

drug store shelves. Last year, the drug industry spent \$24 billion on research and development. U.S. taxpayers also invest \$18 billion every year in the National Institutes of Health, which provides grants for basic health research. Drug companies that are willing to take on the risk of developing new treatments receive tax credits for their research and development costs.

Yet when American consumers pick up their prescription at the drugstore they pay again for research and development in the form of higher prices. Why? Every other developed country imposes some form of price control. Those countries pay for the cost of manufacturing the drug, which is normal, and maybe some profit; but they don't even come close to paying a fair share of the research and development costs of new drugs developed in the United States.

So when some Americans get sick, they can't afford the medicine they need to stay healthy. Instead they go without or they ration medicine. If they are able to travel, Americans cross the borders to Canada or Mexico to buy for much less, the prescriptions they need to stay healthy.

I was curious to know just how much my constituents were saving by traveling to Canada. My office recently conducted an informal study comparing the prices of the top ten most commonly prescribed prescription drugs in several Washington state retail drug stores to the price paid in a typical Canadian pharmacy. I was astounded by the results: on average prices are 64% lower in Canada.

Here are a few examples: The average cost of 30 pills of Zocor, which used to treat high cholesterol, is \$76 in our state, in Canada it costs \$38; Premarin, an estrogen replacement therapy used by many women, is \$26 in our state and \$10.50 just across the border; and a popular new allergy treatment, Claritin, is just \$34 in Canada but almost \$80 in Washington State.

During last week's break, I spent time talking with seniors, doctors, hospital administrators, and others about the cost of prescription drugs. All expressed their concern about the growing amount spent on medicine and the ability of people to continue to have access to the medication that keeps them healthy.

While this debate has properly focused a lot of attention on uninsured seniors and their daily struggle to pay for needed medications, the costs of prescription drugs affect every American—even those with health insurance coverage. Drug spending is a growing part of our overall health care costs. The rising cost of prescription drugs is one of the biggest problems facing health plans, hospitals and others in the health care field.

Obviously, American drug companies have to pay for this huge amount of research and development and the years that it takes to get these drugs licensed. But, what I am outraged about

is a set of foreign policies that means that Americans who by drugs that were developed in America pay substantially more for those drugs than the same manufacturers sell them for in Canada or Mexico. I think that is unconscionable. Those countries are riding on our research and development.

The cost issue is one important part of the debate as we talk about modernizing the Medicare program to include a prescription drug benefit. I do think that Medicare should be updated and that prescription drugs should be covered under the program. Expanding this benefit, however, must be done responsibly—it must not jeopardize the solvency of the current program and that benefits now available to seniors. It is also fairly contentious. Most agree that we should add a drug benefit to Medicare, however, good people have honest disagreements about the best way to do it. Addressing cost is something we can do now.

It is not fair to the American consumer to let other countries get away with policies that make drug companies sell their products cheaper in their country because they don't want to pay for any of the development costs. It's not right, and I will work actively to see that Americans are not overcharged.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

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#### FLAG DESECRATION CONSTITUTIONAL AMENDMENT—Continued

Mr. LEAHY. Mr. President, in 1791, the State of Vermont, the State that I am honored to represent, was admitted to the Union. Kentucky followed. Congress then saw fit to change the design of the American flag for a time to include 15 stars and 15 stripes, one for each State. It was this flag, the one recognizing the addition of Vermont to the Union, that flew over Fort McHenry in 1814, and inspired Francis Scott Key to write the Star Spangled Banner.

Along with Vermonters and many others I find that flag inspirational, as I do the American flag with 48 stars under which my family fought in World War II. I remember the great pride my wife and I felt seeing the current American flag with 50 stars being carried in formation at Paris Island when my youngest son became the newest member of the U.S. Marine Corps.

Fifty years after that famous battle that inspired our national anthem in Baltimore's harbor, President Abraham Lincoln visited that city as this country confronted its greatest test. It was a time in which this nation faced grave

peril from a civil war whose outcome could not yet be determined. Many flags flew over various parts of the United States and our existence as a nation was in doubt. President Lincoln used the occasion to reflect on a basic feature of American democracy.

As Professor James McPherson recently reminded us, Lincoln observed: "The world has never had a good definition of the word liberty. And the American people just now are much in need of one. We all declare for liberty, but using the same word we do not mean the same thing."

Through the course of this debate, it has seemed to me that all of us here in this chamber would champion liberty. If any of us were asked, we would say: Of course we do. When I listen to the debate, I have to conclude that Lincoln's wish for a definition on which all of us would agree remains very elusive.

Ultimately, the debate over this amendment turns on the scope we think proper to give to speech which deeply offends us. For Congress to limit expression because of its offensive content is to strike at the heart of the First Amendment. Justice Holmes wrote that the most imperative principle of our Constitution was that it protects not just freedom for the thought and expression we agree with, but "freedom for the thought that we hate." He also wrote, that "we should be eternally vigilant against attempts to check the expression of opinions that we loathe."

Justice Robert Jackson made this point with unsurpassed eloquence in a 1943 decision, *West Virginia State Board of Education v. Barnette*. Unlike that small handful of wartime decisions upholding flag burning statutes on which the proponents try to base their claim of an expansive judicial tradition before the Johnson case, the Supreme Court, even in 1943, during the difficult days of World War II, recognized the fundamental tradition of tolerance that makes this country strong. The Supreme Court in a very difficult decision, at the height of world War II held that State school boards may not compel their teachers and students to salute the flag. Justice Jackson wrote:

To believe that patriotism will not flourish if patriotic ceremonies are voluntary and spontaneous instead of a compulsory routine is to make an unflattering estimate of the appeal of our institutions to free minds.

We can have intellectual individualism and the rich cultural diversities that we owe to exceptional minds only at the price of occasional eccentricity and abnormal attitudes. When they are so harmless to others or to the State as those we deal with here, the price is not too great. But freedom to differ is not limited to things that do not matter much. That would be a mere shadow of freedom. The test of its substance is the right to differ as to things that touch the heart of the existing order.

If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein.

What unifies our country is the voluntary sharing of ideals and commitments. We can do our share toward that end by responding to crude insults with a responsible action that will justify respect and allegiance that has been freely given. Justice Brennan wrote in *Johnson*:

We can imagine no more appropriate response to burning a flag than waving one's own.

That is exactly how the American people respond.

Respect cannot be coerced. It can only be given voluntarily. Some may find it more comfortable to silence dissenting voices, but coerced silence can only create resentment, disrespect, and disunity. You don't stamp out a bad idea by repressing it; you stamp it out with a better idea.

My better idea is to fly the flag at home, not because the law tells me to; not because there is something that says this is what I have to do to show respect; I do it because, as an American, I want to.

I am immensely proud of being one of the two Senators who has been given the opportunity to represent the State of Vermont. I fly that flag out of pride. Frankly, I am an ornery enough Vermonter that if there were a law that said as a Senator I had to fly that flag, I would not do it. I do it because I want to do it.

It is with the same sense of pride that I saw my son march in uniform with that flag flying. It is the same sense of pride when I see that flag flying over this Capitol Building every day when I drive to work.

