

We don't need to amend the Constitution in order to punish those who burn our flag. They burn the flag because they hate America and they are afraid of freedom. What better way to hurt them than with the subversive idea of freedom? Spread freedom. . . . Don't be afraid of freedom.

Those, my friends, are the words of former POW Jim Warner.

There are many issues in the Senate that need our attention today—a path forward in Iraq, our large and growing dependence on foreign oil, the threat of global warming, the skyrocketing cost of health care, just to name a few. These are pressing issues which demand action not just from the Congress but from the President, too—not in the next administration, not next year, now. Instead, we are spending this week debating a constitutional amendment—however well intentioned—that is truly, in my judgment, not needed in America today.

Later this week, Senator BENNETT and others will offer legislation that would criminalize flag desecration under specific circumstances without having to amend our Constitution. That measure would prohibit burning or destroying the flag with the intent to incite or produce imminent violence or a breach of the peace or damaging a flag that belongs to the United States or another person on U.S. lands.

Senator DURBIN will seek to add to that legislation an amendment that would prohibit groups from demonstrating or protesting near a funeral of someone who died serving in our Armed Forces. This is in response to an extremist group that has been traveling the country—it came to Delaware—and disrupting funeral services for our fallen soldiers, making outrageous claims about our country. Their behavior is reprehensible. It desecrates our flag and everything it stands for. By God, it should be illegal—that kind of behavior—and the Durbin amendment will make it illegal.

We could take up both of these measures today and pass them, I believe, without objection. We could penalize flag desecration to the fullest extent possible without jeopardizing the values inherent in our Constitution. In my view, this approach is a balanced one in that it allows us to maintain our reverence both for our flag that we love and for the Constitution we revere.

As I said earlier in my remarks this morning, I still get a lump in my throat when I sing our national anthem or say the Pledge of Allegiance to our flag and take a moment to truly consider what our flag stands for and the sacrifices made in its honor. It is a symbol of America. I love it now more than I ever have. But behind that symbol is our Constitution. It is the foundation on which our country has been built and endures today. It is what guarantees us the freedoms and the liberties that make this country of ours great. We should not amend that living document lightly, and we should not change it when we can find another way.

My friends, let's find that other way this week. Let's maintain our reverence for the flag and for our Constitution.

Mr. President, I yield back my time. I suggest the absence of a quorum.

The PRESIDING OFFICER. Will the Senator please hold?

Mr. CARPER. Yes.

#### COAST GUARD AND MARITIME TRANSPORTATION ACT OF 2006—CONFERENCE REPORT

The PRESIDING OFFICER. Under the previous order, the Senate having received a message from the House that the House agrees to S. Con. Res. 103, and having received the conference report on H.R. 889 from the House, the conference report is agreed to, and the motion to reconsider is laid on the table.

(The conference report is printed in the House proceedings of the RECORD on April 6, 2006.)

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

The PRESIDING OFFICER (Mr. COLEMAN). Without objection, it is so ordered.

#### FLAG DESECRATION AMENDMENT—Continued

Mr. INOUE. Mr. President, I ask that I be permitted to use 6 minutes of my party's time.

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

Mr. INOUE. Mr. President, I rise to speak against the proposed constitutional amendment.

Since World War II, I have been involved directly or indirectly in 13 wars and conflicts: Korea, Vietnam, the Dominican Republic, Desert One, Grenada, Lebanon, Panama, the Persian Gulf war, Somalia, Haiti, Yugoslavia, Afghanistan, and now Iraq.

In all these wars and conflicts, there are several things in common. First, American lives were lost and many young Americans were wounded and will bear scars for the rest of their lives, and we must not dishonor their memories by abandoning the freedoms for which they sacrificed.

Second, in every war, great speeches are made and delivered energizing our citizens to defend our unique American freedoms contained within the Bill of Rights. I can still hear some of those stirring words.

During the Second World War, very close friends of mine were lost. Much blood was shed to preserve every American's constitutional freedoms.

To be clear, I have no patience with those who defile our flag. It is unpatriotic and deeply offensive to those who

serve or who have served in uniform. It angers me to see symbols of our country set on fire. This objectionable expression is obscene, it is painful, it is unpatriotic, but I believe Americans gave their lives in many wars to make certain that all Americans have a right to express themselves, even those who harbor hateful thoughts.

Our country is unique because our dissidents have a voice. Protecting this freedom of expression, even when it hurts the most, is a true test of our dedication to democracy.

As a commissioned military officer and as a U.S. Senator, I took an oath to uphold and defend the Constitution. As a Senator, I have become accustomed to being insulted and condemned by people who disagree with me. I have been castigated for having cast votes that some call unpatriotic or un-American. I believe that my actions were patriotic and American, but those who criticize me have a right to disagree and express their disagreement.

It is not always easy to serve the country with a Bill of Rights that defends the rights of those who would defile our national symbol. While I take offense at disrespect to the flag, I nonetheless believe it is my continued duty as a veteran, as an American citizen, and as a United States Senator to defend the constitutional right of protesters to use the flag in nonviolent speech.

For over 200 years, our Bill of Rights has endured. It proclaims the Government of the United States is limited in its powers, and this sacred document continues to instruct and inspire people throughout the world. And for the last 200 years, despite repeated efforts to tamper with this document, we have always found the strength necessary to live within these limits.

So today we must look inside ourselves once again and find the strength to affirm our commitment to the precious liberties enshrined in the Bill of Rights.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. COBURN. Mr. President, I have great respect for the Senator from Hawaii, for his service as a veteran, as well as his service in this body, but I couldn't disagree more.

Our Founders used the word "speech." They didn't say "expression" or "expressive behavior." They used the word "speech" very critically. It was discussed in the documents: What word will we use in the Bill of Rights in this first amendment?

They chose the word "speech" because they meant speech. They didn't mean behavior. They meant speech.

I think it is real important for the American people to understand what this debate is all about. It is not about burning the flag. It is about restoring the balance of the three branches of Government, and that when one of the three becomes imbalanced, that we have the right to restore that balance. Our Founders were wise in that regard

to give us this vehicle of amending the Constitution.

We can talk about the flag all we want, but the real debate here is, when an overwhelming majority of Americans agree with this and all 50 State legislatures have passed requests that we do this, why we don't do this? The only way we have to balance the judiciary with the legislative branch is to do it in a manner that represents the will of the people as prescribed by our Founders.

Seven new Republican Senators were elected in 2004, and if there was an issue that dominated that debate more than anything, it was, what kind of judges are we going to put on the courts? Are we going to confirm judges who take what they want, twist the Constitution into what they believe, and change the basics of how we operate in this country or are we going to put judges on the courts who understand that they have a very limited role to interpret the Constitution, interpret the treaties, and interpret the statutes of this country?

The reason we were sent here, the seven of us, the vast majority of the impact of that election, was to have an impact on what kinds of judges we were going to put on the courts. This is that same debate coming from a different angle. Do we want a 5-to-4 decision where five Members of the Court determine and twist what the real words of our Constitution say—speech, not behavior; it says “speech,” not behavior, not expressive conduct; it says “speech”—and do we want to allow that to continue to be twisted or do we want to reserve the right for Congress to go through the method that our Founders allowed to bring about a constitutional amendment that says we have the right to control whether somebody can do that.

To vote against this amendment will limit the ability of this body to hold on to its balanced share of one-third of the power of this Government. This is about restoring the power of this body and the House to, in fact, represent what the people in this country want in an overwhelming majority in all 50 States.

It is not about burning the flag. It is about reestablishing the proper role of the balance of the three branches that run this country—the executive, the judiciary, and the legislative.

We are going to miss a great opportunity if we don't do this. It will do two things: One, it will reestablish the power, but it will send a signal that when judges take an oath, they have to follow the oath and the oath is not to determine what they think is best based on what they believe. Their oath is to follow the Constitution, not change it but follow it; and No. 2, interpret the statutes and interpret the treaties.

We have to reestablish a balance. This resolution is about reestablishing that balance and sending the message that we are serious that judges take

their oath seriously, that they don't get to play games with what they would like but they, in fact, have to uphold their oath. They also have to follow what the Constitution says, and the Constitution says the same thing as their oath. They don't get the privilege of deciding what they want. They have the privilege of only deciding what the Constitution says, what the statutes say, and what the treaties say.

I remind the Members of this body that our Founders put the word “speech” in the first amendment on purpose. They didn't put the words “expressive behavior.” They used the word “speech,” and we ought to establish the right of the Congress to establish within itself the right to do what the American people want and to follow the Constitution. That is what this is about.

There have been a lot of statements made about what would you do with a flag; what about a bathing suit? The way you judge what is a flag is what you drape over the coffin of one of our fallen soldiers. That is how you judge what it is. That is what it means. You can't define what it is other than the value of service and sacrifice that is part of the heritage of this country. To say we cannot preserve the value of that and bring back our constitutional responsibility to do that—No. 1, which does follow the Constitution and, No. 2, is the desired will of this country—means that we won't stand up to the obligations of our office, and we ought to be very serious about it as we do that.

I yield the floor.

THE PRESIDING OFFICER. The Senator from Kansas.

Mr. BROWNBACK. Mr. President, I rise today in full support of S.J. Res. 12, the flag desecration resolution introduced by Senator HATCH. The Senate has given this bill adequate consideration and it is now time to pass it and send it to the States for ratification.

I have heard a lot of critics of the flag amendment incorrectly characterize it as stifling free speech. Nothing could be further from the truth. First, the amendment itself does not prohibit anything. The constitutional amendment we are considering today restores to Congress the power to protect the flag—a power the Congress freely exercised until 1989, when the Supreme Court handed down 5 to 4 decision in *Texas v. Johnson*. This decision struck down a flag protection statute in Texas, and effectively invalidated similar statutes in 48 States and the District of Columbia, as well as the Federal statute. In 1990, in another 5 to 4 decision, the Court struck down a revised Federal statute.

The Court's decision in *Texas v. Johnson* was notable for a powerful dissent authored by Justice Stevens. I would note that Justice Stevens provides consistently one of the most liberal votes on the Court. Justice Stevens found that neither the States nor

Congress had acted improperly in passing the statutes in question. He was on the mark in his dissent when he said:

The case has nothing to do with disagreeable ideas; it involves disagreeable conduct that, in my opinion, diminishes the value of an important national asset.

Justice Stevens is absolutely correct in recognizing that a prohibition on certain forms of conduct is a power long held by Congress and the States and in no way infringes on the right of any individual to express an idea. He went on to say:

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.

Then-Chief Justice Rehnquist also questioned the communicative value in desecrating the flag, saying that such conduct “is most likely to be indulged in not to express any particular idea, but to antagonize others.”

Prior to these rulings, Congress, with the support of a majority of the American people, had the power to protect our Nation's symbol. Respect for the flag is not something that falls along ideological lines or party affiliation; it is shared by Americans from all walks of life. In these polarized times, the flag remains a unifying symbol.

Last month, as chairman of the Judiciary Subcommittee on the Constitution, I chaired a markup of this bill. We had an energized debate, and passed the amendment with a bipartisan 6-to-3 majority. Two-thirds of the membership of my subcommittee not only supported the amendment but were, and are, proud cosponsors.

I would like to thank my good friend and ranking member, Senator RUSS FEINGOLD for his cooperation in scheduling a markup. He doesn't support the amendment, but I know he believes amending the Constitution is a very serious matter, and I appreciate his cooperation in having a fair and honest debate. I would also like to thank Senator FEINSTEIN. She is one of the strongest supporters of this amendment and is also a member of the Constitution Subcommittee. I commend her for ignoring powerful special interest groups and diligently fighting for what's right.

We should be very careful in considering amendments to the U.S. Constitution. It is not something that should ever be taken lightly, but the Court has left us with few options. It is unfortunate that we have to consider this amendment, but I do believe that in light of the Supreme Court's decisions it is the appropriate action.

The amendment has broad bipartisan support here in the Senate, and is supported by Americans from both ends of the political spectrum. Poll after poll indicates that the people of this country want their flag protected. I have been contacted by numerous veterans

groups from my home State of Kansas, as well as across the country voicing strong support for this amendment. We ask a lot from our men and women in uniform. They sacrifice their safety and risk their lives so that each of us can remain free in this great Republic. Their defense of the principles and liberties embodied in the red, white, and blue preserve the freedoms enumerated in the Constitution.

Passing this amendment and sending it to the States allows for the American people to have their voices heard on this important issue. The House passed the flag amendment by a two-thirds majority vote last year, and it is now our turn to do the right thing and give the States and the people of this great Nation the opportunity to decide whether to grant protection to our national symbol. If ratified by three-fourths of the States, then we can debate an appropriate statute concerning treatment of the flag.

There is a lot of misinformation regarding this amendment that should be cleared up. If ratified, the text of the Constitution would not prohibit flag burning. The amendment states:

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

Even if the amendment passes, the Congress may decide not to prohibit flag desecration. But we will have corrected a wrong decision by the Supreme Court.

Article V to the Constitution does not give nine unelected Justices the right to amend our founding document. This power rests solely in the democratic process. Restoring this power to the people and their elected representatives in Congress preserves this process. Protecting the integrity of our national symbol should not be left to a handful of unelected judges. Why would any Member of this body vote to limit our power and expand the power of the Court?

The Founding Fathers wisely devised a process for the people through their elected representatives—not the courts—to amend the Constitution. It is our duty as elected Members of Congress to exercise this constitutionally granted power when necessary and appropriate. Justice is not served when we remain silent and allow unaccountable judges to exercise this power for us. If, as Members on both sides the aisle repeatedly claim, we truly oppose judicial activism, we should send this amendment to the States for ratification.

I am proud to have cosponsored this amendment in every Congress since I became a Member, and to have consistently cast my vote in support each time the bill has made it to the floor. I urge my colleagues to support this bill, so that the American people can choose whether or not to bestow protection to their flag. There is no symbol that has the power to unify us like the flag, which is why a majority of Americans continue to support this

amendment. It is time to restore the traditional meaning of the first amendment and send the flag desecration resolution to the States for ratification. I urge my colleagues to vote for this important amendment.

Mr. President, I thank my colleague from Oklahoma for his great work on this amendment. This legislation passed the Constitution Subcommittee 6 to 3. It passed the full Judiciary Committee and is now ready for this body to vote, and we need to have a positive vote on it.

I flew in to Washington today. There were cloudy skies, but one could still see the monuments when flying in. The beauty of the monuments never ceases to strike me. Whether it is the White House, the Washington Monument, the Lincoln Memorial, National Cathedral, there are just certain landscape features one looks at.

When you are flying in on the so-called river run that the pilots so often do, you get to see these monuments, and it is just so striking.

I was preparing for this debate and thinking about the Lincoln Memorial. What if somebody today, yesterday, or some other time had taken spray paint and sprayed on the Lincoln Memorial: “We want freedom” or “Death to tyrants” or “Down with the flag”? Let’s say they wrote that in big spray paint on the Lincoln Memorial and defaced the memorial and then was caught and was brought to trial and claimed: Wait a minute, I have a first amendment right to say what I want to say, and I believe it is important that I say it anywhere, and I want to say it on the Lincoln Memorial. I want to make my message known, and I am going to spray-paint it all over here; this is free speech, and I ought to be able to do that and this is the place to do it, and Lincoln would approve of that; he believed in free speech, so he wouldn’t mind that the memorial was sprayed upon, that it was defaced.

We would all recognize that as being something wrong, violating the law, and something there should be a law against.

