v. *Johnson*, Justice Brennan begins the Opinion for the Court by expressly noting that Johnson was convicted for publicly burning an American flag,[14] but strictly as an expressive part and feature of a public and political demonstration, neither more nor less, as Justice Brennan expressly observed in the opening sentence of the Court's Opinion in the case.[15] Indeed, it was this fact—that the particular acts of the defendant were so entwined—that brought the first amendment to bear, and it was also this fact that served as the basis of the Court's decision reversing his conviction—nor would the proposed bill apparently affect the case in any way at all.[16] As Justice Brennan also noted in the case,[17] while ''several witnesses testified they were seriously offended by the flag-burning,'' it was also clear that ''[n]o one was physically injured or threatened with injury'' by anything Johnson said or did, including (among the things he did) burning a flag.

B. Next, when this Congress nevertheless reacted to the furor created by the Supreme Court's decision in *Texas v. Johnson*, by enacting the Flag Protection Act of 1989 (as I and others urged it at the time not to do and testified would not withstand constitutional scrutiny consistent with the Court's decision in *Johnson*), that act in turn was at once tested by individuals who protested the act's enactment by very publicly burning flags in demonstrative opposition to the act itself.[18] In reviewing the several convictions obtained in the lower courts (under the new act of Congress) in both these cases, the Supreme Court at once did all of the following: (a) It expressly affirmed its decision in *Johnson*; (b) applied it to these cases (which had been brought to it for prompt review of those convicted under the new act of Congress); (c) reversed both convictions; and (d) held the act unconstitutional as applied.[19]

Nor—and here's the immediate point to which these observations are meant to be pertinent—do I read or understand the provisions of the proposed bill, S. 1335, as presuming to try to dictate a different result in any case involving similar facts and acts as were all present in these cases—for, indeed, if it did, presumably the outcome would once again be the same—the act as thus applied (were it thought to apply) would be unconstitutional as applied unless the Court itself is prepared simply to overrule itself as there is no reason to think it would or should.

C. And again, in still a different case, in *Spence v. Washington*,[20] the alleged criminalized misuse of a flag consisted of defendant's effrontery in having presumed to tape a peace symbol onto the face of a flag—thus ''defacing'' it—which flag he then displayed (as a political demonstration of his views) outward from the window of his apartment for public view. Here, again, the Supreme Court reversed the conviction (a conviction obtained under a state law forbidding such defacing and public display of a flag). It reversed that conviction ''on the ground that as applied to appellant's activity the Washington statute impermissibly infringed protected expression.''[21]

In brief, here, too, the facts involved a politically expressive use of a physical flag, not burned, but nevertheless altered in a manner the state statute forbade, and then publicly displayed, as Spence saw fit to do. Moreover, that Spence's use of his flag in this way may have offended others (as indeed it did), or may have motivated some even to want to act against him in some way, was neither here nor there. As the Court itself observed in *Spence:*[22] ''We are unable to affirm the judgment below on the ground that the State may have desired to protect the sensibilities of passersby. 'It is firmly settled that under our Constitution the public expression of ideas may not be prohibited merely because the ideas are themselves offensive to some of their hearers.' ''[23]

D. The just-quoted portion of *Spence*, moreover, was itself taken from a still earlier ''flag-abuse'' case, itself once again, however, also involving a political demonstrative destruction (burning) of a flag on the public street, with the defendant's conviction once again reversed on First Amendment grounds. In *Street* v. *New York*,[24] as in each of these other real cases, it was plain on the facts that the incident was one involving the public expression of political feelings (nor was there any evidence that Street presumed to burn a flag when and as he did to incite lawless action either against himself or anyone else). Indeed, however, I have found no case at all where it was plain that the ''destruction of the flag of the United States'' was in fact ''intended to incite a violent response *rather than* make a political statement,''[25] so to lift it out from First Amendment protection, much less any that appear to meet the full requirements of the act.

IV. Briefly Then To Sum Up: Unless the critical provision of the act is applied more broadly than a tightly constrained construction would approve[26]—

(a) If thus construed (as it can be construed) to apply only in circumstances consistent with the requirements of *Brandenburg* v. *Ohio*, within that restricted field of application, it may well be sustained in the Supreme Court;

(b) However, as thus very tightly constrained, it will not reach many—possibly not any—of the various kinds of ''flag burning'' cases, or other ''flag desecration'' or ''flag abuse'' cases involving varieties of political expression and political demonstrations previously held by the Supreme Court to be protected by the First Amendment.

(c) Moreover, the cases it—the act—may *clearly* reach *without* substantial risk of being held unconstitutional as applied, are cases involving acts *already* so subject to such criminal penalties (e.g., for incitement to violence or riot) as state and federal criminal law *already cover*, as to raise as a fair question respecting the need for or propriety of this legislation at all. And in brief, if this is so, one must finally ask, just what is there, if anything, of a constitutionally proper concern, that is honestly sought to be served by the act?

V. I am frankly unable to answer this last question I have just posed, and may be forgiven a reluctance to speculate. Yet, whatever it is, it will be most unseemly, I cannot help but believe, that Congress may exhibit no equal interest in bringing to bear the full impact of harsh national criminal sanctions against anyone mistreating the flags of *other* nations in demonstrations of protest as may occur in this country, as Congress appears so willing to provide for our own. But evidently this is what some in Congress appear eager and willing to do. Again, however, I cannot imagine why.

Yet, if so, is this, then, finally to be the example of ''liberty'' and of ''freedom'' we now mean to broadcast to the world?—That Americans are free to burn the English Union Jack, or despoil the French Tricolor, or trample the flag of Canada, South Africa, Iraq, Pakistan, India, or Mexico, as they like, in messages and demonstrations of discontent or protest as they may freely occur in this country, but assuredly *not* (or not so far as this Congress will be given license by the Supreme Court to prevent it) as to make any equivalent use of our own? And indeed that *this* is how we now want to present ourselves to the world?

But I would hope, Senator Hatch, that you and your colleagues would think otherwise, and that you will conclude that to ''wrap the flag'' in the plaster casts of criminal statutes in this way—as this and virtually every similar bill[27] seeks to do—would be a signal mistake. Its occasional burning, utterly unattended by arrest, by prosecution, by sanctions of jail and imprisonment, is surely a far better tribute to freedom than that it is never burned—but where the explanation is not that no one is ever so moved to do (we know some are) but are stayed from doing so by fear of being imprisoned, as some would seek to have done. *That* kind of inhibiting fear is merely the example even now, halfway around the world. It is furnished in a place called Tianamen Square. It is a quiet, well-ordered place.[28] But Tianamen Square is *not* what ought to appeal to us—it is but a quietude of repression, it has a desuetude of fear, it is a place occupied by the harsh regime of criminal law. It furnishes no example whatever of a sort we should desire to emulate or pursue.[29]

So, I hope in the end that you and your colleagues may come to believe the flag of the United States is *not* honored by putting those who ''abuse'' it, whether in some egregious or in some petty incendiary fashion, in prison or in jail. Rather, let us regard them even as Jefferson spoke more generally to such matters in his first Inaugural Address,[30] leaving them ''undisturbed as monuments of the safety with which error of opinion may be tolerated where reason is left free to combat it,'' as surely is true.

Sincerely,

WILLIAM VAN ALSTYNE.

FOOTNOTES

[1] It is the firm practice of the Supreme Court to construe acts of Congress very stringently (i.e., narrowly) when any broader construction would at once draw it into serious first amendment question. (For useful and pertinent examples, *see* National Endowment for the Arts v. Karen Finley et al., 118 S.Ct. 2168 (1998); Watts v. United States, 394 U.S. 705 (1969); Yates v. United States, 354 U.S. 198 (1957).)

[2] That controlling case is almost certain to be *Brandenburg v. Ohio*, 395 U.S. 444 (1969) (discussed *infra*, in footnote 9).

[3] not a secondary or even related, co-equal, objective. . . .

[4] To be sure, other sections do reach some other acts (e.g., ''damaging a flag belonging to the United States'' (§700(b)) or stealing or knowingly converting and destroying a third person's flag (§700(c)), but these provisions are doubtless secondary in significance and so I defer consideration for such slight discussion of these provisions as they are worth. (Briefly, however, there is no likely problem with the provision re ''a flag belonging to the United States.'' (*See* e.g., *Spence v. Washington*, 418 U.S. 405, 409 (1974) (dictum) (''We have no doubt that the State or National Governments constitutionally may forbid anyone from mishandling in any manner a flag that is public property.'') As to a flag merely

owned by a third party, that one ''steal[s], knowingly convert[s], and destroy[s],'' there may be—as the other commentators have noted—a federalism problem (the act in this regard would not appear to meet any of the requirements under *United States v. Lopez*, 514 U.S. 549 (1996), nor does the act appear to be connected to any other enumerated power provided in Article I §8 of the Constitution (e.g., the spending power, tax power, etc.). It remains arguable, however, that the same (merely implied) power providing Congress with legislative authority to establish incidental insignia of nationhood (e.g., a flag, motto, seal, etc.) could conceivably permit it to draw on the ''necessary and proper clause'' to protect personal flag ownership from interference (including interference by theft or conversion), so the ultimate answer to this question is a bit unclear. I agree with the other commentators, however, that without doubt state criminal (and tort) laws already reach all instances that would come within this provision—so it is at best redundant and may inadvertently?) represent still one more instance of gratuitously piling federal criminal sanctions on top of pre-existing state sanctions (a practice the American Bar Association, as well as the Chief Justice of the United States, has recently asked Congress to use more sparingly if at all). In brief, neither need for, nor any special utility of, these provisions has been shown.)

[5] Subsection (a)(4) of §2, (''Findings and Purposes'') declares (with emphasis and bracketed material added) that ''destruction of the flag . . . *can* [but need not] be intended to incite a violate response *rather than make a political statement* and such conduct [presumably meaning by 'such conduct' only such conduct as is indeed intended to incite a violent response and not intended to make a political statement] is outside the protections afforded by the first amendment. . . .'' As thus understood (i.e., understood as aided by the words I have placed in brackets), the subsection is not necessarily inaccurate as a strict first amendment matter.

[6] (*See* discussion *infra* in text at II.).

[7] And to avoid first amendment objections, must probably be construed to mean. . . .

[8] Whether as ''a political statement'' or for any other purpose. . . .

[9] As thus construed and applied, it may meet the test provided in *Brandenburg v. Ohio*, 395 U.S. 444, 447 (1969) (''[Our decisions] have fashioned the principle that the guarantee of free speech . . . do not permit a State to forbid or proscribe advocacy of the use of force or of law violation except where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action.''). If such ''advocacy'' (i.e., such ''speech act'' as one engages in) *is* directed to ''inciting or producing'' imminent lawless action (and is ''likely to incite or produce such action''), on the other hand, the Court plainly implies that ''the guarantees of free speech'' do *not* immunize one from arrest or from prosecution under a suitably framed, properly applied law.

[10] Moreover, to the extent there is any such useful work, such as it might be thought to be, it would be largely merely redundant of what is already subject to a multitude of state and local criminal laws—laws that already reach incitement to riot, violence, or breach of the peace, whether or not it involves torching a flag. Nor is there any reason at all to believe that any of the states—all of which already have such laws—are either unable or unwilling to bring the full force of any such merely standard criminal statutes to bear when any actual case would arise of a kind any of these criminal statutes can validly reach. In brief, this is simply *not* a subject where state or local law enforcement authorities lack encouragement or means to apply the regular force of applicable state criminal law, nor do I think the sponsors of the bill could readily provide examples of such local or state prosecutorial laxity. Far from this being the case, quite the opposite tends to be the rule—prosecutorial zeal in this area is surely the more usual response. The ''need'' for some overlapping, largely duplicative, criminal statute by Congress in this area, in short, is thus fare from clear.

[11] 491 U.S. 397 (1989).

[12] 486 U.S. 310 (1990).

[13] Indeed, however, the observation is fully applicable as well to virtually every other case the Supreme Court and indeed the lower courts have had occasion to consider during the past fifty years, involving politically controversial uses of the flag. Some of these are discussed *infra* in the text.

[14] (—For which he was promptly prosecuted under the relevant Texas statute punishing acts of physical desecration of venerated objects including the American flag as one such object, ultimately and successfully appealing that conviction to the Supreme Court.).

[15] 491 U.S. 397, 399 (1989).

[16] Johnson was not arrested or prosecuted for ''inciting, or attempting to incite, a riot or violence,'' nor is there any reason to think he would not have been charged with that offense had the arresting officers believed there were suitable grounds (rather there was simply no evidence that this was his intent—to incite or to provoke a riot—in burning the flag in a public plaza—as an incident of expressing bitter feelings for ongoing proceedings in the Republican Convention then in progress, in Dallas).

[17] 491 U.S. at 399.

[18] In one instance the defiance of Congress' handiwork was demonstrated very publicly indeed, specifically, as noted in the Court's subsequent Opinion, by several persons who ''knowingly set[] fire to several United States flags on the steps of the United States Capital while protesting various aspects of the Government's domestic and foreign policy'' and virtually simultaneously by others, ''by knowingly setting fire to a United States flag in Seattle while protesting the Act's passage.'' (*See* United States v. Eichman, 496 U.S. 310 at 312 (1990).

[19] *United States v. Eichman*, 496 U.S. 310 (1990).

[20] 418 U.S. 405 (1974).

[21] Id at 406.

[22] Id at 412.

[23] And in *Spence*, note, too, that the Court had also declared: ''Nor may appellant be punished for failing to show proper respect for our national emblem [citing still previous decisions of the Court].'' There was no novelty in any of this. The Court has for decades made it perfectly plain that the first amendment protected uses of flags (e.g., incidental to political demonstrations) were not to be made subject to any offended person's veto; nor may the state use the disturbance of the peace, much less the threat of riot, by persons affronted or made angry over one's provocative use of first amendment rights (including flag uses) as a justification to arrest the person exercising those rights. *See* e.g., R.A.V. v. City of St. Paul, 112 S. Ct. 2538 (1992); American Booksellers v. Hudnut, 771 F.2d 323 (7th Cir. 1985), *summarily aff'd*, 475 U.S. 1001 (1986); Houston v. Hill, 482 U.S. 451 (1987); People v. Cohen, 403 U.S. 15 (1971) (''[T]he issue is whether California can excise, as 'offensive conduct' one particular scurrilous epithet from public discourse, either upon the theory . . . that it's use is inherently likely to causes violent reaction or upon a more general assertion that the State, acting as guardian of public morality, may properly remove this offensive word from the public vocabulary. * * * The argument amounts to little more than the self-defeating proposition that to avoid physical censorship of one who has not sought to provoke such a response by a hypothetical coterie of the violent and lawless, the State may more appropriately effectuate that censorship [itself].''); Rosenfield v. New Jersey, 408 U.S. 901 (1972); Lewis v. New Orleans, 408 U.S. 913 (1972); Brown v. Oklahoma, 408 U.S. 914 (1972); Gooding v. Wilson, 405 U.S. 518 (1972); Terminiello v. Chicago, 337 U.S. 1, 4 (1949) (''[A] 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.'') Cantwell v. Connecticut, 320 U.S. 296 (1940). *See also* Skokie v. National Socialist Party, 373 N.E.2d 21 (Ill. 1978).

[24] 394 U.S. 576 (1969).

[25] —Whether or not by means one could expect to stir some to resentment or anger (that it may do so does not in any degree make it less of a means of making a political statement on that account).

[26] —In which event, if it is given any significantly broader sweep it is likely to be held unconstitutional (even as Professors Presser and Cassell suggested).

[27] —And even some proposed amendments to the Constitution itself.

[28] No one would dare burn the national flag of The Peoples' Republic, not now, not in Tianamen Square.

[29] The better contrasting example we should desire to furnish, surely, is to be found in the compelling remarks by Thomas Jefferson in his own first Inaugural Address. It was Jefferson's straightforward view that—

''If there be any among us who would wish to dissolve this union or change it republican form, let them stand undisturbed as monuments of the safety with which error of opinion may be tolerated where reason is left free to combat it.''

[30] (*See* quotation *supra*, n. 29.)

GEN. COLIN L. POWELL, USA (RET),
Alexandria, VA, May 18, 1999.

Hon. PATRICK LEAHY,
U.S. Senate, Washington, DC.

DEAR SENATOR LEAHY: Thank you for your recent letter asking my views on the proposed flag protection amendment.

I love our flag, our Constitution and our country with a love that has no bounds. I defended all three for 35 years as a soldier and was willing to give my life in their defense.

Americans revere their flag as a symbol of the Nation. Indeed, it is because of that reverence that the amendment is under consideration. Few countries in the world would think of amending their Constitution for the purpose of protecting such a symbol.

We are rightfully outraged when anyone attacks or desecrates our flag. Few Americans do such things and when they do they are subject to the rightful condemnation of their fellow citizens. They may be destroying a piece of cloth, but they do no damage to our system of freedom which tolerates such desecration.

If they are destroying a flag that belongs to someone else, that's a prosecutable crime. If it is a flag they own, I really don't want to amend the Constitution to prosecute someone for foolishly desecrating their own property. We should condemn them and pity them instead.

I understand how strongly so many of my fellow veterans and citizens feel about the flag and I understand the powerful sentiment in state legislatures for such an amendment. I feel the same sense of outrage. But I step back from amending the Constitution to relieve that outrage. The First Amendment exists to insure that freedom of speech and expression applies not just to that with which we agree or disagree, but also that which we find outrageous.

I would not amend that great shield of democracy to hammer a few miscreants. The flag will still be flying proudly long after they have slunk away.

Finally, I shudder to think of the legal morass we will create trying to implement the body of law that will emerge from such an amendment.

If I were a member of Congress, I would not vote for the proposed amendment and would fully understand and respect the views of those who would. For or against, we all love our flag with equal devotion.

Sincerely,

COLIN L. POWELL.

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

The PRESIDING OFFICER. Who yields time?

Mr. MCCONNELL. Mr. President, I yield such time as he may need to Senator BENNETT.

The PRESIDING OFFICER. The Senator from Utah is recognized.

Mr. BENNETT. Mr. President, I am not happy rising in this situation because it puts me in a difficult personal conundrum. I have enormous respect for my senior colleague, Senator HATCH, who is a primary sponsor of this resolution. He has been gracious to me as a junior Senator entering this Chamber. He has supported me and guided me and counseled me in ways that are invaluable.

I do my very best, on every possible occasion, to stand with Senator HATCH and to support him and recognize his great wisdom, particularly in matters relating to the law. I am unburdened with a legal education, and he is one of

the better lawyers in this body, so I do what I can to listen to him and follow him. Unfortunately, on this issue, I am unable to follow him. That is why there is some personal angst in the fact that I take the floor to make this statement.

I am not a lawyer, but I do have an academic background as a political scientist. That was my degree in college. In that situation, I spent a good deal of time studying the Constitution, studying the circumstances surrounding its adoption, and studying particularly the Federalist Papers, which were the political tracts written at the time to try to achieve ratification of the Constitution.

From that study, I have come to the conclusion that this amendment to the Constitution would be a mistake. Because I have taken an oath in this Chamber to uphold and defend the Constitution to the best of my ability, and have come to the conclusion that I cannot be true to that oath, as I understand it—I cast no aspersions on those who interpret the oath differently—I will not vote for this amendment. People say: What is wrong with it? It is simply enabling language. You read the language, and it is indeed relatively innocuous. Do I think it would damage or mar the Constitution in some fundamental way if it were adopted? No, I don't. So why not go along with my colleague and go along with public opinion and go ahead and put it in the Constitution?

Let me share with my colleagues my reasoning on this. The flag is a symbol. By itself, intrinsically, it is nothing more than a piece of cloth or several pieces of colored cloth sewn together. It has great power as a symbol because of what it represents, and we must do what we can to teach respect for that symbol among our youth and to maintain that respect as we mature.

The Constitution is something more than a symbol. The Constitution is our fundamental basic law. Everything we do is measured against it. If we do something in this body that does not meet that measure, it is appropriately struck down and made invalid. The Constitution is more than a symbol.

We are dealing here with a nonissue. No one is burning the flag in America today in any discernible numbers. No one is creating outcry throughout our populace. No one is doing anything to incite any kind of reaction over this issue. This is a nonissue that came out of the 1960s and 1970s. We are 30 years beyond the time when this was something really happening in this country.

If we adopt this amendment, we will be putting a symbol in the Constitution that I do not want my name attached to. The symbol will be this: We will have decided that whenever the Congress, responding to public opinion, disagrees with a Supreme Court decision, they will amend the Constitution, and they will even do it if the issue is a nonissue. The words will lie there. I think they won't make much difference one way or the other, but they will be there as a symbol of our willingness to overturn more than 200 years of tradition with respect to individual rights as outlined in the first amendment. That is a symbol of what I consider to be our foolishness to which I do not want my name attached.

For that reason, I am not in support of this amendment. I have taken the floor opposing this amendment on a previous occasion and so do now.

I will make one other comment before I sit down. I have just come from a television interview where the issue was campaign finance reform. The Vice President has just made a very long and stirring call to arms that we must somehow protect the Nation against the rising cancer of what he calls ''special interest money.'' I think the Vice President is profoundly wrong in his understanding of what happens in the campaign situation. I will save that discussion for another time.

The thing he did not say and that I tried to say in my television response to the Vice President was that he was ignoring the constitutional implications of what he was proposing. As I pointed out to the television audience, one of the more honest members of the Democratic Party, Senator HOLLINGS, will be on the floor in this debate to recognize that you cannot do what the Vice President wants to do with respect to campaign finance reform unless you amend the first amendment, unless you amend the Constitution. There are some who are not as honest as Senator HOLLINGS who are saying you can do it without amending the Constitution. Senator HOLLINGS will have an amendment to the Constitution. Again, I think he is profoundly wrong, but he is at least honest and straightforward and open about his intentions.

An editorial ran in the Washington Post some years ago, speaking of myself and other Republicans, and said: If they were really serious in their opposition to campaign finance reform on constitutional grounds, they would oppose the flag amendment as well. I had already made up my mind and had already made public statement of my intention to oppose the flag amendment. I say to those who are in favor of the flag amendment but claim they want the Hollings amendment, they should adopt the same kind of consistency that the Washington Post urged upon the rest of us. If they oppose the flag amendment, they should oppose the Hollings amendment with respect to campaign finance reform as well.

The Hollings amendment on its history will lose. It will lose overwhelmingly because most people do not want to tinker with the first amendment. One of my colleagues said: I don't want to look back on my history as a Senator and say the most significant vote I cast the whole time I was there was one that weakened the Bill of Rights.

I don't either. I do not intend to vote for the Hollings amendment, and I do not intend to vote for the Hatch amendment. I think it is consistent that we stand firm to protect the liberties of the people to express their views however much we disagree with them.

A final footnote, if it is that: The Senator from Kentucky has shown great leadership in crafting a bill that can solve this nonexistent problem for those who insist that we must have a solution in a statutory way. It will not amend the Constitution. It will lay down a statutory marker to which all of us can repair. I urge the adoption of the statutory solution to this situation as drafted by the Senator from Kentucky and urge the Senate not to tinker with the first amendment and first amendment rights, either in the name of protecting the flag or in the name of clean elections, both of which are worthwhile goals. There are better ways to do it. In this Chamber, we can debate those ways.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. MCCONNELL. Mr. President, I listened with great interest to the comments of the junior Senator from Utah, with whom I agree on this issue entirely.

One of the items I would like to engage him on—I certainly didn't cover it in my comments, and in listening to his, neither did he—was the definitional difficulty, in addition to all the other reasons why the Constitution or the first amendment should not be amended for the first time in 200 years, for either one of these proposals.