The French philosopher Voltaire once remarked that liberty is a guest who plants both of his elbows on the table. I think what he meant by that is that liberty is sometimes an unruly, even an unmannerly and vulgar guest. Liberty demands we be tolerant even when it is hard to do so.

Our freedoms in this country are protected by the constitutional guarantee that dissent must be tolerated whether it is expressed in polite and deferential tones or in a crude and repugnant manner. We are a mature enough political community to know what every child knows: Unlike sticks and stones, words and expressions need not hurt us. It certainly does not justify the loss of rights that protect the liberties of us all.

Especially despicable gestures are hard to tolerate, but we do so because political expression is so central to what makes America great and what protects the rights of each of us to speak, to worship as we choose, and to petition our Government for redress.

As I have said before, I have taken such pride in going to countries with dictators, countries that require a law to protect their flags and their symbols, and in saying: We do not need such a law in our country because in this great Nation of a quarter of a billion people, the people protect our symbols, not because they are forced to do so but because they want to do so.

I was brought up to believe the first amendment is the most important part of our democracy. It allows us to practice any religion we want or no religion if we want. It allows us to say what we want, and the Government cannot stop us.

What does that mean? It means we are going to have diversity—diversity in religion, diversity in thought, diversity in speech, diversity that is guaranteed and protected in this Nation. And when you guarantee and protect diversity, then you guarantee and protect a democracy, because no real democracy exists without diversity. When you exclude and stamp out diversity, then I guarantee, you stamp out democracy, whether it is the Taliban or any of the totalitarian governments of history. If diversity, dissent, and free speech are stamped out, democracy goes with them.

American democracy has succeeded because we have found a way to live with that unruly guest with his elbows on our table of which Voltaire spoke, and to acknowledge acts which are disrespectful and crude and may, nonetheless, be lawful.

We protect dissent because we love liberty, not because we oppose liberty, but because we love it. The very impiety of these acts puts us to the test as votaries of liberty.

Wendell Phillips, the great New England abolitionist, wrote:

The community which dares not to protect its humblest and most hated member in the free utterance of his opinion, no matter how false and hateful, is only a gang of slaves.

No man disagreed more vehemently with Wendell Phillips on the burning issues of their day than Senator John C. Calhoun of South Carolina. Yet Senator Calhoun came to the same conclusion in a speech on the Senate floor in 1848—more than 150 years ago. He said:

We have passed through so many difficulties and dangers without the loss of liberty that we have begun to think that we hold it by divine right from heaven itself. But it is harder to preserve than it is to obtain liberty. After years of prosperity, the tenure by which it is held is but too often forgotten; and I fear, Senators, that such is the case with us.

I represent a State that has a proud tradition of defending liberty, a State that encourages open debate. We are the State of the town meeting. You have never heard open debate, whether as a Member of this great body or the other legislative body, until you have been to a Vermont town meeting. There is debate, there are expressions, there is heat, and there is often light.

I am proud that in 1995, the Vermont Legislature chose the first amendment over the temptation to make a politically popular endorsement of a constitutional amendment regarding the flag. The Vermont House passed a resolution urging respect for the flag and also recognizing the value of protecting free speech "both benign and overtly offensive." Our Vermont Attorney General has urged that we trust the Con-

stitution, not the passions of the times.

But Vermont's actions are consistent with our strong tradition of independence and commitment to the Bill of Rights. Indeed, Vermont's own constitution is based on our commitment to freedom and our belief that it is best protected by open debate. In fact, Vermont did not join the Union until the Bill of Rights was ratified and part of this country's fundamental charter.

We are the 14th State in this Union. But we waited because we were so protective of our own liberty. At one time, we declared ourselves an independent republic. We wanted to make sure our people had their liberties protected. We in Vermont waited until the Bill of Rights was part of the Constitution.

Following that tradition, this Vermonter is not going to vote to amend the Bill of Rights for the first time since it was adopted, and certainly not going to be the first Vermonter to do that.

Vermont sent Matthew Lyon to Congress. He cast the decisive vote of Vermont for the election of Thomas Jefferson when that election was thrown into the House of Representatives. He was the same House Member who was the target of a shameful prosecution under the Sedition Act in 1789 for comments made in a private letter. He was locked up.

Vermont showed what they thought of the Sedition Act. They showed what they thought of trying to stifle free speech. Vermont said: Fine, Matthew Lyon is in jail. We will still reelect him to Congress. And, by God, we did. Why? Because we are saying: Do not trample on our right of free speech.

Vermont served the Nation again in the dark days of McCarthyism when I think probably one of the most remarkable and praiseworthy actions of any Vermont Senator, certainly in the 20th century—the outstanding Vermont Senator, Senator Ralph Flanders—he stood up for democracy in opposition to the repressive tactics of Joseph McCarthy. When so many others ran for cover in both parties—both Republicans and Democrats—Senator Ralph Flanders of Vermont, the quintessential Republican, conservative, a businessman, came to the floor of the Senate and said enough is enough, and asked for the censure of Senator McCarthy.

Vermont's is a great tradition that we cherish. It is one that I intend to uphold.

The New York Times had it right earlier this week when it wrote in its editorial, on Monday:

If the Senate truly respected the Constitution it is sworn to uphold, it would not be trifling with the Bill of Rights and its precious guarantee of freedom of speech. Yet that is exactly what the Senate is doing as it considers the so-called flag desecration amendment—a mischievous addition to the Constitution that would weaken the right of free expression by allowing federal laws banning physical desecration of the flag.

The Washington Post also opposed this amendment in a recent editorial.

It noted that flag burning is "only one among many types of offensive expression that the First Amendment has protected throughout American history." Then they added:

The principle that "Congress shall make no law" restricting speech loses much of its power when exceptions begin turning the "no" into "only a few." The political points senators win by supporting this amendment are not worth the cost.

The first amendment says: "Congress shall make no law." It does not say: Congress shall not make a bunch of laws or Congress shall not make some laws or Congress shall not make little laws versus big laws restricting speech, or Congress should not make laws on Monday versus Friday restricting speech.

It says: "Congress shall make no law."

I remember being at an oral argument in the U.S. Supreme Court when I was a young law student, and Hugo Black was saying: I read the Constitution, which says "Congress shall make no laws", to mean "Congress shall make no laws." I find it pretty clear.

The Chicago Tribune said this:

The amendment is a gross overreaction to a non-problem. Incidents of flag burning are exceedingly rare, and they do no harm beyond causing legitimate disgust among patriotic Americans. Disgust, however, is not an adequate reason to take the extraordinary step of altering the nation's founding document—and altering it to curtail one of our most fundamental liberties.

So many times I read editorials from the Washington Times, especially those that say that Congress takes, too often, a liberal bend. The Washington Times today said this in their editorial—and they oppose this amendment—they said they oppose it because "it would be the only standing constitutional amendment to expand—not curtail—the power of the federal government."

They went on to say:

Laws reflect a nation's culture and Constitution. Both govern a people's relationship with the government. Sometimes, however, the two collide and the nation's leaders must decide between expressing the culture through law or abiding by constitutional restraints that limit government powers to do so. . . . The founders adopted the first 10 amendments, now called the Bill of Rights, as more than simply limits on Government's power, but rather an enumeration of rights on which Government could not trample.

