

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 377

Whereas on May 30, 2004, the Le Moyne College Dolphins men's lacrosse team won the National Collegiate Athletic Association ("NCAA") Division II National Championship;

Whereas the Le Moyne College men's lacrosse team defeated Limestone College 11 to 10 in double overtime, with a game winning goal by junior attackman Brandon Spillett;

Whereas the NCAA Division II men's lacrosse title is the first National Championship won by any Le Moyne College athletic program in the history of the college;

Whereas Brandon Spillett scored 7 goals in the National Championship game and was named Most Outstanding Player in the NCAA Division II men's lacrosse championship game;

Whereas Dan Sheehan, head coach of the Le Moyne College men's lacrosse team, has been named Northeast 10 Conference Coach of the Year for the fourth consecutive season;

Whereas Coach Dan Sheehan, assisted by Brian Datellas, Kevin Michaud, and Bradley Carr, was the first head coach in the history of Le Moyne College lacrosse to earn a berth in the NCAA Division II men's lacrosse tournament;

Whereas the Dolphins were supported in their title run by outstanding efforts from the entire team, including seniors Travis Morgia, Corey Sullivan, Adam Carne, Rob Trowbridge, Pat Hooks, Chris Geng, Joel Dorchester, Justin Wnuk, and Dan Holdridge; and

Whereas the students, staff, alumni and friends of the Le Moyne College men's lacrosse team deserve much credit for their long-time dedication and loyalty to the building of a legacy for the Le Moyne Dolphins men's lacrosse team. Now, therefore, be it

Resolved, That the Senate—

(1) congratulates the Le Moyne College men's lacrosse team for winning the 2004 NCAA Division II National Championship;

(2) recognizes the achievements of the players, coaches, and support staff of the team and invites them to the United States Capitol Building to be honored; and

(3) directs the Secretary of the Senate to make available an enrolled copy of this resolution to Le Moyne College for appropriate display.

NATIONAL PLEDGE OF ALLEGIANCE TO THE FLAG DAY

Mr. WARNER. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. Res. 378, which was submitted earlier today by Senator CORNYN.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The legislative clerk read as follows:

A Senate resolution (S. Res. 378) designating June 14, 2004, as "National Pledge of Allegiance to the Flag Day."

There being no objection, the Senate proceeded to consider the resolution.

Mr. CORNYN. Mr. President, I am pleased that the Senate will approve S. Res. 378, designating today—June 14, 2004—as the National Pledge of Allegiance to the Flag Day.

The resolution, which I introduced earlier today, is cosponsored by several of my fellow Judiciary Committee members—Senators FEINSTEIN, CRAIG, GRASSLEY, CHAMBLISS, GRAHAM of South Carolina, and DEWINE. I thank them.

For Americans across the land, today is a special day.

First of all, today is Flag Day. This morning, I was honored to attend a Flag Day commemoration event at VFW Post 2494, located in the city of Grand Prairie in my beloved home State of Texas. Flag Day is the anniversary of the Flag Resolution of 1777. It was officially established in a proclamation by President Woodrow Wilson on May 30, 1916, and on August 3, 1949, President Harry S. Truman signed an act of Congress designating June 14 of each year as National Flag Day.

I look forward to Flag Day every year, because—as today's resolution notes—Flag Day gives Americans across the land the opportunity to remember and reaffirm that the United States flag is a unique symbol of the United States and its ideals. Millions of Americans instinctively look to the United States flag with reverence, in times of national crisis and triumph alike. No other American symbol has been as universally honored as the United States flag. The United States flag has always played a unique role in honoring the men and women of the Armed Forces who have died in defense of the United States. To the countless families of loved ones who have died in defense of the United States, the United States flag is a treasured possession and a poignant memory of their loss.

But today is also special for another reason. As the resolution also notes, today is the 50th anniversary of the modern version of the Pledge of Allegiance. The pledge has come under attack in recent years, however. Two years ago, a three-judge panel of the U.S. Court of Appeals for the Ninth Circuit, the Federal court of appeals based in San Francisco, ruled in the case of *Newdow v. United States Congress*, 328 F.3d 466 (9th Cir. 2002), that the establishment clause of the first amendment of the Constitution forbids public school teachers from leading willing students in the voluntary recitation of the Pledge of Allegiance, simply because the pledge confirms that our Nation was founded "under God."