Focusing on the flag desecration amendment, it leads the Senator from Kentucky to ask the Senator from Utah if he understands what flag desecration is, because I have always had a little difficulty trying to figure out what that was. I remember I took my kids to the beach one time and saw lots of flags on T-shirts. I even saw one on the behind of some blue jeans. There are a variety of ways in which flags are displayed in this country that, it seems to me, might be arguably inappropriate.

I wonder if the Senator from Utah thinks if this amendment were to become part of the Constitution, we would have a definitional problem here as well.

Mr. BENNETT. Mr. President, the Senator from Kentucky has raised a very interesting question because, as I understand it, the requirement for a definition would fall to the Congress under this amendment, which means it would be decided by statute. It is the intention of the Senator from Kentucky to solve the whole problem by statute from the beginning. The constitutional amendment would end up being subject to congressional definition, as I understand it, and we would be right back where we are right now. We would have put this symbol in the Constitution and not have resolved any of the issues the Senator from Kentucky raises.

I think it is a very appropriate issue to be raised at this point. I can't give you a definition of what constitutes desecration of the flag.

Mr. MCCONNELL. I had a marvelous friend who was a veteran of World War I. He lived up until a couple years ago. He lived in my hometown of Louisville, KY. His mission, toward the end of his life, was to make sure that flag etiquette was always followed. He had become an expert on the subject of flag etiquette, which is apparently quite complicated because it includes ways in which the flag can be displayed, in addition to what we are all familiar with as Boy Scouts, about folding the flag properly. He was constantly irritated and offended by ways in which well-meaning citizens groups used the flag that he felt were a violation of respect with which the flag should be treated in a category of behavior generally referred to as flag etiquette. Frankly, we were all somewhat confused in trying to do that properly.

I wonder if we would not, here in the Congress, be right back in the same soup, so to speak, as the Senator from Utah points out, in trying to determine what is and what isn't proper respect for the flag.

Mr. BENNETT. Mr. President, the Senator from Kentucky reminds me of a similar individual in the State of Utah who constantly berates me every time he gets the opportunity on what he considers to be a desecration of the flag, which is the addition of gold fringe to the edge of the flag. He insists that has a particular legal implication and, indeed, went to the point of insisting that if a Federal judge presides in a courtroom where the flag has gold fringe on its edge, the actions of that Federal judge are not legal and that the flag, to be properly displayed, must have no gold edge.

I noted on one of the rare times I have been in the Oval Office with President Clinton, the flag that hangs behind the President's desk has a gold edge on it. If indeed we were to come to the conclusion that that was a desecration of the flag and that all acts taken in the presence of a flag thus desecrated were illegal, then every bill signed by the President in the Oval Office under that definition would be illegitimate. Obviously, I don't think it will go to that point. But I think the Senator from Kentucky has made a legitimate point as to who is going to argue which position with respect to what constitutes improper handling of the flag.

Mr. MCCONNELL. Mr. President, it could be argued that we might even need ''Federal flag police'' to go around and look after proper respect to the flag under this amendment. It seems to me if we were going to take it seriously and amend the first amendment for the first time in 200 years and enshrine this in the Constitution, presumably we would take this as a serious matter.

Mr. BENNETT. There is no question but that there would be pressures to move in the direction the Senator from Kentucky is talking about. I come back to my same observation, which is that if we wanted to do that, we could do it by statute. We could do it right now. We don't need to amend the Constitution in order for the Congress to pass laws with respect to appropriate flag etiquette and apply penalties to those who violate the flag etiquette. I am not sure I would vote for those kinds of laws, but we have the authority to do that. I think the statute offered by the Senator from Kentucky, of which I have the privilege and honor of being a cosponsor, moves us in the sensible direction to that extent, without leaving behind, as I say, a symbol of, in my view, overreaction in the Constitution itself.

Mr. MCCONNELL. Finally, I am not an expert on these matters, but I am told that the appropriate way to dispose of a flag that is tattered and really torn—in fact, I saw one recently at a school where I brought them a flag that had been flown over the Capitol as a replacement for a flag that had flown at this elementary school for a long time; it was battered and torn and was going to be destroyed. I am told the appropriate way to do that is to burn it. I wonder if the Senator from Utah shares my view with regard to if that is, in fact, the appropriate way to dispose of a flag that actually has reached the end of its useful life, how would we determine which flag burning was a desecration and which was actually an honor?

Mr. BENNETT. The Senator raises a very worthwhile point. It is my understanding as well that the appropriate way to destroy a flag that has outlived its usefulness, or destroy its remnants, is to burn it. That is considered an act of great respect. So it becomes a question of determining motive; and you can't simply regulate the act, you have to go into an understanding of the motive of the act, and, once again——

Mr. MCCONNELL. You have to understand intent, I say to the Senator.

Mr. BENNETT. Yes, intent. And, once again, if you are dealing with the first amendment, the first amendment is very clear that Congress shall make no law that impacts on intent; it only has to do with actual acts. If you speak against the Government, that is fine. If you enter into a conspiracy to actually overthrow the Government, it becomes an overt act, and the act is dealt with, but not your intention to demonstrate your disapproval.

So I think the Senator from Kentucky raises a very significant point as to how pernicious this could be if it were part of the Constitution as opposed to a statute.

Mr. MCCONNELL. Mr. President, I thank the Senator for his important contributions. It reminds me of when we discussed this issue previously. It leads me to believe that the appropriate way to deal with someone who desecrates the flag might be a punch in the nose as opposed to evisceration of the first amendment to the U.S. Constitution, which we have not changed—and I think wisely—in the 200-year history of our country.

I thank the Senator from Utah.

I yield such time as he may desire to the distinguished Senator from North Dakota.

The PRESIDING OFFICER. The Senator from North Dakota is recognized.

Mr. DORGAN. Mr. President, I thank the Senator from Kentucky and the Senator from Utah. This has always been a very difficult issue for me. I voted against a constitutional amendment to prohibit flag desecration both as a Member of the House of Representatives and also previously as a Member of the Senate. But it has been very difficult, largely because I believe, as do most Americans, that desecrating our flag is repugnant. It is an act that none of us would find anything other than disgusting. Yet the question is not that; the question is, Shall we amend the Constitution of the United States?

As I said on two previous occasions, I have voted against a constitutional amendment to prohibit the desecration of the flag, not because I believe the flag is not worth protecting—I believe it is worth protecting—but because I believe the Constitution should be altered only rarely and only in circumstances where it is the only method available to achieve a desired result.

The Constitution was written by 55 men over a couple of centuries ago. The room in which they wrote that document still exists, the assembly room in Constitution Hall. I was privileged to go back there for the 200th birthday of the writing of the Constitution. On that day, 55 of us went back into the chamber where they wrote the Constitution. Men, women, and minorities were among the 55 of us who went into that room. Sitting in that room, I got the chills because I saw the chair where George Washington sat as he presided over the Constitutional Convention. You can see where Ben Franklin, Mason, Madison, and others sat as they discussed the development of a constitution for this new democracy of ours. That Constitution begins with the three words: We the people. Then it describes the framework for self-government, representative democracy.

That framework has served this country very, very well over a very long period of time. As I understand it, there have been over 11,000 proposals to change the Constitution since the Bill of Rights. There have been 11,000 different ideas on how to alter the U.S. Constitution. Fortunately, over two centuries, 17 have prevailed. The framers of the Constitution actually made it fairly difficult to amend the Constitution. They did that for good reason. Only 17 of the 11,000 proposals have actually prevailed. Those 17, of course, are significant. Three of them are Reconstruction-era amendments that abolished slavery and gave African Americans and women the right to vote. There have been amendments

limiting the President to two terms and establishing an order of succession for a President's death or departure from office.

We have had proposals, for example, to amend the Constitution to provide that the Presidency shall be rotated with one term by a President from the southern part of the United States and then the next term by a President from the northern part. That is just one example of the 11,000 proposals to change the U.S. Constitution. It has been done only very rarely.

I indicated to those who support a constitutional amendment that when we are confronted with this question again—I greatly respect their views; I know they have great passion in doing so; they are patriots—I would do a significant review once again, and I have. I reviewed virtually all of the writings of the constitutional scholars on this issue. I read almost anything anyone has written about it, evaluated all of the research, and concluded once again that I think the best approach would be to pass a statute of the type described by the Senator from Kentucky and the Senator from Utah, and provide protection for the flag in that manner which constitutional scholars of the Congressional Research Service say will be upheld by the Supreme Court. I believe that is the more appropriate and right approach as opposed to amending the Constitution.

I will read something from Gen. Colin Powell, former Chairman of the Joint Chiefs of Staff. He puts it probably better than I can. I read it only to describe again that there are some who say, well, if you are not supporting a constitutional amendment to prohibit desecration of the flag somehow you don't support the flag or you are unworthy. That is not the case at all. I hope all of us will respect the various positions on this.

Let me read the letter from Gen. Colin Powell.

He said:

I love our flag, our Constitution and our country with a love that has no bounds. I defended all three for 35 years as a soldier and was willing to give my life in their defense.

Americans revere their flag as a symbol of the Nation. Indeed, it is because of that reverence that the amendment is under consideration. Few countries in the world would think of amending their Constitution for the purpose of protecting such a symbol.

We are rightfully outraged when anyone attacks or desecrates our flag. Few Americans do such things and when they do they are subject to the rightful condemnation of their fellow citizens. They may be destroying a piece of cloth, but they do no damage to our system of freedom which tolerates such desecration.

If they are destroying a flag that belongs to someone else, that's a prosecutable crime. If it is a flag they own, I really don't want to amend the Constitution to prosecute someone for foolishly desecrating their own property. We should condemn them and pity them instead.

I understand how strongly so many of my fellow veterans and citizens feel about the flag and I understand the powerful sentiment in state legislatures for such an amendment. I feel the same sense of outrage. But I step back from amending the Constitution to relieve that outrage. The First Amendment exists to insure that freedom of speech and expression applies not just to that with which we agree or disagree, but also that which we find outrageous.

I would not amend that great shield of democracy to hammer a few miscreants. The flag will be flying proudly long after they have slunk away.

Finally, I shudder to think of the legal morass we will create trying to implement the body of law that will emerge from such an amendment.

If I were a member of Congress, I would not vote for the proposed amendment and would fully understand and respect the views of those who would. For or against, we all love our flag with equal devotion.

I think this letter from Gen. Colin Powell says it well, particularly when he says:

I would not amend that great shield of democracy to hammer a few miscreants. The flag will be flying proudly long after they have slunk away.

The statute that has been introduced by my colleagues from Utah and Kentucky, cosponsored by myself, Senator CONRAD and others, is a statute that offers some protection. I am convinced that it would be upheld constitutionally, and the constitutional scholars of the Congressional Research Service have written us with their opinion that it would be upheld as well.

I believe in every circumstance we ought to find ways to do that which is necessary and which is important without the resulting desire to change the framework of this democracy, the Constitution.

I greatly respect those who disagree with me, but I believe that over a long period of time—a decade, a half a century, a century—America will be better served if we resist the impulse to amend the Constitution in ways that will create unintended consequences.

Once again, that room in which George Washington, Madison, Mason, Franklin, and others wrote the Constitution of the United States with the advice and consent of Thomas Jefferson, who was serving in Europe at the time and contributed most to the Bill of Rights, contains a great sense of history for those of us who have been there, as well as an understanding that the framework for our democracy, the U.S. Constitution, is a very special and very precious document. It should be changed only in rare circumstances, and even then only when it is the last method available for achieving a result we deem imperative for this country.

I believe the statute that has been offered as an amendment is a statutory approach that will solve this issue in an appropriate way, and will at the same time preserve the Constitution as intended, especially with the Bill of Rights and most especially with the care that Congress and the American people have nurtured over nearly two centuries.

Mr. President, let me commend the Senator from Kentucky. I know this amendment has been offered before on the floor of the Senate. I heard the debate by the Senator from Kentucky and the Senator from Utah. I concur with that discussion and hope we can achieve a positive vote on this proposal when it is voted on.

I yield the floor.

The PRESIDING OFFICER (Mr. GRAMS). The Senator from Kentucky.

Mr. MCCONNELL. Mr. President, I thank the Senator from North Dakota for his remarks. I listened carefully to them and am glad to have him cosponsor the amendment. I hope the amendment will prevail this time, as opposed to the constitutional amendment.

I thank my friend from North Dakota.

The PRESIDING OFFICER. Who yields time? The Senator from New Hampshire.

Mr. SMITH of New Hampshire. Mr. President, this is one of those issues that is very emotional. We have people on both sides who truly have the same goals. We believe alike—that those who burn the flag or desecrate the flag in any way are despicable people for whom we should have no sympathy.

I say up front, before I make my remarks, that I certainly have the deepest respect for all of my colleagues who believe that we do not need a constitutional amendment, especially Senator MCCONNELL for whom I have the greatest respect.

I think we need to look very carefully at this issue. The Constitution has been amended. Actually, it has been amended 27 times—not 17—once with the first 10 amendments, of course, and 17 times later. When it was amended, it was amended to clarify, to make clear. That is why we have an amendment process. That is why the founders put it in there.

I do not think the constitutional Republic will tremble, shake, and fall because we decide to deal with an issue such as flag desecration with an amendment. That seems to be the gist of what we are hearing, perhaps in an overly legalistic argument that somehow the constitutional Republic will have acted irresponsibly to pass an amendment to the Constitution which would stop the desecration of the flag.

I am an original cosponsor of the constitutional amendment introduced by Senator HATCH, S.J. Res. 14. I am proud to be a cosponsor of that amendment.

The act of the desecration of the U.S. flag is an aggressive and a provocative act. It is also an act of violence against a symbol of America, our flag. Even more disturbing, it is an act of violence against our country's values and principles.

The Constitution guarantees freedom. There is no question about it. It guarantees freedom of speech. But it also seeks to ensure, in the words of the Preamble, ''domestic tranquility.''

Many Americans have given their lives to protect this country as symbolized by that flag. My own family, as thousands of other families, endured

the same thing. My dad died in World War II, and my family has that flag. It is a very important item in our home, as it is in Senator MCCONNELL's home when he mentioned his father.

I believe the flag deserves the constitutional protection because it is more than just a flag. It is more than just a symbol.

I use the example of a $5 bill which I happen to have in my hand. If this is merely a symbol and has no other meaning, then I suppose I could ask millions of Americans to send me $5 bills and I will be happy to send them back plain pieces of paper because it is just paper. This is paper, therefore it is a symbol, and it doesn't have any meaning. So I can take all these pieces of paper and send them back to you in return for $5 bills.

If anybody does choose to do this, I will be happy to provide it to some charity. I am not looking for $5 bills to be mailed to me.

There is something beyond the meaning of just this piece of paper on this $5 bill, and there is something beyond the meaning of just a piece of cloth with the flag of the United States. Some people believe outlawing the desecration, which this amendment would authorize Congress to do, will lead somehow to the destruction of freedom. I disagree. Our Constitution was carefully crafted to protect our freedoms, not to diminish them. It also was crafted to promote responsibility. We are stepping on very dangerous ground when we allow reckless behavior such as flag desecration, whether burning, trampling, or whatever the desecration may be.

This Constitution has served the test of time very well. It has been amended on 27 occasions. Interestingly enough, the first ten amendments, the Bill of Rights, passed shortly after the Constitution itself was passed. Why? Because they wanted to clarify. They didn't want anybody to misunderstand that we needed to have certain basic freedoms such as the freedom of speech, freedom of religion; the second amendment, the right to keep and bear arms, and so forth.

Oftentimes in the debates on the floor of the Senate many of my colleagues pick and choose which amendments they choose to support and which they choose to ignore. It is all the Constitution.

Under our discussion, I don't think the Supreme Court has more power than the people. If we were to vote today or tomorrow or the next day on this constitutional amendment on flag desecration, it goes to the people. It goes to the State legislatures. We are not making a final judgment. This is a constitutional process. It was very carefully laid out by the founders so that amendments would be very difficult to pass. If the American people support Congress if it passes, then we will have an amendment to the Constitution, No. 28. If they don't, it will not happen. All we are asking is the opportunity to let the people make the decision.

Amending the Constitution is serious, but a simple statute is not enough. We tried that and the Court struck down the statute.

A little bit of history on the legal history of flag burning is relevant. Over the years, Congress and the States have recognized the devotion our diverse people have for the flag and they have enacted statutes over the years that both promote respect for the flag and protect the flag from desecration.

In the Texas v. Johnson case in 1989, by 5–4 vote, referred to earlier in the debate, the Supreme Court overturned a conviction of Gregory Lee Johnson who desecrated an American flag. Johnson burned an American flag at the 1984 Republican National Convention. A fellow protester had taken a flag from a flagpole and had given the flag to Johnson. At Dallas City Hall, Johnson unfurled the flag, poured kerosene on it and burned it.

That is not speech, I say in all humbleness, candor, and with respect to my colleagues. That is not speech. That is an action. That is a direct action of desecrating the symbol of America. While the flag burned, protesters chanted ''America, the red white and blue, we spit on you.''

A few moments ago, my colleague from Utah, Senator BENNETT, was saying he didn't know whether we would be able to determine whether or not somebody who takes the flag with respect and disposes of it the way we are supposed to dispose of it under law —burning it in a respectful way— whether there would be any confusion. I do not think there is any confusion between that act and what I just referred to, ''America, the red white and blue, we spit on you,'' when the flag was torn down from a flagpole and kerosene was poured on it. I don't know why anybody would be confused by that.

Johnson was convicted of desecration of a venerated object, in violation of section 42.09 of the Texas Penal Code which, among other things, made illegal the intentional or knowing desecration of a national flag. The Court held the government's interest did not outweigh the interest of the flag burner. The act was not oral or written political speech; it was conduct. It was conduct, not speech. There is a difference.

Justice Rehnquist, for himself and Justices White and O'Connor, stated in dissent: For more than 200 years, the American flag has occupied a unique position as the symbol of our Nation, a uniqueness that justifies a governmental prohibition against flag burning in the way respondent Johnson did here.

The constitutional amendment would enable Congress to punish the next flag burner or the next flag desecrator. In 1989, Congress enacted a fairly neutral statute, the Flag Protection Act of 1989, with an exception for the disposal of worn or soiled flags as a response to the Johnson decision. Based on the new rule announced in Johnson, the Supreme Court struck down the statute by a 5–4 vote in United States v. Eichman in 1990. S.J. Res. 14 would restore the traditional balance to the Court's first amendment interpretation.

That is all it does. Only a constitutional amendment can restore the traditional balance between a society's interest and the actor's interest concerning the flag. The first amendment prohibits abridgement of freedom of speech. There is always a balancing of society's interest with the individual's interest in expression.

A few examples have been used many times on the floor in debate. Here is a good example: Can you yell ''fire'' in a crowded theater?

Could anyone yell something out now? You would be removed if you were in the galleries making a loud comment that disrupted the proceedings. You would be removed.

There are limits on speech. It is simply incorrect to say there are no limits to free speech. There are limits to free speech, and it has been held as being constitutional. ''Fire'' in a crowded theater was held to be unconstitutional in Schenk v. U.S. in 1919.

There is no constitutional right to disclose State secrets. Some have gotten away with it, but we don't have the constitutional right to go out to the media and announce all the national secrets that we have access to as Senators, along with many individuals who work for the U.S. Government who have access to U.S. secrets. They don't go out and hold press conferences, nor do they tell our enemies what those secrets are. There is not a constitutional right to disclose those secrets.

There is no constitutional right to defame or libel a person's character. That was upheld in Gertz v. Welch. There is no constitutional right to engage in partisan political activity in working for the Federal Government.

There is no constitutional right to commercially promote promiscuous activity by minors.

The American flag has not been given that protection by the Supreme Court. Congress has a compelling interest in protecting the flag. Congress needs to preserve the values embodied by the flag—liberty, equality, freedom, and justice for all.

The flag enhances national unity and our bond to one another in our aspiration for national unity. If we read history about the fall of the Roman Empire, it is when Rome lost the glue that held it together, when they became too big, they became so splintered and there was no unity, no cohesion, that they lost their symbol of what the Roman Empire meant.

When we lose the symbol of what we are about, we will lose this country. The flag enhances national unity. It enhances the bond. Even if we are wrong, even if we do not need the

amendment—and I do not make that case—even if perhaps Senator MCCONNELL and others are correct that we do not need this amendment, so what? We err on the side of caution.

We survived an amendment on prohibition, and we survived an amendment to repeal prohibition. The Constitution and the constitutional Republic did not fall and die as a result of those amendments which were controversial, to say the least. So good amendments and bad amendments occur, and the Constitution survives because that is the way it is supposed to be.

Let's err on the side of caution. Let's err on the side of caution. It sends a good message to everyone—to young and old, those who fought and died, those who survived, and those young people in first, second, and third grade classes, and all through our schools all across America, that the flag is more than just a symbol. It represents that cohesion, that bond, that special thing that makes us Americans. We can carry it into battle. We can have it standing behind the Presiding Officer. We salute it every morning, as Senator MCCONNELL said, before we start our proceedings. If we can salute it, we can protect it. What is wrong with that?

I repeat for emphasis, err on the side of caution. It is not going to cause the destruction of America because we reinforce something we believe in by amending the Constitution.

James Madison stated that desecration of the flag is ''a dire invasion of sovereignty.''

Thomas Jefferson considered violation of the flag worthy of a ''systematic and severe course of punishment.''

S.J. Res. 14 would remove the Government sanction of flag desecration and flag burning. The Judiciary Committee found in hearings that there have been between 40 and several hundred acts of flag desecration over the past decade. Our Supreme Court has granted the flag burner a sanction under the first amendment to engage in the conduct of burning an American flag.

Forty-nine State legislatures and most of the American people want an amendment to protect the American flag. All we are doing, if we can get the requisite number of votes, is to pass an amendment on to the people and the legislatures to make a final decision.

Our heritage, sovereignty, and values are uniquely represented by this flag.

The flag of the United States of America has long unified our countrymen during times of great strife, upheaval, and during the more common times of prosperity and pride. It inspired men and women to win our independence in the Revolutionary War. Over the years, it has represented to a people of all nations freedom and all the values that has made America the envy of the world.

I say to my colleagues, regardless of the technical/legal aspect of this, as to whether or not it is legal, whether or not it is constitutional, whether it is necessary or not, what is the message we send to the world? They will not understand that the Congress of the United States, the Senate, refused to pass an amendment to protect the flag. It will be misperceived, in my view.

It is an inspiration. It has been praised in song and in verse. It has been honored with a day of its own—Flag Day—and its own code of etiquette on how to store it, how to salute it, and what to do with it. It has been given allegiance by our schoolchildren and given honor by the Supreme Court. The Supreme Court recognizes ''love both of common country and of State will diminish in proportion as respect for the flag is weakened.'' That was a Nebraska case in 1907.

How can one say it any better than that? Unfortunately, more recent court decisions have struck down State and Federal statutes banning the desecration of Old Glory.

So we debate again. We have done this before. We are going to do it again. We debate a constitutional amendment. We should remember the important relationship over the years the American flag has had with American history, with American freedoms and, indeed, the American conscience.

On June 14, 1777, the Marine Committee of the Second Continental Congress adopted a resolution that read:

> Resolved, that the flag of the United States be 13 stripes, alternate red and white, that the union be 13 stars, white in a blue field representing a new constellation.

Red for hardiness and courage; white for purity and innocence; and blue for vigilance, perseverance, and justice.

George Washington described the flag in much the same way:

> We take the stars from heaven and the red from our mother country, separating it by white stripes, thus showing that we have separated from her; and the white stripes shall go down to posterity representing liberty.