Think of that. They are not saying, here are some extra powers we have in the Government. Rather, they are saying no to the Federal Government. These are rights you cannot step on. These are rights that belong only to the American people. These are rights that do not belong to a government. They do not belong to the Congress, to the executive branch, or the judicial branch. They belong to all of us, today a quarter of a billion proud Americans.

The Washington Times went on to say:

Conservatives in the Senate should take this opportunity to burn a flag—the white flag the faint-of-heart seem to fly on every

tough issue. It is time to say, "We trust the American people with their flag"—with a vote against this constitutional amendment.

That is what I say: Trust the American people. The vast majority of the people in this great country are patriotic. They respect the symbols of our Government. There isn't a rash of flag burning around the Nation. You don't see people running out to do it because we respect our flag, we respect our Nation, and we don't need a law to tell us to do that. In fact, that respect is diminished if we are told we have to respect the symbols of our Government rather than doing it from our heart.

Through this debate this week, some proponents of the constitutional amendment expressed their view that this is a nation in moral decline and that amending the Constitution to punish flag burning is thereby justified. I disagree. I would not put down the United States that way. I believe this Nation is strong. I believe there is far more civic virtue to the American people than some credit. I know that is the case in my State of Vermont. I know it when I go on line each week with the children of our State in grade schools and high schools around Vermont answering their questions. I sense a civic pride. I do not sense a moral decline. I sense a great nation moving into an even greater century.

I am not a fan of what in some quarters passes for culture nowadays, but let us not have a constitutional amendment to lash out at crude cultural influences. Let us discuss the issue of civic virtue. In fact, we in the Senate play a role, an important one, in setting the level of civic virtue in this Nation. So maybe a good place to start would be with ourselves and with our institution. It is not just what we say here that is important; it is what we do here.

Instead of telling the American people, the rest of the American people beyond the 100 here, what they can and cannot do, maybe we should talk about what we do and how we do it. We honor America when we in the Senate do our jobs, when we work on the matters that can improve the lives of ordinary Americans.

I began this debate by urging the Senate to conclude action on the juvenile crime conference. I urged the Senate to vote on increasing the minimum wage, to confirm judges our courts and people need. We have 77 vacancies today. I urged the Senate to pass a Patients' Bill of Rights and privacy legislation and other legislation that can make a difference today. Then we set an example for the Nation. As this debate concludes and after we vote on this, let us return to that hope and message.

Ours is a time of relative peace and prosperity. We should praise that. Because of that, it is certainly not the time, if there is any, to tinker with the fundamental framework that has helped make this country the land of opportunity and diversity and vitality it has been for more than 200 years.

The proposed amendment to the Constitution would do harm to the first amendment—protections that gird us all against oppression, especially oppression of momentary majority thought. It violates the precept laid down more than 200 years ago that "he that would make his own liberty secure must guard even his enemy from oppression." It undercuts the principle that a free society is a society where it is safe to be unpopular. A nation may lose its liberties in an instant of imposed orthodoxy.

I am sure many of us have read the letter written in 1787 by Thomas Jefferson in which he observed:

If it were left to me to decide whether we should have a government without newspapers, or newspapers without a government, I should not hesitate a moment to prefer the latter.

For me, presented with the stark choice between an undefiled flag and an undefiled Bill of Rights, I, too, must choose the latter.

If somebody were to cruelly desecrate the flag I proudly fly at my home, then I would replace that flag. I would buy a new flag. But if somebody misplaces, changes, or diminishes the Bill of Rights that protects me, protects the other 99 Senators, that protects a quarter of a billion Americans, I can't replace that. I can't go to the store and buy a new Bill of Rights. I cannot start the process of 200 years ago over again. I cannot go back and say, because we have spent 200 years growing and maturing as a nation in protecting our rights under the Bill of Rights, now we can ignore all that because we have changed the Bill of Rights.

Don't diminish it. There are a lot of things that are unpopular, but we protect them. I think of the debate when I was a young prosecutor. Decisions would come down saying you had to warn criminal suspects of their rights—first the Escobedo case and then the Miranda case. I remember people, both in law enforcement and outside, saying we have to amend the Constitution. Some said we had to impeach the whole Supreme Court. We have to amend the Constitution. How dare they say these criminals must be warned of their rights? We want to be warned of our rights because we are not criminals. But the guilty accused have to be warned of their rights? What a terrible idea.

We got through that. What happened? Training of law enforcement got a lot better. The police got a lot better, the courts got a lot better, the prosecutors got a lot better, and our Nation got better. Today there are still people who are arrested or stopped by the police who are totally innocent, and they have their rights. They can stand on those rights. How many times have we said: I am an American; I have my rights? Well, it is true. We have wonderful rights in this country. That is why we are the strongest democracy in the world. Let's not diminish those rights.

Ours is a powerful constitution, all the more inspiring because of what it allows and because we protect each other's liberty. Let us be good stewards. Let us leave for our children and our children's children a constitution with freedoms as great as those bequeathed to us by the founders, patriots and hard-working Americans who preceded us. If we do that, successive generations will bless us, they will praise us, we will have a stronger nation.

I thank my colleagues for their attention and courtesy and yield the floor.

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

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

Mr. HATCH. Mr. President, we have had a productive and educational debate concerning our proposed constitutional amendment to protect the flag. We have considered—and defeated by overwhelming votes—two significant amendments which were aimed at the heart of this amendment. A clear majority of the Senate has its mind made up on this resolution, and it is proper that we are now preceding to a vote.

The events of the last three days could cause one to question the depth of feeling my colleagues have for their argument that this flag protection constitutional amendment would erode free speech rights guaranteed by the first amendment. Many of these same Senators have denounced flag desecration and voted for statutes which would allegedly protect the flag. In 1989, the Congress responded to the Supreme Court's decision in *Texas v. Johnson*, which held that State flag protection statutes were unconstitutional, by enacting the Flag Protection Act. Ninety-one Senators—let me repeat, 91 Senators—voted in favor of that statute, which provided that:

Whoever knowingly mutilates, defaces, physically defiles, burns, maintains on the ground, or tramples upon any flag of the United States shall be fined under this title or imprisoned for not more than one year, or both.

That was the statute that 91 Senators in this body in 1989 voted for.

Clearly, 91 Senators believed in 1989 that flag desecration should be stopped; that people who knowingly mutilate, deface, physically defile, burn, or trample upon any flag of the United States should be prevented from engaging in this sort of conduct. Clearly, 91 Senators believed in 1989 that prohibiting flag desecration would in no way erode free speech rights guaranteed by the first amendment, and voted for the bill in response to a Supreme Court decision that had said otherwise.

I remember those arguments. We can do this by statute. We have had the

same arguments in this debate, all of which are just as specious as they were back then.

Yet, of those 91 Senators who voted to outlaw flag desecration in 1989 to prohibit this form of expressive conduct, 18 who are still here will vote against the flag protection constitutional amendment. In other words, of the more than 30 opponents of the proposed constitutional amendment, 18 voted in 1989 to prohibit flag desecration.