We don’t have a problem with a person standing on the Lincoln Memorial and shouting at the top of his lungs for as long as he wants whatever he wants to say—if it is about the war in Iraq, if it is about the President, if it is about somebody in the Senate, if it is about myself, if it is about the Chair, if it is about anything he wants. We don’t have any problem with that. But if he defaces the memorial, we do.

It is interesting, that was the dissent Justice Stevens used in the *Texas v. Johnson* case. He made that same point. We have no problem with a person speaking on the Lincoln Memorial. We have a problem with him defacing the Lincoln Memorial. We have no problem with people speaking against the flag. We have a problem with them defacing the flag.

Justice Stevens in his dissent—which I think was rightly said—said:

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 Government to prohibit this means of expression. The prohibition will be supported by the legitimate interests in preserving the quality of an important national asset.

That is what we are talking about today: preserving the quality of an important national asset that people follow into battle, that we have had and honored for years and years, and until recently the court has held up as saying: Yes, this is something that should be protected and is protected by the laws of the land, and these laws are appropriate and are not limitations on free speech.

I think if you follow this court ruling, where does it end? If you say actions are speech, wouldn’t you have a legitimate objective in defacing the Lincoln Memorial, particularly if it was some form of political free speech that you wanted to express and put forward?

We have held many hearings on this topic. This is not a complicated issue. It is about whether we are going to have some authority and ability to be able to limit and to be able to honor and to uphold something so precious as our American flag. I think we should do that. I think because of the people who follow this flag and because we are a nation of symbols, and symbols are what unite us, and because of the words and thought that are conveyed by this flag, we should be able to uphold this mighty national asset. I think it is important that we be allowed to do that.

I have had a chance to speak on this at length in committee. I have carried the amendment in our subcommittee. I urge my colleagues to support this amendment and let the States vote on it. Let the States decide what they would choose to do.

Mr. THOMAS. Mr. President, I would like to make a few comments on the bill before us. I have heard a great deal of discussion and, as always, there should be a lot of discussion, different ideas about it, the idea of protecting free speech, and none of us disagree with that. I think the difference here is the fact that the flag represents our right and our freedom for free speech as well as all of our other freedoms. So I am proud and honored to be one of the 59 original cosponsors of the flag protection amendment.

Having served in the Marine Corps, I stood before the flag and understood that it represented the things that we stand for. It represented the freedoms we have. It represented the things that we sacrifice for. I believe it should receive special protection because that is what it symbolizes to the citizens of the United States.

I understand there are concerns about limiting free speech. This amendment does not limit speech; it simply gives Congress the authority to prohibit physical desecration of the

flag. To me, that is pretty easy to determine. It is something we should protect. It is something that we have given a great deal to protect. It is symbolic of the things that mean so much to us.

Since the Supreme Court decision that said desecrating the flag is protected speech, there has been an overwhelming amount of public support to protect the flag. All 50 States have passed resolutions calling for Congress to pass a flag amendment.

I understand that amending the Constitution should not be taken lightly, but burning or defacing or trampling the flag sends the wrong message to people who have given so much, including their lives, for the defense of this country, so certainly that should not be taken lightly.

Throughout history, in times of war, peace, and uncertainty, our Nation always turns to the flag as a sign of resolve, as a sign of commitment, as a sign of strength. After the attacks of September 11, our Nation unfurled the flag at the Pentagon and raised it from the rubble at Ground Zero. It is a symbol of national unity and identity. This symbol needs to be held in the highest regard. Generations of American soldiers have died under the flag and the ideals it stands for. The flag is a strong symbol for those who fought in war-time.

The American flag is a national asset. Just as it is unlawful to desecrate the Washington Monument, the Lincoln Memorial, and the graves at Arlington, it should be unlawful to desecrate the flag. Aren't there some things like symbols of freedom that should rise above politics? It seems to me that they should.

So I urge my colleagues to support this amendment so we can send it to the States for ratification and ultimately let the people of America decide.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Georgia is recognized.

Mr. ISAKSON. Mr. President, I rise in support of the amendment to allow the U.S. Congress to protect the American flag.

I was elected 2 years ago, in the most recent election. I ran on a campaign of three basic promises and commitments to the people of Georgia: The first was to support the President and our men and women in harm's way in the war on terror. The second was to work diligently for strong fiscal accountability on behalf of the Congress. And the third was to vote in favor of confirming the judges appointed by the President of the United States to the Federal bench. With those promises, I made the statement that I really felt as though the division of powers of our Constitution was sound, and that it was absolutely important for judges to interpret the law, not to make the law.

This amendment has been said by some to be a violation of the first amendment. This amendment has

nothing to do with speech or expression. It has everything to do with protecting our flag and allowing the Congress to write those laws that would prohibit physical desecration of our flag.

Unlike some, I do not believe the flag is an inanimate object. I believe it is a living symbol for which our men and women in harm's way have fought for over two centuries.

Just a month ago, I went to Normandy. I went to Bellewood. I went to the Netherlands and Margraten. I went to Belgium and Carthage in Northern Africa. We did seven ceremonies in 6 days at seven American cemeteries, cemeteries where tens of thousands of Americans are buried, having paid the ultimate sacrifice in World War I and World War II. They died to protect the first amendment. But if those in the graves could come back and speak, I don't think a one would say they died to have the flag they fought for desecrated.

The courts have also been inconsistent in this case in my judgment about the first amendment and expression. The court, in 1989, in *Texas v. Johnson*, and in 1990 in the case of the *United States v. Eichman*, ruled that burning the flag was protected by the first amendment. I find it ironic that in 2003, the U.S. Supreme Court ruled in the *Virginia* case, *Virginia v. Black*, that the burning of a cross in someone's front yard was not expression and, therefore, the Virginia law banning it was upheld.

I did a little research on that case which led me to find out that the District of Columbia has that law, the State of Georgia has that law, and many States in the United States have that law, which says the terrible act of desecrating a cross and burning it is protected—is fine for the States to do that. In fact, I read a little bit about Clarence Thomas's opinion written in that 2003 case, and I want to share his remarks because it applies directly to my point on protecting the flag and not allowing its desecration. Justice Thomas said:

This statute prohibits only conduct, not expression. Just as one cannot burn down someone's house to make a political point and then seek refuge in the First Amendment, those who hate cannot terrorize and intimidate to make their point.

I don't think it can be said more succinctly or more clearly.

The amendment that is to be voted on by this Senate, hopefully sometime today or tomorrow, is an amendment that does nothing to prohibit the speech of anyone but does everything to protect the flag from being desecrated. I think those brave men and women who died for this country would agree with that, I agree with that, and I think the people of Georgia agree with that. I urge my colleagues to vote in favor of passage of the amendment.

Mr. President, I yield the floor, and 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. TALENT. 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. TALENT. Mr. President, how much time do we have left?

The PRESIDING OFFICER. The Senator has 3½ minutes.

Mr. TALENT. Mr. President, I rise to speak on the proposition before us and on the importance of protecting the American flag. The American flag is a unique symbol in the Nation's consciousness. America, unlike many countries, actually had a birthday. There was a day when the Colonies became States and the States became a nation and they were organized explicitly around certain beliefs about human dignity and freedom: the belief that people have certain inalienable rights that inhere in them as human beings and that because of those rights the Government is the servant and not the master of the people. It is also a nation that cherishes diversity but balances against that, unity. It is no accident that the national motto is "out of the many, the one."

We are not a country with a monarchy. We rebelled against a monarchy. We are not a country with an established religion. We rebelled against that as well. We are a country with only a few unifying symbols, chief among which is the flag. That is why it is so uniquely important to America's conception of itself to protect the flag. In protecting the flag, we are affirming the basic beliefs of the country.

I believe that there is in the Constitution a narrow power on the part of the States and the Congress to protect the flag from public desecration. In passing this amendment, if the Senate chooses to do it, we will simply affirm those underlying ideals. We are not saying you can't criticize those ideals—you can. You can attack them. You can attack the flag if you want. But there ought to be a power to protect the flag from public desecration, and I think the amendment comes down simply to that proposition:

How much do you value the flag as a symbol of what this Nation has stood for and what the people of this country have sacrificed for and in some cases have died for?

There are arguments that have been raised on the floor against the amendment. One of them is that we should not amend the Constitution. The Supreme Court has amended the Constitution. Until recently, it was the common understanding that this power existed. There were 48 States that had laws against the desecration of the flag. The Supreme Court said they were unconstitutional. In effect, the Court updated or amended the traditional understanding of the Constitution to say that. Whatever you think of the Court's power to amend the Constitution or update it according to the opinions of the Justices, surely the people

ought to have the power to amend the Constitution.

If the Court can do it, the people ought to be able to do it.

That is another basic American ideal—the right of the people to govern themselves, to decide for themselves what their own organic law says. If the people are to have their will carried out in this respect, the only way they have left to do it is by amending the Constitution. If you say we should not amend the Constitution under these circumstances, you are saying, in effect, that the courts can change the Constitution when they think it is important to do it, and the people have no response. They cannot pass a statute because the Court would say it is unconstitutional, and they cannot pass a constitutional amendment because so many in this body say they should never amend their own Constitution.

Another argument against the amendment is that it regulates expression. It does not. Burning the flag is an act. It is an act with expressive overtones, surely, so we should be careful before doing it, but it is an act, and it is fully within the tradition of the first amendment to allow the regulation of actions that have speech overtones. It was only a few years ago that this body passed comprehensive campaign finance reform that most certainly regulated not just acts but expressions. According to that legislation, it is unlawful for grassroots groups to sponsor political advertisement in the last 60 days of an election that mentions the name of a candidate. I cannot think of anything more closely related to the core of what the first amendment was passed to protect, yet the Court said that was constitutional. If it is permissible to regulate speech in that context, why is it not permissible to regulate action that has speech overtones?

Mr. President, I ask unanimous consent for another 2 minutes to finish my remarks.

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

Mr. TALENT. Why is it not permissible to regulate something that is clearly an act that strikes at the heart of the American consciousness and that leaves unregulated a vast area of expression?

I would daresay, if the average American decided to participate in the political process and try to get his or her views out, they might very well join a grassroots group and get involved in a campaign. Yet it is evidently consistent with the first amendment, according to the Court, to regulate that, yet not consistent to prohibit a particular action that has one narrow area of expressive overtones.

We should at least understand what this debate is about. It is about how much you value the flag. I do not begrudge anybody their views about expression or the Constitution or the role of this body in regulating the one or amending the other. But I believe this debate is about how great a signifi-

cance you attach to the flag of the United States. I believe it is important. People have fought under it. They have died for it. There are literally billions of people around the world who see the flag as a symbol for all that is good about their hopes for the future.

I believe it is important that we have this debate. I hope the Senate will think clearly and deeply and thoughtfully and not on a partisan or political basis and decide it is consistent with America's traditions and that it will sustain the balance between diversity and unity for us to pass this amendment and protect our flag.

I yield the floor.

The PRESIDING OFFICER. The assistant Democratic leader.

Mr. DURBIN. Mr. President, I have listened to this debate today and yesterday. I have heard the heartfelt sentiments of my colleagues on both sides of the aisle about this flag. I think everyone following this debate has the same strong feelings about this flag and what it symbolizes.

Today, Senator DAN INOUE, my colleague from the State of Hawaii, spoke. There probably is no one better qualified to come to the Senate floor and speak to this issue. Senator DAN INOUE, a veteran of World War II, lost his arm in combat and was decorated with the Congressional Medal of Honor for the bravery and valor he showed in that conflict. He went on to serve his Nation again in the U.S. Congress and came to the floor today to speak from the heart about what that flag means to him. One would think that a man like Senator INOUE, more than any other who serves in the Senate, would understand the importance of that flag to our men and women in uniform and to all of us who, from the moment we were old enough, learned the Pledge of Allegiance and stood up in front of our classrooms and said that flag means something special.

Today before us is an opportunity to do something for that flag, and I believe we should seize that opportunity. But I think what has been proposed by the other side, the idea of amending our Constitution, is not necessary.

Stop and reflect for a moment. Since 1791, when James Madison, Thomas Jefferson, and the Founding Fathers crafted the words of our Bill of Rights, they have stood as a sacred document in this country. They have guided us through good times and bad. They have given us our moral compass as a nation. They have inspired others to follow that wording so carefully crafted in building their own constitutions and their own nations. It is, indeed, a sacred document.

Some have come to the Senate floor in the last several days and suggested it is time to change the Bill of Rights. It is time for the first time in the history of the United States of America to change the words crafted by our Founding Fathers.

I have said it before and I will repeat it now, when it comes to changing this

Constitution, I approach that task with great humility. I like to think I have some skills, perhaps at writing or speaking, but if you are asking me to write words to put in that Constitution, words that would change what Madison, Jefferson, and the Founding Fathers intended to be our basic rights as Americans, I come to that task with great humility.

But some of my colleagues do not. In fact, over the last 15 years we have had 1,000 amendments proposed to the Constitution. There was a time in the Senate Judiciary Committee not long ago when the chairman scheduled two constitutional amendments to be considered on the same day. I took exception to that. I objected to one of them and I argued then, and I still believe, that for all that is holy in America, we should not amend the Constitution more than once a day.

Today we are facing the second constitutional amendment this month proposed by the Republican side of the aisle. I think it is unfortunate. I wish my colleagues approached this with the same sense of humility which I think most Americans would if facing this challenge. The obvious question is this: If we love this flag, if we respect this flag, if it is a symbol for our Nation, how should we show that respect? We do it in so many ways, from the Pledge of Allegiance to our national anthem, saluting it as it passes in parade or putting your hand over your heart. We do it in ways large and small.

But what about those who desecrate that flag? What about those who engage in hateful conduct toward that flag to protest some action by the United States or for whatever reason? What should we do with those people? According to those supporting a constitutional amendment, we should show our hatred for their conduct by amending the Bill of Rights for the first time in the history of the United States of America. I disagree. I disagree. I believe there is a way to protect that flag without defiling our Constitution. There is a way to show our love of that symbol of our great Nation, not at the expense of that sacred document which has guided us from the beginning. What I am proposing at the end of my statement today is an amendment. It is an amendment that is being offered on a bipartisan basis. It is an amendment that will make it unnecessary to amend the Constitution of the United States. It is an amendment which establishes that it will be a crime to desecrate that flag. We spell out the circumstances that would make it a crime.

The Supreme Court has not said that you have to amend the Constitution to protect that flag—just the opposite.

In the *United States v. Eichman* case in 1990, the Supreme Court expressly recognized that while citizens have a free speech right to express their political dissent by burning the flag, the Government may punish flag-burning under certain circumstances.

In a unanimous decision in 1992—in *R.A.V. v. the City of St. Paul*—the Court explained that although a law prohibiting individuals from dishonoring the flag is not content neutral, the Government may punish flag-burning in a content neutral manner.

Stripping away the constitutional language, what the Court has said is this Congress has within its power to write a criminal statute that would punish someone who desecrates that flag. This amendment that I offer will do that expressly. It would prohibit a person from destroying a flag with the intent of inciting imminent violence. It would prohibit people from threatening someone by burning a flag. It would prohibit damaging a flag owned by the United States. And it would prohibit damaging a stolen flag on Federal land.

Each of those elements in this amendment has been carefully thought out and tested against constitutional standards that have been handed down by the Court.

You may recall, if you follow the Supreme Court decisions, that not long ago there was a historic decision in *Virginia v. Black*. The year was 2003. The Court in that decision held that the Government may prohibit people from burning crosses with the intent to intimidate.