This new flag made one of its first appearances 2 months later at the Battle of Bennington. On August 16, 1777, the American soldiers faced the dreaded Hessian mercenaries. While the two forces clashed, American General John Stark rallied his troops by saying:

> My men, yonder are the Hessians. They were bought for 7 pounds and 10 pence a man. Are you worth more? Prove it. Tonight the American flag floats from yonder hill or Molly Stark sleeps a widow.

The brave Americans triumphed under their new flag at the Battle of Bennington, and the new stars and stripes floated from the hill which the Hessians once possessed.

It was the first time that liberty and freedom was advanced under the flag and, as we all know, it was most certainly not the last.

I can go on and on. Of course, we all know the story of the ''Star-Spangled Banner.'' How in 1814, Francis Scott Key, a Washington attorney, boarded a British warship in the Chesapeake Bay to negotiate the release of a prisoner taken when British forces burned the Capitol in August.

While aboard the ship, the British fleet turned its attention to Baltimore, and that is where Key witnessed the bombardment of Fort McHenry on September 13, 1814. It continued most of the day and night, until the British abandoned their failed attack and withdrew.

Shortly after dawn on the 14th, the morning fog parted and Key saw the flag had survived its night of 1,800 13-inch bombshells and rockets. Its ''broad stripes and bright stars,'' he said, were still ''gallantly streaming.''

Although the forces at Fort McHenry were like sitting ducks under the merciless British assault, they withstood the volleys and emerged victorious once again under the besieged but still-standing American flag.

Key was inspired by this. It was not a piece of canvas that inspired Key to write these things. It was not a piece of cloth. It was more than that. It was a flag. There is a difference. It is the same reason the $5 bill is not a piece of paper. It has meaning. The flag has meaning.

In 1931, Congress made the ''Star-Spangled Banner'' the official national anthem of the United States. We owe our flag, once again under siege, constitutional protection. In May 1861, just before the Civil War that would tear our Nation apart, Henry Ward Beecher gave a speech on ''The National Flag.'' It is worth mentioning a few of the things he said in that 1861 speech, bearing in mind that our Nation was about to be torn asunder in a war that almost destroyed us:

> A thoughtful mind, when it sees a nation's flag, sees not the flag, but the nation itself. . . .
>
> Wherever [our flag has] streamed abroad men saw day break bursting on their eyes. For the American flag has been a symbol of Liberty, and men rejoiced in it. . . .
>
> If one, then, asks me the meaning of our flag, I say to him, it means just what Concord and Lexington meant, what Bunker Hill meant; it means the whole glorious Revolutionary War. . . .
>
> . . . [it means] the right of men to their own selves and to their liberties. . . .
>
> . . . our flag means, then, all that our fathers meant in the Revolutionary War; all that the Declaration of Independence meant; it means all that the Constitution of our people, organizing for justice, for liberty, and for happiness, meant.

Whatever that meant, that is what the flag meant.

> . . . our flag carries American ideas, American history and American feelings. . . .

Again, my colleagues, err on the side of caution. If you think we do not need the amendment to protect it, we will not rock the Republic that much if we would just make that statement with the amendment.

Henry Ward said:

> Every color [of our flag] means liberty; every thread means liberty; every form of star and beam or stripe of light means liberty; not lawlessness, not license; but organized institutional liberty—liberty through law, and laws for liberty!

I could not agree more. Because the highest court in the land will not preserve the liberty represented by our

flag from lawlessness and license, we must protect it with a constitutional amendment.

One of the most inspirational and emotional places to visit in Washington, DC, I say for those who are here who may be listening—you have all kinds of things out there that you can visit, from the Treasury Building, to the White House, to the Washington Monument, to the Lincoln Memorial, to the Jefferson Memorial. They are all wonderful. I have been to them all. Let me add one to the list you ought to see before you leave: The raising of the flag on Iwo Jima; the Iwo Jima Memorial right here in Washington—an image that signifies the steep price of freedom.

On February 19, just last month, we remembered the 55th anniversary of that bloody battle. Six thousand Americans gave their lives on Iwo Jima. What were they fighting for? Most of them probably did not know where Iwo Jima was when they went into the service.

After 4 days, some Marines finally made it to the top of Mount Suribachi. They tried twice to plug a wooden flag pole into the ground. Both times it broke. The third time, they wrapped the flag to a metal pole. Later during the battle, the second flag was ordered raised when commanders on the beach could not easily recognize the first one, which was considerably smaller.

A photographer captured the moment, which has become the U.S. Marine Memorial outside Arlington at the National Cemetery.

Marines later said they could see the flag from a quarter of a mile away, and it gave them the courage and inspiration to overcome their exhaustion and fear to keep fighting.

It is amazing. It is not just a flag; it is more than a piece of cloth. Ask those guys who were at Iwo Jima. Go see that memorial, and see how you feel about an amendment after you see that monument.

It goes on. We could talk all day—''Buzz'' Aldrin, when he planted the flag on the moon. The only good thing about it, I guess, is there is no oxygen on the moon so no one could burn it there. Maybe we ought to put a few more up there.

Obviously, there have been many treasured moments in American history intertwined with our flag. History shows our laws have reflected the values represented by our flag and our Government's interest in preserving it.

In 1634, Massachusetts colonists prosecuted, tried, and convicted a person who defaced the Massachusetts State flag. The court concluded that defacing the flag was an act of rebellion. This case, called the ''Endicott's Case,'' reflects the traditional balance between the interests of society in preserving the flag and freedom of expression.

We have early examples of why we can make a strong and powerful case for a constitutional amendment. The colonists saw the need to punish the act, flag desecration, that violated Government sovereignty.

The framers of our Constitution, through their words and actions, clearly showed the importance of protecting the flag as essential to American sovereignty.

James Madison, in 1800, an expert certainly of the Constitution, if there ever was one—he wrote it—denounced the hauling down of the American flag from the ship the George Washington as a ''dire invasion of [American] sovereignty.''

In 1802, Madison pronounced an act of flag defacement in the streets of Philadelphia to be a violation of law.

We sometimes overanalyze and overdebate what the founders meant. I am amazed by the people in the 20th, now in the 21st century, who know what the founders meant. They know all about what they meant. Even though they said something different, they still know what they meant, which is the exact opposite of what they said. It seems to me we should go back and look at what the founders said.

Madison wrote the Constitution. I think he had a little understanding about what he meant. If he said something, then it ought to be pretty good support to say: You know, he might have meant what he said. He said it. He said that an act of flag defacement in the streets of Philadelphia was a violation of law.

In 1807, when a British ship fired upon and ordered the lowering of an American ship's flag, Madison told the British Ambassador that ''the attack on the [ship] was a . . . flagrant insult to the flag and the sovereignty of the United States.''

As the author of the first amendment, Madison knew what freedom of speech was. However, his repeated stands for the integrity of the flag show that he believed that there had been no intent to withdraw the traditional physical protection from the flag.

Thomas Jefferson also believed in the sovereignty and the integrity of the flag. While he was Washington's Secretary of State, there were many foreign wars and naval blockades. The American flag was a neutral flag during this time, and other countries wanted to fly it. Jefferson instructed American consuls to punish ''usurpation of our flag.''

To prevent the invasion of the sovereignty of the flag, Jefferson did not think that the first amendment was an obstacle to a ''systematic and severe'' punishment for people who violated the flag.

Both Madison and Jefferson considered protecting the flag and punishing its abusers very important.

There are all kinds of examples in American history from our greatest founders, and all kinds of resources to draw from in support of this amendment. They believed that sovereign treatment for the flag was not inconsistent with protecting free speech.

They consistently demonstrated that they wanted to protect commerce, citizenship, and neutrality rights through the protection of the flag. They did not mean to suppress ideas or views or free speech. That was not what they were about. They just wanted to protect the Government's interests in protecting the sovereignty of the Nation as personified in the flag. Freedom of speech protects that, not conduct. There is a difference.

William Rehnquist said:

> The uniquely deep awe and respect for our flag felt by virtually all of us are bundled off under the rubric of ''designated symbols'' that the First Amendment prohibits the government from ''establishing.'' But the government has not ''established'' this feeling; 200 years of history have done that. The government is simply recognizing as a fact the profound regard for the American flag created by that history when it enacts statutes prohibiting the disrespectful public burning of the flag.

We have seen the Supreme Court defy the ''deep awe and respect'' that the American people, through their elected representatives, have for that flag.

The Supreme Court further denied the American people any voice in protecting the integrity of the flag in the RAV v. City of St. Paul case in 1992. In that decision, the Court ruled it will no longer balance society's interest in protecting the flag against an individual's interest in desecrating it.

The Court's recent decisions have led us down this path. In order to preserve the values embodied by our flag, in order to enhance national unity, and in order to protect our national sovereignty, we, the people's representatives, have to take the first step here to amend the Constitution. It is going to be a slow and difficult process, as the Founding Fathers intended. They wanted it to be slow and difficult. It was not supposed to be easy.

We should have this debate. We should rise up and take each other on directly. We should have a vote, and we should be recorded. If it prevails with the 67 votes necessary, it will move forward for the people and the legislatures. It is a necessary process in order to remove the Government's seal of approval of flag burning and desecration.

Mr. President, I suggest the absence of a quorum and ask unanimous consent that the time be equally deducted from both sides.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. SMITH of New Hampshire. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. SMITH of New Hampshire. Mr. President, how much time remains on both sides?

The PRESIDING OFFICER. The Senator from New Hampshire has 25 minutes remaining, and the Senator from Kentucky has 20 minutes remaining.

Mr. SMITH of New Hampshire. I thank the Chair and yield myself 15 minutes.

Turning to the substance of the McConnell amendment, I find that it fails to protect the flag or the people who revere it. This is a very narrow proposal. In order to be prosecuted under the statute Senator MCCONNELL has proposed, one must: No. 1, intentionally destroy or damage the flag with an intent to incite or produce imminent violence or breach of the peace; No. 2, one must steal and intentionally destroy a flag belonging to the United States; or, No. 3, one must steal or intentionally destroy someone else's flag on Federal property.

Now if you come to the conclusion that I have—and I think we all have on both sides—that flag desecration is wrong, why limit the desecration to those instances I just cited? Why make it legal to burn a flag in front of a crowd that loves flag desecration or on television or at some safe distance and yet make it illegal to burn a flag in front of people who would be upset? That is what is happening here.

Let me repeat that. Why make it legal to burn a flag in front of a crowd that loves flag desecration and yet make it illegal to burn a flag in front of people who would be upset? That is pretty much what we have here. Why make it illegal to burn a post office flag but not a flag belonging to the hospital across the street? Why make it illegal for a lone camper to burn a flag at a campfire in Yellowstone Park when it is legal to burn a flag before hundreds of children at a public school? To anybody who is interested in protecting the flag from desecration, how does this make sense? It is not common sense.

There are other problems with this statute as proposed. First, the Supreme Court is likely to hold that the amendment's attempt to prohibit flag burning that may breach the peace is unconstitutional. In Texas v. Johnson, the State of Texas defended its flag desecration statute on the ground that it was necessary to prevent breaches of the peace, and the Court rejected the argument because there was no showing that a disturbance of the peace was a likely response to Johnson's conduct regardless of Johnson's intent. So in order to qualify for the breach of the peace exception under Brandenberg v. Ohio, the Court said the flag burning must both be directed to inciting or protecting imminent lawless action and is likely to incite or produce such action.

Since the McConnell amendment fails to require any showing that the destruction of a flag objectively is likely to incite or produce the breach of peace, the Court will strike it down as unconstitutional. This is a lot of legalese—legal gobbledygook, I might call it. This is what the lawyers like to do. But this is more than a legal issue. Your speech cannot be suppressed because it might breach the peace, even if you believe you are breaching the peace. You must have both intent and the objective likelihood that others nearby will be compelled to violent action because of your speech.

So in this regard, I note that the Court, in Johnson, found that the flag burning did not threaten to breach the peace, nor was there any finding that Johnson intended to breach the peace. The Court also found that no reasonable onlooker would have considered the flag burning to be an invitation to a fight. In other words, the Court held that flag burning did not constitute fighting words. As a result, the McConnell amendment would not even apply to the flag burning in Johnson.

Even if the McConnell statute satisfied the breach of peace exception to the first amendment, the other sections of the proposed statute wouldn't. The Johnson and Eichman cases seem to require that the same general analysis apply. Could the Government say that all racist fighting words are illegal on Government property but that others are not in some other location? Of course not. The Court has said that this amounts to impermissible content-based discrimination. But that is the effect of the amendment Senator MCCONNELL offers because it only criminalizes stealing and destroying a flag rather than all Government property and because it only criminalizes the burning of a flag stolen from another on Government property rather than all other property that could be stolen and destroyed. A lot of legal language, but it is important because this is what we would be dealing with if the statute Senator MCCONNELL proposes were to pass as opposed to the amendment.

Even if these portions of the McConnell amendment could survive constitutional scrutiny, which I doubt they could, they are no substitute for real flag protection. The McConnell statute would not have punished Gregory Johnson's notorious flag burning. When he took it down from that pole, burned it, and spat on it, he didn't steal the flag from the United States; so he wouldn't be punished. It was stolen from a bank building; therefore the statute would not apply. Johnson didn't burn his stolen flag on Federal property; he burned it in front of city hall; therefore the bill would not apply. If the amendment would not punish Johnson, who would it punish? We need to be reasonable. We would look foolish to take this kind of legalistic approach rather than the substance of what Madison and Jefferson and Washington and so many others so eloquently put many years ago when they wrote this Constitution.

Now, some say it is better than an amendment because they want to preserve the first amendment rights. But if we are going to punish flag destruction on Federal property during a political rally, if we are going to say that is not an infringement of free speech when the flag is stolen, then why does the first amendment protect desecrating the flag under the same circumstance?

The ownership of the flag is not relevant to the first amendment analysis. It is not the ownership of the flag that matters, it is the flag. It is what it symbolizes. It is the act that matters. It seems to me that the statute by my friend from Kentucky is perfectly consistent without allowing flag desecration on city or State property regardless of whose flag it is. Once you make it a Federal crime to burn a flag, you are reaching communicative conduct the Supreme Court says is constitutionally protected. If you are prepared to punish flag desecration based on the theft of the flag and the location of the desecration as consistent with the first amendment, you cannot logically argue that punishing the desecration of one's own flag on that same property or other property is inconsistent with the first amendment.

I think any Senator who can vote for this statute, frankly, can vote for an amendment that authorizes broader protection of our flag. We need to stop splitting hairs here and understand what we are talking about, understand the incitive act that we are talking about in the desecration of that flag and what it means to the fabric and fiber of our Nation. While the Federal connection to property may give you jurisdiction for a Federal statute, it simply does not change the first amendment analysis.

Why would anyone vote for an ineffective statute? It is a weak way to say we don't want an amendment. It is not a good alternative. I would almost prefer that you voted no on the basis of it being unconstitutional in your mind than to offer this amendment. But adoption of the McConnell amendment will amount to the government's unintended declaration of open season on all American flags. It says: Do what you want to the flag—whatever you want—but don't start a riot, whatever you do. Don't steal it from the government; steal it from a bank, and whatever you do, don't burn it on government property. Otherwise, have a good time, burn away, desecrate away. Pick and choose where you want to burn, where you want to desecrate, and you will be fine.

Now, really, does that make sense as an alternative to the amendment? We can do better than that. The proposed constitutional amendment allows us to do better than that. By giving Congress the power to enact a sensible flag protection statute, the flag amendment will allow for meaningful flag protection that doesn't make silly, legalistic distinctions. So let's have the courage of our convictions to say, yes, we need the constitutional amendment because without it, the flag can be desecrated, and this will have a harmful affect on our country and on its fabric, if you will. Or say, no, we don't need the amendment, it will have no impact, it doesn't matter, and let it go at that.

I urge my colleagues who support protection for the flag to vote no on

the McConnell amendment and to vote yes on the constitutional amendment.

I suggest the absence of a quorum.

The PRESIDING OFFICER (Ms. COLLINS). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. SMITH of New Hampshire. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. SMITH of New Hampshire. Madam President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator has 5½ minutes remaining.

Mr. SMITH of New Hampshire. Madam President, opponents of the amendment like to say that America is not facing an epidemic, that we have a few acts of flag desecration. Depending on how you want to define them, they are usually by some crazy person or some nut, or whatever term you want to apply to it, or someone who is demented. But I think opponents try to downplay the number of desecration incidents that we have in this country. They not only use flawed statistics, but I think they also miss the point that numbers don't always tell the story, and who is doing it is another issue. I would like to give an example.

I am a former schoolteacher. You are never a former teacher. You are always a teacher; once a teacher, always a teacher. I used to try to instill in my students the patriotism and respect for the country. I taught civics.

I wonder if you will hear the opponents of our amendment talk about what happened a few weeks ago in a town called Somerset, MA. Two teenagers—just two—smashed several dozen Civil War-era gravestones, toppled several others, and burned and shredded 87 American flags that were placed on 60 gravestones in that cemetery—Civil War veterans. Sixty stones were toppled or vandalized. One hundred American flags marking the graves of war veterans were either stolen, ripped, or burned, according to the Boston Herald.

Opponents who argue that no great and extraordinary occasions justify the proposed amendment are simply off the mark, in my view. Eighty-seven burnt flags, particularly flags honoring heroes who made the supreme sacrifice defending the Union in the Civil War, is a great and extraordinary occasion.

Regardless of how we count the number of desecration incidents, the point of our discussion today is not statistics. It is not how many but rather the impact that this kind of incident has on our values, on our culture, and on our children. What do we say to those children who did that? What do we say to the children who didn't do it, the vast majority of children, I might add? What do our children learn by hearing that our Government is powerless to punish those vandals? What do we want to teach our children about that incident? We can remain silent. It didn't happen on Government property, unless it was a VA cemetery. Maybe it was. So we couldn't punish them under the statute being proposed.

If we don't have a constitutional amendment, maybe we can figure out some other way to punish them. But it is more than punishment of the vandals that is at stake. It is a message to the rest of America why this is wrong and why it is not right to go in there and desecrate those flags and those graves.

Many people today—I am not alone—believe we live in a culture that suffers profoundly from a lack of common values, ideals, morals, and patriotism. Further, many people believe if it continues, that, in and of itself, will destroy the constitutional Government that we have.

I will make this suggestion with all due respect. That kind of action and that kind of lack of statement or commitment to values will bring our country down a lot sooner than an amendment to the Constitution that prevents the desecration of our flag.

My colleagues, an amendment doesn't mean the end of our constitutional Republic. It reinforces. It says this Senate, this country, this Congress, the people of America, the legislatures, your parents, their parents, and people all across America say: You don't do that. It is wrong. It can mean that our country may not survive with this kind of disrespect.

The idea that everyone's viewpoint is just as good as anyone's can grow just a little bit too large. Is that free speech? Is that what we want to say in America, that it is free speech for two young people to go into a cemetery where Civil War veterans are buried, take the flags off their graves, desecrate the flags, and desecrate the tombstones, and say it is OK, free speech? I say that is conduct. I don't think it has one thing to do with speech. It is conduct, and it is conduct for which you should be held accountable.

The fact is, the founders of our country developed some ideas about government that all Americans believe are the best, that all Americans find some common ground upon the ideals for which this Nation was founded—common ground, cement, glue—to bring us together. This divides us in a way that goes right to the essence and to the heart of what our country stands for and what it is. Our flag, those flags, 87 of them on those graves, represent those ideals.

As much as our culture downplays our common beliefs—God knows we hear enough about it—everybody has a right to be a free spirit these days; don't have anything in common; do what you want; instant gratification; you want to go desecrate a cemetery, go ahead; it is just free speech.

As much as our culture downplays those beliefs, it is our duty as Americans—I am using the word ''duty''—to protect those beliefs and our duty to protect the one symbol that unites us. If you don't think desecration of that flag threatens us, then maybe you had better take another look.

It is our responsibility to ensure the integrity of our country and to say that there is at least one principle that unites our society. We divide on every issue. You name it; we divide on it. There is somebody for and somebody against everything we debate.

We need this amendment to say that our flag should be protected under the law. It is not enough to say if somebody walked up here now—a staff member, anyone—and took that flag, threw it on the floor and began to deface it, stomp on it, in the name of free speech that is OK. It is not speech. I will say again. It is not speech. It is conduct, and conduct you should be responsible for and responsible to someone for doing it. If we can't say that, if it is a threat to our constitutional Republic to have an amendment that precludes that action, then I am not sure what we could have a constitution for that really matters.

We have survived amendments that weren't that great. The Constitution survived, the people survived, the American Government survived, because the Founders gave us the opportunity, provided that for us in the Constitution.

We see evidence of moral decay and a lack of standards all around. Our families are breaking down, our communities are divided, our leaders are not providing appropriate moral leadership for the American public. Everyone knows what I am talking about—moral leadership comes from the White House. You can shake it off, you can say it doesn't matter, there is no personal accountability, say whatever you want. The bottom line is, if you are going out for the weekend and you want to leave your 14-year-old daughter home, most of you say: I don't know if I want to leave her with the President of the United States. That is pretty sad.

I will make people angry saying that, but we are dividing ourselves. We have to stand for something. If we stand for something, we will stand up and be counted as a nation. If we don't stand for something, then we stand for nothing.

We can laugh it off. We do it all the time. It is a gun's fault that children are dying. No, it is not the gun's fault the children are dying. The culture of death in this country is not about guns.

The desecration of the flag and all of the other things happening is about us as a people. It is because we don't stand up often enough. If we are threatened because we want an amendment to the Constitution to stop that, then we have a problem. We have moral decay in this country. We are falling apart at the seams because people should be able to do what they want. There is no personal accountability.

Desecrate the graves, stomp the flag, disrespect the veteran. It is OK. Spit on the flag. That is OK, it is free speech.

Look at our culture. If you are a parent, look at movies to which your kids have access. Look the at video games, look at the music, look at the TV. Our children are bombarded every day with messages of violence, selfishness. The incidence of gun violence, particularly at our public schools, is a predictable result of a culture that is afraid to teach that certain ideas are right and certain ideas are wrong.

That is what this is about. It is wrong to desecrate the flag. Color it up any way you want, hide it any way you want, take another position and say the law is OK, I don't care. The point is, it is wrong to desecrate the flag for the same reason it is wrong to overturn gravestones, it is wrong to be disrespectful to veterans, and it is wrong to leave your children alone and give them access to this kind of violence. Frankly, it is wrong for some in society to give them access to that violence.

Why don't we do something about it? No, we have a right, they say, to be free spirits.

Blame somebody else. It is not our fault. It must be the Government's fault, the church's fault, our minister's fault, the Senator's fault; it has to be somebody else's fault, not mine. It couldn't possibly be my fault; I didn't do anything.

Do you see what is happening to this country? This is just a perfect example of it. It is one symbol of what is wrong with America.

From the 1800s and the 1900s, wave after wave after wave of immigrants came to this country; they built this country. It was the glue. They saw the Statue of Liberty. They became a part of the essence of America. That flag is the essence of America. We ought to pass a constitutional amendment so it not be desecrated.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. MCCONNELL. How much time do I have remaining?

The PRESIDING OFFICER. The Senator has 10 minutes remaining.

Mr. MCCONNELL. I yield whatever time the Senator from North Dakota may desire.

The PRESIDING OFFICER. The Senator from North Dakota is recognized.

Mr. CONRAD. I thank the Chair. I thank Senator MCCONNELL.

Madam President, I rise today to support the McConnell-Bennett-Dorgan-Conrad effort to pass a statute to protect the flag, rather than to amend the Constitution of the United States for that purpose.

It seems to me that anybody who advances an amendment to the Constitution has to clear a very high threshold. I personally believe the Constitution of the United States is one of the greatest documents in human history. It is not to be amended lightly. It is certainly not to be amended when there are other ways of addressing a problem.