Let me read directly from the joint resolution, the constitutional resolution:

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

In other words, we want to give them the power so that they can, again, vote for their beloved statute. They can't vote for it now because it would be declared unconstitutional again. I think the limited version presented here, the McConnell statute, which would not do much to begin with, is likewise unconstitutional.

The point was that 18 of those who will vote against the flag protection constitutional amendment today, at least 18 of the more than 30 opponents of this proposed constitutional amendment, voted in 1989 to prohibit flag desecration.

Just yesterday we voted on whether to adopt the Flag Protection Act of 1999. That is a more narrow flag desecration statute offered by Senator MCCONNELL. Now some Senators voted against Senator MCCONNELL's amendment because they do not believe flag desecration is a problem in our society, that it is too trivial of an issue for the Senate even to consider. Other Senators, including myself, voted against the McConnell amendment because we believe that under the Supreme Court precedents, and given the present composition of the Court, it would be struck down as the other statutes were. Yet 36 Senators voted in favor of the McConnell amendment, a statute prohibiting flag desecration. Clearly, these 36 Senators do not believe that prohibiting flag desecration will erode free speech rights guaranteed by the first amendment. Of these 36 Senators, 30 have indicated they will vote against the flag protection constitutional amendment today.

I must ask these Senators: Do you believe in flag protection or not? Or are you just playing political games? If they do believe in flag protection, they should vote for this constitutional amendment, which is the only constitutional way of protecting our flag. If not, they should have the courage to repudiate the votes they cast yesterday, in 1995, and in 1989, and to admit that they do not want to prohibit flag desecration in any way. They can't have it both ways unless they are just playing politics. I would never accuse anybody in this body of doing something as denigrating as playing politics.

Some of my colleagues contend our country has achieved greatness in its two centuries of existence because they say we value tolerance over all else. Yes, we are tolerant of everything that is rotten and we are intolerant of many things that are good. They say if we pass this constitutional amendment and then adopt legislation prohibiting flag desecration, we will become Iran, Iraq, North Korea, Libya, Cuba, and a host of other repressive and dictatorial regimes that do ban desecration of their respective flags. They even suggest we will become like South Africa during apartheid or like Nazi Germany if we protect our flag. This argument is not only specious, it is absolutely ridiculous. It is insulting.

Indeed, I must say their argument is full of historical revisionism. The United States of America prohibited desecration of the American flag during the first two centuries of its existence. If this constitutional amendment is adopted and implementing legislation is passed, the United States of America will not somehow become an intolerant, repressive, dictatorial police state. No, the United States of America's laws will be just as they were for over 200 years before this lousy decision by five people on the Supreme Court, versus four, showing it was hotly contested. Even they weren't sure what they were doing.

I find that a sense of elitism is creeping into the Senate. In fact, I don't fear it, I know that is the case. We have amongst us people who seem to think the Senate has more important things to do than to listen to, and act on, the views of the overwhelming majority of American citizens who want the flag protection constitutional amendment. I find this elitism profoundly troubling. As a matter of fact, all we are asking is for this body to give a two-thirds vote, as the House did, so we can submit this to the people in the respective States and let them decide once and for all whether or not they want to protect the flag.

The American people do not believe that the flag of the United States of America is just a piece of cloth or just another symbol. The American people know that the flag is the embodiment of our heritage, our liberties, and indeed our sovereignty as a nation, as Madison indicated—the author of the Constitution. The American people are deeply offended and morally outraged when they see the flag humiliated and the Government powerless to defend it.

I have heard both sides of this debate cite leaders in the military, and I am sure that some of these people who are opposed to our amendment today are good people. But let me quote Gen. Norman Schwarzkopf, commander of U.S. and allied forces during the gulf war. He wrote:

The flag remains the single, preeminent connection to each other and to our country. Legally sanctioned flag desecration can only serve to further undermine this national unity and identity that must be preserved.

There are tens of thousands of veterans living in our country today who have put their lives on the line to defend our flag and the principles for which it stands. Those are the fortunate ones who were not required to make the ultimate sacrifice. For every one of those, there is someone who has traded the life of a loved one in exchange for a flag, folded at a funeral. Let's think about that trade—and about the people who made that trade for us—before deciding whether the flag is important enough to be addressed by the Senate.

Let's think about the meaning of majority rule before we dismiss the feelings of the American public. Would it really trivialize the Constitution, as some of these critics suggest, to pass an amendment that is supported by the vast majority of Americans? The Constitution itself establishes the process for its own amendment. It says that the Constitution will be amended when two-thirds of the Congress and three-fourths of the States want to do so. It does not say that this procedure is reserved for issues that some law professors, or even some Senators, think are important. If government by the people means anything, it means that the people can decide the fundamental questions concerning the checks and balances in our government. It means the people can choose whether flag desecration is against the law. The people have said they want Congress to protect the American flag.

Because the flag amendment reflects the will of the people, I believe passage and ratification of this amendment is ultimately inevitable. It may not pass the Senate today, but it will pass the Senate. The votes in the past few years demonstrate that momentum—as well as the fulfillment of duty—is on our side. In 1989, 51 Senators voted for the amendment. That was it, 51. In 1990, there were 58 votes in favor. In 1995, 63 Senators voted for the amendment. And, today, we hope we will at least get that many. We have had some reversals, as you have seen. But the trend of support will continue until we get the 67 needed to pass this resolution and send the constitutional amendment to the States for ratification. I personally will not stop fighting for the flag amendment until it passes the Senate with the requisite two-thirds vote.

I came up the hard way. I had to earn everything I have, and I have earned it the hard way. I learned a trade as a young man. I worked as a janitor to get through school. I have never been part of the elite, and I wouldn't be there if I could be. I have to tell you, this place is filled with elitism among those who are voting against this amendment today.

Frankly, I get a little tired of the elitism in this country. It is throughout our country, and it is elitism that is allowing the savaging of our values to occur today in this country. It is the elite who are basically upholding

things that force us to be tolerant, as they say, of some of the very offensive acts that occur in our society. They say we should be tolerant, not to do anything about people who defecate on our flag or urinate on our flag or burn our flag with contempt or trample on it. They don't seem to see any real problem with that, although they condemn it vociferously without doing one doggone thing about changing this culture and letting the American people know we are going to stand for something.

What better thing can you stand for, other than your families—and this is part of standing for families in my book—what better thing to stand for than standing up for this national symbol that unites us and brings us together? Just think about it.

In conclusion, the flag amendment is the very essence of government by the people because it reflects the people's decision to give Congress a power that the Supreme Court has taken away on a 5-4 vote. The four who voted against the five—in other words voted to uphold the right of the Federal Government and the States to ban desecration of the flag—those four fought very hard for their point of view. They happen to be right.

I urge all my fellow Senators to do the right thing for the American people. I urge everybody in America to hold us responsible for not doing so. I am asking the folks out there in America to start getting excited about this. If we could pass this amendment through the Senate, since the House has already done it, I guarantee we would create the biggest debate on values this country has seen in years in every one of our 50 States. If we did that, that alone would justify everything we are talking about today, let alone standing up for the greatest symbol of any country in the world today. I think we ought to do it. I hope my fellow Senators will do the right thing and vote for this resolution so the people, through their State legislatures, can decide for themselves whether or not they want their elected representatives to enact a law prohibiting the physical desecration of the American flag.