You know what the symbol of burning a cross is. It is a symbol of hatred and bigotry and prejudice. It is especially a hateful symbol to African Americans who recall our bitter past of slavery, before the dawn of the civil rights movement. And the Supreme Court made it clear. It said, the Government may prohibit intimidation by the use of burning crosses.

We use the same logic and the same argument of the Court and apply it to the flag.

For those who have come to the floor—and many have—and said how much they respect the flag, we offer them a reasonable alternative: an alternative that protects the flag without infringing our Bill of Rights.

I think that is the way we should move. We have learned long ago that when it comes to amending the Constitution, it shouldn't be the first thing we do. It should be the last resort. That sacred document deserves to be honored and only changed when absolutely necessary for America.

There is a criminal statute that I am going to propose as an alternative way to protect that flag, to show respect for that flag, and to still show respect for our Bill of Rights.

Let me tell you about another issue which we address in this amendment. You have read about it. If you read it, as I have recently, it makes you sick. What I am referring to is a group nominally calling themselves Christians that is now picketing and protesting at the funerals of our fallen soldiers. There is a man by the name of Phelps. He calls himself a minister. But his gospel seems to begin and end with ha-

tred—hatred for gays and lesbians, and obviously hatred and insensitivity for the poor families of our fallen veterans.

About 15 years ago, this man Phelps and his so-called church followers started showing up at the funerals of men and women who died of HIV/AIDS. They have reportedly picketed over 22,000 funerals and other events across America. When their vile acts of incivility stopped generating the publicity they sought, Mr. Phelps found a new target.

I am reluctant to show these photos because I don't want to encourage this man. But I have to tell you that it puts in context what we are talking about today. Imagine if you had someone who calls themselves God-fearing and goes to the funeral of fallen soldiers with signs like these, "Thank God for 9/11" and "You are going to hell."

Here is another one of those followers holding a sign at a veteran's funeral, "God hates you." Here he is. "AIDS is God's curse."

I received a letter recently from the wife of one of our fallen heroes in Iraq. Mr. Phelps and his group showed up at her husband's funeral.

Can you imagine the heartbreak that family must have felt, losing a father, a husband, a brother, coming for that sad moment of parting and then to have these protesters standing around saying that God hates you.

In the past year, these hate-mongers have protested at more than 100 military funerals in America. They claim that the deaths of America's Armed Forces are God's punishment for America's tolerance for those with different sexual orientation. This is such an affront to the families, to everyone in uniform, and to our Nation.

I think there will be a special place in the next life for these people, but there is no place for their brand of hatred at veterans' funerals in this life.

Last month, we passed a bill which the President signed into law that made it clear that Mr. Phelps and his faithful followers could not engage in this sort of demonstration at our 121 national cemeteries.

The amendment which I will be offering includes a section which not only protects our flag by making it a crime to defile or desecrate under the circumstances I mentioned, it goes further. It expands the bill that we passed earlier. It applies the same standards as would apply to national cemeteries to the funerals of all veterans, whether they are buried in a national cemetery or in their own church cemetery or somewhere else.

My amendment will prohibit protests at cemeteries, funeral homes, houses of worship and other locations where deceased veterans are honored and buried.

We can honor our veterans and protect our loved ones from these hateful, barbaric intrusions on the grief of their families. We can do this without weakening or assaulting our Constitution.

We can do this without diminishing the basic freedoms we revere in our Nation—freedoms that those veterans fought for.

I ask my colleagues to stop, pause, and think for a moment. If we can achieve this, if we can truly protect this flag and if we can protect the veterans and their families from these hateful demonstrations without amendment to our Constitution, let's do that. Let's join together on a bipartisan basis.

We often disagree in this Chamber. Debates go on and on. Can't we come together in agreement on this that we love this flag and can protect it without amending our Constitution, that we respect our veterans, soldiers and their families, and that now we include this provision as well to protect them?

The amendment I offer is very narrow. It doesn't ban all protest activities. It permits protests outside military funerals as long as protesters don't engage in loud activities. But it draws strict guidelines so that you can't disrupt that funeral home by putting demonstrators and pickets within certain distances consistent with our constitutional rights.

I hope that those who will consider this amendment will go back to the point I made earlier. We can stand for this flag and we can stand for our veterans. But first we must stand for our Constitution. We should address this Constitution with humility and with the understanding that the words that have inspired our Nation and people around the world for more than 200 years are words worth protecting. And that before we come to this floor for whatever motive to change those words, if we can find an alternative to create Federal crimes for the activities that we find so objectionable, so abhorrent, it is a much more reasonable path to follow.

I yield the floor.

**THE PRESIDING OFFICER.** The Senator from Utah.

**Mr. BENNETT.** Mr. President, I thank my friend from Illinois for the amendment he has offered. It is my understanding that it is the same wording of the amendment to the bill which I offered and which is pending before the Judiciary Committee, cosponsored with Senator CLINTON and others but that he has added a section to it which I find very worthwhile. I thank him for his thoughtfulness and for the section that he has added with respect to funerals and cemeteries, and for his diligence in bringing forward that piece of legislation which I had offered and which has been bogged down in the Judiciary Committee for whatever reason. I am grateful to him for his consideration.

I ask unanimous consent that I be added as a cosponsor to his amendment.

**THE PRESIDING OFFICER.** Without objection, it is so ordered.

**Mr. BENNETT.** Mr. President, while I have the floor, I would like to make



this comment about the debate that is before us.

I have great personal conflicts on this issue because my senior colleague from Utah, Senator HATCH, is the co-sponsor and the principal sponsor of the constitutional amendment which would empower the Congress to have the right to take legislative action to protect the flag.

The PRESIDING OFFICER. Time is currently under the control of the minority.

Mr. KERRY. Mr. President, I ask unanimous consent that whatever time he uses be charged to the majority and I reserve our time appropriately.

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

Mr. BENNETT. I thank my friend from Massachusetts. I wasn't aware of the time situation.

I have enormous respect for Senator HATCH—not only for his legal ability but perhaps more so for his sincerity and his commitment to this cause.

This is not something he is doing for any cheap political purpose. This is not something he is doing to grandstand. This is something that he is doing because he sincerely believes it. He is sincerely committed to the idea that protecting the flag is an essential thing for us to do, not only to honor our veterans but to teach our children the importance of the flag in the future.

I respect that, and I am with him. But I cannot quite bring myself to amend the Constitution in the manner that he suggests for those purposes. I want to make it very clear that I do not under any circumstances denigrate those purposes. I believe that the legislation I offered—which, as I indicated, is still before the Judiciary Committee—would take care of the challenges of protecting our flag. He disagrees. He insists that my legislation would be unconstitutional based on past precedent.

Checking with legal authorities, I am assured that it is constitutional. That is not the point. The Senate will work its will one way or the other with respect to this.

I simply want to make it clear that although I have come to the conclusion that a constitutional amendment under the present circumstances is not necessary, this does not mean that I surrender one whit of my respect for and loyalty to my senior colleague. The Senate will make its decision. I will be happy with whatever that decision might be.

I once again extend my support and respect for my senior colleague even as I announce my intention to vote in a different path.

The PRESIDING OFFICER. Five minutes remain on the minority side.

Mr. KERRY. Only 5 minutes of the total?

The PRESIDING OFFICER. That is correct.

Mr. KERRY. Is that on the half hour?

The PRESIDING OFFICER. Yes.

Mr. KERRY. Mr. President, would it be possible, because we got pushed

back a little bit, that I could have 10 or 15 minutes on my time and then slide it back the other way?

Mr. President, I ask unanimous consent that I be permitted to proceed for 10 minutes.

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

Mr. KERRY. Mr. President, I thank the Chair and I thank my colleague.

Mr. President, let me begin by saying that all through the years we have been here before. We have had this vote before a number of times. And each time, thank God, the Senate in its wisdom has protected the Constitution of the United States.

I must say that I have concern at a time when real leaders ought to be uniting the country around our biggest challenges, in a summer when American soldiers are in harm's way in Iraq, Afghanistan, and elsewhere in the world, while families at home are struggling with record gas prices, with health care costs soaring, jobs being shipped overseas and veterans who are defending our country and flag are still going without the health care they were promised, it is astonishing that we are here having this debate.

This debate, like wars themselves, can pit father against father, family against family, veteran against veteran. It is a complicated debate emotionally, and I understand that. I am not doubting at all the emotional feeling which is real for every American about our flag. We all understand that.

I remember taking an oath in 1965 with a group of friends of mine who decided—all of us—that we ought to serve our country. We went into different branches of the service with a common sense of what our obligation was. But when I raised my hand, I did not raise my hand to defend the flag; I raised my hand and took an oath to defend the Constitution and our country.

A lot of those friends did not come home. They were buried in coffins that bore that flag until the moment of their burial, and then that flag was given to a family member. That flag was a symbol of their sacrifice, a symbol of their gift, a symbol of our country itself and all that it stands for, but it was not our country itself. I think each of us still feels bound by those oaths.

I took almost the same oath when I came here to the Senate. The obligation is the same: to defend what the Framers of the Constitution intended and never to give in to the passions of the moment, to the momentary urge to try to respond to something emotional that, no matter how much the emotion is genuine, and it is, takes away from the larger principle and larger set of values that guide our country.

I think it would be a grave mistake if we broke those oaths in the Senate today. We need to listen to the voices of patriotism which urge us to do our real duty. Our former colleague, one of the best and bravest men I know, Senator John Glenn, said:

[T]hose 10 amendments we call the Bill of Rights have never been changed or altered by one iota, not by one word, not a single time in all of American history. There was not a single change during any of our foreign wars, and not during recessions or depressions or panics. Not a single change when we were going through times of great emotion and anger like the Vietnam era, when flag after flag was burned or desecrated. There is only one way to weaken our nation.

Senator Glenn said:

The way to weaken our nation would be to erode the freedom that we all share.

Gary May, who lost both his legs above the knee after a landmine explosion in Vietnam—a veteran who was awarded the Bronze Star with combat “V” and the Purple Heart—spoke for all of us when he said:

[A]s offensive and painful as flag burning is to me, I still believe that those dissenting voices need to be heard. . . . The freedom of expression, even when it hurts, is the truest test of our dedication to the belief that we have that right.

This is not a test of who loves the flag; this is a test of who has the courage to protect the Constitution.

Mr. President, as I said, I think every single American feels the same emotions when they see the flag. I have seen it in so many different kinds of circumstances where I have been moved and touched by what it does symbolize to us. But our flag is, in the end, not the Bill of Rights. It does not carry in it the freedoms that are expressed in the Bill of Rights. It symbolizes those freedoms. The fact is, who we are is embodied, above all, in a document that has not been changed since the beginning. A desecrated flag is replaceable. Desecrated rights are lost forever.

What makes the United States different, I think in many ways stronger than any other nation, is our ability to be able to tolerate opinions we do not agree with, to tolerate diversity, to tolerate the aspiration for a people to be able to express themselves even when we disagree. That is what is different about the United States. Thanks to our Constitution, we are the leading proponent on the face of the planet for the greatest experiment in freedom set forth in words and in practice.

At the end of our national anthem we sing, with hand over chest, to the flag: “land of the free and home of the brave.” If this amendment passes, make no mistake about it, we will be a little less free and we will be a little less brave.

Ivan Warner, an American soldier who was imprisoned by the North Vietnamese from 1967 to 1973, wrote:

I remember one interrogation where I was shown a photograph of some Americans protesting the war by burning a flag. “There,” the officer said. “People in your country protest against your cause. That proves you are wrong.”

And this prisoner of war, not knowing if he would ever be returned to America or whether he would be tortured for what he said, said:

“No. That proves that I am right. In my country we are not afraid of freedom, even if

it means that people disagree with us." The officer [who was interrogating him] was on his feet in an instant, his face purple with rage. He smashed his fist into the table and screamed at [Ivan] to shut up.

And Ivan said:

While he was ranting I was astonished to see pain, compounded by fear, in his eyes. I have never forgotten that look, nor have I forgotten the satisfaction I felt at using his tool, the picture of the burning flag, against him.

In the words of Ivan Warner:

We don't need to amend the Constitution in order to punish those who burn our flag. They burn the flag because they hate America and they are afraid of freedom. What better way to hurt them than with the subversive idea of freedom? Spread freedom. . . . Don't be afraid of freedom.

In the final analysis, there are eight other powerful reasons for why we should not do this. They are Iran, Libya, North Korea, China, Cuba, Syria, and the Sudan. And of the many nations—there are about 30-plus of them—that have laws about not burning the flag—even a few of our friends—none of them have a constitution that prohibits it. I do not think the United States of America ought to join those countries, including Iraq under Saddam Hussein, the South Africa of apartheid, and Nazi Germany.

So I ask my fellow Senators, are we really that frightened of somebody's willingness to go out and be stupid? In the United States of America, you have a right to be stupid. You have a right to go out and do something that every one of us thinks is dishonorable or unacceptable. And communities can punish those people in any number of ways. I have voted previously for a statute in the U.S. Senate because I believe a statute is enforceable and does less violence to the Constitution. And there are plenty of ways for prosecutors—on disturbance of the peace or destruction of personal property or any other numbers of ways—to prosecute people. But, in the end, a community of Americans, whose love of flag is so great, is going to ostracize anybody who engages in that kind of behavior. Communities have the ability to make sure they do not get jobs, to make sure they are persona non grata within the community.

It is unbelievable to me, with only two flags we know of being burned in this last year—something like eight or so in the last 365 days in America—that this prompts Senators to feel they have to change the Constitution for the first time and the first amendment for the first time. I think it is wrong. I think our country is bigger than that, and I hope our colleagues in this institution will be today.

Mr. DAYTON. Mr. President, ever since I began my campaign for the U.S. Senate over 6 years ago, I have consistently promised to support the proposed constitutional amendment to prohibit the desecration of the American flag. Indeed, I am a cosponsor of that constitutional amendment, which will soon be voted upon by the Senate.

I value and respect the first amendment's protection of free speech, and I have personally experienced its importance. When I opposed the Vietnam War in the 1960s and '70s, the first amendment permitted my lawful dissent, although it did not prevent President Richard Nixon's Justice Department from tear-gassing our demonstrations or from unlawfully spying upon me. A generation and another war later, the first amendment again protected my right to speak out against President Bush's policies without intimidation or incarceration, and, this time, without being tear-gassed. I would never infringe upon those precious freedoms of expression and dissent.

The question before us today is not whether we honor the first amendment, which we do, but, rather, whether an act as vile as burning the American flag should be considered "free speech" or is it an act of such wanton violence and outrageous disrespect that it should be "out of bounds"? I come to the second conclusion.

Our Nation's Pledge of Allegiance was first published almost 114 years ago and was established by Congress in 1923. It states, "I pledge allegiance to the flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all."

I note, parenthetically, that the U.S. Supreme Court ruled in 1943 that under the first amendment no one can be compelled to recite the Pledge of Allegiance. Nevertheless, it is one of our most revered statements of citizenship. It does not pledge allegiance to a Democratic or a Republican administration. It does not pledge allegiance to any ideology, policy, or platform.

It pledges allegiance to the flag of the United States of America—and to the Republic for which it stands, one nation, under God, indivisible, with liberty and justice for all. In other words, allegiance to something above any one of us. To something that unites us as one people indivisible, with liberty and justice for all.