Most Americans were alarmed by the decision, and rightly so. In response, a majority of the Senate subcommittee on the Constitution, Civil Rights and Property Rights filed the first amicus brief in the U.S. Supreme Court defending the pledge on the merits. The Senate legal counsel also filed a brief defending the pledge on behalf of the entire U.S. Senate. Clearly, members of both parties reject the views of the Ninth Circuit, the ACLU, and Americans United for the Separation of Church and State, and instead believe in the constitutionality of the Pledge of Allegiance.

Just last week, the subcommittee convened a hearing, entitled "Beyond the Pledge of Allegiance: Hostility to Religious Expression in the Public Square." At that hearing, scholars testified that our courts have become so hostile to democracy and to religious expression that they object even to patriotic references to God, such as those contained in the pledge.

Let us be clear: There is nothing unconstitutional about pledging allegiance to the flag. And thankfully, the U.S. Supreme Court reversed the Ninth Circuit decision in the *Newdow* case just this morning.

The Court did so, however, solely on procedural grounds—leaving for another day a determination by the Supreme Court as to whether it agrees with the Ninth Circuit's decision striking down the Pledge as unconstitutional.

I am glad to see that at least three members of the Supreme Court—Chief Justice Rehnquist, Justice O'Connor, and Justice Thomas—specifically acknowledged the constitutionality of the pledge in their opinions this morning. Their expressions follow a long line of statements in previous Supreme Court decisions supporting the Pledge. See, e.g., *Engel v. Vitale*, 370 U.S. 421, 440 n.5 (1962) (Douglas, J., concurring) ("The Pledge of Allegiance . . . in no way run[s] contrary to the First Amendment but recognize[s] only the guidance of God in our national affairs.") (quotations and citations omitted); *Sch. Dist. of Abington v. Schempp*, 374 U.S. 203, 304 (1963) (Brennan, J., concurring) ("The reference to divinity in the revised pledge of allegiance . . . may merely recognize the historical fact that our Nation was believed to have been founded 'under God.' Thus reciting the pledge may be no more of a religious exercise than the reading aloud of Lincoln's Gettysburg Address, which contains an allusion to the same historical fact."); *Lynch v. Donnelly*, 465 U.S. 668, 676 (1984) ("There is an unbroken history of official acknowledgment by all three branches of government of the role of religion in American life from at least 1789 . . . [E]xamples of reference to our religious heritage are found . . . in the language 'One Nation under God,' as part of the Pledge of Allegiance to the American flag. That pledge is recited by many thousands of public school children—and adults—every year."); *Wallace v. Jaffree*, 472 U.S. 38, 78 n.5 (1985) (O'Connor, J., concurring) ("In my view, the words 'under God' in the Pledge . . . serve as an acknowledgment of religion with 'the legitimate secular purposes of solemnizing public occasions, [and] expressing confidence in the future.'"); *County of Allegheny v. ACLU*, 492 U.S. 573, 602-3 (1989) ("Our previous opinions have considered in dicta the motto and the pledge, characterizing them as consistent with the proposition that government may not communicate an endorsement of religious belief."); see also *Sherman v. Community Consolidated*

Sch. Dist. 21, 980 F.2d 437 (7th Cir. 1992) (upholding constitutionality of school district policy providing for voluntary recitation of the Pledge).

However, the other five Justices of the Supreme Court—Justices Stevens, Kennedy, Souter, Ginsburg, and Breyer—did not see fit to join the other three Justices in supporting the constitutionality of the pledge. They appear to have remained largely silent on the issue. I hope that they are not sending a signal with their silence—a signal that they may strike down the pledge in some future case. Certainly, by reversing the Ninth Circuit on solely procedural grounds, they effectively reserve for themselves the opportunity to strike down the pledge in a future case.

The majority opinion does state that, “as its history illustrates, the Pledge of Allegiance evolved as a common public acknowledgement of the ideals that our flag symbolizes. Its recitation is a patriotic exercise designed to foster national unity and pride in those principles.” This passage suggests that the majority would uphold the Pledge of Allegiance against constitutional attack under the establishment clause. I hope that that is ultimately what the Court will do. I hope that the Court will ultimately vote to uphold and protect the Pledge of Allegiance.