We know we do not have the votes today, but we are not going to stop until this amendment is approved. Sooner or later we will get enough people here who feel strongly enough about this to get the constitutional amendment passed. I venture to say, if we could pass this constitutional amendment, at least 38 States—and, frankly, I think all 50 States would ratify this amendment—I believe the people out there would ratify this amendment and we would have more than 80 percent in the end, and people would feel very good about it.

I know one thing, those seven Congressional Medal of Honor recipients who were standing with us yesterday as we had a press conference on this, it would make their lives, as it would for

all these veterans throughout this country who have sacrificed for you and me that we might be free. I would like to see that happen. If it does not happen today, don't worry, we will be back because we are not going to quit until we win on this amendment. When we do, it will be a great thing for this country.

I want to thank the dedicated staff of the Senate Judiciary Committee for their hard work on this important proposed constitutional amendment—S.J. Res. 14. In particular, I would like to commend Alex Dahl, Catherine Campbell, Kyle Sampson, and Ed Haden. These fine lawyers and professional staff spent countless hours getting us to this point. I also want to thank the committee's chief counsel, Manus Cooney, for his assistance and counsel. On the minority side, let me acknowledge Bruce Cohen for his professionalism and spirited opposition.

Many other staffers were helpful including Jim Hecht and Stewart Verdery of our leadership staff. I think these staffers know that this debate was an important one and one of significance.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The senior assistant bill clerk proceeded to call the roll.

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

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

Mr. MCCAIN. Mr. President, I rise today in support of Senate Joint Resolution 14. It is with great honor and reverence that I speak in support of this resolution, a bipartisan constitutional amendment to permit Congress to enact legislation prohibiting the physical desecration of the American flag.

Let me explain my support by recalling the sacrifice for flag and country of a prisoner of war I had the honor of serving with.

I spent 5½ years at the Hanoi Hilton. In the early years of our imprisonment, the North Vietnamese kept us in solitary confinement of two or three to a cell. In 1971, the North Vietnamese moved us from these conditions of isolation into large rooms with as many as 30 to 40 men to a room. This was, as you can imagine, a wonderful change. And it was a direct result of the efforts of millions of Americans, led by people like Ross Perot, and Nancy and Ronald Reagan, on behalf of a few hundred POW's, 10,000 miles from home.

One of the men who moved into my cell was Mike Christian. Mike came from Selma, Alabama. He didn't wear a pair of shoes until he was 13 years old. At 17, he enlisted in the U.S. Navy. He later earned a commission. He became a Naval aviator, and was shot down and captured in 1967. Mike had a keen and deep appreciation for the opportunities this country—and our military—provide for people who want to work and want to succeed.

The uniforms we wore in prison consisted of a blue short-sleeved shirt trousers that looked like pajamas and rubber sandals that were made out of automobile tires.

As part of the change in treatment, the Vietnamese allowed some prisoners to receive packages from home. In some of these packages were handkerchiefs, scarves and other items of clothing. Mike got himself a piece of white cloth and a piece of red cloth and fashioned himself a bamboo needle. Over a period of a couple of months, he sewed the American flag on the inside of his shirt.

Every afternoon, before we had a bowl of soup, we would hang Mike's shirt on the wall of our cell, and say the Pledge of Allegiance. I know that saying the Pledge of Allegiance may not seem the most important or meaningful part of our day now. But I can assure you that—for those men in that stark prison cell—it was indeed the most important and meaningful event of our day.

One day, the Vietnamese searched our cell and discovered Mike's shirt with the flag sewn inside, and removed it. That evening they returned, opened the door of the cell, called for Mike Christian to come out, closed the door of the cell, and for the benefit of all of us, beat Mike Christian severely.

Then they opened the door of the cell and threw him back inside. He was not in good shape. We tried to comfort and take care of him as well as we could. The cell in which we lived had a concrete slab in the middle on which we slept. Four naked light bulbs hung in each corner of the room.

After things quieted down, I went to lie down to go to sleep. As I did, I happened to look in the corner of the room. Sitting there beneath that dim light bulb, with a piece of white cloth, a piece of red cloth, another shirt and his bamboo needle, was my friend Mike Christian, sitting there, with his eyes almost shut from his beating, making another American flag. He was not making that flag because it made Mike Christian feel better. He was making that flag because he knew how important it was for us to be able to pledge our allegiance to our flag and our country.

I believe we have an inviolable duty to protect the right of free speech—one of our most precious inalienable rights and the linchpin of a healthy democracy. I do not believe, however, that guaranteeing respect for our national symbol by prohibiting "acts" of desecration impinges on political "speech."

As long as citizens are free to speak out on any matter and from whatever point of view they wish, as our forefathers intended, it does not seem burdensome to me that we accord some modicum of respect to the symbol of those precious freedoms for which so many of our countrymen have laid down their lives.

Some view these efforts to protect the flag as political demagoguery or

empty symbolism. I see the issue differently. The flag represents each and every one of us, regardless of race, religion or political diversity. Tolerating desecration of the flag is silent acquiescence to the degeneration of the broader values which sustain us as a free and democratic nation—the ramifications of which are far more profound than mere symbolism.

For these reasons, I support this constitutional amendment to ban flag desecration. I voted for such language in previous Congresses, but unfortunately, we have always fallen short of the 67 affirmative votes necessary for approval.

Whenever we send our young men and women into harm's way, we must remember that these same men and women have taken a solemn oath which this flag symbolizes. Let us honor their commitment and honor our great nation. I urge my colleagues to support the flag protection amendment.

Mr. LEVIN. Mr. President, I cannot support the proposed constitutional amendment.

The American flag is the premier icon of our national freedom. It is an irreplaceable reminder of liberty, sacrifice, and patriotism. To deliberately desecrate or burn a flag is an insult to anyone who has fought to defend it. But to deliberately weaken the First Amendment rights of all Americans cannot be the answer to those who attack a symbol of freedom.

We love our flag for obvious reasons, and true Americans treat it with respect. A person who destroys such an important symbol should face the scorn of all decent women and men. But we should not allow the misguided actions of a few individuals to jeopardize the rights and freedoms of all Americans.

The Supreme Court has ruled that such an attack on the flag is a protected form of speech under the First Amendment to the Constitution.

If we pass this amendment, and the States ratify it, we alter the Bill of Rights for the first time in our nation's history. For more than 210 years, the Bill of Rights—which protects our most basic freedoms—has served us well. Although I love the flag, I also love the Bill of Rights and the Constitution. When we pledge allegiance to the flag, in the same breath, we pledge allegiance to the Republic for which it stands.

Mr. President, Senator John Glenn, a true American hero, reflected these concerns in his testimony before the Judiciary Committee. He said:

[I]t would be a hollow victory indeed if we preserved the symbol of our freedoms by chipping away at those fundamental freedoms themselves. Let the flag fully represent all the freedoms spelled out in the Bill of Rights, not a partial, watered-down version that alters its protections.