I believe in this circumstance the issue is really quite clear. Flag burning and flag desecration are unacceptable to me and I think unacceptable to a majority of Americans, certainly unacceptable to the people of the State that I represent. But the first answer cannot and should not be to amend the Constitution of the United States.

In our history, more than 10,000 amendments to the Constitution have been proposed. Only 27 have been approved. Since I have been in the Senate, more than 850 constitutional amendments have been offered. Thank goodness we have not adopted them. Many of them would have made that document worse. Many of them would have taken positions that are really things that ought to be done by statute.

The Constitution is a framework. It does not deal with specifics. It deals with the larger framework of how this Government should operate. Individual laws, individual statutes are meant to deal with the specific problems that we encounter as a society within the framework provided by the Constitution. Some would have us change that basic organic document to deal with this problem. I believe that would be a mistake, and we would look back on it in future years and say: My, that was an overreaction.

Yes, it is unacceptable to engage in flag desecration. Yes, it is abhorrent to desecrate the flag. Those are obviously true statements and those are genuine feelings. But we have an alternative. The alternative is to pass a statute.

The proponents of the constitutional amendment will say to you: But that will be ruled unconstitutional, as has the previous attempt to pass a statute.

This statute has not been ruled unconstitutional, and the American Law Division of the Library of Congress tells us it would be upheld as constitutional.

I ask unanimous consent that the letter from the American Law Division addressed to me 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, November 8, 1995.

To: Honorable Kent Conrad Attention: Dan Kelly

From: American Law Division

Subject: Analysis of S. 1335, the Flag Protection and Free Speech Act of 1995

This memorandum is furnished in response to your request for an analysis of the constitutionality of S. 1335, the Flag Protection and Free Speech Act of 1995. This bill would amend 18 U.S.C. §700 to criminalize the destruction or damage of a United States flag under three circumstances. First, subsection (a) of the new §700 would penalize such conduct when the person engaging in it does so with the primary purpose and intent to incite or produce imminent violence or a breach of the peace and in circumstances where the person knows it is reasonably likely to produce imminent violence or a breach of the peace.

Second, subsection (b) would punish any person who steals or knowingly converts to his or her use, or to the use of another, a United States flag belonging to the United States and who intentionally destroys or damages that flag. Third, subsection (c) punishes any person who, within any lands reserved for the use of the United States or under the exclusive or concurrent jurisdiction of the United States, steals or knowingly converts to his or her use, or to the use of another, a flag of the United States belonging to another person and who intentionally destroys or damages that flag.

The bill appears intended to offer protection for the flag of the United States in circumstances under which statutory protection may still be afforded after the decisions of the Supreme Court in United States v. Eichman[1] and Texas v. Johnson.[2] These cases had established the principles that flag desecration or burning, in a political protest context, is expressive conduct if committed to ''send a message;'' that the Court would review limits on this conduct with exacting scrutiny; and legislation that proposed to penalize the conduct in order to silence the message or out of disagreement with the message violates the First Amendment speech clause.

Subsections (b) and (c) appear to present no constitutional difficulties, based on judicial precedents, either facially or as applied. These subsections are restatements of other general criminal prohibitions with specific focus on the flag.[3] The Court has been plain that one may be prohibited from exercising expressive conduct or symbolic speech with or upon the converted property of others or by trespass upon the property of another.[4] The subsections are directed precisely to the theft or conversion of a flag belonging to someone else, the government or a private party, and the destruction of or damage to that flag.

Almost as evident from the Supreme Court's precedents, subsection (a) is quite likely to pass constitutional muster. The provision's language is drawn from the ''fighting words'' doctrine of Chaplinsky v. New Hampshire.[5] In that case the Court defined a variety of expression that was unprotected by the First Amendment, among the categories being speech that inflicts injury or tends to incite immediate violence.[6] While the Court over the years has modified the other categories listed in Chaplinsky, it has not departed from the holding that the ''fighting words'' exception continues to exist. It has, of course, laid down some governing principles, which are reflected in the subsection's language. Thus, the Court has applied to ''fighting words'' the principle of Brandenburg v. Ohio,[7] under which speech advocating unlawful action may be punished only if it is directed to inciting or producing imminent lawless action and is likely to incite or produce such action.[8]

A second principle, enunciated in an opinion demonstrating this continuing vitality of the ''fighting words'' doctrine, is that it is impermissible to punish only those ''fighting words'' of which government disapproves. Government may not distinguish between classes of ''fighting words'' on an ideological basis.[9]

Footnotes at end of analysis.

Subsection (a) reflects both these principles. It requires not only that the conduct be reasonably likely to produce imminent violence or breach of the peace, but that the person intend to bring about imminent violence or breach of the peace. Further, nothing in the subsection draws a distinction between approved or disapproved expression that is communicated by the action committed with or on the flag.

There is a question which should be noted concerning this subsection. There is no express limitation of the application of the provision to acts on lands under Federal jurisdiction, neither is there any specific connection to flags or persons that have been in interstate commerce. Therefore, application of this provision to actions which do not have either of these, or some other Federal nexus, might well be found to be beyond the power of Congress under the decision of the Court in United States v. Lopez.[10]

In conclusion, the judicial precedents establish that the bill, if enacted, while not reversing Johnson, and Eichman, should survive constitutional attack on First Amendment grounds. Subsections (b) and (c) are more securely grounded in constitutional law, but subsection (a) is only a little less anchored in decisional law.

We hope this information is responsive to your request. If we may be of further assistance, please call.

JOHN R. LUCKEY,
Legislative Attorney,
American Law Division.

FOOTNOTES

[1] 496 U.S. 310 (1990).
[2] 491 U.S. 397 (1989).
[3] See, 18 U.S. §§641, 661, and 1361.
[4] Eichman, supra, 496 U.S., 316 n. 5; Johnson, supra, 412 n. 8; *Spence* v. *Washington,* 418 U.S. 405, 408–409 (1974). See also *R. A. V.* v. *City of St. Paul,* 112 S. Ct. 2538 (1992) (cross burning on another's property).
[5] 315 U.S. 568 (1942).
[6] *Id.,* at 572.
[7] 395 U.S. 444 (1969).
[8] *Id.,* at 447. This development is spelled out in *Cohen* v. *California,* 403 U.S. 15, 20, 22–23 (1971). See, also *NAACP* v. *Claiborne Hardware Co.,* 458 U.S. 886, 928 (1982); *Hess* v. *Indiana,* 414 U.S. 105 (1973).
[9] *R. A. V.* v. *City of St. Paul,* 505 U.S. 377 (1992).
[10] 115 S. Ct. 1624 (1995).

Mr. CONRAD. Madam President, here we have the American Law Division of the Library of Congress, which houses the Congressional Research Service, telling us this statute authored by Senator MCCONNELL would be upheld as constitutional. That is the best advice we have available to us as Members of Congress. They are saying to us this statute would be upheld.

Why ever would we go out and amend the Constitution when we have a statute that our own legal advisers inform us would be upheld as Constitutional. Why would we do that? It makes no sense to me. Not only does it make no sense to me, it makes no sense to veterans organizations. I ask unanimous consent that resolutions of support by veterans organizations in the State of North Dakota be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. CONRAD. Madam President, these are resolutions in support of the Flag Protection Act of 1999 by AMVETS of North Dakota, by the AMVETS Ladies Auxiliary of North Dakota, and by the North Dakota State Council of the Vietnam Veterans of America. All of these veterans organizations, some of the finest in my State, have said this is the proper approach; that we ought to attempt to pass this statute rather than amend the Constitution of the United States.

I just got word, moments ago, that the editor of the 164th Infantry Association Newsletter, of my State, has contacted my office and agrees with the position that I am taking, that it is not necessary to amend the Constitution of the United States.

I think he is exactly right. I would just conclude by saying, not only do veterans organizations back home support the position I am taking, but many who are in the American Legion have contacted me and told me they support the position that I am taking.

Finally, Gen. Colin Powell was quoted at length in a full page ad of a major newspaper in my State today as saying that he does not believe that the appropriate response is to amend the Constitution of the United States. Gen. Colin Powell, former Chairman of the Joint Chiefs of Staff, the man who led us in Desert Storm, a man for whom I have profound respect, saying to us, yes, it is abhorrent to desecrate the flag, yes, it is abhorrent to burn the flag, but that flag is going to survive long after, as he describes it, these miscreants who desecrate the flag are long gone. Long after they are gone, that flag is still going to be flying proudly over this great Nation.

One of the reasons this is a great Nation is because of the Constitution of the United States. What a brilliant document. I doubt very much anything we are going to be doing in the next 2 days would improve upon that Constitution that is the organic law for our country.

I urge my colleagues to take a look—take a serious look —at the work Senator MCCONNELL has done and that the four of us, on a bipartisan basis, are offering our colleagues as an alternative to taking the very drastic step of amending the Constitution of the United States.

I hope my colleagues will support this approach.

I commend my colleagues who have joined in offering this—with a special thanks to Senator MCCONNELL, who has drafted this approach—Senator BENNETT, and Senator DORGAN.

I believe this is the wiser course. It is the right course. It is one that will stand the test of time.

I thank the Chair and yield the floor.

EXHIBIT 1

AMVETS LADIES AUXILIARY, DEPARTMENT OF NORTH DAKOTA, RESOLUTION TO SUPPORT THE ''FLAG PROTECTION ACT OF 1999''

Whereas: the delegates of the 15th Annual Convention of the AMVETS Ladies Auxiliary, Department of North Dakota, assembled in Minot on this 15th day of May, 1999, desire to support Senator Dorgan and Senator Conrad on ''The Flag Protection Act of 1999'' which they are co-sponsoring, therefore be it

Resolved: We support the ''Flag Protection Act of 1999'' for the protection of the flag, free speech, and other purposes, to ensure our symbol of national pride and freedom be protected, that the embodiment of our democracy and unity be preserved, especially since our veterans fought for this freedom, it further be

Resolved: That a copy of this courtesy resolution be spread upon the records of this annual convention and a copy be presented to the above mentioned.

ANGIE LEKANDER,
President.
VICKIE TRIMMER,
Secretary.

VIETNAM VETERANS OF AMERICA,
NORTH DAKOTA STATE COUNCIL,
Bismarck, ND, May 10, 1999.

Hon. KENT CONRAD,
U.S. Senator, Hart Office Building, Washington, DC.

DEAR SENATOR CONRAD: On behalf of the North Dakota State Council of Vietnam Veterans of America, it is my honor to inform you that at our quarterly meeting on May 8, 1999 in Bismarck, the following action was taken regarding the Flag Protection Act of 1999, which you are cosponsoring.

''Bob Hanson moved that the North Dakota State Council of the Vietnam Veterans of America support enactment of legislation by Congress to protect the nation's flag, such as that cosponsored by Senators Byron Dorgan and Kent Conrad and that a copy of this resolution be forwarded to our state's entire Congressional delegation. Seconded by Richard Stark. Approved unanimously.''

Thank you for continual support of veterans and we wish you success in your endeavors in this matter.

Sincerely,

BOB HANSON,
State Secretary, ND VVA.

RESOLUTION NO. 9911—A RESOLUTION TO SUPPORT THE ''FLAG PROTECTION ACT OF 1999''

Whereas, a Constitutional amendment to protect the desecration of the American flag has been before Congress for several years and has failed to garner the votes for passage, and

Whereas, those opposed to the Constitutional amendment believe that a statute can effectively provide protection and be upheld by the Supreme Court, and

Whereas, Senator Mitch McConnell of Kentucky has introduced a statute, ''The Flag Protection Act of 1999'', cosponsored by Senator Kent Conrad of North Dakota, Senator Byron Dorgan of North Dakota, and Senator Bennett of Utah, and have been assured by the Congressional Research Service and constitutional scholars that it would be upheld by the courts, and

Whereas, the AMVETS of North Dakota have consistently supported a statutory remedy over a Constitutional amendment at our annual conventions, now therefore be it

Resolved, that the AMVETS of North Dakota express appreciation to Senators McConnell, Conrad, Dorgan and Bennett and further supports the Flag Protection Act of 1999 and urge the National Department to also support the Flag Protection Act of 1999.

Submitted for consideration at the Department Convention by the Department Commander.

RANDALL A. LEKANDER,
Commander.

Adopted as amended by AMVETS Department of North Dakota in convention at Minot this 16th day of May, 1999.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. MCCONNELL. I thank the distinguished Senator from North Dakota for his outstanding remarks in support of

the effort we have, on a bipartisan basis, put together to try to deal with the flag desecration problem through statute rather than by amending the first amendment to the United States Constitution for the first time in its 200-year history. It has been a pleasure working with the distinguished Senator from North Dakota. I thank him for his support.

We hope all of our colleagues will take a look at a different approach to this problem when the vote occurs tomorrow afternoon.

Madam President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator has 30 seconds.

Mr. MCCONNELL. I yield it back.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. I believe we are now about to move to the Hollings amendment. Is that the next agenda item?

The PRESIDING OFFICER. The Senator from West Virginia, Mr. BYRD, still controls 30 minutes of time which, under the previous order, was to occur prior to moving to the Hollings amendment.

Mr. SESSIONS. Are there 2 hours equally divided on the Hollings amendment?

Mr. HOLLINGS. Madam President, I understand that the Senator from West Virginia is not going to use that 30 minutes. So I am authorized to yield back that time. I yield back Senator BYRD's 30 minutes.

The PRESIDING OFFICER. All time has been yielded back.

Under the previous order, the Senator from South Carolina is to be recognized to offer a first-degree amendment. Under the previous order, there shall be 4 hours of debate on the amendment, equally divided, with one of the 4 hours to be under the control of the Senator from Arizona, Mr. MCCAIN.

Mr. SESSIONS. I am prepared to yield the floor to the Senator from South Carolina and ask unanimous consent that I be allowed to have 30 minutes on this subject.

The PRESIDING OFFICER. Is there objection?

Mr. HOLLINGS. Thirty minutes when?

Mr. SESSIONS. Whenever.

The PRESIDING OFFICER. Out of the 2 hours that has been set aside?

Mr. SESSIONS. In the next hour.

The PRESIDING OFFICER. Following Senator HOLLINGS?

Mr. SESSIONS. Yes. If we can finish in 1 hour.

Mr. HOLLINGS. No objection.

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

The Senator from South Carolina.

AMENDMENT NO. 2890

(Purpose: To propose an amendment to the Constitution of the United States relating to contributions and expenditures intended to affect elections)

Mr. HOLLINGS. Madam President, has the amendment been reported?

The PRESIDING OFFICER. The amendment is at the desk.

Mr. HOLLINGS. I ask that the clerk report the amendment.

The legislative clerk read as follows:

The Senator from South Carolina [Mr. HOLLINGS], for himself, Mr. SPECTER, and Mr. REID, proposes an amendment numbered 2890.

Mr. HOLLINGS. 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:

On page 2, line 4, strike beginning with ''article'' through line 10 and insert the following: ''articles are proposed as amendments to the Constitution of the United States, either or both of 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 7 years after the date of submission for ratification:''.

''ARTICLE—

''SECTION 1. Congress shall have power to set reasonable limits on the amount of contributions that may be accepted, and the amount of expenditures that may be made by, in support of, or in opposition to, a candidate for nomination for election to, or for election to, Federal office.

''SECTION 2. A State shall have power to set reasonable limits on the amount of contributions that may be accepted by, and the amount of expenditures that may be made by, in support of, or in opposition to, a candidate for nomination for election to, or for election to, State or local office.

''SECTION 3. Congress shall have power to implement and enforce this article by appropriate legislation.

''ARTICLE—''.

Mr. HOLLINGS. Madam President, this amendment is offered on behalf of myself, the distinguished Senator from Pennsylvania, Mr. SPECTER, and the distinguished Senator from Nevada, Mr. REID.

Let me go right to the heart of some comments just made because I want to emphasize what the distinguished Senator from North Dakota said.

One, with respect to the matter of actually passing a statute whereby the statute would suffice, I only refer specifically, because I have been reading it at length, to the decision of the U.S. Supreme Court in Nixon v. Shrink, that for nearly a half century the Court has extended first amendment protection to a multitude of forms of speech, such as making false inflammatory statements, filing lawsuits, dancing nude, exhibiting drive-in movies with nudity, burning flags, and wearing military uniforms. It goes on to cite even more examples.

That is why this Senator would not vote for the statute. I think that is dancing around the fire and a putoff. On the contrary, I intend to support the constitutional amendment. But I do agree with the observation of the distinguished Senator from North Dakota that the Constitution should not be amended lightly, and, as the Senator stated, not amended when there are other ways.

There is a definite difference between the matter of burning the flag—there is really no threat to the Republic. There is no threat to our democracy. There is no corruption. I do not like it; others do not like it. I hope we can pass the amendment.

But there is basis for the concern that a constitutional amendment is not in order because there is no threat to the Republic. We have seen and, unfortunately, been hardened in a sense to observing the flag being burned. I happen to be like the man: Convinced against his will is of the same opinion still. They can keep on saying that is constitutional. I do not believe it.

I think an amendment to the Constitution is necessary. But only look around us. Where is everybody? Out raising money. The Senator from South Carolina is not charging that an individual is bribed. I know of no bribes. That is not my argument.

My argument and position is that this Congress, the process, and the Government have been corrupted by the money chase. We all know the amount of money. But all you have to do is have been around here for 30-some years and you get the feel, very definitely, that the money chase has taken over and we are thoroughly corrupted.

I say that because here it is Monday. It is really a wash day. There are no votes. There is nobody here to hear you. This is no deliberative body. That is really a nasty joke on all of us because we do not deliberate anymore. I remember over 30 years ago when we would come in on Monday morning and work all day, have votes at 9 o'clock on Monday morning, go throughout Tuesday, Wednesday, Thursday, Friday, and hope to get through by 5 on Friday and take Saturday and Sunday off and go back to work on Monday. But we start the week here with no votes, nobody around, no deliberation, no exchange of ideas, no legislation, just a sort of fill-in so you can give those who are concerned their time at bat, limited as it is, because it is only half time. Nobody is here to listen, so you can learn the fallacy in your arguments or the substance thereof. But there is no really good exchange out here by the Members themselves. Monday is gone, and Tuesday morning follows suit because we have to wait for everybody to get back from their Monday evening fundraisers. Then we have Tuesday afternoon, Wednesday, Thursday, and Friday is gone.

If you don't think it is corrupted, go up and ask the majority leader, if you please, to take up a bill. ''Oh'', he says, ''wait a minute, that might take 3 or 4 days.'' It's a given, that you are not going to call a bill that is going to take 3 or 4 days of consideration and debate by colleagues. It is not going to be called. Nothing is called unless the jury is fixed.

Why haven't we taken up the budget? Because they haven't been able to fix the vote of the Senator from Texas. They fixed all the others. They got them in line. I don't know what their budget is. There has been give and take

among the members on the Budget Committee on the Republican side, but we on the Democratic side have yet to see a budget, even though it is the end of March. We are supposed to have had the markup for several weeks and be ready to report it out by this weekend. We do have notice, but you can bet your boots if we come together tomorrow afternoon and Thursday, they will use Thursday night and the threat of, ''wait a minute, you will have to work on Friday, so hurry up, let's vote until 1 o'clock in the morning,'' whatever it is, because none of your amendments is going to pass; we have the votes.

That is the most deliberative process. That is the corruption the money chase has gotten us into. You can't consider anything here. Come Tuesday, they say, ''well, we will have a caucus.'' In the main, that is about money and how we are going to collect it, and how we will dock each other so many thousands of dollars, and who has been to meetings, and everything else of that kind. Otherwise, come evening, ''hurry up and let's adjourn early because I have a fundraiser Tuesday evening.'' Or, on Wednesday we have a window. ''Can we make sure; I have to go all the way downtown at lunchtime, so let's not have any real conduct of the Senate or work of the Congress because I want a window so we can go down and have that fundraiser; or wait until the evening.'' The same thing occurs on Thursday.

By the way, there is a special Wednesday afternoon set up where we are supposed to go over to our campaign committees and get on the phone for hours in the afternoon. To do what? To call for money. I thought when we got elected, the campaign was over and we were going to work for the people. Instead, we go to work for ourselves. The entire process has been corrupted. That is why we need a constitutional amendment.

No, not likely. We have tried for 25 years to get around Buckley v. Valeo. We got a little squeak from Justice Stevens in the Nixon v. Shrink decision. He said: Money is property, not speech. But he was only one. The rest of the Court, in other words, had every opportunity to consider it being property and not speech, but they reiterated Nixon v. Shrink, that money is speech. My gracious, if you read that dissenting opinion with Scalia and the other two Justices, they read it to go with removing the limits on contributions. Just buy it. This thing is a real disaster; it is an embarrassment.

Just coming on the floor, they called my staff and said: Why in the world would you want to amend the Constitution here but not with the flag? Well, of course, I corrected that. I would amend the Constitution with the flag. But those who have some concern about the flag amendment to the Constitution need not hesitate with respect to this particular amendment. Otherwise, they have been living in a cocoon somewhere, or they have been in China during the last campaign, because all you have to do is look at the primaries and see that the one thing, whether it was Independent, Democratic, Republican or any other kind of votes, that they were trying to clean up this system.

Senator GORE, Vice President GORE, got the message. He said: The first thing I will do as President of the United States is introduce McCain-Feingold and do away with soft money.

Governor George W. Bush said that was a terrible thing. I read that in the news. But I remembered back to January 23, in his interview with George Will, when Governor Bush said soft money, both corporate and labor, should be banned. I agree. But I will have to agree with the distinguished Senator from Kentucky that it is patently unconstitutional according to the Court. All we are trying to do is constitutionalize McCain-Feingold or any and every other idea you want, whether you want to publicly finance, whether you want to give free TV time, whether you want to limit, whether you want to not limit, whether you want to increase the limit—whatever you want to do. Don't give me the argument on this one because this only constitutionalizes your particular idea.

Let me read exactly what it says:

> Congress shall have the power to set reasonable limits on the amount of contributions that may be accepted by, and the amount of expenditures that may be made by, in support of, or in opposition to, a candidate for nomination for election to, or for the election to, Federal office.

We have had this up for over 10 years, Senator SPECTER and myself. I have had it up for over 20 years. I can tell you, the States in unanimity, the Governors' conference and all, came and said: Please put us in. We have the same problem, not just for Federal office but for State office. It is costing $1 million to get elected to the city council. It has corrupted the entire process over the land, and everybody knows it.

Section 2—this is why we added it—

> A State shall have power to set reasonable limits on the amount of contributions that may be accepted by, and the amount of expenditures that may be made by, in support of, or in opposition to, a candidate for nomination for election to, or for election to, State or local office.

Of course, Congress is empowered to implement and enforce the article by appropriate legislation.

That is a very simple amendment. You can bet your boots it is far more important at this particular hour of our history. The 27th amendment has to do with our pay. Well, it is certainly more important than the Fed raising his pay because if he votes that way, they are going to jump all over him at the next election. So they didn't even need this. This was just puffing and blowing and demonstrating and flagellating. That is all we have been doing up here this year. We figured as long as we could put the people off and sneak back in, we could get the money to buy the time to buy the office.

The 22nd amendment, Presidential term limits. More important than that. The 23rd amendment, D.C. electoral votes. This is more important—this particular corruption to be corrected. The elimination of the poll tax, the 24th amendment, and the 25th amendment, Presidential succession. The 26th amendment, giving 18-year-olds the right to vote. You have taken away the vote of all the people, not just the 18-year-olds.

I ask unanimous consent that this short article be printed in the RECORD at this point.

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

[From the Washington Post, Mar. 19, 2000]

PANDER GAP

(By Richard Morin)

This may be really hard to believe: Neither Congress nor the President panders to public opinion. And they don't craft policy to match the latest poll numbers, either.