I am not so optimistic about the Court voting to protect the flag itself, however—as I wrote in an op-ed published in the Fort Worth Star-Telegram just this morning, a copy of which I ask unanimous consent be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. CORNYN. To be sure, from the founding, of our Nation until 1989, the power to protect the flag was not in doubt. In *Smith v. Goguen*, 1974, the U.S. Supreme Court held, in a decision authored by Justice Lewis Powell, that “nothing prevents a legislature from defining with substantial specificity what constitutes forbidden treatment of United States flags.” Justice Byron White stated in that same case that “[i]t would be foolishness to suggest that the men who wrote the Constitution thought they were violating it when they specified a flag for the new Nation. . . . There would seem to be little question about the power of Congress to forbid the mutilation of the Lincoln Memorial. . . . The Flag is itself a monument, subject to similar protection.” In *Street v. New York*, 1969, Chief Justice Earl Warren wrote that “the States and Federal Government do have the power to protect the flag from acts of desecration and disgrace.” Justice Hugo Black wrote in that same case that “[i]t passes my belief that anything in the Federal Constitution bars a State from making the deliberate burning of the American Flag an offense.” And Justice Abe Fortas noted that “the States and the

Federal Government have the power to protect the flag from acts of desecration committed in public.” More recently, Chief Justice William Rehnquist, Justice John Paul Stevens, and Justice Sandra Day O’Connor have all expressed their belief that nothing in the first amendment prohibits protection of the flag.

Accordingly, until recently, 48 States have had laws on the books protecting the flag—most of them patterned after the Uniform Flag Act of 1917. The Federal Government enacted its own law in 1967. And Congress reaffirmed that law in 1989 with the support of 91 Senators.

This historic power to protect the flag was eviscerated in 1989, however when the U.S. Supreme Court issued the first of two decisions, both decided by a bare 5 to 4 majority, declaring that flag desecration constitutes speech protected by the first amendment. See *Texas v. Johnson*, 1989, and *United States v. Eichman*, 1990.

Legal scholars agree that the flag protection amendment is the only way to restore the law as it existed for most of our Nation’s history. Constitutional amendments are the only way for the American people to reverse judicial constitutional decisions they reject. The Eleventh, Fourteenth, Sixteenth, Nineteenth, Twenty-Fourth, and Twenty-Sixth amendments were all ratified in order to reverse judicial decisions with which the American people disagreed.

So I am pleased to be an original cosponsor of the flag protection amendment, S.J. Res. 4. That resolution was introduced by Senator HATCH and by my Democrat cosponsor of today’s resolution, Senator FEINSTEIN. The amendment states simply that “[t]he Congress shall have power to prohibit the physical desecration of the flag of the United States.” I am proud to be an original cosponsor of the flag protection amendment, because I firmly believe that the flag occupies a unique place in our Nation and deserves constitutional recognition as such.

Of course, the first amendment guarantees freedom of speech, and thankfully so. And of course, the requirement that constitutional amendments be approved by two-thirds of each House of Congress and three-fourths of the States guarantees that the liberties we hold dear will not be taken away, just because we have acted today to protect the U.S. flag against physical desecration.

Moreover, the first amendment itself already contains exceptions. For example, the law does not allow individuals to yell “Fire!” in a crowded theater—even though such laws do impose a burden on the freedom of speech, albeit a minor one. Likewise, the vast majority of Americans agree that the Nation is better off when our flag is protected.

The House has approved the flag protection amendment five times in the past five Congresses—including just last year. All 50 State legislatures have

approved resolutions asking Congress to give them the opportunity to vote on the amendment. The last time that the amendment was brought to a vote on the Senate floor, in 2000, 63 Senators voted in favor of it—just four votes shy of the necessary two-thirds.

I urge my colleagues at least to give the States the opportunity to consider this amendment. And I urge my colleagues at least to give constitutional recognition to the importance of the United States flag to millions of Americans—even if they ultimately would oppose implementing legislation to protect the flag against physical desecration.

After all, the flag protection amendment does nothing more than to recognize that the United States flag occupies a unique position as the symbol of our Nation and, accordingly, deserves constitutional recognition as such. The amendment would empower Congress to take action to protect the flag, but it would not require Congress to do anything whatsoever.

There are many ways to express one’s political views. But there is only one United States flag—and it deserves constitutional protection.

I look forward to the debate over the flag protection amendment, and I look forward to a decision of the U.S. Supreme Court affirming for all time the constitutionality of the Pledge of Allegiance.

Until then, I am pleased that, because of the Senate’s action today, today will forever be known as the National Pledge of Allegiance to the Flag Day.