The flag is the nation's most powerful and emotional symbol. It is our most sacred symbol. And it is our most revered symbol. But is it a symbol. It symbolizes the freedoms we

have in this country, but it is not the freedoms themselves.

General Colin Powell has said:

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.

We should not alter the basic charter of our liberties just to address the few incidences of flag burning in this country. Despite the attention it receives, flag burning is relatively infrequent. According to one expert, there have been only 200 reported incidences of flag burning in the history of our nation. That amounts to less than one case per year. The Congressional Research Service has listed 43 flag incidents between January 1995 and January 1999.

Even if this constitutional amendment were adopted, and the physical desecration of the flag were prohibited, it would not necessarily yield the intended results: the preservation of our glorious symbol.

As the Port Huron Times Herald suggested on June 26, 1999, flag desecration may not necessarily be flag burning, but the trivialization of the flag:

How glorifying is it to see the Stars and Stripes emblazoned on paper napkins destined to be smeared with ketchup and barbecue sauce and tossed in a trash can?

How respectful is it to wrap ourselves in Old Glory beach towels? Sip our coffee from red, white and blue mugs? Start our car from a flag-emblazoned key chain?

We shouldn't worry about people burning the flag. It just doesn't happen. We should worry about trivializing a glorious symbol into something as meaningless as a paper napkin.

I oppose the proposed constitutional amendment because it would amend our Bill of Rights for the first time, but I do support a statutory prohibition on flag desecration. The McConnell-Conrad-Dorgan statutory approach is preferable because it provides protection of the flag through enactment of a statute, and subsequently, does not weaken our First Amendment freedoms.

If we love the flag, we will not only preserve the sanctity of the cloth, but the freedoms for which it stands. No matter how abhorrent the action of flag burning may be, I see great danger in amending the Bill of Rights and curtailing freedoms enumerated in the Constitution, the very documents that give our flag its meaning.

Mr. MURKOWSKI. Mr. President, I rise as an original co-sponsor of S.J. Res. 14, a resolution proposing that the Constitution be amended to permit Congress to enact statutes to protect against the physical desecration of the American flag. Although it is rare that I support amending our Constitution, in this instance the Supreme Court has made clear that a federal statute is incapable of protecting the national symbol of America.

There is no doubt in my mind that every single Member of the Senate abhors the idea that someone would desecrate the American flag. Yet the vote

on this amendment will be far from unanimous. That is because many of my colleagues believe that adoption of this amendment somehow represents an attack on the First Amendment's guarantee of freedom of speech. In my view, this amendment in no way threatens the freedoms embodied in the First Amendment.

The freedom of speech that is guaranteed in the first amendment of the Constitution is not unlimited. The Supreme Court has long recognized that the law must strike a balance between society's and government's interest and the interests of the individual. More often than not, the Court has come down on the side of the individual. However, the Court has recognized that society's interest in public safety outweighs an individual's right to freely shout "Fire" in a crowded theater. The Court has balanced society's interest in national security with a speaker's interest in disclosure of state secrets and has upheld restrictions on such speech.

By this amendment, we are not challenging the first amendment's guarantee of freedom of speech. Anyone in America is guaranteed the right to criticize nearly every aspect of American society and American government. Nothing in this amendment precludes such speech.

Instead, this amendment speaks to the issue of desecrating the symbol of this country. A symbol that is recognizable throughout the world as the symbol of this 224 year old democracy. A democracy that has asked its men and women to fight all over the world to preserve democracy and freedom against tyranny.

When in 1989 the Supreme Court by a 5-4 decision struck down a Texas Flag desecration statute, Justice Stevens dissented and eloquently stated why the Court had reached the wrong conclusion about the First Amendment in this case. Let me quote Justice Stevens:

The Court is . . . quite wrong in blandly asserting that respondent "was prosecuted for his expression of dissatisfaction with the policies of this country, expression situated at the core of our First Amendment values." Respondent was prosecuted because of the method he chose to express his dissatisfaction [burning an American Flag] with those policies. Had he chosen to spray-paint—or perhaps convey with a motion picture projector—his message of dissatisfaction on the facade of the Lincoln Memorial, there would be no question about the power of the Government to prohibit his means of expression. The prohibition would be supported by the legitimate interest in preserving the quality of an important national asset. Though the asset at stake in this case is intangible, given its unique value, the same interest supports a prohibition on the desecration of the American flag.

Would anyone disagree with Justice Stevens' suggestion that the first amendment does not permit an individual to desecrate the Lincoln Memorial by spray painting his political views on the Memorial? Surely that would be a criminal act and no one

would suggest that the spray painter's first amendment rights had somehow been invaded.

Yet, I ask the question: What is the difference between barring someone from desecrating the LINCOLN Memorial and barring someone from desecrating the American flag? Why are the marble and mortar of the Memorial more important than the intangible values represented by the American Flag? Does it make a difference that the American taxpayer paid for the construction and upkeep of the Memorial and therefore as public property an act of desecration is actionable?

I do not think that the payment of taxes to construct and maintain the Memorial should make a difference. Are we to compare the payment of taxes to construct a Memorial with the sacrifice of the hundreds of thousands of men and women who fought in wars over two centuries to preserve the democratic ideals embodied in our Constitution? I think not.

As I said earlier, I am not a frequent supporter of amending the Constitution. I would prefer that we adopted a statute to prevent flag desecration. But those who argue for a statute ignore the fact that 11 years ago Congress adopted a statute—the Flag Protection Act—which outlawed desecration of the flag. That Act was adopted in response to the Supreme Court's decision striking down the Texas statute and along with that state law, the state flag protection laws of 47 other states. Unfortunately, one year later, the Supreme Court struck down the Flag Protection Act, again by a 5-4 vote.

So the only realistic way that we can outlaw flag desecration is by adopting a Constitutional Amendment. Let the people of the 50 states decide whether our flag deserves such protection. I urge my colleagues to support S.J Res. 14.

Mr. LIEBERMAN. Mr. President. I rise today to explain my vote on the Flag Amendment. This is one of the most difficult votes I will have to cast during my tenure in the United States Senate. Words cannot fully express the anger I feel towards those who desecrate the American Flag. The Flag is a symbol of what is great about our country. It is the standard we rally around in war and in peace, in mourning and in celebration and, ultimately, in life and in death. It unites us in our past and in our future. When someone desecrates the Flag, they in a sense strike at all of those things.

It is because I find desecrating the Flag to be so abhorrent and despicable an act, that I will, as I have in the past, support using any statutory means possible to prohibit Flag desecration. But after thinking long and hard about this issue, I have decided that I will again vote against this constitutional amendment. Although I recognize that a statute cannot do the whole job, I cannot vote to amend the Constitution's Bill of Rights for the

first time ever in a manner that would restrict, rather than expand, individual liberties. In my view, however great a symbol the Flag is, our Constitution and its Bill of Rights are all that and more. More than a symbol of liberty, they are liberty's real guardian and its true protector. They are not only what unites us, but also what keeps our more than 200-year-old experiment in self-government working. They are the best the Founders of this great nation left to us—a lasting testament to the Framers' brilliant insight that for any people to remain truly free and capable of self-government, that there must be some limits to what the State can do to regulate the speech and political behavior of its citizens. The Flag is an important symbol, but the Bill of Rights is what the Flag symbolizes. We must be extremely cautious in altering the freedoms that this great document guarantees, lest we diminish the ideals for which our Flag stands.