You scoff. But those are the claims of two political scientists who have documented the gap between what Americans say they want and what their politicians deliver. ''We have found a dramatic decline of political responsiveness to the wishes and preferences of the public on major policy decisions in at least the past 20 years,'' assert Lawrence R. Jacobs of the University of Minnesota and Robert Y. Shapiro of Columbia University in their forthcoming book, ''Politicians Don't Pander.''

The researchers tracked Americans' views on a range of political issues and compared them with the relevant legislation that Congress eventually approved. Twenty years ago, lawmakers did what a majority of Americans wanted about two-thirds of the time, they found. Today, Congress is on the same page with the public only about 40 percent of the time. This growing disconnect, the authors argue, is at the heart of America's mistrust of politicians, government and the political process.

The reputation that President Clinton has developed for governing by poll isn't accurate, the contend. Certainly, Clinton and other politicians do a lot of polling, but not to make policy; instead, the authors say, the surveys are used to figure out how to sell policies that have already been constructed (much as market researchers convene focus groups and sponsor surveys to find new ways to get you to buy soap).

Rather than hewing to the demands of voters, the researchers say, today's lawmakers answer to ''the extreme ideological elements of their parties, to their contributors, and to special interests.'' They say the split between politicians and the people accelerated in the 1990s, as Congress became increasingly partisan.

In their book, Jacobs and Shapiro offer two revealing case studies of how the sausage is really made in Washington. The first was the failed Clinton health care plan; the second was the ''Contract With America,'' led by former House speaker Newt Gingrich. These peeks inside the process included interviews with dozens of policymakers as well as access to reams of memorandums and policy drafts.

''Our research showed that public opinion played no role, or [was] secondary at best,'' Jacobs said, 'We don't trust public opinion. . . . Constituencies are important to us.'''

Remarkably, Jacobs said, Republicans told them ''much the same thing, sometimes using nearly the same words.'' Partisan concerns, special interest pleadings and narrow

ideological concerns consistently trumped the vox pop. ''What a majority of Americans really wanted was never a driving factor,'' he said.

Jacobs says he's not suggesting that politicians should march in lock step with the polls. ''There are times, like Nixon's opening to China, when politicians should disregard public opinion. But it should be part of a larger discussion about why the public will is being ignored. These should be the exceptions.''

Mr. HOLLINGS. This is entitled ''Pander Gap.'' We are not pandering to the people. We have taken away the votes of all the people, not just the 18-year-olds. The survey is used to figure out this so-called polling. They say we followed the polls. I am quoting this part of it:

. . . the surveys are used to figure out how to sell policies that have already been constructed (much as market researchers convene focus groups and sponsor surveys to find new ways to get you to buy soap).

Rather than hewing to the demands of voters . . . today's lawmakers answer to ''the extreme ideological elements of their parties, to their contributors, and to special interests.''

In short, to money, money, money, millions and millions. The year before last I was supposed to run a race in South Carolina on about $3 million at the most. I had to spend $5.5 million. Since the South has gone Republican, it made it more difficult. With two Republican Senators from Alabama, two from Mississippi, two from Texas, two from Tennessee, it seems everywhere I look, I've got Republicans buzzing around me.

I am not critical because I got a lot of good Republican votes. I am grateful for the Republicans who did vote for me. But, in essence, it was tough to get those contributions because they didn't want their names to appear, and then go to the club and have to explain why in the world they contributed to that scoundrel HOLLINGS? They were ready to give me the money, but they could not. So I had to travel the land and tell my story. I was lucky. They gave me a rather hard-working fellow as an opponent who was all over the place. Didn't know what he was talking about, about the polls and everything, and trying to take a fellow who had been in office almost 50 years, and being arrogant about it. You can't be arrogant and get elected seven times to the Senate. I can tell you that. You respond to the people, and I happily do so. I am responding to the people of this country.

I am not amending the Constitution lightly. I will yield in a moment to give my colleague from Alabama time. Let's hearken back to 1971 and 1974, the Federal Election Campaign Practices Act. I will never forget in the 1968 race, Maurice Stans was running around almost like the Chamber of Commerce. He told various businesses: Your fair share is this. He came to the textile industry in South Carolina and said it is $350,000. This was 30-some years ago. They had never raised $350,000 for this fellow, and I had done everything in the world for the textile industry. They got together 10 of them with $35,000 apiece.

What happened was individuals gave a million, or $500,000, $2 million, different amounts in cash. And it so happened that after President Nixon had taken office, the Secretary of Treasury, John Connolly came to the President and said: Mr. President, a lot of people have given you a lot of money. You haven't met them, you haven't shaken their hands, you haven't been able to thank them. I think it would be in order for you to come down to the ranch. I will put it on at the ranch.

Nixon said: Fine business, that's what we will do.

A few weeks later, they turned into the ranch. But as they turned into the ranch in Texas, there was old Dick Tuck with the Brinks truck—you know the prankster from the Kennedy years. My heavens, the Government was up for sale. We were all embarrassed, Republican and Democrat. We got to the floor and presented the 1974 Campaign Practices Act—we said to our friend, the Senator from Massachusetts: You can't buy it. We looked over there to the Senator from New York, Mr. Buckley and he said: You can't tell me. I am going to buy it. We passed it with an overwhelming bipartisan majority. But Senator Buckley then sued the Secretary of the Senate and took it all the way to the Supreme Court. That is where we got this distortion which causes the corruption. It was by one vote, 5–4.

If you want to raid the erudite decisions on this particular matter, read Justice White and Justice Marshall in the dissenting opinion. They foresaw this corruption in the process, where we can't get anything done, where we have the unmitigated gall to stand up and say: I am going to buy this office. Of course, they say: Freedom of speech; freedom of speech. Nobody is listening to that. I never thought the day would come when they would stand on the floor and proudly say, ''I am going to buy the office,'' or a particular party would come and say, ''We are going to buy the Presidency.'' That is exactly what they have done. The Republican Party said: Get out of the way, Steve Forbes, and all the rest of you; we are going to get our candidate, Governor Bush down in Texas, and we are going to raise him $70 million. He has already spent $63 million, and it is only March. We have almost 7 or 8 months to go before the election. They are not worried about that. We just never did think.

I can see Senator Long of Louisiana. Every mother's son ought to be able to run for the Presidency. That is why we have the checkoff on the income tax return and the matching funds for those who qualify. We thought that was good and plenty. But they spent, by the first of March, $63 million, and they will spend another $63 million very easily. That crowd has an investment.

If I were going to run for the Presidency, I would run on one particular message: Let the people of America know here and now this office is not for sale. That ought to be a fundamental Americanism—that you can't buy the office.

Now, we have several in the body who had millions in their campaigns and have gotten to the Senate. I will say in the same breath, I look at them and their service, and they would have done the same without the millions, but they did spend millions to get here. That is the kind of body we are turning it into more and more each year. You can't consider anything. You can't debate anything. You can't take time to speak to your colleagues. It is a veritable money chase. That is exactly why we are not doing anything this year. It is the year 2000, the year that the U.S. Congress squats and does nothing. There is an old political axiom: When in doubt, do nothing, and stay in doubt all the time. That reelects a lot of people. That is what we are motivated by on this particular afternoon.

I am going into the details of the amendment again out of necessity and will emphasize why we need a constitutional amendment, because we have tried it every other way. The Court has found, more and more, free speech implications in any and all legislation. Unless we can amend the Constitution to extract this cancer and this corruption from the body politic, we are goners. I can tell you that democracy is gone.

I yield the floor. I reserve the remainder of my time.

The PRESIDING OFFICER. Under the previous order, the Senator from Alabama is recognized for up to 30 minutes.

Mr. SESSIONS. Madam President, I always enjoy the remarks of the Senator from South Carolina. I am glad he doesn't speak with an accent. I can understand him better than most around this body. He is a straight shooter and a skilled lawyer who understands what the legal system is about and what we are doing in the Senate. I respect that.

I respect his conclusion, which I believe is legally sound, that most of the campaign proposals which have been proposed in recent years run afoul of the Constitution, according to a majority of the U.S. Supreme Court. That is a fact. I believe that is a good fact.

Some would say: Well, you want to limit free speech when you want to stop burning the flag and you want to prohibit that and that is free speech. The Supreme Court, by a 5–4 majority, held that the act of burning a flag is free speech. I don't agree with that. In 1971, the Supreme Court didn't agree with that. For over 200 years they didn't agree with that. Over 40 States have laws against it.

When it passed this time recently, it was a 5–4 majority. But in my view, the flag of the United States is a unique object and prohibiting its desecration will not in any way fundamentally alter the free expression of ideas in this country. You can speak about why the

flag ought to be burned and that sort of thing, but we know the act of it is different from speech. It seems to me if it is speech, and if the Court is correct in saying it is speech, then the people of the United States care deeply about protecting the flag. They have an avenue to adopt a restricted, narrow constitutional amendment that doesn't in any way jeopardize the ability of our people in this country to speak freely but would allow States to prohibit the burning of a flag. That is what I think we ought to do.

I think it would be healthy for this country to adopt a constitutional amendment that would allow the protection of the flag because people on the battlefield have died for that flag. More Medals of Honor have been awarded for preserving and fighting to preserve the flag than any other. We know the stories of battle when time after time the soldier carrying the flag is the target of the enemy. When he fell, another one would pick it up. When he fell, another one would pick it up. When he fell, another one would pick it up. That is the history.

We pledge allegiance to the flag, not the Constitution, not the Declaration of Independence. We pledge allegiance to the flag because it is a unifying event. It is a unifying symbol for America, and having a special protection for it is quite logical for me. I do not believe we should never amend the Constitution. I do not think we amend the Constitution enough. But we want to have good amendments that are necessary, that are important, that enrich us, and that make us a stronger nation. I support that.

With regard to the amendment of the Senator from South Carolina, I respect his honesty and his direct approach. I think by his amendment he recognizes in the most fundamental sense that when you constrain the right of people in this country to come together, raise money, and speak out on an issue that they care deeply about, you are indeed affecting independent thought, free debate, and freedom of speech.

The Constitution of the United States says Congress shall make no law abridging the freedom of speech.

I am really surprised to look at this amendment. It goes in just the opposite way. It says Congress shall have the power to place reasonable limits. So right away we are amending the first amendment. We are saying Congress shall have the power to place reasonable limits on the amount of contributions that may be made and accepted, and the amount of expenditures made by and in support of or in opposition to a candidate for office in the United States, State and Federal—the two clauses of this amendment. We are saying incumbent politicians in this body ought to be seeking to encourage laws that would prohibit people from gathering together and raising funds and speaking out. The Senator said we want a constitutional amendment because it will allow any other thing you want to do, whatever you want. He said it will allow that in terms of campaign finance. That is a scary thing to me—whatever we want.

What do incumbents want? They want many times to keep down debate. They want to keep from the people the errors they may have made, or the acts they have carried out with which the people do not agree. Many times the only way we can ever know what the truth is, is for people who care about those issues to raise money and speak out against it.

I feel very strongly about this. I think this is a major event. If the flag amendment is a 1 on a constitutional scale, this Hollings amendment is a 9 or a 10. It is the first time in the history of this country I know of where we have submitted a constitutional amendment that does not increase our freedom, our liberties, and our ability to act and speak as we choose. It will be the first time I know of where we are proposing a constitutional amendment that would clearly dampen, reduce, and control the free rights of American citizens to speak out on issues they care deeply about.

The Cato Foundation, a conservative think tank, and the ACLU, a liberal group, are horrified at the very thought of this.

This is basic constitutional law. We are talking about restricting the right of people to run advertisements during a campaign season to say why they care about issues. What more is free speech about?

Chief Justice Rehnquist, in talking about the flag burning, said, ''At best, burning a flag is a grunt or a roar.'' It is not really speech at all, if you consider it some sort of expression, which I think is a stretch. But even then, you consider it inarticulate speech. That is not of great value compared to the unifying symbol of the flag.

But when you talk about taking away the right of American citizens to run ads on television, to buy newspapers, to print handbills and pass them out, and to say they can't do that; why? Well, you just can't do it during an election cycle. When do you want to speak out? What good is it if you do not want to do it during an election cycle?

I do not want to use all the time I have. We have two excellent scholars who care deeply about this issue who wanted to speak before I got unanimous consent. I don't want to take their time.

I will just say this before I yield the floor and ask that my time be given back to them.

We do not need to be retreating from freedom. We do not need to be retreating from free debate. We do not need to be adopting a constitutional amendment that will allow our children and grandchildren not to rise up, raise money, and speak out and condemn a group of incumbents who they believe are not doing the right thing in America. Sometimes that is the only way you can get the message out.

Frankly, I am not one of those who believes our national news media is fair. I think it is ludicrous to expect and to suggest they are fair and objective. They are clearly, in my view, biased toward big government and liberal activity.

I am not going to say I am going to subject my campaigns to constant reinterpretation of what I do to some media outlet that may get worse than it is today. Apparently, they have unlimited rights to run their programs every day and call it ''news'' if they want to. Somebody who has a different view cannot raise money, buy time on their program, and rebut that?

This is fundamental stuff. This is right to the core of what the first amendment was all about. The first amendment is about intelligent debate, argument, concern over policy issues—not whether or not you have a ''grunt'' or a ''roar'' in burning a flag. I don't believe that was ever intended to be covered by the Constitution.

If so, we don't need to go in this direction. It is one of the most adverse steps we could take. It would be an error of colossal proportions if this Senate were to vote to amend the great charter of freedom, the first amendment to the Constitution of the United States, out of some vain, hopeless effort that we are going to suppress the right of free American citizens to raise money and speak out on what they believe in.

I am prepared to vote on reasonable controls on campaign funding as long as it can pass constitutional muster. I believe fundamentally our best protection is to allow people to speak; if people give money, disclose how much money they give, and let everybody know promptly and immediately. If the public knows where the money is coming from, they may judge the value of the ads.

In my Republican primary 3 years ago for the Senate, I had eight opponents. They spent $5 million among them. I spent $1 million. Two of my opponents spent more than $1 million of their own money. I had to raise every dime I could raise, some $900,000. I worked hard, and I won the race. John Connolly, mentioned earlier, spent more money per vote than any man, and he got clobbered. Other senatorial candidates have spent tens of millions of dollars and have been clobbered in races.

I do not believe money always tells the tale. It was difficult for me when I faced the guy spending $1.5 million of his own money on a Republican primary in Alabama, but that is the way it is. I do not see how I can tell that person he cannot spend that money and express what he believes and cares about in that election about why he would be an outstanding candidate.

Many gave to me because they believed I could be an effective voice for their concerns. That is what America is all about. I don't believe it corrupts politicians. I believe it sucks them into

the system and makes them be participants. They speak, run ads, and attack, sometimes, unfairly. If we can figure out a way to do a better job of disclosing how this money is spent and from whom it comes, I think that will help the public.

I appreciate the leadership of Senators BENNETT and MCCONNELL, who are scholars on these issues. I believe the Senate should do well to listen to them. I agree with the Senator from South Carolina, this is really important. More Senators need to be paying attention to this crucial issue in our Nation's history.

I yield to the Senator from Kentucky.

The PRESIDING OFFICER. The Senator from Kentucky is recognized.

Mr. MCCONNELL. I thank the Senator from Alabama, who has faithfully participated in the campaign finance debates in the years he has been here, always very skillfully. I am sure some of the things I will say will be repetitious because he was right on the mark in his observations about the Hollings amendment.

It is important to note at the beginning of the debate, the last time we had a vote on the Hollings amendment was March 18, 1997. Only 38 Senators voted for the Hollings amendment, an effort to amend the first amendment for the first time in the 200-year history of our country, restricting avenues of political speech. Only 38 of the 100 Senators believe it necessary, no matter what our views on the various campaign finance proposals before the Senate, to carve a chunk out of the first amendment to give the Government this kind of truly draconian power to control everybody's speech.

I know Senator FEINGOLD of McCain-Feingold fame is also going to oppose this amendment. I note that the Washington Post, with which I have essentially never been aligned with on a campaign finance issue, also opposes this amendment.

With due respect to the Senator from South Carolina, he has framed the issue correctly by pointing out that in order to do what many of the so-called reformers have tried to do, you do need to amend the first amendment. Of course, that is a terrible idea, I respectfully suggest.

The campaign finance debate is all about constitutional freedom. Soft money, hard money, issue advocacy, express advocacy, PACs, independent expenditures, bundling, and the other terms of art in the campaign finance debate are euphemisms for freedoms of speech and association protections under the first amendment to our Constitution, freedoms belonging to citizens groups, candidates, and parties. It is no more complicated than that.

The measure before the Senate, the Hollings constitutional amendment to empower the Federal and 50 State governments to restrict all contributions and expenditures ''by, in support of, or in opposition to Federal and State candidates,'' illustrates this simple fact beautifully and succinctly. The Hollings amendment is a blunt instrument. Where a statutory approach such as a Shays-Meehan or McCain-Feingold and their ilk slices and dices at this freedom—a cut here, an evisceration there—the Hollings amendment reaches out and rips the heart right out of the first amendment.

Before this week is out, we could be on our way to getting rid of the first amendment protection for everyone except pornographers. But I rather enjoy this debate. No pretense, no artifice, no question about it: If you believe that the Government, Federal and State, ought to have the unchecked power to restrict all contributions and spending ''by, in support of, or in opposition to Federal and State candidates,'' then, by all means, vote for the Hollings amendment. If you believe that the U.S. Supreme Court should be taken out of the campaign finance equation, then the Hollings constitutional amendment is for you.

If the Hollings amendment had been in place 25 years ago, there would have been no Buckley decision; Congress would have gotten its way. Independent expenditures would be capped at $1,000. Any issue advocacy that the FEC deemed capable of influencing elections would be capped at $1,000. Everyone would be under mandatory spending limits. There would be no taxpayer funding. It would not be necessary because spending limits would not have to be voluntary.

That is why the American Civil Liberties Union counsel, Joel Gora, who was part of the legal team in the Buckley case, has called the Hollings constitutional amendment a ''recipe for repression.''

The media, news and entertainment industries, ought to take note. There is no exemption for them in the Hollings constitutional amendment, no media loophole. Under the Hollings constitutional amendment, the Federal and State governments could regulate, restrict, even prohibit the media's own issue advocacy, independent expenditures, and contributions just as long as the restrictions were deemed reasonable.

What we have traditionally done in order to assert what the Congress might consider reasonable is look to the American people and their views. Let's look at their views with regard to the press.

Eighty percent of Americans want newspapers' political coverage regulated. You cannot do that under the first amendment; you could under the Hollings amendment.

Eighty-six percent want mandatory equal coverage of candidates by newspapers. You cannot do that under the first amendment; you could do it under the Hollings amendment.

Eighty percent want newspapers required to give equal space to candidates against whom they editorialize. You can't do that under the first amendment; you could under the Hollings amendment.

Seventy percent believe reporters' personal biases affect campaign and issue coverage.

They are right about that. Sixty-eight percent believe newspaper editorials are more important than a $10,000 contribution.

Sixty-one percent believe that a newspaper-preferred candidate trumps the better-funded candidate.

Forty-two percent of Americans believe editorial boards ought to be forced to have an equal number of Republicans and Democrats.

Finally, 45 percent of Americans think newspapers should be required to give candidates free ad space.

I mention this survey to make the point that if Congress is going to have the power to regulate all of this speech, presumably, it will refer to the opinions of the American people in trying to make these regulatory decisions, and all of those items I mentioned could be fair game in determining what is reasonable to be spent ''by and on behalf of or in opposition to a candidate.''

Again, I commend the Senator from South Carolina for offering this amendment insofar as he lays on the table just what the stakes are in the campaign finance debate. To do what the reformers say they want to do, limit ''special interest influence,'' requires limiting the U.S. Constitution which gives special interests—all Americans—the freedom to speak, the freedom to associate, and the freedom to petition the Government for redress of grievances. That is called lobbying.

We have to gut the first amendment and throw on the trash heap that freedom which the U.S. Supreme Court said six decades ago is the ''matrix, the indispensable condition of nearly every other form of freedom.''

Some would call that horror reform. A few dozen Senators may even vote for it. As I said, last time 38 voted for it. We can all agree to disagree on campaign finance. We can even agree to disagree on what is reform. But surely we can also agree that this business of amending the Constitution whenever the Supreme Court hands down a result we do not like is wrong and is dangerous. We trivialize that sacred document which so embodies the spirit of America, which guarantees the success of America, and we treat it as if it were a rough draft. To be seriously contemplating chopping off a huge chunk of the Bill of Rights must seem incomprehensible to the casual viewer of this discussion.

This debate, like the debate over Shays-Meehan and McCain-Feingold, is not only about politicians' first amendment freedoms. The ''in support of or in opposition to'' components of the Hollings constitutional amendment refer to the freedom of everyone else in America—private citizens and groups and, yes, as I pointed out, even the media, the entire universe of political speech.

What makes the Hollings amendment on many orders of magnitude so much more egregious than the statutory proposals is that the Supreme Court cannot intervene and save America from whatever folly we would engage in on the floor in defining what ''reasonable'' is.

As I said, I recoil in horror from the substance of the Hollings amendment while I embrace the clarity of the choice it presents us. It exposes the fallacy of McCain-Feingold and other such speech suppression schemes. If one believes that McCain-Feingold is constitutional, as its advocates claim it is, then we do not need the Hollings constitutional amendment. If my colleagues vote for the Hollings constitutional amendment, then they have affirmed what so many of us inside and outside the Senate have been saying: That to do what McCain-Feingold proponents want to do—restrict spending by, in support of, and in opposition to candidates—then we need to get rid of the first amendment. That is what the Hollings constitutional amendment does: No more first amendment protection of political speech for anyone, politician or not.

Fifteen years ago, when I first took the oath of this office to support and defend the Constitution of the United States against all enemies foreign and domestic, I had no idea how much time and energy I would expend doing just that—defending the Constitution, not from foreign enemies, mind you, but from the Congress itself. I certainly could not have imagined that the Senate would spend so much time seriously discussing whether we should wipe out core political freedoms. We need to stop this, and I am confident and hopeful that the Hollings amendment will be defeated overwhelmingly tomorrow, as it has been defeated overwhelmingly in the past.

I will mention a couple of recent letters in relation to this amendment. One is from Roger Pilon at the Cato Institute who says in pertinent part:

. . . I am heartened to learn that those who want to ''reform'' our campaign finance law are admitting that a constitutional amendment is necessary. But that very admission speaks volumes about the present unconstitutionality of most of the proposals now in the air. It is not for nothing that the Founders of this nation provided explicitly for unrestrained freedom of political expression and association—which includes, the Court has said, the right to make political contributions and expenditures. They realized that governments and government officials tend to serve their own interests, for which the natural antidote is unfettered political opposition—in speech and in the electoral process.

In the name of countering that tendency this amendment would restrict its antidote. It is a ruse—an unvarnished, transparent effort to restrict our political freedom and, by implication, the further freedoms that freedom ensures. That it is dressed in the gossamer clothing of ''reform'' only compounds the evil—even as it exposes its true character.

I also have a letter from the ACLU, dated March 24, 2000, indicating its opposition to the Hollings constitutional amendment. In pertinent part, the ACLU says the constitutional amendment:

. . . would also give Congress and every state legislature the power, heretofore denied by the first amendment, to regulate the most protected function of the press—editorializing. Print outlets such as newspapers and magazines, broadcasters, Internet publishers and cable operators would be vulnerable to severe regulation of editorial content by the government. A candidate-centered editorial, as well as op-ed articles or commentary printed at the publisher's expense are most certainly expenditures in support of or in opposition to particular political candidates. The amendment, as its words make apparent, would authorize Congress to set reasonable limits on the expenditures by the media during campaigns, when not strictly reporting the news. Such a result would be intolerable in a society that cherishes the free press.