Those are our Nation's founding principles. They are our eternal ideals. We can disagree; we can dissent; we can lawfully protest; we can say almost anything we want and do most of what we want, because those are our rights. They are precious, inviolable rights.

But we also have responsibilities. This great country cannot succeed, if we concern ourselves with nothing more than our rights as individuals. We must equally consider our responsibilities as citizens.

This Constitutional amendment says that one of those responsibilities of citizenship is to not burn or otherwise desecrate our American flag. I am astounded that the U.S. Supreme Court could construe that as free speech, but it has. This amendment would simply permit Congress to declare otherwise and to place that senseless act of desecration outside the boundary of free-

dom of speech, just as the Supreme Court recently ruled burning a cross outside that boundary of protected free speech.

I am willing to take this carefully considered action, because of what I know the American flag means to millions of American citizens. Many of them are relatives or friends of heroic Americans who have given their lives to defend our country. In my view, those great American heroes have consecrated our flag with their precious blood. Honoring our flag honors their extraordinary sacrifices, as it honors the principles and ideals for which they died.

That is why I will vote for this constitutional amendment.

Mr. OBAMA. Mr. President, I rise today to speak in opposition to the proposed constitutional amendment.

There have been so many moments in our history where the flag was not just a piece of cloth. It was a focal point that united this country through both our most difficult days and our proudest moments. This is the flag that inspired Francis Scott Key in Baltimore Harbor during the War of 1812. It is the flag that Illinois soldiers rallied to during the Battle of Gettysburg. It is the flag that marines raised over Mount Suribachi on Iwo Jima during a battle that claimed 6,800 American lives. It is the flag that Neil Armstrong and Buzz Aldrin planted on the surface of the moon. It is the flag that was draped over the charred Pentagon following the September 11 attack. It is the flag that rests atop the caskets of the men and women who give the ultimate sacrifice in Iraq and Afghanistan.

I cannot imagine anything more abhorrent to a veteran than seeing the flag they fought for, or watched their good friends die for, being burned to make a political point. Although I have not served in the military, I too have great pride in our flag, as do the overwhelming majority of Americans. I share outrage at the thought of its being disrespected. I have never seen anyone burn a flag. And if I did, it would take every ounce of restraint I had not to haul off and hit them.

But we live in a country of laws. Laws that stop people from resorting to physical violence to settle disagreements. Laws that protect free speech. The primacy of the law is one of the things that protects us, one of the things that makes us great.

When I took this job last year I was asked to swear an oath of office. It is a short, simple oath, and everyone in this Chamber has repeated it. It begins: "I do solemnly swear that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same." Our first allegiance here is not to a political party, or to an ideology, or to a President, or even popular opinion, it is to the Constitution and to the rule of law.



Senator BYRD often talks about the Constitution as a remarkable document that transformed a revolutionary movement to a stable government that has lasted more than 200 years and is the envy of the world. He is right.

The Constitution has only been amended 27 times. The amendments include guarantees of our most basic freedoms, the freedom of religion, the right to a trial by jury, the protection against cruel punishment. The amendments also chronicle the great struggles of this country. The 13th amendment abolished slavery in 1865. The 17th provided for the direct election of senators in 1913. The 19th amendment gave women the right to vote in 1920. The 24th eliminated the poll tax in 1964.

The Framers established a high bar for amending the Constitution, and for good reason. It is difficult to amend the Constitution because our founding document should not be changed just because of political concerns or temporary problems. The Constitution should only be amended to address our Nation's most pressing problems that can't be solved with legislation. But even the supporters of this amendment are hard pressed to find more than a few instances of flag burning each year.

Today, there are hundreds of thousands of U.S. troops risking their lives for their country, looking to us to come up with a plan to win the peace so they can come home. Across America, there are millions who are looking for us to do something about health care, about education, about energy. We are only supposed to be in session for about 50 more days for the rest of this year. To spend the precious time we have left battling an epidemic of flag burning that does not exist is a disservice to our country.

Mr. President, 141 years ago, Congress passed—and the States approved—the 13th amendment to end slavery. A century and a half later, Americans can look back at that effort and be proud. What will Americans 141 years from now think if we pass the 28th amendment to ban flag burning? Will they breathe a sigh of relief that we made the world safe from flag burners? Or will they see this for what it is: an effort to distract, an effort to score political points, an effort to use the same flag that should unite us to instead divide us? I believe they will laugh and shake their heads.

During this debate, we have heard much about Colin Powell's opposition to this amendment. I am moved by his statement that:

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

His view is shared by the many calls and letters I have received from Illinois veterans. All of them full of honest passion, and all of them sharing a common love of flag and country. I want to read a bit from a few of the letters I received.

Richard Savage of Bloomington wrote me:

I am a Vietnam veteran and Republican. . . . Those who would burn the flag destroy the symbol of freedom, but amending the Constitution would destroy part of freedom itself.

Marci Daniels from Edwardsville wrote:

I am a veteran and I oppose the flag amendment. I did not put my life on the line for the flag, but for the Constitution and the freedoms it guarantees.

Terrence Hutton of Winnetka wrote:

As a Vietnam war veteran, I did not like the steady fare of flag-burnings we seemed to see on TV and in the print media back in those unhappy days, but I accepted them as part of the price we pay as a free society. . . . We have survived this long without a flag-burning provision in the Constitution and can go right on surviving without one.

These are all proud Americans, veterans. They know that we should not play politics with the Constitution. We shouldn't distract voters in an election year, when there are so many common challenges we face and so little time to face them.

There is, in fact, another way. There is a way to balance our respect for the flag with reverence for the Constitution. Senators CLINTON and BENNETT are proposing an amendment to this proposal that would protect the flag without amending the Constitution. Their statutory approach is a new one that doesn't fall into the same constitutional traps that doomed previous flag protection bills. The Clinton-Bennett amendment is narrowly drawn to meet the first amendment tests the Supreme Court has laid out in previous court decisions. It makes it illegal to burn a flag in a threatening way or to incite violence. I believe this statute will pass constitutional muster and be upheld by the Supreme Court.

I will vote for the Clinton-Bennett amendment in an effort to find a way to balance our respect for the flag and our protection of the Constitution. I urge my colleagues to do the same.

Mr. NELSON of Florida. Mr. President, I intend to vote in favor of this resolution.

The flag is a sacred symbol to this country and its citizens. Men and women have given their lives to protect the ideals embodied in the flag, and it's a unifying representation of America and all that we value. I believe it is a symbol worthy of protection.

This resolution will give Congress the ability to consider legislation that will protect the flag and prevent its desecration.

Mr. CONRAD. Mr. President, today I will support the Durbin amendment to pass a statute to protect the flag and address the very real problem of protests at military funerals.

I was recently at a funeral for a North Dakota soldier, and I was disgusted—absolutely disgusted—by the behavior of protesters who used the funeral to convey their twisted message of hatred for our soldiers and their

families. The Durbin amendment would restrict these protests from the immediate area of the funeral, and it would protect the flag without amending the Constitution of the United States for that purpose.

Anybody who advances an amendment to the Constitution has to clear a very high threshold. The Constitution of the United States is one of the greatest documents in human history. It is not to be amended lightly. And it should certainly not be amended when there are other ways of addressing a problem.

In our history, more than 10,000 amendments to the Constitution have been proposed. Only 27 have been approved. Since I have been in the Senate, more than 850 constitutional amendments have been offered.

Thank goodness we have not adopted them. Many of them would have made that document worse. Many of them would have done things that ought to be done by statute.

The Constitution is a framework. It does not deal with specifics. It deals with the larger framework of how this Government should operate. Individual laws, individual statutes are meant to deal with the specific problems that we encounter as a society within the framework provided by the Constitution. Some would have us change that basic organic document to deal with this problem. I believe that would be a mistake that we would come to regret.

Flag burning and flag desecration are unacceptable to me and unacceptable to a majority of Americans. They are certainly unacceptable to the people of the State that I represent. But the first answer cannot and should not be to amend the Constitution of the United States.

Of course, it is unacceptable to engage in flag desecration. Of course, it is abhorrent to desecrate the flag. We do not need to amend the Constitution to address these few instances of deplorable conduct. We have an alternative. The alternative is to pass a statute.

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

But this statute has not been ruled unconstitutional, and a range of constitutional experts believe it would pass constitutional muster. They are saying to us this statute would be upheld. It is my view that we ought to see if they are right before we conclude that the only alternative is to amend our Constitution. We ought to give the Supreme Court a chance to look at this statute, and see if we can find a way to protect the flag by statute before we amend the Constitution.

I am not alone in taking this position. I have heard from distinguished veterans all across my state and all across the country who agree that the Constitution does not need to be amended to protect the flag.

For example, Rick Olek, a 22-year member of the American Legion, a

combat veteran, and a Purple Heart recipient, has written:

As a combat veteran, I fought for this country and I respect our flag, but I also respect the rights of freedom of speech. The position of Senators Conrad and Dorgan on the flag amendment is consistent with protecting first amendment rights as well as protecting our flag.

Similarly, Mike Dobmeier, former National Commander of the Disabled American Veterans, says:

I fought—and many of my comrades died—to protect the freedom and ideals the U.S. flag embodies. Senator Conrad understands our sacrifice and he is working tirelessly to protect Old Glory. Last year he introduced bipartisan legislation that would criminalize the desecration of our flag, rather than changing the Constitution. Senator Conrad knows that we can protect our flag without infringing on the precious freedom it represents.

And Brad Maasjo, a retired Air Force Colonel from Fargo, ND, writes:

There is a poem that says in part that "... it is the soldier, who fights for the flag ... whose coffin is draped by the flag ... who wins the right to protest the flag. ..." Maybe if we take away that right, we also lose sight of what he fought for in the first place.

These are just a few of the people I have heard from, proud North Dakota veterans who support the flag but also revere our Constitution. They tell me that they abhor flag desecration, but that the flag is a symbol for the liberties and freedoms they fought to protect. They do not want to rush to amend the Constitution when there are other options available.

Finally, GEN Colin Powell, Secretary of State Powell, has written the Congress to say he does not believe that the appropriate response is to amend the Constitution of the United States. GEN Colin Powell, former Chairman of the Joint Chiefs of Staff, the man who led us in Desert Storm, a man for whom I have profound respect says:

I understand how strongly so many of my fellow veterans and citizens feel about the flag and I understand the powerful sentiment in state legislatures for such an amendment. I feel the same sense of outrage. But I step back from amending the Constitution to relieve that outrage. ... 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.

I urge my colleagues to step back from the constitutional amendment and instead support the Durbin amendment. This is the wiser course. It is the right course. It is one that will stand the test of time.

Mr. AKAKA. Mr. President, I rise today in opposition to S.J. Res. 12, the flag desecration constitutional amendment.

I believe our flag is a living symbol that represents this great country and its rich history. As a World War II veteran, I feel a deep connection to our flag, and it offends me when I see the flag burned or treated poorly. Our flag deserves our reverence and respect.

As a U.S. Senator, I have sworn to protect the Constitution and the free-

doms for which it stands. I believe it would be wrong to amend the Constitution to infringe upon our first amendment freedoms. Although I find it personally detestable that someone would desecrate the flag, it is my duty to protect the right to free speech and expression. To me, this amendment would protect our Nation's preeminent symbol at the cost of sacrificing the very freedoms that it is supposed to represent.

This amendment is all the more troublesome because it is wholly unnecessary. Americans are not lacking in patriotism nor is there an epidemic of flag burning. To the contrary, in these five years since the tragic events of September 11, 2001, Americans have vigorously rallied around our flag and the liberties it represents.

For these reasons, Mr. President, I will be opposing S.J. Res. 12, and I urge my colleagues to do the same.

Mr. LEVIN. Mr. President, the American flag is a cherished symbol of our freedom and the democratic values and liberties that we believe in, and we should respect the flag as a reminder of the bravery of the men and women who have lost their lives fighting under its colors for our country. One of the most poignant images to a patriotic American is when that flag is draped over the coffin of a fallen soldier.

I detest flag burning. To deliberately desecrate the flag is an insult to anyone who has fought to defend it and to all of us who love it. Any person who destroys such an important reminder of sacrifice and patriotism deserves the scorn of all decent men and women.

Although I love the flag, I also love the Constitution and its Bill of Rights. For more than 210 years, this timeless document has protected our most basic freedoms. The Supreme Court has ruled that a physical attack on the flag is a protected form of speech under the first amendment.

In 1984, Gregory Johnson publicly burned an American flag as a means of political protest and was convicted of desecrating a flag in violation of Texas law. In *Texas v. Johnson*, the Supreme Court held that, although "the government has a legitimate interest in making efforts to 'preserv[e] the national flag as an unalloyed symbol of our country,'" Johnson's burning of the flag was constitutionally protected speech.

In response to that decision, Congress passed the Flag Protection Act, a Federal law to prohibit flag-burning and other forms of desecration. I supported that legislation, but the Supreme Court found it unconstitutional in *United States v. Eichman*. The Court found that the statute suppressed constitutionally protected expression, and held:

The Government's interest in protecting the "physical integrity" of a privately owned flag rests upon a perceived need to preserve the flag's status as a symbol of our Nation and certain national ideals. But the mere destruction or disfigurement of a par-

ticular physical manifestation of the symbol, without more, does not diminish or otherwise affect the symbol itself in any way. ... While flag desecration—like virulent ethnic and religious epithets, vulgar repudiations of the draft, and scurrilous caricatures—is deeply offensive to many, the Government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable.

Now that the Court has decided that flag burning as a means of expression is constitutionally protected, the question for the Senate is whether to amend the Constitution to ban such speech. Our Constitution has been amended only 17 times since the adoption of the Bill of Rights in 1789. The Bill of Rights has never been amended. I believe that to deliberately weaken the first amendment rights of all Americans is not the answer to those very few who attack a symbol of freedom.

Senator John Glenn, an American hero who fought for our country through two wars and took our flag into space, eloquently expressed this view before the Judiciary Committee:

[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 it is a symbol. It symbolizes the freedoms we have in this country, but it is not the freedoms themselves.

Steve Sanderson, a Michigan Vietnam-era veteran, expressed a similar view as quoted in the *Detroit Free Press* on June 14, 2006. He said:

Veterans certainly cherish the flag, perhaps more than civilians who have never been to war can realize. But commitment is not confined to that symbol. I am hurt when I see the flag burned, largely because I've also seen the flag draped on coffins of troops. But my patriotism lives in my heart and mind. We set a very dangerous precedent if we argue that certain forms of speech should be restricted because the majority disagrees with the message and how it is expressed.

Mr. President, I love our flag. I love our Constitution. Flag desecration is repugnant, but it would be a mistake to let a flag burner cause us to weaken our first amendment guarantees. If we take this fateful step of singling out one symbol to exempt from the first amendment, will we next authorize Congress to make it a crime to rip up a copy of the Constitution or a copy of its Bill of Rights?

The American flag symbolizes our freedom, and that includes freedom from an overreaching government that decides which symbols are worthy of protection. We are honoring our flag and the republic for which it stands by refusing to amend the Bill of Rights in response to a few misguided people.

I do support the statute that will be offered as a substitute for the constitutional amendment, which provides that: "Any person who shall intentionally threaten or intimidate any

person or group of persons by burning, or causing to be burned, a flag of the United States shall be fined not more than \$100,000, imprisoned for not more than 1 year or both." The Supreme Court has held that the first amendment does not provide full protection for what are called "fighting words," or those words which, by their very utterance, inflict injury or tend to incite an immediate breach of the peace.