EXHIBIT 1

[From the Fort Worth Star-Telegram, June 14, 2004]

OUR BANNER DESERVES CONSTITUTIONAL PROTECTION

(By John Cornyn)

For Americans everywhere, Flag Day is special. And today we mark not only the annual celebration of the U.S. flag but also the 50th anniversary of the modern Pledge of Allegiance.

The U.S. flag is a uniquely powerful symbol of our nation and of our commitment to freedom and democracy. Therefore, it is deeply regrettable that our democratic system of government to date has not properly protected it.

A June 2 hearing of the Senate subcommittee on the Constitution, Civil Rights and Property Rights got to the heart of this problem.

Legal scholars testified that our courts have become so hostile to democracy and to religious expression that even patriotic references to God, such as those contained in the Pledge of Allegiance, are being wrongly struck down by the courts.

Let’s be clear: There is nothing unconstitutional about pledging allegiance to the flag. Yet a federal appeals court in San Francisco struck down the pledge anyway simply because it acknowledges that our nation was founded and exists “under God.”

The U.S. Supreme Court will soon decide whether the First Amendment forbids schoolteachers across America from leading students in voluntary recitation of the pledge.

The vast majority of Americans believe that the pledge is constitutional and reject

the views of the 9th Circuit Court and the American Civil Liberties Union. A majority of the Constitution subcommittee members filed the first amicus brief in the Supreme Court defending the pledge on its merits.

Many legal observers predict that the Supreme Court will reverse the 9th Circuit's decision. The same cannot be said, however, for protecting the flag itself.

The ability to protect the flag against physical desecration was not in doubt throughout most of American history. For example, in 1974, the Supreme Court held that "nothing prevents a legislature from defining with substantial specificity what constitutes forbidden treatment of United States flags."

Congress' power to protect the flag has also been supported by Chief Justices Earl Warren and William Rehnquist and Justices Byron White, Hugo Black, Abe Fortas, John Paul Stevens and Sandra Day O'Connor.

This power, however, was eviscerated in 1989 when the Supreme Court decided by a 5-4 majority that flag desecration constitutes speech protected by the First Amendment.

The flag deserves constitutional protection, and legal scholars agree that the Flag Protection Amendment is the only way to restore the law as it existed for most of our nation's history. That is why the Constitution subcommittee recently approved the amendment, and the full committee is scheduled to vote on it this month.

The First Amendment guarantees freedom of speech, and rightfully so. The requirement that constitutional amendments be approved by two-thirds of each chamber of Congress and three-fourths of the states guarantees that the liberties we hold dear will not be taken away just because the American people decide to take action to protect the U.S. flag against physical desecration.

The House has approved the Flag Protection Amendment five times in the past five Congresses—including just last year. All 50 state legislatures have approved resolutions asking Congress to give them the opportunity to vote on the amendment.

The last time that the amendment was brought to a vote on the Senate floor, in 2000, 63 senators voted in favor of it—just four votes shy of the necessary two-thirds. This year, the prospects for passage could be even better.

In times of national crisis and triumph alike, it is the U.S. flag that Americans look to with reverence. No other American symbol has been as universally honored.

In a time of war, it is even clearer that the flag plays a unique role in honoring the men and women of the military who died for the ideals that the flag represents.

If a soldier dies in defense of our nation, the United States gives the family a flag in honor of that service. To countless families, the flag is a treasured possession and a poignant memory of their loss.

There are many ways to express one's political views. But there is only one United States flag—and it deserves constitutional protection.

Mr. REID. Mr. President, if I could proceed, it is very appropriate that today—I do not know if the distinguished Chair knows this, being as busy as he has been all day—the Supreme Court upheld our being able to pledge allegiance to the flag. They did it on a procedural grounds, but I do not think it matters. We won.

Mr. WARNER. I thank the distinguished leader for advising the Senate of that. I had heard of that earlier today. I think it is most appropriate that our colleague from Texas has

acted. The Senate will act without any further delay.

I ask unanimous consent that the resolution be agreed to, the preamble be agreed to, the motion to reconsider be laid upon the table, and that any statements relating to this matter be printed in the RECORD.