Even if Congress exempted the press from the amendment, what rational basis would it use to distinguish between certain kinds of speech? For example, why would it be justified for Congress to allow a newspaper publisher to run unlimited editorials on behalf of a candidate, but to make it unlawful for a wealthy individual to purchase an unlimited number of billboards for the same candidate? Likewise, why would it be permissible for a major weekly news magazine to run an unlimited number of editorials opposing a candidate, but impermissible for the candidate or his supporters to raise or spend enough money to purchase advertisements in the same publication? At what point is a journal or magazine that is published by an advocacy group different from a daily newspaper, when it comes to the endorsement of candidates for federal office? Should one type of media outlet be given broader free expression privileges than the other? Should national media outlets have to abide by fifty different state and local standards for expenditures? These are questions that Congress has not adequately addressed or answered.

All of which would be before the Congress if the Hollings amendment were to become law.

Madam President, I ask unanimous consent that the letter from the Cato Institute, the ACLU, and an editorial from the Washington Post, also opposing the Hollings amendment, be printed in the RECORD.

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

CATO INSTITUTE,
Washington, DC, March 24, 2000.

Hon. MITCH MCCONNELL,
Chairman, Committee on Rules and Administration, U.S. Senate, Washington, DC.

DEAR CHAIRMAN MCCONNELL: Your office has invited my brief thoughts on S.J. RES. 6, offered by Senator Hollings for himself and Senators Specter, McCain, and Bryan, which proposes an amendment to the Constitution of the United States that would grant power to the Congress and the States ''to set reasonable limits on the amount of contributions that may be accepted by, and the amount of expenditures that may be made by, in support of, or in opposition to, a candidate for nomination for election to, or for election to,'' any federal, state, or local office.

It is my understanding that on Monday next, Senator Hollings is planning to offer this resolution as an amendment to the flag-burning amendment now before the Senate. For my thoughts on the proposed flag-burning amendment, please see the testimony I have given on the issue, as posted at the web site of the American Civil Liberties Union, and the op-ed I wrote for the Washington Post, copies of which are attached.

Regarding the proposed campaign finance amendment, I am heartened to learn that those who want to ''reform'' our campaign finance law are admitting that a constitutional amendment is necessary. But that very admission speaks volumes about the present unconstitutionality of most of the proposal now in the air. It is not for nothing that the Founders of this nation provided explicitly for unrestrained freedom of political expression and association—which includes, the Court has said, the right to make political contributions and expenditures. They realized that governments and government officials tend to serve their own interests, for which the natural antidote is unfettered political opposition—in speech and in the electoral process.

In the name of countering that tendency this amendment would restrict its antidote. It is a ruse—an unvarnished, transparent effort to restrict our political freedom and, by implication, the further freedoms that freedom ensures. That it is dressed in the gossamer clothing of ''reform'' only compounds the evil—even as it exposes its true character. If the true aim of this amendment is incumbency protection, then let those who propose it come clean. Otherwise, they must be challenged to show why the experience of previous ''reforms'' will not be repeated in this case too. Given the evidence, that will not be an enviable task.

Fortunately, candor is still possible in this nation. This is an occasion for it. I urge you to resist this amendment with the focus that candor commands.

Yours truly,

ROGER PILON,
Vice President for Legal Affairs.

AMERICAN CIVIL LIBERTIES UNION,
WASHINGTON NATIONAL OFFICE,
Washington, DC, March 24, 2000.

DEAR SENATOR: The American Civil Liberties Union strongly opposes S.J. Res. 6, the proposed constitutional amendment that permits Congress and the states to enact laws regulating federal campaign expenditures and contributions.

Whatever one's position may be on campaign finance reform and how best to achieve it, a constitutional amendment of the kind here proposed is not the solution. Amending the First Amendment for the first time in our history in the way that S.J. Res. 6 proposes would challenge all pre-existing First Amendment jurisprudence and would give to Congress and the states unprecedented, sweeping and undefined authority to restrict speech protected by the First Amendment since 1791.

Because it is vague and over-broad, S.J. Res. 6 would give Congress a virtual ''blank check'' to enact any legislation that may abridge a vast array of free speech and free association rights that we now enjoy. In addition, this measure should be opposed because it provides no guarantee that Congress or the states will have the political will, after the amendment's adoption, to enact legislation that will correct the problems in our current electoral system. This amendment misleads the American people because it tells them that only if they sacrifice their First Amendment rights, will Congress correct the problems in our system. Not only is this too high a price to demand in the name of reform, it is unwise to promise the American people such an unlikely outcome.

Rather than assuring that the electoral process will be improved, a constitutional

amendment merely places new state and federal campaign finance law beyond the reach of First Amendment jurisprudence. All Congress and the states would have to demonstrate is that its laws were ''reasonable.'' ''Reasonable'' laws do not necessarily solve the problems of those who are harmed by or locked out of the electoral process on the basis of their third party status, lack of wealth or non-incumbency. The First Amendment properly prevents the government from being arbitrary when making these distinctions, but S.J. Res. 6 would enable the Congress to set limitations on expenditures and contributions notwithstanding current constitutional understandings.

Once S.J. Res. 6 is adopted, Congress and local governments could easily further distort the political process in numerous ways. Congress and state governments could pass new laws that operate to the detriment of dark horse and third party candidates. For example, with the intention of creating a ''level playing field'' Congress could establish equal contributions and expenditure limits that would ultimately operate to the benefit of incumbents who generally have higher name recognition, greater access to their party apparatus and more funds than their opponents. Thus, rather than assure fair and free elections, the proposal would enable those in power to perpetuate their own power and incumbency advantage to the disadvantage of those who would challenge the status quo.

S.J. Res. 6 would also give Congress and every state legislature the power, heretofore denied by the First Amendment, to regulate the most protected function of the press—editorializing. Print outlets such as newspapers and magazines, broadcasters, Internet publishers and cable operators would be vulnerable to severe regulation of editorial content by the government. A candidate-centered editorial, as well as op-ed article or commentary printed at the publisher's expense are most certainly expenditures in support of or in opposition to particular political candidates. The amendment, as its words make apparent, would authorize Congress to set reasonable limits on the expenditures by the media during campaigns, when not strictly reporting the news. Such a result would be intolerable in a society that cherishes the free press.

Even if Congress exempted the press from the amendment, what rational basis would it use to distinguish between certain kinds of speech? For example, why would it be justified for Congress to allow a newspaper publisher to run unlimited editorials on behalf of a candidate, but to make it unlawful for a wealthy individual to purchase an unlimited number of billboards for the same candidate? Likewise, why would it be permissible for a major weekly newsmagazine to run an unlimited number of editorials opposing a candidate, but impermissible for the candidate or his supporters to raise or spend enough money to purchase advertisements in the same publication? At what point is a journal or magazine that is published by an advocacy group different from a major daily newspaper, when it comes to the endorsement of candidates for federal office? Should one type of media outlet be given broader free expression privileges than the other? Should national media outlets have to abide by fifty different state and local standards for expenditures? These are questions that Congress has not adequately addressed or answered.

Moreover, the proposed amendment appears to reach not only expenditures by candidates or their agents but also the truly independent expenditures by individual citizens and groups—the very kind of speech that the First Amendment was designed to protect.

If Congress or the states want to change or campaign finance system, then it need not throw out the First Amendment in order to do so. Congress can adopt meaningful federal campaign finance reform measures without abrogating the First Amendment and without contravening the Supreme Court's decision in Buckley v. Valeo. Some of these reform measures include:

Public financing for all legally qualified candidates—financing that serves as a floor, not a ceiling for campaign expenditures,

Extending the franking privilege to all legally qualified candidates,

Providing assistance to candidates for broadcast advertising,

Improving the resources for the FEC so that it can provide timely disclosure of contributions and expenditures,

Providing resources for candidate travel.

Rather than argue for these proposals, many members of Congress continue to propose unconstitutional measures, such as the McCain/Feingold bill that are limit-driven methods of campaign finance reform that place campaign regulation on a collision course with the First Amendment. Before Senators vote to eliminate certain First Amendment rights, the ACLU urges the Congress to consider other legislative options, and to give these alternatives its considered review through the hearing and mark-up processes.

The ACLU urges Senators to oppose S.J. Res. 6. As Joel Gora, Professor of Law of the Brooklyn Law School recently stated, ''This constitutional amendment is a recipe for repression.''

Sincerely,

LAURA W. MURPHY,
Director.

[From the Washington Post, Dec. 2, 1996]

WRONG WAY ON CAMPAIGN FINANCE

Campaign finance reform is hard in part because it so quickly bumps up against the First Amendment. To keep offices and officeholders from being bought, proponents seek to limit what candidates for office can raise and spend. That's reasonable enough, except that the Supreme Court has ruled—we think correctly—that the giving and spending of campaign funds is a form of political speech, and the Constitution is pretty explicit about that sort of thing. ''Congress shall make no law . . . abridging the freedom of speech'' is the majestic sentence. So however laudable the goal, you end up having to regulate lightly and indirectly in this area, which means you are almost bound to achieve an imperfect result.

As a way out of this dilemma, Senate Minority Leader Tom Daschle added his name the other day to the list of those who say the Constitution should be amended to permit the regulation of campaign spending. He wasn't just trying to duck the issue by raising it to a higher level as some would-be amenders have in the past. Rather, his argument is that you can't win the war without the weapons, which in the case of campaign finance means the power not just to create incentives to limit spending but to impose spending limits directly.

But that's what everyone who wants to put an asterisk after the First Amendment says: We have a war to fight that we can win only if given the power to suppress. It's a terrible precedent even if in a virtuous cause, and of course, it is always in a virtuous cause. The people who want a flag-burning amendment think of themselves as defenders of civic virtue too. These amendments are always for the one cause only. Just this once, the supporters say. But have punched the one hole, you make it impossible to argue on principle against punching the next. The question becomes not whether you have exceptions to the free speech clause, but which ones?

Nor is it clear that an amendment would solve the problem. It would offer a means but not the will. The system we have is a system that benefits incumbents. That's one of the reasons we continue to have it, and future incumbents are no more likely to want to junk it than is the current crop.

The campaign finance issued tends to wax and wane, depending on how obscene the fund-raising was, or seemed, in the last election. The last election being what it was, Congress is under a fair amount of pressure to toughen the law. The Democrats doubtless feel it most, thanks to the revelations of suspect fund-raising on the part of the president's campaign, though the Republicans have their own sins to answer for—not least their long record of resistance to reform. With all respect to Mr. Daschle, a constitutional amendment will solve none of this.

The American political system is never going to be sanitized, nor, given the civic cost of the regulations that would be required (even assuming that a definition of the sanitary state could be agreed upon), should that be anyone's goal. Rather, the goal should be simply to moderate the role of money in determining elections and of course the policies to which the elections lead. The right approach remains the same: Give candidates some of the money they need to run, but exact in return a promise to limit their spending. And then enforce the promise. Private money would still be spent, but at a genuine and greater distance from the candidates themselves. It wouldn't be a perfect world, and that would be its virtue as well as a flaw.

Mr. MCCONNELL. Madam President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator has 32 minutes remaining.

Mr. MCCONNELL. I yield to the distinguished Senator from Utah whatever time he may need.

The PRESIDING OFFICER. The Senator from Utah is recognized.

Mr. BENNETT. Madam President, I have enjoyed this discussion because it is always enlightening and is the kind of discussion the American people need to hear in the present atmosphere, when there is a rush to blame all of our problems on our campaign finance system, and say: If we only reform the campaign finance system, the millennium will come. Everything will be marvelous. We will vote on Mondays. Our political system will take care of itself. There will be purity throughout all the land.

I come to this debate not as a lawyer but as a businessman. One of the things I learned in the business world is: Find out if it works. It is very interesting to have the theory laid out before you, but the question is, Does it work? Will the situation be as advertised before you make the purchase?

We have enough examples before us that I think make it clear that the current reforms being talked about—whether it is a constitutional amendment or McCain-Feingold, which I believe would be struck down as unconstitutional—do not work. Let's look at the evidence. Let's see what we have.

Stuart Rothenberg has a column in Roll Call, a newspaper with which all

of us on the Hill are familiar. This appeared on March 20, 1997, but it is still applicable. It is talking about campaign finance reform applied in the State of Colorado. The headline is: ''Look Before You Leap: Colorado's Lesson on Campaign Finance.'' It goes through and describes the reforms that were established in Colorado, backed by Common Cause and the League of Women Voters, setting limits on candidates and limits on contributions. To quote Rothenberg:

Now, however, most seasoned political operatives and many candidates will tell you privately that they think the law is terrible. They complain that the limits are too low . . . and they note that the law doesn't address independent expenditures, which will now balloon.

That is the point I want to make over and over again: ''independent expenditures, which will now balloon.''

He goes on in the column to say:

So instead of making candidates more responsible for the campaign environment, the law actually encourages independent forces to become active.

Here is where they have tried it. They have found that special interest power has gone up, not down, and that candidates have been forced out of the equation to a great degree, while special interests have filled the vacuum.

He concludes his column by saying:

Clearly, the voters don't like the current campaign finance system, and they are eager for change. But they haven't considered the ramifications of many of the proposals, and most of the suggestions for reform have ignored the realities of political campaigns. Reformers would be well advised to start at the beginning, not at the end.

If I may be a little parochial for a moment, there is an editorial that appeared in the Salt Lake Tribune, my hometown newspaper, entitled ''Don't Ban Soft Money.'' The Salt Lake Tribune is not known for its friendliness to Republican candidates. But they have raised this issue, as is their first amendment right as a newspaper. They say:

The campaign-reform prescription of the moment is ''ban soft money.'' Beware. The cure could be worse than the disease.

They go on to describe all of that, and then they make the same point as Stuart Rothenberg:

A ban on soft money would simply encourage big donors to run issue campaigns themselves. Then a candidate's supporters could do a hatchet job on an opponent without any accountability to anyone. Some groups already are adept at this tactic.

I do not know if they ever met, but the Salt Lake Tribune and Stuart Rothenberg are making the same point: If you put the campaign finance reform pressure on the candidate, you increase the power of independent expenditures, you increase the power of special interest groups.

Here is a column by Dane Strother, a Democratic political consultant. I am trying to not just quote Republicans here. This appeared in the New York Times on February 1, 1997. He said:

Limiting candidates' spending usually succeeds only in giving special interests even more clout.

Once again, that is the same statement as these others. I will repeat it:

Limiting candidates' spending usually succeeds only in giving special interests even more clout. Consider recent ''reform'' efforts in Kentucky and the District of Columbia.

We are dealing with actual results here. We are not dealing with theory. He describes how, when he was living in the District of Columbia, campaign contributions were limited. He says:

In 1993, Washington limited contributions in mayoral races to $100—

Boy, that is draconian—

down from $2,000 per election cycle. Some candidates struggled mightily to raise even $30,000, and couldn't get their messages to the public. I lived in the District then, and didn't receive a single political flier or piece of mail. Some do-gooders would find this an improvement, but information is the basis of an educated vote.

Then here is the punch line—the same point. He said:

Special interests filled the vacuum. Unions and big business set up independent campaigns to help the candidates of their liking, while politicians were reduced to begging them for support. After the election, the City Council returned to the old system.

''Special interests filled the vacuum''—it is the pattern that has been repeated again and again. When you put limits on the ability of a candidate to express himself, to raise the money and get his message out, you create an enormous opportunity for special interests to fill the vacuum.

Here is another example. This one had to do with an election in Chicago. It is written by R. Bruce Dold. He talks about the 1984 race where Charles Percy lost his seat to Paul Simon.

He said this was brought about, in large measure, because of a campaign run by an outsider whom he identifies as a man named Michael Goland who had no connection whatsoever to Paul Simon but who did not like Charles Percy's voting record. So he ran a series of ads. He spent more than $1 million running his ads, independent of either Percy or DURBIN, attacking Percy as a chameleon. He said, if you put pressure on the candidates, you will see far more chameleon ads.

He points out that in 1996, the AFL-CIO spent millions of dollars to run ''Mediscare'' ads against Republicans; and then, to balance it, he shows that the Christian Coalition and the National Rifle Association tried similar maneuvers. He says, summarizing once again:

If these groups want to express a political opinion, more power to them. But McCain-Feingold would make them more powerful than the candidates themselves.

That is another example, another place. You go to Colorado, you go to Utah, you go to Washington, DC, you go to Chicago—everywhere it is tried, it is demonstrated again and again, the more pressure you put on the candidates in the name of campaign finance reform, the more you give to the special interest groups who then, in the words of one of the columnists there, fill the vacuum.

I have more that I would like to say, but I see my colleague from Washington is here, and I want to close so we can hear from him.

I simply want to commend to the Members of the Senate an article reprinted from the University of West Los Angeles Law Review written by James Bopp, Jr., and Richard E. Coleson, in which I think they summarize it all in the title of their article. The title is: ''The First Amendment Is Not A Loophole.'' I cannot think of a better summary of this entire debate than that title of this article by these lawyers in this law review: ''The First Amendment Is Not A Loophole.'' Then they add the subhead: ''Protecting Free Expression In The Election Campaign Context.''

I may come back to this article at a later point in the debate. But as I say, now I wish to wind up so we can hear from the Senator from Washington. I cannot think of a better summary than that of this title, and I leave it at that: ''The First Amendment Is Not A Loophole.''

Mr. MCCONNELL. Madam President, again I thank my good friend from Utah for his support and important contribution to this debate. We will have another hour in the morning where I hope he will be available and we will discuss that further.

How much time do I have left?

The PRESIDING OFFICER. The Senator has 21 minutes remaining.

Mr. MCCONNELL. I yield to the distinguished Senator from Washington such time as he may need.

The PRESIDING OFFICER. The Senator from Washington is recognized.

Mr. GORTON. Madam President, Members of this body, in speaking against a similar, though not identical, attempt to amend the Constitution of the United States 2 or 3 years ago, I spoke of amending the first amendment.

As I read this short and very simple proposal from the Senators from South Carolina and Arizona with respect to political speech, it does not amend the first amendment. It repeals it. It states that the Congress of the United States has the power reasonably to limit contributions or expenditures with respect to elections for Federal and State offices. That is exactly the power the Congress of the United States would have were there no first amendment to the Constitution of the United States. Our actions in that respect would have to meet some test of reasonableness under the 14th amendment in that field as they do in every other. But for all practical purposes, the first amendment to the Constitution of the United States, ratified by the States 209 years ago, would be repealed with respect to political speech.

Now, it is not deemed that obscenity is a significant enough threat to the people of the United States to repeal or even to amend the first amendment in that respect. It is not considered important enough to change the first

amendment with respect to tobacco or alcohol advertising. But it is considered that free and open political speech, through anything other than an individual's voice, is now such a great threat to the free institutions of the United States that Congress—that is to say, incumbent officeholders—ought to be able to limit it in any way they deem reasonable. This is clearly, as was its predecessor in 1997, the most profound threat to first amendment rights, literally, since that Constitution was adopted.

The Alien and Sedition Acts in the last decade of the 18th century were, after all, only statutes that were subject to challenge under the Constitution. They also had an automatic termination date to them. They are nonetheless constant examples of how a Congress can misuse its powers to limit speech and are considered such in almost any thorough history of the Constitution and of the United States itself.

Now, what is it that leads us to this moment? Clearly, it is the feeling, the opinion, that too much money is spent on politics, that there is too much political speech, and that it is clearly too free. The distinguished colleague who sits in front of me and was recently a candidate for President was, I think, rightly critical of two Texas millionaires who advertised in a way he considered misleading and false. This proposal would say that they could be completely muzzled, that they could be denied the right to speak at all, if it was deemed unreasonable. And certainly the candidate who was the victim of such speech deems it to be unreasonable, as would many incumbents in many Congresses in the United States.

We are here dealing with this proposition: Too much money is being spent on politics. Not that too much money is being spent on regulating the activities of the people of the United States, not that too much money is being spent on social or political programs of the United States, but that too much money is spent in responding to those programs and to that regulation and that somehow or another the power of the Federal Government to regulate economic, environmental, and social activities is so benign that we can muzzle the criticisms of those who are adversely affected by that regulation. At least we can muzzle those expressions which are directed at changing the people who write the very laws that impose those regulations.

We can at the very least ascribe consistency and thoughtfulness to the promoters of this constitutional amendment who are also eloquent spokespersons for the original McCain-Feingold legislation, legislation that limits, that comes close to eliminating the right of an outside person so much as to mention the name of a candidate 6 weeks before an election.

Yes, if you want to say that anyone—including a newspaper editorialist but even more significantly, someone who does not own a newspaper—who wants to criticize a candidate for office in the 6 weeks before an election, if you want to eliminate that right, if you think it is desirable to limit or to eliminate that right, you do, in fact, need this constitutional amendment.

McCain-Feingold, as it came before this body, in that respect at least is clearly and blatantly and openly in violation of a constitutional provision, the first amendment, that says: ''Congress shall make no law respecting freedom of speech or of the press.'' That may be the single most quoted line in the entire Constitution of the United States. But the proponents of this amendment here today propose effectively to strike it from the Constitution as it relates to election campaigns for Federal or State or local office.

The statement of the case should assure its defeat. The statement of the case that somehow or another we are too political, that campaigns for office are too robust as they deal with this massive engine of the Federal Government, and that we should repeal one of the founding theories of this Government, the right of completely untrammeled and totally free political speech, to state that proposition is to defeat.

We should not repeal the first amendment to the Constitution of the United States with respect to free political speech. We should not modify the first amendment to the Constitution of the United States with respect to free political speech. We should, though we may lack the imaginations of James Madison and his colleagues in the first Congress, at least have the wisdom and the humility not to destroy what they wrought at the very founding of this constitutional Republic.

Mr. MCCONNELL. Madam President, how much time does my side have remaining?

The PRESIDING OFFICER. The Senator from Kentucky has 9 minutes remaining.

Mr. MCCONNELL. Madam President, I am not sure I will use the entire 9 minutes. I thank the Senator from Washington for his contribution to this debate once again, and also my friend from Utah, and remind everyone the last time we voted on the Hollings amendment, it only got 38 votes. Even the Washington Post, with whom I am seldom aligned on this subject, opposes the measure. Senator FEINGOLD opposes the measure.

Mr. GORTON. Will the Senator from Kentucky yield for a question?

Mr. MCCONNELL. I yield to the Senator from Washington for a question.

Mr. GORTON. Is it appropriate, I ask my friend from Kentucky, to describe 38 votes to repeal the first amendment to the Constitution as ''only'' 38?

Mr. MCCONNELL. I say to my friend from Washington, it is discouraging that there were even 38, but I say also to my friend from Washington, in earlier Congresses the Hollings amendment got greater support, including up to 52 votes in favor of the proposition back in 1988. So I prefer to look at the bright side of this, I say to the Senators. It makes progress. We are moving in the right direction and, hopefully, tomorrow there will be even fewer than 38 votes. I think we are heading in the right direction. We have some time remaining. I don't know whether the Senator from Utah would like to speak further. I would be happy to give him the remainder of the time. It is my understanding there are 2 hours equally divided in the morning?

The PRESIDING OFFICER (Mr. ROBERTS). The Senator is correct in that assumption.

Mr. MCCONNELL. It is not yet determined when that would begin, is it?

The PRESIDING OFFICER. At 9:30.

Mr. MCCONNELL. Two hours equally divided beginning at 9:30 a.m.?

The PRESIDING OFFICER. That's correct.

Mr. MCCONNELL. I yield the remainder of the time on this side to the distinguished Senator from Utah.