My former colleague Senator John Glenn—an individual whose patriotism and love of country none could doubt—expressed this view well when he submitted a statement to the Judiciary Committee last April. He explained:

The flag is the nation's most powerful and emotional symbol. It is our most sacred symbol. And it is our most revered symbol. But it is a symbol. It symbolizes the freedoms that we have in this country, but it is not the freedoms themselves. That is why this debate is not between those who love the flag on the one hand and those we do not on the other. No matter how often some try to indicate otherwise, everyone on both sides of this debate loves and respects the flag. The question is, how best to honor it and at the same time not take a chance of defiling what it represents.

As General Colin Powell also recently so well put it: "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."

Of course I do not believe that our Constitution or its Bill of Rights must remain forever unaltered. But the importance of the Bill of Rights requires us to establish an exceedingly high threshold for agreeing to any amendment. For me, that threshold lies at the point where an amendment is shown to be necessary to address some extreme threat to the Republic or redress some outrageous wrong. In this case, abhorrent though Flag desecration may be, it simply does not meet that threshold.

I know that this is an issue that many feel passionately about. Many of my constituents have brought their views on this issue to me, and I would like to take just a couple of minutes to address some of the arguments they have made.

I have heard it argued that a vote for this amendment is merely a vote to let the People—through their state legislatures—decide the issue. Those who make this argument point to polls showing that as much as 75 to 80 percent of the American public support



the amendment. It frankly is unclear whether support is all that high. I have seen polls showing that a majority of Americans opposed the amendment when they knew that it would be the first in our nation's history to restrict our First Amendment freedoms of speech and expression. But more importantly, a decision on an issue as important as this one should not be made on the basis of polling. It is precisely because of the caution the Framers meant us to use in amending the Constitution, that they required supermajorities of both Houses of Congress as well as of the State legislatures to give their assent before our nation's foundational document could be altered. The Senate was never meant to serve as a rubber stamp in this process, and so I owe it to the People of Connecticut, who have elected me to use my best judgment, to carefully consider issues before me, and to vote the way I believe to be correct.

Some also have suggested that it is not this Amendment that would be changing the Bill of Rights or the First Amendment—that it was instead the Supreme Court that did that when, in 1989, it overturned 200 years of precedent and found Flag desecration to be protected by the First Amendment. The history of this issue is more complicated than that. Most importantly, it's just not correct to say that the Supreme Court reversed 200 years of precedent. The first state Flag statute apparently was not enacted until the end of the 19th Century, and there was no federal Flag statute until 1968. Moreover, it's not really fair to say that the Supreme Court reversed any of its precedents in 1989, because before the 1989 *Texas v. Johnson* case, the Supreme Court never addressed this issue head on. In fact, in a number of cases throughout the 20th Century dealing with people who treated the Flag in a manner that offended others, the Supreme Court repeatedly either held the conduct to be protected by the First Amendment or found other reasons to overturn the convictions. For that reason, despite dicta in some of these cases distinguishing them from pure Flag desecration, the dissent in *Johnson* had to acknowledge that "Our prior cases dealing with flag desecration statutes have left open the question that the Court resolves today." 491 U.S. 397, 432.

I must conclude that, abhorrent and despicable as I find desecrating the Flag to be, I cannot vote to support this amendment. In the end, Flag desecration is hateful and worthy of condemnation, but I just cannot conclude that it threatens the Republic. For that reason, although I stand ready to support any statutory means possible to curtail desecration of the Flag, I just cannot support amending our nation's foundational document to address it.

Mr. CRAIG. Mr. President, I join in this debate with mixed feelings.

On one hand, I am very frustrated we are here yet again, as we have been

year after year for so long, trying to secure approval for this very important amendment so that it can be sent to the states for ratification. Time after time, we have come within just a few votes of success. But, for whatever reason, those few votes have eluded us, and we have had to go back to square one and begin the legislative process again.

So I cannot approach this debate without a good measure of frustration.

But on the other hand, the very fact that we are here again debating this measure is reassuring. It is proof positive of the American people's continuing belief in the importance of flag protection.

Imagine that. In spite of all the editorials about the erosion of ideals, in spite of all the speeches, some on this very Senate floor, about the loss of values in America, in spite of the dire predictions about moral decline—in spite of all that, there is a strong and growing grassroots movement demanding protection of our Nation's most important symbol: our flag.

Why would we even hesitate to answer that call?

Millions of our fellow citizens are telling us that the sight or mention of our flag still has the power to awaken the spirit of the American patriot. State legislatures are clamoring for the opportunity to protect the symbol of our national aspirations and values.

To those of my colleagues who are searching for signs of spring in a winter of moral decay, let me say: look no further. Here is the sign. This is the call. Now is the time to take a stand and support this amendment.

I do not minimize the fears of those on the other side of this debate. However, it is worth remembering that the U.S. Supreme Court has not hesitated to draw constitutional lines around the kinds of speech that are protected or not protected by the First Amendment. They have found that in some cases, certain interests may outweigh the citizen's right to free expression. As a result, laws may be enacted to restrict those kinds of speech, such as "fighting words" or obscenity.

The Court chose not to exempt the behavior that came under scrutiny in the flag case. Frankly, I think they could have, and should have, reached a different result. But my point is that the Congress need not shrink from applying its own judgment to balancing the interests involved. In my opinion, flag protection serves a number of compelling interests but would not prevent the expression of a single idea or message. I do not think the First Amendment must be or would be compromised by protecting the flag from desecration.

Even so, it is also worth noting that what we do here today is only the first step in a long process. This amendment must be ratified by the states, and only after that will Congress fashion an actual flag protection statute. Even if some of my colleagues are uncertain

about how to go about crafting legislation to protect the flag, I hope they will all agree that it is appropriate to pass this resolution and give the American people the opportunity they have demanded to consider this issue in the legislatures and town halls and across the kitchen tables of this great country.

Yesterday morning, I had the honor of addressing our Nation's veterans. As I stood before them, I thought of the long line of patriots throughout our history who have defended our flag—some with the supreme sacrifice. Suddenly, the legal hairsplitting and fear-mongering over this issue seemed both trivial and insulting.

Millions of Americans understand, as these veterans do, that the flag is more than a scrap of cloth. It weaves people of diverse cultures together to form our Nation, just as surely as its threads are woven into a pattern that stands for freedom throughout the world. It deserves protection and can be protected without endangering any of the fundamental ideals it symbolizes.

Today, we can send a signal that we understand, that we agree, that we honor the values that the American people have attached to our flag. I hope all our colleagues will join in voting in favor of this resolution and moving the flag protection constitutional amendment to the states for ratification.

Mr. BINGAMAN. Mr. President, I rise to speak briefly on S.J. Res. 14, an amendment to the Constitution of the United States.