Also, in *Virginia v. Black*, a case that involved the burning of a cross, the Supreme Court held that the government can prohibit people from burning crosses with the intent to intimidate. In that case, Virginia law prohibited cross burning through a statute that made it unlawful for any person to burn a cross with the intent of intimidating any person or group of persons. A majority of the Court held that it believed the substantive prohibition on cross-burning with an intent to intimate was constitutionally permissible. Writing for the majority, Justice O'Connor said:

The protections afforded by the First Amendment, however, are not absolute, and we have long recognized that the government may regulate certain categories of expression consistent with the Constitution . . . Thus, for example, a State may punish those words "which by their very utterance inflict injury or tend to incite an immediate breach of the peace. . . . We have consequently held that fighting words "those personally abusive epithets which, when addressed to the ordinary citizen, are, as a matter of common knowledge, inherently likely to provide violent reaction" are generally proscribable under the First Amendment."

The substitute also contains an important provision to support our military families in their time of grief. During the past year, a fringe religious group has held protests at more than 100 military funerals across the Nation, claiming that the deaths of U.S. soldiers is God's punishment of America. In May, Congress passed and the President signed into law the Respect for America's Fallen Heroes Act, which prohibits demonstrations at and around national cemeteries. This amendment would expand that Act to include military funerals at private cemeteries, funeral homes, and houses of worship. The families of the fallen have a right to be free to bury their loved ones and our heroes in peace.

I support this narrowly drawn substitute because it both protects the flag, consistent with the Bill of Rights, as well as honors those who have made the ultimate sacrifice while fighting under its colors.

Ms. MIKULSKI. Mr. President, I rise to support the substitute offered by Senator DURBIN to ban the desecration of our flag. The Durbin alternative stands for the same things I do. It protects the principles embodied in our Constitution—as well as our U.S. flag. It does not amend the Constitution, but it will get the job done by punishing those people who help wage war against the symbol of this country and everything it stands for.

I know that we have gone down this road before, by passing statutory language to ban flag-burning only to have the Supreme Court overturn it. But this language has been specifically crafted so that it will pass constitutional challenge.

It says you cannot get away with abusing the flag of the United States or using it to incite violence. This is an exception the Supreme Court has allowed. The Durbin substitute says you can't use this Nation's symbol of freedom and turn it into a symbol of disrespect.

If there is a way to deal with and punish those who desecrate our U.S. flag without amending the Constitution, I am all for it. That is why I support the Durbin Substitute.

I feel very strongly about this issue. I have voted for legislation to prohibit flag burning, and I have voted against amending the U.S. Constitution. Today, I will do so again.

I take amending the U.S. Constitution very seriously. In the entire history of the United States we have only amended the Constitution 17 times after the Bill of Rights. Seventeen times in over 200 years—that's it.

We have amended the Constitution to extend rights. We have amended the Constitution to end slavery, give women the right to vote, and guarantee equal protection of the laws to all citizens. The Constitution protects our liberty and it is the symbol of the strength of our Nation. I believe that it is my obligation as a Member of this body to protect its integrity and strength.

So many of our veterans have fought to protect our flag and what it stands for in battle. They have defended our flag and the nation against foreign enemies. These men and women fought valiantly to protect America and this issue is very important to veterans, who fall on both sides of the debate.

Many want an amendment to protect this important symbol of our Nation. Others know that the flag is a symbol of our freedom but our freedom endures beyond the cloth of the flag.

I respect how strongly they feel about our flag and all that it stands for. I share their concerns and have seriously considered supporting a constitutional amendment.

But, I have weighed the concern about protecting this national symbol with the need to defend our Constitution and the rights of free speech. I believe that the substitute offered by Senator DURBIN strikes the right balance. My colleague from Illinois has offered an alternative to amending the Constitution that would protect the flag and protect the Constitution. I will support that alternative approach today.

Yet, I can't help but be concerned about why we are raising this issue now. There has not been a sudden surge in flag burning. In fact, to the contrary, I see more Americans waving their flags proudly as they support our

troops overseas. It disappoints me that we raise this issue now, instead of focusing on priorities that really matter to veterans.

Instead of focusing on amending the Constitution, we should be standing up for our veterans where it really counts. Support for our military in the field must be matched by support for our veterans at home. This means deeds, not just words.

There are 25 million veterans in the United States. These veterans served with honor, bravery and sacrifice. The way to thank them is with a commitment to veteran's healthcare, veteran's programs and veteran's services.

Whether at Iwo Jima, Pork Chop Hill, the Mekong Delta, Falluja or the mountains of Afghanistan, our veterans shouldn't have to fight for the services they need and deserve at home. Instead of debating this amendment, the Senate should take up and pass Senator AKAKA's Keeping Our Promise to America's Veterans Act.

I am proud to cosponsor this bill, which does five things to provide real support to our veterans with deeds, not just with words. First, it makes sure veterans get full funding for veterans medical care by accounting for growing vets population and rising health care costs. Second, it provides mental health care to vets from Afghanistan and Iraq. Third, it allows VA hospitals to fill prescriptions written by private doctors. Fourth, the bill guarantees concurrent receipt of military retired pay and VA disability benefits. Finally, this bill makes it easier to take advantage of the G.I. bill by excluding G.I. benefits from financial aid eligibility computations.

I am disappointed that the Senate has chosen to spend time on this debate, instead of taking up this important bill and keeping our promise to America's veterans. We are giving our veterans rhetoric instead of results, and I am deeply disappointed for Maryland's 500,000 veterans, and veterans all across the Nation.

Mr. HARKIN. Mr. President, I have come to the floor today to speak in opposition to the flag desecration amendment to the Constitution.

If I were strictly following my emotions, I would no doubt favor this amendment. After all, I can imagine few acts more despicable, offensive, and cowardly than to deliberately desecrate the flag of the United States of America. But in considering this constitutional amendment, which for the first time would amend the Bill of Rights, we have a solemn responsibility to separate reason from passion. We have a responsibility to preserve and protect the Stars and Stripes of the United States of America. But even more importantly, we have a responsibility to preserve and protect the principles and rights for which it stands.

Fortunately, instances of flag desecration in the United States are extremely rare. Nonetheless, there is no denying the emotions and anger that

are incited even by the thought of someone desecrating the American flag. I myself feel those emotions and that anger. I believe that we all do. We all have memories that cut deep to the heart, and when we see the flag on fire it feels like something burning inside of us.

I remember what the flag meant to my mother, an immigrant from what is now Slovenia, who came to America speaking just a few words in English. When I was growing up, the American flag was always proudly displayed in our home because, to my mother, that flag meant the freedom of her new country.

I have not forgotten my mother's pride, and even now the American flag, standing proudly by my desk, is the first thing I see when I go to work in the morning and the last thing I see when I leave to go home at night.

I remember, too, the friends I lost in Vietnam. I remember escorting the body of a fellow pilot to his home and presenting the American flag to his widow. The flag is our country's ultimate tribute to a fallen soldier.

So it is with strong feelings—right here in my stomach and right here in my heart—of rage and disgust that I view those who would desecrate my flag, defile my memories, and dishonor my heritage.

I think back to my days flying jets in the Navy.

I think of the friends I had, and the friends I continue to have as a proud member of American Legion Post 562 in my hometown of Cumming, IA.

Over the years, I have turned to my fellow veterans to see how they would vote on such an amendment. Some were for, some against. But I have been most impressed by the arguments of those who oppose a flag desecration amendment.

Frankly, I expected my neighbor, who earned five Purple Hearts in combat, to be gung-ho for a constitutional amendment. But he told me he was absolutely opposed to an amendment. He said, "I fought for freedom. I didn't fight for doing away with freedom."

An Iowa veteran I met at a coffee shop had this common-sense perspective. Speaking of the flag-burner in the case of *Texas v. Johnson*, he said: "Look, this flag burner, this Greg Johnson, he's just one of a handful of kooks. Should we change the Bill of Rights, which has never been changed, for a handful of kooks?"

Most moving to me was the article I read years ago in the *Cedar Rapids Gazette* by a former prisoner of war, James Warner.

Let me read to you part of his article:

It hurts me to see other Americans willfully desecrate the flag. But I have been in a communist prison where I looked into the pit of hell. I cannot compromise on freedom. It hurts to see the flag burned, but I part company with those who want to punish the flag burners.

Mr. Warner went on to recount how, in a North Vietnamese prison camp, he

was given a choice: He could renounce his country and leave, or stay and be tortured. James Warner chose to stay. The North Vietnamese tried to break his spirit but they couldn't. During one interrogation, his captor showed him a photograph of some Americans protesting the war by burning a flag.

"There," the North Vietnamese officer told him, "People in your country protest against your cause. That proves you are wrong."

"No," Warner said, "That proves I am right. In my country we are not afraid of freedom, even if it means that people disagree with us."

In that moment, the interrogator was on his feet—his face purple with rage, according to Warner's account. There was also pain in the interrogator's eyes, compounded by fear. The Communist feared freedom; only freedom could be used to defeat him.

Likewise, in 1989, the Chinese Communists feared the students in Tianamen Square who burned the Chinese flag. The students' protests were silenced with tanks and guns. As communism crumbled across Eastern Europe in the late 1980s, expressions of freedom took many forms: protests, speeches, underground newspapers, strikes—and yes, even flag desecrations. And when we saw those torn and burned flags, symbols of Communist domination, did we denounce these protestors for defiling their own State symbols? Of course not. We praised them for their acts of political defiance. Burning and tearing their flags represented a powerful act of political speech, a denunciation of the communist regimes that had oppressed those countries for decades.

And once the Communist regimes began to fall, what came next? Calls for Western-style guarantees of rights to freedom of the press, freedom of association, and freedom of speech. Many called for a constitution. They knew what some of us seem to forget: That the only way those freedoms can be protected is with an inviolable Bill of Rights such as our own. A Bill of Rights that has stood unchanged for more than two centuries—despite Civil War, Depression, two world wars, and powerful internal movements of dissent. Even at those times of profound turmoil, we resisted any temptation to amend the Bill of Rights.

As a veteran, I will never, ever do anything to show disrespect for the flag. At the same time, I will never, ever do anything that would diminish the freedom our flag represents.

In our churches, synagogues, and mosques, we are taught not to worship the idols of our faith, but rather the ideals of our faith. Likewise, patriotism is not measured, first and foremost, by our love for the flag as a physical object, but by our love for the rights and ideas the flag stands for.

I do not want to see the flag become another Golden Calf—an object to be worshipped for the sake of worshipping. The flag is only as powerful as the re-

public—and the rights and ideals—for which it stands.

Back in 1990, when the Senate first debated—and rejected—a flag desecration amendment, I remember reading a letter to the editor of the *Burlington, IA, Hawkeye*, written by a World War II veteran who had volunteered for duty. He wrote:

I served my country under the flag. I pledged allegiance to the American flag, and to the Republic for which it stands. 'Stands' is the key. The flag stands for the government. The government guarantees us free speech. My allegiance is to the flag however it is displayed, cloth, paper, paint, or the one that waves continuously in my mind. That one, in order to burn, they would need to burn me. I like the Bill of Rights just as it is. Exactly what the flag stands for.

So wrote the veteran from Mount Pleasant, IA. And he concluded with these words: "Isn't it better to put up with a few disgusting frustrating acts of free speech than to open a Pandora's box?"

I have to agree with his characterization of this amendment as a "Pandora's box" which, once opened, could lead to other proposals to punch holes in the Bill of Rights.

Mr. President, I hope that the Senate will reject this amendment, once again. But I believe this debate can have a positive legacy—not by diminishing our rights as citizens, but by increasing public displays of the flag, increasing people's knowledge and understanding of the flag's history, and increasing good citizenship and public service.

We are proud of the flag. Let us fly the flag.

We are proud of the flag. Let us tell our children and grandchildren about what that flag represents, what it means and why so many died for it.

That flag in my mother's house was not used as a tablecloth, it was not used as a scarf, it was not used as a piece of clothing. I grew up believing there was a proper way to hold the flag, a right way to display it. We need to take it a step further and educate people, young and old, as to the meaning behind the symbols—behind the flag and our Bill of Rights.

Mr. President, next week we celebrate 230 years since our Declaration of Independence. Fireworks will recall the 'rocket's red glare' and the 'bombs bursting' overhead when those who were first to wear the uniform of the United States Armed Forces put their lives on the line.

And in all of our 50 States, the American flag will be hailed, waving in the breeze over courthouses and city halls, public buildings and private homes. Pride will be felt and respect shown, not because it is mandated by law, but because it is embedded in our hearts.

I can think of no more patriotic way to celebrate the Fourth of July, no better way to show respect for the American flag and for the principles for which it stands, than by voting against this proposed amendment to the Bill of Rights.

Ms. SNOWE. Mr. President, I rise today to support in the strongest terms the proposed constitutional amendment to grant the States and Congress the power to prohibit the physical desecration of the flag of the United States.

Our flag occupies a truly unique place in the hearts of millions of citizens as a solemn and sacred banner of freedom. As a national emblem of the world's greatest democracy, the American flag should be treated with unyielding respect and scrupulous care.

At this time when Americans are fighting and, tragically, perishing under the flag of the United States, it is long overdue that we pass a constitutional amendment to protect that very symbol of American ideals from acts of desecration. We lost the effort by just 4 votes 6 years ago in the Senate. Meanwhile, the other body has done its duty and passed a bill twice. We in this chamber must finally do the right thing and protect our flag once and for all and for all time.

With the introduction of this resolution, we resume our effort to protect the greatest symbol of the American story and American experience. There is no more powerful example of freedom, democracy, and our steadfast commitment to those principles than the American flag, and it is altogether fitting and just that we try to ensure that it is publicly displayed with pride, dignity, and honor.

I cannot underscore the point enough that the flag is not merely a visual icon to us, nor should it be. The American flag is not just another piece of cloth. It is not just another banner or logo or emblem. It is our revered testament to all that we have defended and protected. Too many Americans have contributed too much and sacrificed too much . . . their labor, their passion, and in many cases their lives for the flag to be simply and frivolously regarded. The flag permeates our national history and relays the story of America in its most direct, and most eloquent terms. Indeed, knowing how the flag has changed—and in what ways it has remained constant—is to know the profound history and limitless hopes of this country.

More than 220 years ago, a year after the colonies had made their historic decision to declare independence from Britain, the Second Continental Congress decided that the American flag would consist of 13 red and white alternating stripes and 13 white stars in a field of blue. These stars and blue field were to represent a new constellation in which freedom and government of the people, by the people and for the people would rule. The colors of the flag are representative, as well. Red was to represent hardiness and valor, white was to represent purity and innocence and blue was to represent vigilance, perseverance and justice. And as we all know, the constellation has grown to include 50 stars, but the number of stripes has remained constant.

In this way, the flag tells all who view it that no matter how large America may become, she is forever rooted in the bedrock principles of freedom and self-government that led those first 13 colonies to forge a new nation.

Even more significant is the fact that the flag also represents our enduring pledge to uphold these ideals. This dedication has exacted a high human toll, for which many of America's best and brightest have given their last full measure of devotion. It is in their memories and for their ultimate sacrifice to America's ideals that I am proud to support this amendment.