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

The resolution (S. Res. 378) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 378

Whereas the United States flag is a unique symbol of the United States and its ideals;

Whereas millions of Americans instinctively look to the United States flag with reverence, in times of national crisis and triumph alike;

Whereas no other American symbol has been as universally honored as the United States flag;

Whereas the United States flag has always played a unique role in honoring the men and women of the Armed Forces who have died in defense of the United States;

Whereas to the countless families of loved ones who have died in defense of the United States, the United States flag is a treasured possession and a poignant memory of their loss;

Whereas the Second Continental Congress adopted the Stars and Stripes as the official flag of the United States on June 14, 1777;

Whereas Congress has designated June 14 as Flag Day (36 U.S.C. 110);

Whereas the Pledge of Allegiance is recited by millions of Americans who wish to demonstrate their loyalty and allegiance to the flag of the United States and to the republic for which it stands;

Whereas President Eisenhower signed into law the modern version of the Pledge of Allegiance on June 14, 1954 (Joint Resolution entitled "Joint Resolution to amend the pledge of allegiance to the flag of the United States of America", Public Law 83-396, approved June 14, 1954), making Flag Day, 2004, the 50th anniversary of the modern version of the Pledge of Allegiance;

Whereas a 3-judge panel of the United States Court of Appeals for the Ninth Circuit ruled in *Newdow v. United States Congress*, 328 F.3d 466 (9th Cir. 2002), that the words "under God" in the Pledge of Allegiance violate the establishment clause of the first amendment of the Constitution of the United States when recited voluntarily by students in public schools;

Whereas on June 14, 2004, the Supreme Court issued a decision, *Elk Grove Unified School District v. Newdow* (docket number 02-1624), that reversed the decision of the United States Court of Appeals for the Ninth Circuit in the *Newdow* case solely on procedural grounds, but that leaves unresolved whether the Supreme Court agrees with the decision of the United States Court of Appeals for the Ninth Circuit to strike down the Pledge of Allegiance as unconstitutional;

Whereas Congress, in 1954, believed that it was acting constitutionally when it revised the Pledge of Allegiance;

Whereas the Senate believes that the Pledge of Allegiance, as revised in 1954 and as recodified in 2002 (4 U.S.C. 4), is a fully constitutional expression of patriotism; and

Whereas the Senate has twice acted by unanimous consent to authorize the Senate Legal Counsel to defend the constitutionality of the Pledge of Allegiance in the Federal courts (Senate Resolution 134, 108th

Congress, agreed to May 8, 2003, and Senate Resolution 292, 107th Congress, agreed to June 26, 2002); Now, therefore, be it

Resolved, That the Senate—

(1) supports and reveres the United States flag and the Pledge of Allegiance;

(2) strongly disapproves of the decision by the 3-judge panel of the United States Court of Appeals for the Ninth Circuit in *Newdow v. United States Congress*; and

(3) hereby designates June 14, 2004, as "National Pledge of Allegiance to the Flag Day".

SMITHSONIAN ASTROPHYSICAL OBSERVATORY

Mr. WARNER. Mr. President, I ask unanimous consent that the Rules Committee be discharged from further consideration of S. 2362 and the Senate proceed to its immediate consideration.

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

The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 2362) to authorize construction of the Smithsonian Astrophysical Observatory instrumentation support control building and associated site development on Kitt Peak, Arizona, and for other purposes.

There being no objection, the Senate proceeded to consider the bill.

Mr. WARNER. Mr. President, I ask unanimous consent that the bill be read a third time and passed, the motion to reconsider be laid upon the table, and any statements in relation to the bill be printed in the RECORD.

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

The bill (S. 2362) was read the third time and passed, as follows:

S. 2362

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SMITHSONIAN ASTROPHYSICAL OBSERVATORY INSTRUMENTATION SUPPORT FACILITY.

The Board of Regents of the Smithsonian Institution is authorized to develop the site for a Smithsonian Astrophysical Observatory instrumentation support control building, including the installation of necessary utilities and equipment housings, and to construct such building on the site, for the purpose of supporting the collaborative Very Energetic Radiation Imaging Telescope Array System (VERITAS) project on Kitt Peak near Tucson, Arizona.

SEC. 2. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to carry out this Act \$1,000,000 for fiscal year 2005.

APPOINTMENT OF COMMITTEE TO ESCORT HIS EXCELLENCY HAMID KARZAI, PRESIDENT OF THE TRANSITIONAL ISLAMIC STATE OF AFGHANISTAN

Mr. WARNER. Mr. President, I ask unanimous consent that the President of the Senate be authorized to appoint a committee on the part of the Senate to join with a like committee on the part of the House of Representatives to escort His Excellency President Hamid Karzai into the House Chamber for the joint meeting tomorrow.