As my colleagues know, I will vote against this resolution just as I have voted against previous attempts to pass anti-flag desecration amendments during my tenure in the Senate. However, I take a back seat to no one in my respect for the flag, for what it stands for and, most importantly, for the hundreds of thousands of brave men and women of our armed services who sacrificed so much to defend this Nation, our Constitution, and, yes, our flag. I abhor the desecration of the flag as a form of expressing views about America or a policy of our government. That is why I supported an amendment by Senator MCCONNELL that would prohibit most, if not all, incidents of flag desecration by statutorily banning the desecration of a flag if it is done with the intent to incite or produce imminent violence or breach of the peace, or if the flag belongs to the United States Government or the act occurs on lands reserved for the use of the United States.

In the end, however, it is our Constitution and not the flag which gives us our freedoms. And chief among those freedoms, indeed the fundamental and most important freedom, is the right to speak freely against the government, against a government official or against a government policy. The speech of an individual may be distasteful to the majority, as is the case when someone burns a flag or when the KKK is allowed to march in our cities,



but our Constitution was established to protect the rights of the minority. For when the majority is allowed to rule without a check and balance, tyranny is not far behind.

I don't doubt that the vast majority of Americans oppose, as do I, the desecration of our flag, but we were elected to preserve and protect the Constitution of the United States and I simply do not see how we defend the Constitution by chipping away at its very foundation.

Mr. President, there are many reasons to oppose amending the first amendment for the first time in our Nation's history and for this particular purpose. As several of our colleagues have pointed out, we are not experiencing an epidemic of flag burning in the country. But we likely will, if this amendment passes and Congress goes on to ban acts of desecration.

I also share the concerns raised yesterday by my friend from Vermont, Senator LEAHY, that while the Senate takes 3 or 4 days to debate this amendment, we have not taken the time to address other issues that are extremely important, especially to our Nation's veterans and to our Armed Forces. One example is S. 2003, of which I am a co-sponsor and that begins to address the issue of the Federal Government keeping its promises to our veterans in the area of health care. I wish the Senate would take up and pass S. 2003 but we can't seem to find time to do that. Likewise, I recently introduced legislation that would compensate the remaining survivors of the Bataan Death March for the incredible suffering they endured on behalf of their country. I would like to see the Senate take up and pass that legislation but we haven't.

Mr. President, I think our Constitution and Nation are strong enough to handle a few miscreants who want to burn a flag. I think the drafters of the Constitution envisioned that it would survive speech which the majority finds offensive. I believe that a vote against this amendment is a vote for the Constitution and for the most important principle embedded in that document, the right of every American to free speech.

Ms. MIKULSKI. Mr. President. I oppose the burning of our Nation's flag. I oppose it today as I always have. I am deeply concerned about the desecration of the United States flag because of what it says about our culture, our values and our patriotism.

Our flag is the lasting symbol of America. To me, every thread in every American flag represents individuals who have laid down their lives in the name of freedom and democracy.

Yet I cannot support an Amendment to the United States Constitution which would, for the first time in our nation's history, narrow the reach of the First Amendment guarantee of freedom of speech. Instead of expanding the rights of Americans, this Amendment would constrict the freedoms which we fought so hard to win.

Instead, we should enact legislation that accomplishes the same goal—without trampling on our fundamental American rights. I have voted several times for legislation that would have provided protection of the flag through a statute, rather than a Constitutional amendment.

Senator MCCONNELL offered an alternative that sought to create a statutory solution that could have passed the muster of the Supreme Court. The McConnell amendment would have provided for fines or imprisonment for anyone who destroys a flag with the intent to incite violence or breach of peace. This amendment would have protected both our flag and our Constitution. I'm disappointed that it did not pass.

Our flag is a symbol of the principles that have kept our country strong and free. When we think of our flag, we think of everything that is good about this country—patriotism, courage, loyalty, duty and honor. Our responsibility is to live up to these standards—and to foster a new sense of citizenship and a new sense of duty.

We should honor our flag by rekindling these principles—not by amending our Constitution.

The PRESIDING OFFICER (Mr. DEWINE). Who yields time?

Mr. HATCH. Mr. President, I yield 5 minutes to the distinguished Senator from Florida.

Mr. MACK. Mr. President, I intend to speak on another issue. I ask unanimous consent to speak as in morning business for not to exceed 5 minutes.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

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#### IN SUPPORT OF A PRIVATE RELIEF BILL FOR ELIAN GONZALEZ-BROTONS

Mr. MACK. Mr. President, I come to the floor of the Senate to speak about an incident that occurred just before Thanksgiving Day 1999, when a mother who so loved her son that she tried to bring him to the shores of the United States of America from Cuba. Had she succeeded, she would have joined her family members already in the United States. Instead, she met with tragedy in the Florida straits. The mother died. The five-year-old boy survived. Now, we are being forced to consider young Elian's future.

Today, the freedom sought by a mother for her son is being mocked. Elian Gonzalez finds himself in the middle of a struggle between his Miami family and the Department of Justice, an agency unwilling to consider what is in the best interest of the child, an agency continually impairing a fair presentation of the merits of this case.

I ask my colleagues to open their minds and their hearts and listen to why the current process being used by the DOJ and the INS represents a grave injustice and denies a decision that should be based upon Elian's best inter-

est. Remember when Elian first arrived, the INS stated that the matter was a custody decision for a Florida state family court. Forty-eight hours after Castro threatened the United States, the decision flipped, and continues to bend to Castro's will. Now the administration wants to rush an appeals process to send him back to a country that Human Rights Watch states has "highly developed machinery of repression."

In the past week, the Department of Justice has put unrealistic demands on the family of Elian to expedite the appeal of the federal district court decision. The Department of Justice has repeatedly threatened to revoke Elian's parole and remove the child to Cuba if the family fails to agree to their demand that both sides have an appellate brief prepared in one week. These unprecedented tactics short-circuit and dismantle the judicial process in which an appellate is typically allotted a minimum of 30-60 days to prepare a brief. This is plain and simple—Elián's family's civil rights are being denied.

This past Monday, the family under great pressure filed a motion with the Eleventh Circuit to expedite the appeals process, and still, the government's threats have continued. In a letter sent to the family at 10 p.m. on Monday night, the government demanded that the family's attorneys appear for a meeting on Tuesday morning at 9 a.m. with INS officials to discuss the revocation of Elian's parole. The government has continually dictated the terms of all meetings and has bulldozed over the right of Elian and his Miami family.

Today, the Department of Justice has summoned Elian's great-uncle, Lazaro Gonzalez, to a meeting where he is expected by the INS to sign a unilateral demand "to comply with the instructions of the INS," yet the INS has failed to provide the attorneys and the family with what those instructions will be. After all this child has been through, is it too much to ask how the government plans on removing him from the only home he now knows? Should his family agree to having INS agents come to his Miami home and take him? Probably not. But one thing is for sure: they should know the details of what they are agreeing to.

Keep in mind that this same agreement, if signed, destroys any shred of dignity left in our judicial process. It demands that the family's attorneys have a brief prepared to submit to the Supreme Court within 5 days of the appellate court decision, a time line virtually impossible to meet.

In its effort to dictate terms for the family's appeal, the government has betrayed the very integrity for which the Attorney General is charged with defending—equal protection under the law and the right to pursue justice in a free America. In the past week, I've heard justice department officials say they are taking more aggressive action against the family because they want