Make no mistake, this amendment is necessary because the Supreme Court, in its 1990 U.S. versus Eichman ruling, held that burning the flag in political protest was constitutionally protected free speech. No one holds our right to free speech more dearly than I do. But I have long held that our free speech rights do not entitle us to consider the flag as merely personal property, to be treated any way we see fit, including its desecration for the purpose of political protest. The fact is the Eichman decision unnecessarily rejects the deeply held reverence millions of Americans have for our flag. With all the forums for public opinion available to Americans every day, from television and radio, to newspapers and Internet chat rooms, Americans are afforded ample opportunity to freely and fully exercise their first amendment rights, even if what they have to say is overwhelmingly unpopular with a majority of American citizens. At the heart of the issue is respect. I applaud the right to protest and to assemble in order to express opinion, dissent, or a point of view. Write letters to the editor. Start a website. Create a blog. Organize. Leaflet. March. Chant. Speak out. Petition. Do any and all of these things but do not burn our flag.

As we consider this amendment, we must also remember that it is carefully drafted to simply allow the Congress and individual State legislatures to enact laws prohibiting the physical desecration of the flag, if they so choose. It certainly does not stipulate or require that such laws be enacted, although many States and the Federal Government have already demonstrated widespread support for doing so. In fact, 48 States, including my own State of Maine, along with the Federal Government, have had antflag burning laws on their books for years and that was prior to the Supreme Court's rulings on this issue. So, in effect, what this resolution does is simply give the American flag the protection that almost all the States, the Federal Government, and a large majority of the American people have already endorsed.

Whether our flag is flying over the U.S. Capitol, a State house, a military base, a school, Fenway Park, or on a flag pole on Main Street, the stars and stripes represent the ideals and values that are the foundation of this great

Nation. Our flag has come to not only represent the pride we have for our Nation's past glories, but also to stand for the hope we all harbor for our Nation's future.

Perhaps it was The Reverend Henry Ward Beecher who captured best the essence of the flag's meaning and symbolism more than a century ago when he wrote that "a thoughtful mind, when it sees a nation's flag, sees not the flag only, but the nation itself and whatever may be its symbols, its insignia, he reads chiefly in the flag the government, the principles, the truths, the history which belongs to the nation that sets it forth."

Mr. President, our flag represents not just the new constellation of freedom envisioned by our forebears, but the distillation of that freedom, too everything that was behind the forming of our nation and everything that informs our nation and who we are to this day. So, it is with undaunted pride and unwavering hope that I urge my colleagues to support this amendment.

Mr. DOMENICI. Mr. President, I rise today in support of the flag protection amendment, S.J. Res. 12.

This amendment was precipitated by the Supreme Court's ruling in *Texas v. Johnson*, which overturned a law which prohibited flag burning. The ruling made the burning of the American flag a legitimate exercise of free speech.

I believe freedom of speech, guaranteed in the first amendment, is one of the fundamental freedoms the Founding Fathers sought to protect since it is the basis for every other freedom we enjoy. However, in the past the Supreme Court has ruled that freedom of speech is not an absolute freedom. For example, it is unlawful to yell "fire" in a crowded auditorium, and it is also illegal to threaten to harm the President of the United States.

I disagree with the Supreme Court's analysis of flag burning. The Supreme Court erred in equating free speech with the desecration of the American flag. The act of desecrating the American flag goes beyond merely expressing a point of view—it is a violent act against the symbol of our Nation. It is not an act of free speech. Every American is free to denounce our Nation and ideals for which the flag stands. Frankly, I think it would be terribly misguided, but if that is what they want to say, they have the right to say it. There is a vast difference, however, between speaking one's mind and desecrating the symbol of our Nation.

The American flag is a unifying symbol of our Nation and is considered by many to be the physical embodiment of the founding principles of this country. The predominance our flag holds in the national psyche was reconfirmed after the September 11 attacks, when the vision of the red, white and blue galvanized our Nation.

The American flag is not just a piece of cloth. It is a symbol of freedom and of the sacrifice it takes to gain that freedom. The red stripes are there to

remind us of the blood that was and continues to be shed in defense of this Nation.

I have the deepest reverence for the U.S. Constitution, and I do not believe it should be amended casually. However, in this case, I believe the American flag and all it represents deserves the protection of our laws. Therefore, I have decided to support a constitutional amendment that would require due respect for this great symbol of freedom.

Mr. FEINGOLD. Mr. President, I understand the desire of my colleagues to defend the flag, and I share their outrage at the despicable conduct that some families of fallen servicemembers have had to endure as they bid farewell to their loved ones. But I cannot support the substitute amendment offered by the senior Senator from Illinois. The Supreme Court has twice held that criminalizing flag desecration violates the first amendment. Flag burning is unacceptable, but outlawing certain forms of flag destruction based on the message that the misguided person is trying to convey raises obvious first amendment problems.

The vast majority of flag desecration incidents can be prosecuted under criminal trespass, destruction of private property, and other State and local criminal statutes. We do not need a Federal statute to handle the handful of other incidents that occur each year, and we certainly should not amend the Constitution to make such a statute possible.

Mr. INHOFE. Mr. President, today this Chamber considers whether to send a constitutional amendment to the States and people of the United States, a United States that is represented by that glorious flag that stands to your right, Mr. President.

This is not the first time the people's elected representatives have acted to protect the flag, but as a result of a willful judicial resolve, we are forced to take this decisive action as the people's duly elected policymakers.

I find it highly doubtful that the Framers intended the first amendment to cover flag desecration as protected speech. I find it even more unlikely that they intended the courts to be able to tell Congress that it cannot protect our flag. Quoting Alexander Hamilton, in *The Federalist* No. 78, it is Congress who "prescribes the rules by which the duties and rights of every citizen are to be regulated," not the courts. This is a principle I have consistently stood for and will stand for again when I vote in favor of S.J. Res. 12. When I see images on the news of different groups around the world burning American flags, it sickens my stomach. That is not speech; that is chaos. That is the mob mentality that is rebelliousness. That is conduct that appeals to the deepest and darkest parts of human nature. That is not the kind of riotous conduct that should be protected in this Nation; this amendment will allow us to make that clear once and for all.

I have heard some say—Justice Brennan in *Eichmann*—that allowing protesters to burn the flag is the greatest tribute to that flag, that what the flag stands for allows those who hate it to abuse it. Though I understand the merits of this argument, I disagree that it gives any kind of real reason to allow this behavior. This pseudo reverent justification could also defend spitting on our soldiers returning from duty or the hateful, vile-spewing protesters who want to defile the funerals of our Nation's heroes. After all, it is our soldiers who give these protesters a free country in which to protest.

Opponents say that one has a right to burn the flag. I say that we have a right not to have our flag burned. Countless soldiers and citizens have given their lives defending what this flag stands for. It is time that we, as the Congress of the United States, stand up and defend our flag, that we recognize that our national symbol that represents our system of laws is worthy of the protection of our laws.

Mr. SESSIONS. Mr. President, the amendment we are debating is short and to the point. It contains only 17 words:

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

We are discussing this today because in 1989, in *Texas v. Johnson*, five members of the Supreme Court held that flag desecration—specifically burning the American flag—was a form of first amendment-protected speech and Texas's law banning desecration of the flag was unconstitutional. Adding insult to injury, when Congress passed the Flag Protection Act of 1989, codified as title 18, section 700 of the United States Code, five members of the Supreme Court struck down that law as unconstitutional, too, in *United States v. Eichman*, 1990.

I believe the amendment we are considering today is entirely appropriate, and I am proud to cosponsor it. I wish to respond briefly to some of the criticism I have heard. Some would say: Well, you want to limit free speech when you want to stop burning the flag.

Now, it is true that the Supreme Court, by a 5-to-4 majority, held that the act of burning a flag is free speech. Well, I don't agree. The Supreme Court for a long time has allowed reasonable "time, place, and manner" restrictions on speech.

Moreover, the Supreme Court has long recognized that:

[t]here are certain well-defined and narrowly limited classes of speech, the prevention and punishment of which have never been thought to raise any Constitutional problem. These include the lewd and obscene, the profane, the libelous, and the insulting or "fighting" words—those which by their very utterance inflict injury or tend to incite an immediate breach of the peace.

The late Chief Justice Rehnquist wrote in his dissent in *Texas v. Johnson*: "Far from being a case of 'one pic-

ture being worth a thousand words,' flag burning is the equivalent of an inarticulate grunt or roar that, it seems fair to say, is most likely to be indulged in not to express any particular idea, but to antagonize others." It is not really "speech" at all, but if you consider it some sort of expression, it is certainly inarticulate. It is not of great value compared to the unifying symbol of the flag.

The first amendment is about intelligent debate, argument, concern over policy issues—not whether you get to "grunt" or "roar" by burning a flag. I don't believe flag-burning was ever intended to be covered by the Constitution. So I believe the Supreme Court got it wrong in *Texas v. Johnson* and *United States v. Eichman*.

More importantly, the American people agree that the Supreme Court got it wrong. All 50 States have asked Congress to propose an amendment prohibiting flag desecration. In our democracy, the people have the last say on the Constitution. If the people think the Supreme Court is wrong, they have every right to amend the Constitution and tell it so.

In my view, the flag of the United States is a unique object, and prohibiting its desecration will not in any fundamental way alter the free expression of ideas in this country.

It seems to me if burning the flag is speech and if the Court is correct in saying it is speech and the people of the United States care deeply about protecting the flag, then they should adopt a restricted, narrow constitutional amendment that would allow Congress to stop flag desecration.

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

We pledge allegiance to the flag, not the Constitution, not the Declaration of Independence. We pledge allegiance to the flag because it is a unifying symbol for America, and having a special protection for it is quite logical to me.

I do not believe we should never amend the Constitution. I do not think we amend the Constitution enough. But we want to have good amendments that are necessary, that are important, that enrich us, and that make us a stronger nation. In 1816, Thomas Jefferson wrote: "Some men look at constitutions with sanctimonious reverence, and deem them like the ark of the covenant, too sacred to be touched." Jefferson disagreed and proposed amending a constitution every 20 years or so so that it could "be handed



on, with periodical repairs, from generation to generation, to the end of time, if anything human can last so long."

I don't know whether we need to amend the Constitution every 20 years, as Thomas Jefferson proposed, but I do think a constitutional amendment is a healthy way for us to remind ourselves that this Nation is a democratic republic. We are not a nation under the rule of the Supreme Court. The Constitution belongs to "We the People of the United States," as its preamble states—not the judiciary of the United States. The Constitution was democratically adopted. It was meant to be democratically amended. It must remain democratically accountable—or lose its legitimacy as the foundation for a democratic republic.

Let me finally address one more concern about the language of this amendment. It is short. It is concise. And it leaves it to Congress to address the details on what specific forms of conduct to prohibit. I trust Congress to do that. Congress did it in 1989 with the Flag Protection Act codified at title 18, section 700 of the United States Code.

Concern has been expressed that the term "desecration" is too broad, too vague. I don't think so. I think it will clearly grant Congress the power it needs without any restriction on our great freedoms, particularly real speech.

Mr. President, the flag of the United States is a unique, unifying symbol of our country and all it embodies. Brave men and women have fought and died for that flag and what it represents. Let us today act to protect the flag and adopt S.J. Res. 12.

Mr. ENZI. Mr. President, I rise in strong support of S.J. Res. 12 which proposes an amendment to our Constitution allowing Congress to prohibit the physical desecration of the flag of the United States. I am proud to be an original cosponsor of the resolution introduced by my colleague from Utah.

Throughout the years of our Nation's existence, many brave men and women have fought and died to defend the freedom that our flag symbolizes. We must honor their memory by protecting our flag and preserving this symbol of our Nation and the unity of the 50 States. I have heard from veterans across my home State of Wyoming about their service and the importance of the flag in both their military and civilian lives. Our flag is a constant reminder of all those who have sacrificed so much so that we might be free.

We are now engaged in a new and different kind of war. We have taken up arms to end the threat of terror. We have been joined by many different nations in that effort, but we are, once again, relying on our own Armed Forces, the greatest fighting force in the world. With the talents and abilities of our service members and our support and prayers, I have no doubt they will get the job done.

When our deployed troops return home, they will deserve our support

and encouragement as they return to their everyday lives. I believe they will also expect us to take action to ensure the symbol of our Nation that they carried with them into battle is afforded the protection it deserves. We must ensure our flag is respected and protected as a symbol of our freedoms and the sacrifices that were made.

Over the last couple of days, some Members of this body have made some misleading statements about what this resolution does. Let's be clear—this piece of legislation does not ban anything. It does begin the process of restoring the authority of Congress to pass a flag desecration statute. A constitutional amendment will only become law if it is approved by three-quarters of the States.

I have also heard some of my colleagues claim that the language we are debating is too vague. Again, this is simply the first step in a process. The details will be debated once Congress regains its authority to make laws related to the desecration of the flag. It is then the job of those in Congress to talk about and debate the definition of desecration and what that word will mean in our laws.

Again, I believe our flag should be protected as a symbol of this Nation and our history. It represents us in military actions, in athletic competitions, diplomacy, and any activity we engage in around the world. The flag helped rally the Nation after the attacks of September 11, 2001. It calls to mind those who serve on our police, fire, and emergency response teams, risking their lives every day to ensure we are safe and protected from harm.

Diana and I have a friend from Finland who taught in the United States for a year. She had a flag of Finland that she traveled with while we were debating a flag burning amendment. She couldn't believe that anyone would dishonor their country's flag by burning it. As a symbol of the country, she couldn't believe that anyone would desecrate it in any way. She couldn't imagine that burning or desecrating the flag of a person's own country could have any positive effect. She believed that what people were doing to the symbol of our Nation would have a very detrimental effect overseas.

Changing the law may not change people, but the discussion alone that we are having should point out what is right and wrong and how other countries view the disrespect we demonstrate for our country. People are missing the issue of the protests. They are only seeing the disrespect for the country. We can do better. We must do better. This amendment will help us do better on focusing on problems instead of drama that takes away from ways we can make our lives and our country better.

Our flag symbolizes our hope for the future and our willingness to work together to make this world a better place for us all to live. That hope for tomorrow unites us, guides us, and

helps to make us truly one Nation under God, with liberty and justice for all.

I encourage all Senators to support S.J. Res. 12.

Mr. VITTER. Mr. President, the America flag is such an important symbol to our country that from the time we are children, we salute the flag with a hand over our hearts and pledge our allegiance to the flag of the United States of America. For the past two centuries, in battles all around the globe, the American flag has served as an inspiration and rallying point for our Armed Forces fighting for the ideals it embodies. We hold the flag with such reverence that it covers the coffin of America's military heroes who have dedicated their lives to the service of our Nation. Old Glory should be revered and protected because it represents American History, American sacrifice, and hope for our Nation's future.

On the Fourth of July, especially, we are reminded of the sacrifices of our forefathers in founding this great Nation, and the American flag symbolizes that sacrifice. The act of burning or destroying the flag shows a tremendous disrespect for our forefathers and the countless men and women who have given their lives to make the United States what it is today. That's why I am an original cosponsor of the flag protection amendment, and I rise to speak in support of it today.

By supporting this amendment, I believe that I am supporting the will of the people of Louisiana and the American people. I have received so many phone calls, letters, and e-mails from people in my home State of Louisiana in support of a constitutional amendment to prevent the desecration of our American flag. Polls show an overwhelming majority of Americans believe that burning the U.S. flag should be a crime. According to Fox News poll when asked, "Do you think burning the American flag should be legal or illegal?", 73 percent respondents said they thought it should be illegal.