Mr. BENNETT. Mr. President, I wish to add another point to the points I made earlier when I said that holding down the ability of candidates to express themselves in terms of the amount of money they can raise and the amount of advertising they can do only creates an opportunity for special interests to fill the vacuum. There is one other point I need to make with respect to the perceptions on this issue. The first perception, which I have attacked, is that holding down the expenditures and the contributions will somehow control the special interests. I am sure the results of where it has been tried has been in the opposite direction.

The special interest rule now through campaign contributions —I want to share this with the Senate. A survey was done in Fortune magazine, published in December of 1999, byline, Jeffrey Birnbaum, who, again, is not normally known for his sympathy of the positions of this Senator, he talks about the impact of money on politics in Washington in this article. Fortune magazine does an annual survey of who has the most clout in Washington, which special interests are the most powerful.

For 3 years running now—and in this article it is the same one—the No. 1 special interest that has the most power in Washington, rated by those who have done the survey, is—the envelope please—the AARP, which is a group that, by its rules, does not give any campaign contributions to anyone. The group that is considered the most powerful special interest in Washington by this independent survey is a group that does not give campaign contributions, hard or soft.

One of the individuals involved in pulling together the survey, a man from the Mellman Group—Mark Mellman is his name—he is one of the

pollsters. He normally polls on the Democratic side of the aisle. I think my Democratic colleagues might recognize his name. He made this comment, ''We couldn't find any direct relationship between campaign donations and clout.''

I think that is worth repeating in this superheated atmosphere about how campaign contributions are ''buying'' the Congress. Here is an outsider coming in to do a survey of the most powerful special interest groups in Washington and how they got their power, and he says: ''We couldn't find any direct relationship between campaign donations and clout.''

The question arises: if their clout does not come from the campaign contributions, why does the AARP have so much power? It is because they have so many members. It is voters who make the difference.

What is the group in second place behind the AARP. It is the National Federation of Independent Businessmen. Why do they have so much power? Because they have so many members. It is voters who make the difference.

I am sure that no one would want to say to the AARP, in the name of campaign finance reform, we are going to forbid you to tell your members what you think about how people vote in Washington. Are we going to say to the NFIB we are going to forbid you to talk to your own members in the name of campaign finance reform? Those are the groups that are 1 and 2 in this independent survey.

You can go through the whole thing and you will begin to realize that all of the conversation about contributions and power in Washington is conversation that takes place in the press gallery. In the reality of where we compete in the election process, it misses the mark.

I remember during the hearings someone said: Senator, with this process you are allowing people to buy access to you. I responded then as I respond now: The best way for you to get access to me is to register to vote in the State of Utah. If you are a voter in the State of Utah, I will do my best to get access to you, greet you, sign autographs, make you feel good about me. It will not cost you anything, particularly if you live in Utah. If you don't live in Utah, it would be a little hard to register there. So I think there are some myths that need to be dispelled.

The final one I want to address has to do with this question of the amount of money that is flowing and is being raised. I am quoting now from a paper presented by Professor Joel Gora from the Brooklyn Law School, another Democrat, a man who was heavily involved in Senator Eugene McCarthy's insurgent campaign for the Presidency in 1968. He makes this point:

> Senator McCarthy's landmark and principled 1968 Presidential campaign raised more money, adjusted for inflation, than George W. Bush's campaign this year . . .

I didn't hear anybody complaining in 1968 that Eugene McCarthy was a tool of special interests bought with special interest money. He raised more money, adjusted for inflation, than George W. Bush has raised this year. And Professor Gora goes on to say:

> . . . and did so relying on an extremely small handful of extremely wealthy individuals who shared the ideals and values of Senator McCarthy and his supporters. Only in the perverted post-Watergate world of campaign ''reform'' would the word ''corruption'' or ''the appearance of corruption'' possibly be used to describe that noble endeavor.

I didn't support Eugene McCarthy in 1968, but I agree that nobody would have said that Eugene McCarthy in 1968 was a tool of special interests or that he was part of corruption or the appearance of corruption? Why? He disclosed every dollar immediately when it was received, and everybody knew who his supporters were and why they were with him. They were with him because they opposed the war in Vietnam.

There is much more that can be said, and undoubtedly will be said, but I want to leave it at that. A number of myths are swirling around this whole debate. We need to look at the reality, which is that every time campaign finance reform has been tried at the State level, the power of special interest groups have gone up, not down, as a result. The reality of it is that we do not have an inordinate amount of money washing through politics today. If you take it on an inflation-adjusted basis, it is the same today as it was back in 1968. We do have a great deal of hysteria which, if we don't puncture the balloon of that hysteria, could lead us to make a seriously significant mistake. I don't want us to do that. That is why I am as vigorous as I can be to see to it that we do not pass the Hollings amendment and we do not, subsequent to that, pass McCain-Feingold.

I yield the floor.

The PRESIDING OFFICER. The distinguished Senator from Pennsylvania.

Mr. SPECTER. I thank the Chair.

The PRESIDING OFFICER. Who yields time to the Senator?

Mr. HOLLINGS. I yield such time as is necessary.

The PRESIDING OFFICER. The Senator is recognized.

Mr. SPECTER. I thank my distinguished colleague from South Carolina.

Mr. President, on January 30, 1976, the Supreme Court of the United States handed down a most extraordinary decision equating freedom of speech with money. That was a shock to me on the day the decision came down, and it remains a shock, because in a democracy political power ought not to be determined by who has the most money.

Since 1988, for more than 12 years, Senator HOLLINGS and I have proposed a very basic constitutional amendment which would permit Congress to regulate contributions and expenditures. There is nothing in this amendment which would limit political speech otherwise, but deals solely with the issue of contributions and expenditures.

The amendment states Congress shall have the power to set reasonable limits on the amount of contributions that may be accepted by and the amount of expenditures that may be made by or in support of or in opposition to a candidate for nomination or election to or for election to Federal office. Section 2 gives similar power to the States in identical language.

In 1976, the day Buckley v. Valeo was handed down, I was an announced candidate for the Republican nomination for the Senate in the State of Pennsylvania. I had entered into that contest on the basis of the 1974 Campaign Finance Act, which said that a candidate for nomination for the Senate in the State the size of Pennsylvania would be limited to spending of $35,000. My opponent in that primary contest was Congressman John Heinz. On January 30, the Supreme Court said that John Heinz could spend millions, which he did, and my brother, Morton Specter, who might have been able to finance my campaign, was limited to $1,000. I had a little bit of a hard time understanding at that point why Congressman Heinz's speech was different from Morton Specter's speech.

When I came to the Congress, I pursued this issue. As I say, since 1988, Senator HOLLINGS and I have pursued this constitutional amendment. This is the 106th Congress. It was in the 105th Congress and the 104th Congress, et cetera. I believe it is a very important amendment if we are to eliminate certain dangers, and certainly the perception of dangers, in our election system.

In the 1996 Presidential campaign, the expenditures were some $400 million. In the congressional campaigns in 1996, there was almost $300 million in the Senate, and more than $477 million in the House. In the 1988 congressional campaigns, the Senate spending level remained at about the same, while the House spent about $452 million. The time that it takes Members of Congress to raise the money has been well documented. There is a perception in the land that Members of Congress—Senators and Representatives—are for sale. I think that votes are not for sale, but I believe there is no doubt of the public perception to the contrary.

The amendment which has been presented is necessary because of the decision in the Buckley case, and it is improperly characterized as an amendment to the first amendment of the U.S. Constitution. In my personal view, the first amendment to the U.S. Constitution is inviolate. Those words have stood this country tremendously well, and I would fight any effort to change the language of the first amendment. But a decision by the Supreme Court of the United States in interpreting the first amendment is not inviolate. It is not Holy Writ. These judgments are handed down by individuals who are nominated and confirmed in the Senate, and they write opinions because that is their opinion as to what the first amendment means.

I submit that to say speech is equivalent to money is basically outrageous. But until that is changed and our Constitution requires that in the form of a constitutional amendment, it ought more accurately to be said that it is the opinion of the Congress by a two-thirds vote backed up by the opinion of the State legislatures, three-fourths of which are necessary to have the amendment come through, that the opinion of the Supreme Court is not correct.

We are debating at the same time a constitutional amendment on the flag-burning issue. Here again, it is not the Constitution which says that in the first amendment a citizen or anyone has a constitutional right to burn a flag. But five Justices said in opinions the first amendment raises that implication. Four Justices said the first amendment did not raise that implication. They are opinions. With all due respect to the men and women who occupy the chambers of the Supreme Court, with the columns lining directly up with the Senate Chamber, having participated in my tenure in eight confirmation proceedings, their opinions are not inviolate. And their opinions are subject to modification. As our Constitution is written, they have the last word unless the provisions of the Constitution are followed to have a change and an amendment.

When the Constitution was formulated, the Congress was in the first article, and I think the drafters of the Constitution thought that Congress was the primary article I body. The executive branch came in in article II. The Court came in in article III. There is nothing in the Constitution which says the Supreme Court of the United States has the power to invalidate an act of Congress. There is nothing in the Constitution which says that. But the Supreme Court of the United States, in 1803, in perhaps the most famous of all Supreme Court decisions, in Brown v. Board of Education—perhaps some others—said that the Supreme Court had that authority. I believe it was a wise decision because someone has to have the last word. But their pronouncements are not statements from the tabernacles, from the Ten Commandants, or Holy Writ. They are their opinions. It is a very tough mountain to climb to have this amendment adopted because it brings together a coalition of people who articulate the sanctity of the first amendment really misstating it as the sanctity of the opinions of the Justices.

Buckley v. Valeo was a split decision. Those individuals, institutions, agencies, are combined with the people who want to maintain the money chase for elective office the way it is at the present time, so there is no doubt it is a very tough proposition.

Go into the Cloakrooms of both parties and you find in common parlance the people who say they are for campaign finance reform really are not but say so because it will not pass. It is like the constitutional amendment for a balanced budget that requires 67 votes. There are people who say they are going to vote for it, but until it gets to 66, nobody will cast that 67th vote, so there is a fair amount of posturing on the issue before anything can be adopted.

It is important to focus on the fact that this provision, this amendment, this change in the opinions of the Justices of the Supreme Court in Buckley v. Valeo does not adopt any specific kind of change in the campaign laws. It does not say what will happen to soft money, it does not say what will happen to corporate contributions, it does not say what will happen to the union money, it does not say what will happen to money of millionaires or billionaires.

As we speak, there are campaigns underway for $25 million in one State in a primary. Is a seat in the Senate something that ought to be up for sale? I think $25 million for a primary is too high. Our seats ought not to be up for sale. There is too much of a public trust here for any individual to buy a seat in the Senate or the House of Representatives. That is the practical fact of life.

When the Supreme Court of the United States decided Buckley v. Valeo—and it is one of the most challenging opinions to read; it goes on for 128 pages of single-spaced opinions—the Court said at one point:

> We agree that in order to preserve the provision against invalidation on vagueness grounds, section 608(e)1 must be construed to apply only to expenditures for communications that in express terms advocate the election or defeat of a clearly identified candidate for Federal office.

Then they have a footnote which says: The Constitution would restrict the application to communications containing express words of advocacy of election or defeat such as ''vote for, elect, support, cast your ballot for, Smith for Congress, vote against, defeat, reject,'' et cetera.

That interpretation, on what is called express advocacy, has led to extraordinary approval of political advertisements, so-called ''issue advertisements,'' not regulatable by campaign finance and which can be paid for by soft money which corporations or individuals or unions or anyone can put up in large amounts—millions of dollars.

Let me read a couple of commercials from the 1996 election early on purchased with soft money, which really turned the election. This is not a Democrat issue or a Republican issue. Both sides comport themselves about the same.

This is a commercial for President Clinton's reelection.

> American values. Do our duty to our parents. President Clinton protects Medicare. The Dole/Gingrich budget tried to cut Medicare $270 billion. Protect families. President Clinton cut taxes for millions of working families. The Dole/Gingrich budget tried to raise taxes on eight million of them. President Clinton proposes tax breaks for tuition. The Dole/Gingrich budget tried to slash college scholarships. Only President Clinton's plan meets our challenges, protects our values.

Could anybody with hearing and sanity say that is not an advertisement for President Clinton? The Supreme Court of the United States says it is not. That is an issue ad. Why? Because it doesn't say ''elect Clinton.'' It doesn't say ''defeat Dole.'' But it says President Clinton protects Medicare. It says Dole-Gingrich tried to raise taxes on 8 million citizens.

Try another one:

> 60,000 felons and fugitives tried to buy handguns—but couldn't—because President Clinton passed the Brady bill—five-day waits, background checks. But Dole and Gingrich voted no. One hundred thousand new police because President Clinton delivered. Dole and Gingrich? Vote no, want to repeal 'em. Strengthen school anti-drug programs. President Clinton did it. Dole and Gingrich? No, again. Their old ways don't work. President Clinton's plan. The new way. Meeting our challenges, protecting our values.

Try this one on for size:

> Protecting families. For millions of working families, President Clinton cut taxes. The Dole-Gingrich budget tried to raise taxes on eight million. The Dole-Gingrich budget would have slashed Medicare 270 billion. Cut college scholarships. The President defended our values. Protected Medicare. And now, a tax cut of 1,500 a year for the first two years of college. Most community colleges are free. Help adults go back to school. The President's plan protects our values.

That is not a commercial for President Clinton, that is an issue advertisement, so says the law of the land handed down by the Supreme Court of the United States. To say it is ridiculous or to say it is outrageous or to say it is nonsensical, to say it is stupid is an understatement. Those are the laws we are operating under now.

We face very determined opposition. I heard a lot of arguments about myths and facts, arguments that the Constitution's right to freedom of speech would be changed by what Senator HOLLINGS and I and others are proposing. That is not so. It doesn't deal with the right to freedom of speech under the Constitution. It deals with campaign contributions and campaign expenditures.

When you talk about a good bit of the legislation which is pending, it is not going to do the job even if it is enacted. Better to try than not to try, but if you are dealing with soft money, it is going to be rejected under the clear-cut language of Buckley v. Valeo on what is express advocacy contrasted with what is issue advocacy.

The only way to get this job done is to adopt an amendment. We call it a constitutional amendment, but it really is not a constitutional amendment. It is not a constitutional amendment because it does not seek to change the words of the Constitution. It does not seek to change the words of the first amendment. It seeks only to say the opinions of the Justices in a split Court

are not correct. Those are men and women, not too dissimilar from Senator HOLLINGS, a very distinguished lawyer who could have been on the Supreme Court if he had chosen to be on the Supreme Court. In a fact not widely known, you don't have to be a lawyer to be on the Supreme Court.

Parenthetically, I tried to urge Senator Hatfield to become a Supreme Court Justice at one stage because I thought he had extraordinary qualifications, one of which was he wasn't a lawyer, but there are others who have different opinions.

When you equate money with speech, Justice Stevens said in his concurring opinion in Nixon v. Shrink Missouri Government PAC: Money is property, it is not speech.

It seems fundamental that in a democracy the power of a person with money is greater than the power of a person without money. The proportion of the power goes directly in line with how much money that person has. It is not good for America.

Senator HOLLINGS and I are going to be around for a while pushing this constitutional amendment. We may even push it until Senator HOLLINGS is a senior Senator. He has only been here since 1966. He has a record of being the senior junior Senator in the history of the Senate. I say that only in a moment of light jest. We have a very distinguished senior Senator from South Carolina, Mr. THURMOND, who is the longest serving Senator in the history of the Senate.

We intend to keep pushing this. The votes go up and down as the constituency of the Senate changes. We believe very strongly that we are right and that money is not speech. One day we will prevail.

I yield the floor.

The PRESIDING OFFICER. The Senator from South Carolina is recognized.

Mr. HOLLINGS. Mr. President, I thank my distinguished colleague from Pennsylvania. He is so learned in the law and so long on common sense. He just laid out what the situation is and how we are going about, in a very deliberate, constitutional way, repairing the tremendous damage done by Buckley v. Valeo.

There is no question about the process being corrupted. He mentioned a minute ago that I have been here since 1966. I have been here when we have had everybody here at 5:30 and we would debate these things and, yes, on a Monday. But we do not meet on Mondays. Why? Because we have been corrupted by the money chase.

I have gone to the leaders on both sides: Give me a window; how about seeing if we do not go late on Thursday night because I have to get back to South Carolina for a fundraiser. Every Senator has done it. We are not here on Monday. We are not here on Friday. In 1966 and 1967, under Senator Mansfield, I can tell you right now, we worked until late Friday afternoon and we reported back for rollcalls at 9 o'clock on Monday morning.

We worked the full time. We worked the full months. We did not have January off and then another big break in February and another break in March and another break in April and another break in May-June and another break of a month in August. Why the breaks? To raise the money. If you are not raising it for yourself, you are supposed to go out and raise it for your colleagues.

The whole process has been corrupted. Recognize it. We cannot get a bill. We cannot get debate. We cannot talk to each other. Nobody is here. They are not expected to be here. TV has corrupted that. If one wanted to know what was going on in the Chamber, they had to get out of their office and come to the floor. We always had 15 or 20 Members on one side and 20 or 30 Members on the other side listening and joining in, and we had debates on serious matters. We debated. The most deliberative body in the world was our reputation.

Now we do not bring up a serious matter unless it is fixed. We cannot produce a budget unless the vote is fixed in the Budget Committee, and when they can get it through it is late Thursday evening, when it is quite obvious none of the amendments are going to be adopted. The vote is fixed. The jury is fixed. There is no deliberation. They will bring that up, and then they have fixed time on it.

Go to the leader and say: We want to take up this measure, and it takes 3 or 4 days; and he will look at you as if you are stupid: Don't you know better, we don't have time to deliberate, we don't have time to debate.

The system is corrupted. Get a life. Get along. Go out. Collect some money. After all, it is the money chase. We have to work for ourselves to stay in office or to keep our colleagues in office. That is the name of the game.

Important issues, I can go down the list—but when they want money, oh, wait a minute, there is an exception. That sham, that fraud, that charade of Y2K. For 30 years, the computer industry had notice of the year 2000. For 30 years, they all could have changed. They still have 7 months or so to change.

There was a big debate. Why? Because the lawyers got the Chamber of Commerce to gin up Silicon Valley. The gentleman from Intel told me there was not a real problem, and everybody else said there was not a real problem. But we had a problem. It was a money chase for getting Silicon Valley's money in Y2K, and the media covered it: How much Bush had received, how much Gore had received, how much this group had received, and we continue to invite Silicon Valley here for special sessions. We are really interested.

That is not middle America, and they are not going to create our industrial backbone. We admire their ingenuity and their talent. We are not jealous of the money. Let them all make millions. We just want our share.

Y2K came, and we passed it. Nothing happened. In opposition to the States, in opposition to the States' supreme court justices, in opposition to the American Bar Association, we repealed 200 years of State tort law. Why? Because of the money. Why, we spent 4 days on that one. That was highly important. Just put up a straw man, knock it down, and then go home, boldly and proudly saying: Look what we have done; we took care of Y2K.

Yet, on the other hand, if we have a real problem, they will not call it up. Why? On account of the money. I have a TV violence bill. There is no mystery to this. Europe, Australia, and New Zealand do not have children shooting each other in schools. They have a safe harbor practice so that violence appears on television after hours.

I introduced the same thing, and it was in the Commerce Committee in the last two Congresses. Senator Dole was there. When he went out to the west coast, he came back and said: Oh, this is terrible. I said: Senator Dole, why don't you be the chief sponsor, you run it, you take credit for it. It has already been debated and we have had testimony on it, and it was reported out by a vote of 19–1 from the Commerce Committee. It is on the calendar. Call it.

Oh, no, it wasn't called. We needed the Hollywood money. I have it on the calendar now. Again, we debated it. We brought out the study the industry conducted, and the motion picture industry itself found that violence was on the rise.

It is a real problem in this country, but we talk a little bit here and there. When we want to get a tried and true approach and it is on the calendar, they say: Wait a minute, don't call that, let's not debate it.

It is not called up because of the money. This attitude has corrupted the process, and we have a gang over there that loves the corruption. They come here with their octopus defense. I have seen it before. We used to try cases, and if you do not have the facts and you do not have the lawyer beaten on the desk, you squirt out that dark ink of freedom of speech, first amendment, 2,000 years, 20,000 amendments. This is a shocking thing.

They were not shocked when the 1976 decision of Buckley v. Valeo came down because that decision is what amended the freedom of speech. It said: If you have the money, you have all the speech you want. If you don't have the money, you get lockjaw. Shut up. You don't have speech.

In that Buckley v. Valeo decision, read what they said in this distortion: ''Money is property; it is not speech,'' said Justice Stevens.

Then Justice Kennedy:

> The plain fact is that the compromise the Court invented in Buckley set the stage for a new kind of speech to enter the political system. It is covert speech.

This is, of course, the famous case of Nixon v. Shrink, the most recent decision of this Court:

The Court has forced a substantial amount of political speech underground, as contributors and candidates devise ever more elaborate methods of avoiding contribution limits, limits which take no account of rising campaign costs. The preferred method has been to conceal the real purpose of the speech. . ..

Issue advocacy, like soft money, is unrestricted, see Buckley, supra, at 42–44, while straightforward speech in the form of financial contributions paid to a candidate, speech subject to full disclosure and prompt evaluation by the public, is not. Thus has the Court's decision given us covert speech. This mocks the First Amendment.

That is what Justice Kennedy talks about. That is what I am talking about. Don't give me this: Freedom of speech and first amendment. What a shocking thing it is with that black ink like the octopus, putting up all the billboards about the freedom of the press and how people want editorial writers to be equally Democratic and Republican—what kind of nonsense is all of that? And what about getting up and saying: All I want is for you to register and vote.

Quoting further:

The current system would be unfortunate, and suspect under the First Amendment, had it evolved from a deliberate legislative choice; but its unhappy origins are in our earlier decree in Buckley, which by accepting half of what Congress did (limiting contributions) but rejecting the other (limiting expenditures) created a misshapen system, one which distorts the meaning of speech.

The Senator from North Dakota said: Let's don't do it lightly. Let's don't amend the Constitution willy-nilly. I agree. But what about when you have a threat to the democracy, to the Republic itself, this corruption of the process here, where the Congress does nothing because of the money chase that we are in.

Quoting further:

The irony that we would impose this regime in the name of free speech ought to be sufficient ground to reject Buckley's wooden formula in the present case. The wrong goes deeper, however. By operation of the Buckley rule, a candidate cannot oppose this system in an effective way without selling out to it first.

We all have to sell out. I am running around trying to get money to help my colleagues right this minute.

Soft money must be raised to attack the problem of soft money.

Listen to this sentence:

In effect, the Court immunizes its own erroneous ruling from change.

Let me quote that one more time:

In effect, the Court immunizes its own erroneous ruling from change.

That is why you need a constitutional amendment. That is why we are here. If you enjoy the corruption, if you want to continue on, not being able to debate anything around here, not having to amend, just going through the motions of arriving and going home, and getting another break and going home to collect some more money, and coming back and going back to collect more money, and acting as if you are doing the people's business—it is an embarrassment.

They sure know embarrassment when they try to equate it with free speech, when they can jump on Vice President GORE and the Buddhist temple. The Christian right, that fellow Pat Robertson with the Christian right, I have had to face that insidious trickery in all of my campaigns—that Bob Jones crowd. I am glad it is out from under the radar.

Let me tell you, it has been going on. I wish Senator MCCAIN had had a chance to get organized in the State because that is the only way I survived. You have to sort of out-organize it. But they had Ralph Reed in there, and he had been working in there since last June. He had it all greased.

They had the poor Senator from Arizona's family in the Mafia. They had him fathering illegitimate children. And he was in prison. They had him getting along with the North Vietnamese and going against the veterans. They had more dirty rumors—totally false—of anything you can think of. I mean, you never heard such things. He had no chance.