Before the Supreme Court issued its decision in *Texas v. Johnson*, declaring that flag burning is politically expressive conduct protected by the first amendment, 48 States, including Louisiana, and the District of Columbia, had enacted statutes prohibiting the physical desecration of the American flag. In my opinion, the Johnson decision is just one more example of unelected activist judges ignoring the will of the American people. In response to the Court's decision in *Johnson*, Congress enacted the Flag Protection Act. However, in *U.S. v. Eichman* the Court struck down the Flag Protection Act, holding that Government's interest in protecting this symbol did not outweigh the individual's right to politically expressive conduct.

Since the Supreme Court issued these 2 decisions, all 50 States have passed resolutions asking Congress to pass a constitutional amendment that would

provide some protection to the American flag. This is overwhelming evidence that the American people disagree with these activist decision and believe that the flag—the symbol of Our nation—should be protected. I believe that we as Senators owe it to our constituents—as their elected representatives—to support this amendment and give Congress the power to enact a law banning the physical desecration of the U.S. Flag.

The Flag Protection Amendment gives Congress the power to enact laws prohibiting the “physical desecration” of the flag. This amendment does not ban flag burning—it doesn’t ban anything. It merely gives Congress the power to enact legislation if and only if three-fourth of the States ratify the amendment within 7 years. Therefore, this amendment would place the power back into the hands of the American people, which, in my mind, is much better than leaving it in the hands of activist judges.

Opponents of this amendment state that any laws prohibiting physical desecration of the flag, no matter how narrowly tailored, violate an individual’s first Amendment right to free speech. However, while the first amendment grants Americans the precious right to free speech, that right is not without limitations. For example, the Supreme Court has held that certain types of hate speech and obscenity are not covered under the first amendment. Additionally, public school teachers may not espouse their personal religious views in the classroom, and attorneys and doctors cannot breach the confidence of their clients.

The first amendment protects a number of avenues for individuals to voice their dissent, but it should not protect the physical desecration of the symbol that embodies the spirit of our Nation.

It is time for the Senate to pass the flag protection amendment—an amendment that has overwhelming bipartisan support and 59 cosponsors. The House passed this amendment last year by two-third majority. Now it is time for the Senate to pass this amendment so that we can send it to States and give the American people a chance to vote on this very important legislation. Mr. President, I believe that protecting the symbol of our Nation is one of our duties as elected representatives of the American people, and it is too important to leave in the hands of activist judges.

Mr. JOHNSON. Mr. President, today I share with my colleagues my thoughts on S.J. Res. 12 to amend the Constitution of the United States to prohibit the physical desecration of the flag of the United States. There are good, thoughtful, and patriotic Americans on both sides of this contentious issue. I have great respect for the views of many that amendment would constitute an unnecessary and harmful interference with the first amendment guarantees of free speech. Nonetheless, I am a supporter of S.J. Res. 12. For

most of America’s history, flag desecration has been illegal under State law and local ordinances. This constitutional amendment allows the return of the law to its former state, and I support this amendment to ensure those protections.

Mr. McCONNELL. Mr. President, whether flying on an aircraft carrier, hanging in one of our Embassies, or worn as a patch on a soldier’s uniform, the American flag stands for freedom.

The vast majority of Americans honor the flag, and rightly so. Some would go so far as to amend the Constitution to protect the flag against those who would burn it. While I share and admire their patriotism, weakening the first amendment, even for the noble purpose of protecting the flag, is not a position I can support.

Make no mistake I treasure the Stars and Stripes as much as any American. One of my most prized possessions is the flag which honored my father’s military service in World War II. It was draped upon his coffin after his death from cancer in 1990. He fought in the European theater to protect the freedoms that flag represents, and it now rests proudly on the mantle in my Senate office.

I do not have any sympathy for any who would dare desecrate the flag. They demean the service of millions of Americans, including my father and the brave men and women currently fighting the war on terror. They deserve rebuke and condemnation.

There may be no greater symbol of freedom than the flag. Its powerful symbolism is precisely why miscreants choose to desecrate it to make their point. They intend to convey a powerful message, and they have succeeded, because we find their message so disgusting that proponents of S.J. Res. 12 seek to ban their message. But freedom of speech means nothing unless people are allowed to express views that are offensive and repugnant to others.

Over 60 years ago, Justice Jackson noted how much the flag means to all Americans, and at the same time argued that the principles of liberty require us to allow others to view the flag differently than we see it ourselves. He wrote that:

The case is made difficult not because the principles of its decision are obscure but because the flag involved is our own . . . But freedom to differ is not limited to things that do not matter much. That would be a mere shadow of freedom.

Since our founding, we have watched other nations silence dissent, while America welcomed it—and America has prevailed. In fact, the Senate has seen free and open debate this week about the flag resolution. Those who support the resolution have made their best arguments to try to convince those who disagree. Regardless of the outcome of the vote on this measure, this week’s debate is good for democracy and good for America.

Free and open debate is also the correct approach to use in dealing with

those who desecrate the flag. The Supreme Court has recognized that “[t]he way to preserve the flag’s special role is not to punish those who feel differently about these matters. It is to persuade them that they are wrong.”

Flag burning is an abominable act. We are lucky to live in a country where the overwhelming majority of people not only reject it, but honor the American flag and the freedoms it stands for. These freedoms are America’s source of strength, whether embodied in the first amendment’s protection of speech, or the second amendment’s protection of the right to bear arms, or the fifth amendment’s protection of private property, or in any other provision of our enduring Constitution.

Ultimately, people who use the flag to convey a message of protest pose little harm to our country. But weakening our first amendment freedoms might.

Our Founding Fathers wrote the first amendment because they believed that, even with all the excesses and offenses that freedom of speech would undoubtedly allow, truth and reason would triumph in the end. And they believed the answer to offensive speech was not to regulate it, but to counter it with more speech, and in so doing, let the truth prevail in the marketplace of ideas.

The PRESIDING OFFICER (Mr. MARTINEZ). The Senator’s time has expired.

The majority leader is recognized. Mr. FRIST. Mr. President, I ask unanimous consent that the committee amendment be agreed to and that the following amendment be the only amendment in order to the pending joint resolution, S.J. Res. 12: Durbin first-degree amendment relating to statutory language. I further ask consent that all debate be equally divided between the two leaders or their designees until 5:30; and further, at that time the Senate proceed to a vote in relation to the Durbin amendment; further that the resolution then be read a third time and the Senate proceed to a vote on passage of S.J. Res. 12, as amended, with no further intervening action or debate; provided further that if all 100 Senators fail to vote on final passage, then the vote be reconsidered and the Senate vote again on final passage on Thursday, June 29, at a time determined by the two leaders.●

The PRESIDING OFFICER. Is there objection?

Mr. REID. Mr. President, reserving the right to object, I would further ask that the consent agreement contain the understanding that the Durbin first-degree amendment relating to statutory language be the only amendment that would be in order.

Mr. FRIST. Without objection.

The PRESIDING OFFICER. That is part of the agreement.

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

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. So it is clear, I will have an up-or-down vote on my amendment.

Mr. REID. At 5:30.

Mr. DURBIN. But it will be an up-or-down vote directly on the amendment; is that understood?

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. BUNNING. Mr. President, I would like to just clarify the unanimous consent request so that Members who are on the floor are not excluded from the debate that is going on.

Mr. REID. Senator FRIST and I will allocate the time that is left.

Mr. BUNNING. But there is time allocated presently.

Mr. FRIST. That is correct, Mr. President. Through the Chair, time has been allocated. The remainder of the time will be allocated between the two of us, and there is nothing in the unanimous consent request that will interfere with that.

Mr. BUNNING. Thank you.

The PRESIDING OFFICER. Is there objection?

The Senator from Colorado.

Mr. ALLARD. Mr. President, I think Senator KERRY had asked for some additional time, and it is cutting our time on this side. I want to make sure we restore that time we would have lost.

Mr. REID. Mr. President, I think that is very appropriate. I believe the extra time Senator KERRY took from the Republicans should be restored. It would be about 5 minutes, I think.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The committee amendment was agreed to.

Mr. FRIST. Mr. President, just briefly, on our side, because I can tell there is some confusion as to the order, I have Senator BUNNING for 10 minutes, Senator ALLARD for 7 minutes, Senator WARNER for 7 minutes, and Senator THUNE for 5 minutes.

The PRESIDING OFFICER. The Senator from Kentucky is recognized.

Mr. BUNNING. Mr. President, I rise in support of S.J. Res. 12, the flag protection constitutional amendment. It is fitting for the Senate to address this issue on the eve of the Nation's most celebrated national holiday, the Fourth of July.

For over 200 years, from the time of the Revolutionary War to this very moment, the American flag has served as the most unifying and visible sign of our great Nation. It is a symbol that knows no particular political affiliation or ideology. It is a symbol that has many different meanings for many different people. And, most importantly, it is a symbol of our Nation's greatest freedom that so many men and women in our Armed Forces have and continue to sacrifice to protect.

I believe it is an insult to those sacrifices to stand idly by while the flag is desecrated. It is time to show the same honor to our flag that we do to those who have sacrificed to protect it. I believe we owe it to our Old Glory, and that is why I am here today to speak in

support of the constitutional amendment to protect our flag.

This amendment is necessary to restore protections for the flag that the Supreme Court wiped away in 1989, ruling in *Texas v. Johnson*. In that 5-to-4 ruling, the Court set aside longstanding national and State laws that protected our flag and recognized and honored its place in American society.

Congress quickly acted in response to that ruling through the passage of the Flag Protection Act of 1989. The Supreme Court, however, was also quick to act. In another 5-to-4 decision, in 1990, the Court again found that flag protections were inconsistent with their view of the rights protected by the first amendment.

But the Court is once again out of touch with America. Its view that flag burning should be protected is not shared by many Americans. In fact, the vast majority of Americans think just the opposite. Nationwide, over 70 percent of Americans think it is important for us to pass a law to protect the flag. And in my State, that number is even higher—87 percent think that it is important that we act now to protect the flag.

It is time that we turn this issue back to the people. The Constitution provides an amending process for a reason. The bar to enact a constitutional amendment is high, requiring a two-thirds vote of both the House of Representatives and the Senate. Likewise, the amendment must be ratified by three-fourths of the States. But in the rare instance when those super-majorities can be assembled, the Framers gave us away to change the Constitution and for the people's voice to be heard. That is just what we should and must do.

Since the Supreme Court's rulings, the House of Representatives passed a flag protection amendment five times—most recently last year. The Senate has also taken up the issue, but unfortunately failed to get the necessary 67 votes. By all accounts, this time the Senate is within one vote of adopting the amendment and sending it to the States for ratification.

I have no doubt that should the Senate pass this resolution it would be ratified by the States. While this issue is currently being debated at the national level, States have been quick to show their overwhelming support for such a resolution. Since 1989, all 50 States have enacted resolutions asking Congress to pass a flag protection amendment.

Mr. President, we owe it to Old Glory to protect each and everyone of its stars and stripes.

Two weeks ago, I had the honor of introducing a man who fought to rescue Old Glory from would-be flag-burners. Rick Monday, a former center fielder for the Chicago Cubs and a Marine Corps Reservist, rescued the American flag from being burnt by two protestors during a 1976 baseball game between the Cubs and the Dodgers.

Monday was playing center field for the Cubs that day, when suddenly in the 4th inning two protesters ran onto the outfield grass carrying the American flag. These two individuals then proceeded to spread the flag on the ground, dousing it with lighter fluid and pulling out matches to light it on fire. But before they could act, Monday dashed from his position swiping the flag right out from under their noses to the sound of thunderous cheers from the crowd.

Following Monday's patriotic actions those in attendance that day burst into a chorus of God Bless America. Whether you are a player or a fan, we all have our favorite memories from America's past time, but few of those moments compare to Monday's act of patriotism. It is arguably one of the greatest moments the game has ever seen. In fact, the Baseball Hall of Fame recognized it as one of the 100 Classic Moments in the history of baseball. Monday, a true American Patriot, fought to stop what he knew was wrong in 1976 and is still wrong today.

Some may argue that burning the flag is a form of speech. I do not agree with those people. In the 1989 flag burning case *Texas v. Johnson*, late Chief Justice William Rehnquist said it well in his dissent when he said that flag burning is more like a grunt or roar designed to antagonize others than it is a form of speech.

Well, Mr. President, it is time that this body acted to protect Old Glory from those who wish to indulge in its desecration. We owe it to our past, present and future generations. And ultimately, we owe it to the brave men and women who sacrifice so much to protect us at home and abroad.

Each and everyone of us should recognize what a privilege it is to live under the Stars and Stripes. And like Monday, we should do everything we can to protect and honor our flag. After all, what it represents is the very reason our troops are putting their lives on the line right now in the war on terror. When you disrespect the flag you are disrespecting our men and women in uniform.

Mr. President, on the eve of our Nation's most important national holiday, the Fourth of July, I urge my colleagues to protect our Nation's great flag.

I believe it is our duty as public servants to protect one of our Nation's greatest symbols of freedom—Old Glory.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Colorado is recognized.

Mr. ALLARD. Mr. President, I rise today, June 27, 2006, between Flag Day and Independence Day, to speak on behalf of the American flag.

The American flag is a symbol, a physical embodiment of the freedom and liberty that we as Americans are blessed to claim. More than a mere banner of red, white, and blue, our flag characterizes the fundamental essence

of what it means to be an American: liberty, justice and equality.

Whether flown at a high school football game, in an Olympic arena, or over this very building that we stand in today, the American flag is an image that commands worldwide respect, while at the time symbolizing the triumph of representative Government over the inequities of tyrannical rule.

To allow for the physical desecration of such a symbol of opportunity and liberty is not quite tantamount to condoning an assault on the very foundation of our individual freedoms, but so close as to have damaging effects. Strength in symbolism can oftentimes rely upon the extent to which an image is protected by the society it represents, which is why this is not an issue pertaining to freedom of expression, but rather an issue of patriotic reverence and national identity.

The American flag has done more than wave as a symbol of freedom; it has served as an inspiration, a guiding light to our men and women in uniform throughout our Nation's history.

On New Year's Eve, 1776, just 7 months before the signing of our Declaration of Independence, George Washington and the Continental Army were laying siege to the British-occupied Boston. In the midst of battle, Washington recognized the need to present a unifying symbol to his own troops, as well as the need to commemorate the birth of our truly unique sense of American pride. Inspired with the fortitude of his continental troops, Washington ordered the hoisting of the Grand Union flag. This was one of the first instances where our flag became more than a symbol of independence, but the physical representation of an ideal stemming from the innate human desire for freedom.

On June 14, 1777, almost a year-and-a-half after George Washington raised the Grand Union flag over Prospect Hill, the Continental Congress passed an act that officially gave America a flag. Though the intricacies of the design have changed several times in our nation's history, the principles that it represents have never faded.

Patrick Henry aptly summed up this uniquely American commitment to personal liberty by stating, "I know not what course others may take but as for me; give me liberty or give me death." President Calvin Coolidge once commented, "We do honor to the stars and stripes as the emblem of our country and the symbol of all that our patriotism means." Henry and Coolidge spoke of a liberty that was fought for, and won by the sacrifice of thousands of our American sons and daughters. As it stands today, the American flag is a monument to their heroic effort, and a testament to the price those serving our country are willing to pay for our freedom.

With the 230th birthday of our Nation fast approaching, we will undoubtedly see even more American flags on display in front yards, on top of sky-

scrapers, and in the hands of people celebrating the birth of our Nation. While many of these patriotic displays will coincide with the festivities of this national holiday weekend, the unifying message behind every one of these flags is that we as Americans understand the power behind our national symbol.