The Christian right and Pat Robertson: They come on Sunday. They brag. I can show you the statement, 75 million leaflets. They come out and give them out to the church on Sunday morning. They distort your record, and everything else of that kind. You cannot answer because the vote is on Tuesday.

He said he spent $500,000 carrying Virginia for George W. Bush. Pat Robertson, he gets respect. He's on TV. We think that is great. He is a bum, I can tell you. I know him. I knew his father Willis. He was a real gentleman. Willis Robertson was one of the finest gentlemen you would ever meet. That fellow is a scoundrel, whining and weaseling and dealing around.

But then, of course, the poor Buddhists, they want to get in the act. There is nothing wrong with the Buddhists getting in the act. They tell me now what had happened is that this young lady, she had gotten contributions from everybody and then reimbursed them. They found her guilty of the—what?—contributions, not of free speech.

See, when we find Johnny Huang guilty, that is in violation of the contribution laws. That is not free speech. That is money. Oh, boy, I wish I was a lawyer before the jury with that crowd.

When they held the committee here with Charlie Trie, we had the Governmental Affairs Committee conduct the activities. I do not know how many months, but 70 witnesses, 200 witness interviews, 196 depositions under oath, 418 subpoenas, with a final report published in 1998 with six volumes, 9,575 pages—about contributions, not free speech.

But now this afternoon, we pushed that aside. The Senator from Texas says, You Democrats have all the labor unions and we have the corporate money. However, in South Carolina, I don't have either one. So let me give you George W. Bush's statement on soft money, because he's an authority on the subject.

This is on January 23. George Will, questioning Governor Bush:

In which case would you veto the McCain-Feingold bill or the Shays-Meehan bill?

Governor Bush:

That is an interesting question. Yes, I would. And the reason why is two for one. And I think it does restrict—

I am quoting it verbatim here as written.

—free speech for individuals. As I understand how the bill was written, I think there has been two versions of it. But as I understand, the first version restricted individuals and/or groups from being able to express their opinion. I've always said that I think corporate soft money and labor union soft money—which I do not believe is individual free speech, this is collected free speech—ought to be banned.

We have Vice President GORE. He got the message about the corruption. He said: The first thing I will do when I am your President is submit to Congress the McCain-Feingold bill.

The people are tired of this political mess up here. I am tired of being a part of it. They will hear from me again and again. The reason you hadn't heard about it is that they forbid a joint resolution from coming up. I studied the calendar and waited for a joint resolution so that my joint resolution won't be objected to on a point of order. It is finally in order and so we can hear it. But then I had to go along or else I wouldn't have had a chance to introduce it at all because then they would have brought the flag amendment up and the cloture vote.

So you bag around here, this most deliberative body, for an hour or 2 hours to get some work done and nobody is here. Nobody wants to be here because they are supposed to be out raising money and having fundraisers and breakfasts in the morning and windows at lunchtime and in the evening. It's taking a few hours on Wednesday afternoon to call on behalf of your campaign committee and come up with thousands of dollars, your fair share. It is money, money, money, money. It is corruption.

You tell me about the Washington Post; that crowd still calls the deficit a surplus. You tell me about the ACLU and all these other authorities running around and the scare tactics, that octopus defense, and the dark ink and all of those other irrelevant matters. We are talking sense. We are talking law. We are talking about what the Justices have just stated. There is no question why Justice Stevens said money is property and not speech. He was only one of the nine. The others could have gone along and reversed Buckley, and we would be out of this dilemma. We would go back to the original intent, which was to control spending. Now we are proudly hollering about this and that and freedoms, and now we are going to take the newspapers and do away with the editorialists and control

the press. This amendment doesn't use the word ''speech.'' It says ''contributions.'' It is money. That is exactly what we have controlled throughout and that is what is intended.

The Senator from Alabama, Mr. SESSIONS, stood up there and started reading this. He said that is limiting speech. It is not limiting speech. You can't limit speech. But you can limit the freedom of the contributions. You and I know that. That is what we are trying to do.

Under the 1974 act that computed spending limits by the number of registered voters, Senator THURMOND and I would have had $670,000. Double that to a million or a half or give us 2.5 million. That is a gracious plenty. When I first ran for office I ran against a millionaire—a most respected gentleman, but he had the money. But we outworked him, just like we out-organized my opponent the year before last in South Carolina. That is why I am still here and able to talk.

I don't buy cars in campaigns, but it was suggested that a lot of other candidates do. When they rent, lease, and then later buy a piece of property, all of that is not freedom of speech. That is money. It is contributions. It is where you ought to try to control the spending limits so we don't become a bunch of millionaires and instead go back to what Russell Long said: Every mother's son would be able to run for the highest office in the land.

I could go on and on. The afternoon is late. To repeal the first amendment, the Senator from Washington turned to the Senator from Kentucky and said, read that word, that is to ''repeal'' the first amendment. Now, if you believe that, you go ahead and vote against this. But you know and I know, it is to repeal the corruption. That is what I am about; I am trying to repeal the corruption. I am trying to get back to the original intent. Yes, you might say we had 38 votes. I remember when we had 52 votes, a majority, for this. I remember when I had a dozen Republican cosponsors.

I admire my colleague from Pennsylvania for sticking with me on this, making it bipartisan. But I don't know of another one over there, because they have been disciplined and put right into the trough and told: You stick with us. This is a party vote, and this is it. It is freedom of speech and don't you forget it.

It is not freedom of speech. It is money. We are trying to control the purchase of the office. We are trying to correct the corruption. We are trying to get back to our work on behalf of the people, which is very difficult to do with the pressures now on Senators up here. It is disgraceful. It is absolutely disgraceful. Everybody knows it. I want somebody to contest it. They are not around. They are not going to contest it. They are going to make these comments about so many years and so many amendments and the freedom of speech and the hallowed document and everything else.

I have gone down five of the last six amendments; all had to do with elections, less important than this corruption to be corrected, far less a threat. I admit, recognize, agree with the Senator from North Dakota that we shouldn't do it lightly, and we are not doing it lightly. If it was only a minor problem, whereby we could merely pass a statute, I would do it. But all of these statutes, McCain-Feingold, as the Senator from Kentucky has contended each time, is patently unconstitutional. You can tell from reading this most recent decision on soft money how they are equating everything with speech. You can see how they have immunized their mistake from change. Those are not my words. Those are Justice Kennedy's words. They have ''immunized'' their mistake from change.

So we have to have a constitutional amendment. This is written very carefully, very deliberately, and very reasonably, where we don't take sides one way or the other, whether you are for or against McCain-Feingold, whether you are for or against free TV time, whether you are for or against public financing, whether you are for or against your idea you have on campaign finance. This will constitutionalize it so we can quit this sham of beating around the bush. It is hit and run driving with a, yes, I am for reform, knowing good and well that the Court is going to throw it out when it gets there. So we can find out who is who and what is what. I understand that this corruption should cease.

I want to complete the thought I was making with respect to various comments of the Senator from Washington, Mr. GORTON, who said they are being denied under the Hollings amendment the right to speak at all. Not so. The person being denied the right to speak at all in political campaigns is the individual without the money.

Take a campaign against a very affluent or wealthy person, and they buy up all the time. At the end, you do not have the money to match it. The TV station calls you and says: Here are all of these time slots gotten by your opponent, and you have the right to equal it. I don't have the money. Before long, with all of the friends, the family says: Well, I don't understand why John doesn't answer him. He is not interested in this race. He is not working. He looks slovenly. Why? Because he doesn't have the money.

That is the point. Right now, I am trying to prepare, along with the Senator from Pennsylvania, Mr. SPECTER, for being denied the right to speak at all. That is under the Buckley v. Valeo decision. If you have money, you can speak until the sky is the limit and for how long your money will take you. If you do not have the money, you have the right to get lockjaw, shut up, and sit down, that ends it, because 85 percent of your money goes to television and you are not there.

The people do not know you are in the race. They keep talking about repealing the first amendment.

The distinguished Senator from Utah, Mr. BENNETT, said that limiting candidates would give special interests more power. It would create a vacuum, and the special interest would fill the vacuum. There isn't any vacuum, except for the poor. The special interests are in there to the tune of millions and millions. That is what we all know. We are trying to limit the special interests. We are not trying to create a vacuum they can fill.

That is exactly the point of this particular amendment. You go over again and again. They raise these straw men of exactly the opposite of what is intended and what is provided for in the Hollings-Specter amendment; namely, to limit spending in Federal elections, and limit spending, of course, in State elections.

With respect to the cases, I cited the case where the individual got caught trying to go around. I refer now to James W. Brosnan's article in The Commercial Appeal dated November 8, 1998.

The indictment of Chattanooga developer Franklin Haney highlights what some campaign reformers believe could be a frequent, but hard to prove, crime—companies reimbursing their employees for contributions.

The indictment charges that Haney and his administrative assistant, who was not named in the indictment, instructed company employees to make contributions of $1,000 apiece, filled out the donor cards themselves and then wrote Haney Company checks to reimburse the employees.

I ask unanimous consent that the entire article be printed in the RECORD.

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

[From the Commercial Appeal, Nov. 8, 1998]

FUNNELING TO CAMPAIGNS MAY BE WIDESPREAD

(By James W. Brosnan)

The indictment of Chattanooga developer Franklin Haney highlights what some campaign reformers believe could be a frequent, but hard to prove, crime—companies reimbursing their employees for contributions.

''I suspect it is a lot more widespread than foreign donors trying to press dollars into the hands of American politicians,'' said Larry Makinson, executive director of the Center for Responsive Politics, a campaign watchdog group.

Haney Wednesday became the 14th person indicted by the Justice Department's campaign finance task force. He is charged with 42 counts of using his company's employees, friends and relatives to make $86,500 in illegal corporate contributions to the Clinton-Gore campaigns in 1992 and 1995, and the Senate campaigns of former Tennessee Sen. Jim Sasser and former Tennessee congressman Jim Cooper in 1994.

Haney has said he is innocent. The Justice Department said none of the campaigns were aware of the deception. Sasser—who lost to Sen. Bill Frist (R–Tenn.) and became U.S. ambassador to China—said in a statement: ''Although I myself am not under investigation, I will of course cooperate fully.''

In recent testimony before the House Commerce oversight subcommittee, Sasser depicted Haney as someone eager to show his

credentials around Washington by hiring people like Sasser and long-time Democratic fund-raiser Peter Knight. Wednesday's indictment also describes someone who was willing to violate the law in order to make good on his pledge to raise $50,000 for the Clinton-Gore committee.

The indictment charges that Haney and his administrative assistant, who was not named in the indictment, instructed company employees to make contributions of $1,000 apiece, filled out the donor cards themselves and then wrote Haney Co. checks to reimburse the employees.

Justice Department officials indicate they discovered the illegal contribution scheme when Haney came on their radar screen because of reports concerning his hiring of Knight and Sasser. They represented him in efforts to obtain a government lease and private financing for the Portals office complex here.

House Republicans have charged that the fees paid by Haney, $1 million to Knight and $1.8 million to Sasser, may have been illegal contingency fees. Government contractors may not pay lobbyists based on whether a contract is awarded. The Justice Department continues to investigate the Portals lease.

Campaign finance experts say illegal corporate contributions are seldom discovered unless a company employee blows the whistle or the company comes under scrutiny for another matter.

''It's a scheme which is extremely difficult to uncover,'' said Ellen Miller, executive director of Public Campaign, a group which supports public financing of campaigns.

Gary Burhop, the lobbyist for Memphis-based Harrah's Inc., said he doubts it's a frequent practice.

''If it happens, it happens more out of ignorance than a willful desire to violate the law,'' said Burhop, based on his observation of cases before the Federal Election Commission.

Larry Sabato, a University of Virginia political scientist who has studied campaign finance laws for 25 years, said he doesn't believe the practice ''is widespread, but I don't think they catch everybody who does it, either. It's very difficult to catch unless somebody snitches. You have a know who to target.''

Haney's indictment was the second brought by the campaign finance task force. On September 30, Mark Jimenez 52, of Miami, the chief executive officer of Miami-based Future Tech International, was charged with funneling $23,000 into the Clinton-Gore campaign, and $16,500 into four other Democratic campaigns, from his company and another controlled by a relative.

Two companies have been prosecuted by local U.S. attorneys for using straw donors to make illegal contributions to the 1996 presidential campaign of former Kansas Republican Bob Dole.

Simon Fireman, a national vice chairman of Dole's campaign, funneled $100,000 into Dole's campaign using employees of his company, Aqua Leisure Industries of Avon, Mass. He paid a $6 million fine.

Empire Sanitary Landfill of Scranton, Pa., pleaded guilty to contributing $110,000 to the Dole and other Republican campaigns through employees and paid an $8 million fine.

Independent counsel Donald Smaltz was appointed to investigate football game tickets and other gifts to former Agriculture secretary Mike Espy, but his four-year probe has produced six convictions for illegal corporate campaign contributions.

In one case, lobbyist Jim Lake arranged for $5,000 in contributions to the 1994 Mississippi congressional campaign of Espy's brother, Henry Espy, and then padded his expense account to get the money back. He was fined $150,000 and ordered to write and send descriptions of the campaign finance law to 2,000 lobbyists.

In another, New Orleans attorney Alvarez Ferrouilet was sentenced to one year in prison for disguising $20,000 in illegal contributions to Espy.

The other cases have resulted in fines of $1.5 million against Sun-Diamond Growers, $480,000 against Sun-Land Products $80,000 against American Family Life Assurance Co., and $2 million against Crop Growers Corp.

Mr. HOLLINGS. Mr. President, this is the pertinent part.

Simon Fireman, a national vice chairman of Dole's campaign, funneled $100,000 into Dole's campaign using employees of his company, Aqua Leisure Industries of Avon, MA. He paid a $6 million fine.

Empire Sanitary Landfill of Scranton, PA, pleaded guilty to contributing $110,000 to Dole and other Republican campaigns through employees and paid an $8 million fine.

Independent counsel Donald Smaltz was appointed to investigate Mike Espy, which we all know about.

I don't know what happened to Haney, or whether or not he was found innocent. But let's assume so. I am not trying to disparage. I am just trying to say here is the corruption that actually goes on.

In one case, lobbyist Jim Lake arranged for a $5,000 contribution to the 1994 Mississippi congressional campaign of Espy's brother and then padded his expense account to get the money back. He was fined $150,000 and ordered to write and send descriptions of the campaign finance law to 2,000 lobbyists.

Another New Orleans attorney, Alvarez Ferrouilet, was sentenced to 1 year in prison for disguising $20,000 in illegal contributions to Espy.

The other cases have resulted in fines of $1.5 million against Sun-Diamond Growers, $480,000 against Sun-Land Products, $80,000 against American Family Life Assurance Company, and $2 million against the Crop Growers Corporation.

This corruption is rampant, and you can't stop it unless you get this constitutional amendment. Everyone understands what Justice Kennedy said—that you are not going to have this covert speech. You are not going around, and you are not going to employees, because the name of the game is—I know because I ran for President. I know one State that I believe I could have taken, but the one who succeeded in taking it spent *x* thousands of dollars above the limit. It was 2 years later they found out that he spent over the limit. That was the end of that.

What I am saying is, you can't control this. It is a Federal election campaign practices commission because it is all ex post facto. It is lost in the dust.

This has been going on, particularly with you and I serving in the Senate. We can't talk sense, we can't debate, we can't get measures up, and we can't deliberate because we have been corrupted by the money chase.

Mondays and Fridays, gone; Tuesday morning, gone; windows here and there and yonder for lunches, dinners, fund raisers, breaks now every month of the year. Why: They go raise some more money, and we are not getting the work of the people done.

I was here when it worked, when we met at 9 o'clock on Monday morning. Nobody was here at 9 o'clock this Monday morning. Nobody is here now because they are all out raising money. I can tell you, we worked until Friday afternoon at 5 o'clock. Ask Senator BYRD. He remembers. He knows how hard we worked in those days when he was leader.

But the system and the Buckley v. Valeo cancer are overtaking all of us. We are all part of it. I have asked for windows, and I have had to chase at holidays. I continue to do so. I am saying to myself and to all of us that it is time we sort of fess up and understand that this has to stop. We have to start working on behalf of the people and not ourselves. Let's do away with the corruption. Let's get back to the original intent of Buckley v. Valeo, which was totally bipartisan and overwhelmingly passed. That was to limit spending or stop the buying of the office.

We had that enough in 1978, which I explained because I know what was called upon in cash moneys in my particular State. It was listed all over the country. Connolly asked the President, and he went down to collect. They put up with Dick Tuck in the Brinks truck as it turned into the ranch in order to have the barbecue so the President could thank his contributors whom he had not even met.

We all were so embarrassed. It is bad when there is not even any embarrassment in this body. The corruption is exacerbated. I learned that word having come to Washington—''exacerbate.'' It continues to exacerbate, and it gets worse and worse.

I yield back the remainder of our time, and I suggest the absence of a quorum.

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

The assistant legislative clerk proceeded to call the roll.

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

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

CLOTURE MOTION

Mr. SESSIONS. Mr. President, on behalf of the leader, it is the leader's hope and intention to have a final vote on the pending concurrent resolution before the Senate adjourns on Tuesday, March 28. However, if a consent agreement cannot be reached, a cloture vote will occur on Wednesday morning. With that in mind, I send a cloture motion to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The legislative clerk read as follows:

CLOTURE MOTION

We the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on Calendar No. 98, S. J. Res. 14, an amendment to the Constitution of the United States authorizing the Congress to prohibit the physical desecration of the flag of the United States.

Trent Lott, Orrin Hatch, Bill Roth, Peter Fitzgerald, Rod Grams, Ted Stevens, Chuck Hagel, Thad Cochran, Paul Coverdell, Pat Roberts, Phil Gramm, Frank H. Murkowski, Don Nickles, Bob Smith of New Hampshire, Susan Collins, and Tim Hutchinson.

Mr. SESSIONS. It is the leader's hope the final vote will occur tomorrow. However, if this cloture vote is necessary, I now ask consent it occur at 10 a.m. on Wednesday and the mandatory quorum under rule XXII be waived.

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

MORNING BUSINESS

Mr. SESSIONS. Mr. President, I ask consent there be a period for the transaction of routine morning business with Senators permitted to speak for up to 10 minutes each.

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

THE OIL CRISIS

Mr. MURKOWSKI. Mr. President, there has been a great deal of anticipation today on what OPEC might do. For those of you who do not recall the sequence, several weeks ago, our Secretary of Energy went over to OPEC, encouraging them to increase production. The concern was that we were approximately 56-percent dependent on imported oil. A good portion of that came from OPEC. As we saw with the Northeast Corridor crisis on heating oils, there was concern over the availability of adequate supplies of crude oil. It appears that we are using somewhere in the area of 2 million barrels a day more in the world than are being produced currently. That sent a shock through the oil marketeers and resulted in our Secretary going over to OPEC and meeting with the Saudis and urging them to increase production.

They indicated they were going to have a meeting on March 27, which is today, and would respond to us at that time. The Secretary indicated that this was a dire emergency, that oil prices were increasing and the East Corridor was looking at oil prices in the area of nearly one and a half dollars and he needed relief now. The OPEC nations—particularly the Saudis—indicated they would address it at the March 27 meeting. So, in other words, the Secretary was somewhat stiff-armed.

Well, the Secretary, as you know, went to Mexico and encouraged the Mexicans to increase production. The Mexicans listened patiently, but they reminded the Secretary that last year when oil was $10, $11, $12, $13 a barrel, and the Mexican economy was in the bucket, where was the United States? The Secretary indicated we would help Mexico out with the tesobonos, ensuring that they would be bailed out. But to make a long story short, we didn't get any relief from Mexico.

Well, today, we didn't get any relief from OPEC. OPEC said they would address it tomorrow. So the question of whether or not we are going to get relief, I think, points to one thing: We have become addicted to imported oil. We are like somebody on the street who has to have a fix. The fix is more imported oil. And when the supply is disrupted, we look at what it takes to get more.

Well, it takes maybe a higher payment, a shortage of supply. It makes the price go up. That is the position we are in. I encourage my colleagues to look very closely at what OPEC does tomorrow—indeed, if they do anything—because what they have been doing so far is cheating. Who have they been cheating on? They have been cheating, in effect, on themselves at our expense because last year they agreed to cut production. They developed a discipline within OPEC to cut production back to 23 million barrels per day. But they did not keep that commitment. They are currently producing 24.2 million barrels a day. That is about 1.2 million over the agreement.

So if they come up tomorrow and announce they are going to come out with a million and a half barrels a day increase, that isn't a million and a half barrels net; the net is 300,000 barrels a day. So we better darn well look at that arithmetic. If they come up with 2 million barrels a day, that is relief, in a sense, but in the last year our demand increase has been a million and a half barrels a day in addition, and I did not take into account my arithmetic. Remember, we are not the only ones in the world who consume oil from OPEC. Those other countries are going to have to share in whatever increased production comes out.

So it is indeed a rather interesting dilemma that we find ourselves in as we now are dependent 56 percent on imported oil. The Department of Energy tells us that in the years from 2015 and 2020, we will be 65-percent dependent on imported oil. Well, some people say you learn by history. Others say you do not learn very much. Obviously, we have not learned very much.

There is one other factor I think the American people ought to understand. Where has our current increase been coming from? It has been coming from Iraq. Last year, we imported 300,000 barrels a day from Iraq. Today, we are importing 700,000 barrels a day from Iraq. Today, the Department of Commerce lifted some sanctions off of Iraq to allow the Iraqis to import from the United States certain parts so they could increase—these are refinery parts—refining capacity by 600,000 barrels a day in addition.

So here we are, importing 700,000 barrels a day currently from Iraq. Some people forgot we fought a war over there not so many years ago—in 1991. What happened in that war? We lost 147 American lives; 423 were wounded in action, and we had 26 taken prisoner. In addition, the American taxpayer took it. Where did he take it? He took it in the shorts because since the end of the Persian Gulf war in 1991, just to contain Saddam Hussein and keep him within his boundaries, the cost of enforcing the no-fly zone and other things is costing the American taxpayer $10 billion.

So here we are today looking at OPEC for relief, allowing them to get parts for their refineries so they can increase production. Here we are depending and begging and passing the tin cup for OPEC production. The answer lies in decreasing our imports on foreign oil and, as a consequence, producing more oil and gas in the United States. We can do it safely. We have the American technology. We have the overthrust belt, the Rocky Mountains, Colorado, Wyoming, Utah, Montana, Louisiana, Texas, those States that want OCS activity.

My State of Alaska is perfectly capable of producing more oil. We produce nearly 20 percent of the total crude oil; it used to be 25. We have the technology. We know how to open up the Arctic areas and make sure the animals and the character of the land are protected because we only operate in the wintertime. Our roads are ice roads. They melt in the spring. There is no footprint. If there is no oil there, there is no footprint of any kind. We can do that in these areas. But as a consequence, we have to look for a solution.

I hope my colleagues really pick up on this. If OPEC does increase production, there are going to be those who claim victory, that we got relief. But it is going to be a hollow victory because that victory simply says our Nation becomes more dependent on imported oil. I think most Americans are waking up to the reality that that is a very dangerous policy. To suggest we got caught by surprise—I will conclude with two little notes. In 1994, Secretary of Commerce Brown requested that the independent petroleum producers do an evaluation on the national energy security of this country and came to the conclusion that we were too dependent on imported oil.

Last March, Members of the Senate wrote a bipartisan letter to the Secretary of Commerce, Secretary Daley, asking for an evaluation on the national security interests of our country relative to our increased dependence on imported oil. He released that report in November. It sat on the President's desk until Friday. They finally released it in a brief overview. The conclusion was that we have become too