It is time that we, as the Nation's legislature, restored the ability of the America people to protect the flag as the symbol of our country. This ability has been eroded over the years by judicial decisions that have stripped away the people's right to protect the American flag and all that it stands to represent.

This sentiment has garnered wide support across the Nation, as is evidenced by all 50 states passing resolutions calling upon Congress to enact some constitutional protections for the flag. In each of the past five Congresses, the House has passed a constitutional amendment designed to protect the flag from all forms of desecration, with the latest measure passing almost a year ago by a vote of 286 to 130. Here in the Senate, we came up only 4 votes short of the required two-thirds majority in 2000.

Today, we stand closer than ever to passing this vital constitutional provision. Some of my colleagues have expressed concerns regarding the potential first amendment ramifications of passing this initiative. First of all, this amendment does not ban anything. It simply restores the authority of Congress, the representatives of the American people, to pass a flag desecration statute if it chooses.

Second, even if such a statute were subsequently passed, it would not place a restriction on the content of the speech, only on the means by which the speaker wishes to communicate. Someone seeking to burn the flag would still retain their right to express any political viewpoint they wish to advance. They would, however, not have the ability to desecrate the flag as a substitute for other forms of expressive conduct.

This is why the resolution was reported out of the Judiciary Committee with broad support originating from both sides of the aisle. This bipartisan support is evidence that this issue transcends all political ideology; and to me, this unity could not have come at a more critical moment in history.

Internationally, our enemies have consistently used the desecration and burning of our flag to symbolize plight of international democracy at the hands of Islamist tyranny. Domestically, Americans are daily assaulted with media images of home-grown extremists groups burning the American flag in an attempt to speak out against the actions of their Government. The irony, however, is not lost on the American people when they see these political ideologues desecrate the very symbol that gives them the right to speak in the first place.

This tendency to overshadow our flag's positive symbolism with nega-

tive contextual imagery is the reason why the majority of Americans support this amendment. We understand the power of this national symbol, believe in the principles that our flag represents, and we know that past generations have fought and died to ensure that those principles resonate well into the future.

I ask the Senate to stand in unity with the American people and the 50 states and ask them to not let this opportunity pass us by without acting to protect this still vibrant national symbol.

I yield the floor.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Mr. President, I believe at this time I am scheduled. Does the Senator from Pennsylvania have control of the time?

Mr. SPECTER. Yes.

Mr. WARNER. I will take a few minutes.

Mr. President, I was completing my luncheon and walking through the hallway back to my office when a reporter in a very respectful way spoke with me and asked how I intended to vote on this amendment.

I said I intended to vote as I have done three previous times; basically to support it, the other options.

He said: What is the driving force? Is it your highest priority? And he asked a series of questions in a very polite way which really said: Stop and think what it is I am about to do and why I am about to do it.

I gave him a reply which follows along these lines: I listened to the distinguished Senator from Pennsylvania yesterday referring with a deep sense of emotional pride about how his family had proudly worn the uniform of our country, and most particularly his father who was in the great Army that went over in 1917-1918 to save Europe, in World War I, and how he was severely wounded in the Battle of the Argonne.

I checked my own father's record. I, of course, have it proudly on the wall in my Senate office. He served in World War I. He was engaged in several major battles. He was a doctor in the trenches and cared for the wounded. He was in the Battle of the Argonne. How do we know perhaps my father rendered medical assistance to Senator SPECTER's father. But those things are instilled in sons and daughters by their parents.

When it came time for me to proudly raise my right arm and volunteer in World War II, I did so because of my father and how proud he was, as was my mother, who, incidentally, was with the American Red Cross in World War I tending to the wounded in the hospitals in the United States.

In my father's library in which I grew up as a small boy, there were remnants and artifacts that he brought back from France from the 1917-1918 experiences. I remember a small American flag, his helmet, his old belt, and

several other artifacts, and how he and my brother and I treasured them as young persons.

My military service is of no great consequence. I did have the opportunity for a short period in the final year of the war to go through the training command, but I remember very well I was then just in the training part of it—I think, out of boot camp or perhaps in boot camp—seeing that flag raised on Iwo Jima. We didn't know at that time in February-March of 1945 how long that war was going to last. We had no idea. We just experienced the Battle of the Bulge in which the final thrust of the German forces trapped so many of our soldiers with unexpected casualties in the 40,000s in that battle and now Iwo Jima, some 17,000 I think killed, wounded, and missing in that battle for about 5 weeks.

I remember the picture of that flag going up. Now we see it on the monuments out here which the Marines revere so deeply.

That was one of the reasons I later joined the Marine Corps and served for another period on active duty, this time in Korea as a young officer with the Marines. There was no particular valorous service, just like many others. You raised your arm and did what you were told to do and thanked God you got home in one piece. That is what we were all glad to do.

So I am very humble about what little active service I had. But I have had the privilege of being associated with the men and women of the Armed Forces for over a half century, now in this Chamber serving with others, again, 28 years on the Senate Armed Services Committee doing everything we can for the men and women of the Armed Forces.

So I told this reporter that I felt I had a duty to those who had worn the uniform of our country so proudly in these many years that I was privileged to be associated and learn from them and profit from them and my experience in the military.

It has been a great, wonderful opportunity for me to have this service in the Senate and have as a part of it the responsibilities. So I thought I would recount some statistics.

In World War I, the conflict in which our fathers served, I say to Senator SPECTER, 116,000 killed, 204,000 wounded; World War II, 405,000 killed, 671,000 wounded; Korea, 54,000 killed, 103,000 wounded; Vietnam, 58,000 killed, 153,000 wounded; Desert Storm, that is the first engagement with Saddam Hussein's forces, 382 killed, 467 wounded; Afghanistan, 291 killed, 750 wounded; the second battle with Saddam Hussein, Iraqi Freedom, 2,521 killed, over 18,000 wounded.

Most, if not all, of those brave men, and I expect some women—I fully anticipate women were included—came back to their beloved country from those foreign lands and at some point before they were finally put into Moth-

er Earth an American flag was put on that casket. There is not a one of us in this Chamber who has not had the privilege to go to those services. There is not a one of us whose throat hasn't swelled or whose eyes haven't welled up when that takes place.

So, Mr. President, that flag symbolizes the everlasting—I repeat everlasting—gratitude of the citizens of this great Nation for that giving of a life in the cause of freedom. I could do no less than proudly stand here and vote "aye" for this amendment, as I shall do.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from South Dakota.

Mr. THUNE. Mr. President, I rise today as well to voice my strong support for a constitutional amendment that would allow Congress to prohibit the desecration of the American flag.

Some of the opponents have spoken today about how important it is that we not use this opportunity to amend the Constitution. The Senator from Illinois referred to the constitutional language, the constitutional sacred language, and question how we could alter what Thomas Jefferson and our Founding Fathers wrote.

I simply point out that in the last 20 years, our colleagues on the other side have on over 100 occasions introduced constitutional amendments. In fact, there was one by the Senator from Illinois a few years back that would abolish the electoral college.

So the question isn't whether we amend the Constitution for this purpose. It seems to me at least the question that has been raised about the Constitution comes down to one's preference for which amendments are in order and which are not.

I have to say that I think an amendment to protect the American flag is in order, not just because it shares a majority and a strong bipartisan support in the Senate but because many of the people who were just alluded to by the Senator from Virginia who have fought and died on behalf of that flag want to see this flag honored.

Look at the veterans organizations in this country—the American Legion, the Veterans of Foreign Wars. Veterans organizations are very much in favor of this amendment. In fact, it has been one of their top priorities. The American Legion for some time now has been trying to get an amendment to the Constitution that would allow Congress to enact laws that would protect the American flag.

As a member of the Veterans Affairs Committee, I heard from many veterans on this issue who understandably feel strongly about this flag and rightly view desecration of the flag as an affront.

Many of our veterans have stood in harm's way around the world to protect everything our flag represents. That is why it is a unifying symbol that deserves to be protected from desecration.

The proposed amendment is simple. It says:

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

It does not amend the first amendment. It simply authorizes Congress to pass a law to protect the flag from desecration.

This amendment, as I said earlier, has overwhelming bipartisan support. Members on both sides of the aisle feel strongly that this flag should be protected.

Our flag is intertwined with some of the most memorable scene's from our Nation's history. It was raised at Mt. Suribachi during the battle for Iwo Jima, and draped over the side of the stricken Pentagon on September 11. It is what Olympic gold medalists are honored with. It brings comfort to the wife of a fallen soldier. Young schoolchildren pledge their allegiance to our flag. Above all, it symbolizes the freedoms we hold dear, and I believe it should be protected from falling victim when those freedoms are exploited.

Since the birth of our Nation, American soldiers have fought for the ideals our flag represents and look to it for direction and promise on bloody battlefields. The effort we are making here is not something of small consequence. It is an opportunity to debate an issue of critical importance to the American people and to allow the voice of the people to be heard on this critical issue.

I am not a lawyer and most Americans are not lawyers, yet the vast majority of Americans know instinctively that the American flag is something that needs to be protected from desecration. However, right now five unelected lawyers on the Court have decided that desecration of the flag deserves the protection of the first amendment. Five unelected Justices on the Supreme Court decided that Federal and State laws prohibiting flag desecration were unconstitutional. Many of these statutes had stood for generations before these Justices determined that these statutes were unconstitutional.

In fact, four Justices on the Supreme Court completely disagreed with the majority opinion in the flag-burning cases. In fact, Justice Stevens, perhaps one of the most liberal Justices on the Court, wrote a dissenting opinion saying that desecrating the flag is offensive conduct, not speech that deserves protection.

Our Constitution does not belong to the courts. It belongs to the people. And when the courts get it wrong, it is appropriate the people have an opportunity to correct it. In this case, I believe the opinion of the four Justices ought to be the majority opinion, as do the vast majority of the American people. If two-thirds of the Senate, two-thirds of the House of Representatives,

and three-fourths of the State legislatures also believe it should be the majority opinion, then that is a constitutional basis for making it a majority opinion.

The notion that flag desecration is a nonexistent problem is also not factual. As Senator HATCH has noted earlier, there have been several incidents of flag desecration just in the last year, and these are the occasions that were published in the media. They are the ones that we know about.

The House of Representatives has passed this amendment with the required two-thirds majority in each of the past five Congresses, but it has always been bottled up here in the Senate. The Senate last voted on this amendment in the year 2000 when it drew 63 votes. That is a lot of votes, but it is still 4 votes short of the 67 that are needed to pass. This time around, it appears that we are very close to passing this amendment.

Mr. President, I hope my colleagues who are listening to this debate will ultimately come down in favor of supporting what is a very simple, straightforward approach which simply says that Congress shall have the power to prohibit the physical desecration of the flag of the United States. It puts the power in the hands of the Congress—the elected representatives of the people of this country—and the people who ultimately will have the opportunity in the 38 States if this thing is approved here today, with the 67 votes that are necessary to vote on its passage.

So I stand proudly today in support of those veteran organizations who have spoken loudly on this issue—those who have sacrificed and who believe that the American flag is not just ink and cloth, but is a symbol of our freedom, a symbol of our democracy, and it is something that the majority of Americans and those who have served this country and fought to protect it deserve to have protected.

Mr. President, I yield the remainder of my time.

Mr. DURBIN. Mr. President, how much time is remaining?

The PRESIDING OFFICER. The Democrats have 35 minutes remaining.

Mr. DURBIN. And the other side?

The PRESIDING OFFICER. The other side has 9 minutes.

Mr. DURBIN. I yield 15 minutes to the Senator from West Virginia.

Mr. BYRD. Mr. President, I thank my distinguished friend from Illinois.

We are here today, once again, to debate the wisdom of amending the United States Constitution, to outlaw the desecration of the American flag. As I have stated repeatedly and sincerely over the years, there are few acts more deeply offensive to any of us than the willful destruction of that American flag which stands there beside the President's desk.

The flag is a symbol of our Republic. It is a unique symbol of national unity and a powerful source of America's pride. I love the flag. We all love the

flag and all that it represents. We revere the flag because it is a symbol of the liberties that we enjoy as American citizens. These are liberties that are protected by the Constitution of the United States and the Bill of Rights. The Constitution is the instrument that provides for what that flag represents.

Now, let me say that again. This Constitution that I hold in my hand is the instrument—there it is—that provides for what that flag represents. It is the Constitution that has been and continues to be the source—the source—of our freedom. We celebrate our freedom every time we pledge allegiance to the flag, every day that this Chamber comes to order and conducts a session. So we pledge allegiance to that flag and to the Republic—not to the democracy but to the Republic—for which it stands; one Nation, one Nation under God—yes, under God—indivisible, with liberty and justice for all. Think of that. Listen to that. One Nation under God, indivisible, with liberty and justice for all.

Seven years ago, in contemplation of a similar moment when the Senate was confronted with a constitutional amendment banning flag desecration, I spent long hours contemplating both the legal bases and the need for such an amendment. I said at that time, and I say again today, that I know of few subjects that have come before the Senate which have caused me greater anguish and consternation. I knew 7 years ago, and I know today, that many West Virginians, many of my colleagues, many of the people I represent support this amendment. But based on my continued examination of the matter, I believe that I must remain—and I shall remain—opposed to that amendment.

I oppose it not because I do not love the flag because I do love the flag. I oppose it not because I fail to respect the sacrifices made by our veterans, our law enforcement officials, and our first responders who, for the benefit of all Americans, have given their lives and who have offered their lives in defense of our country and our flag because I do. Instead, I oppose it because while I agree that desecration of the flag is abhorrent, repugnant, I believe that amending the Constitution to prohibit flag desecration flies in the face—the very face—of first amendment rights like freedom of speech. Men and women have died to protect that freedom of speech, that freedom to express ourselves.

Flag desecration remains a rare and isolated event in this large country of ours. The vast majority, the overwhelming majority of Americans respect the flag and they fly it with pride. They do not abuse it.

The Senate Judiciary Committee has not held one hearing on this proposal. Let me say that again. The Senate Judiciary Committee has not held one hearing on this proposal. It is especially troubling to me that the Senate

would seek to amend the Constitution—yes, this Constitution that I hold in my hand—and the first amendment—without holding even a single hearing on the need for this amendment.

Now, I know that some who favor this amendment believe that the burning of the flag is sufficient to justify the adoption of this extraordinary—I say extraordinary—legislative remedy. And I, too, cringe, I shrink from, and I condemn any desecration of the flag. But I do not agree that it is necessary to amend the basic document, the basic organic document, the Constitution, to prohibit it.

Furthermore, this constitutional amendment provides no actual punishment of those who desecrate the flag. Plus, if protection of the flag is a pressing concern—and I acknowledge that to many people it is—why do the backers of the constitutional amendment not support pending legislation, of which I am a cosponsor, which could be enacted to prohibit desecration of the flag more quickly? As we all know, a constitutional amendment requires ratification by three-fourths—three-fourths—of all 50 States, which could take up to 7 years, and it is likely that additional legislation to enforce the enactment would have to be enacted after that.

I also would not support this constitutional amendment because it continues to be my heartfelt belief—and I wish I were mistaken—that the primary effect of the amendment will be to create more, rather than fewer, incidents of flag desecration, flag destruction. Zealous defenders of the first amendment who are offended, rightly or wrongly, by the passage of this amendment will surely cast themselves in a new role; namely, as provocateurs who, newly inspired, will deliberately seek to test the boundaries established by this proposed amendment if it is adopted.

This is more than a matter of symbolism; this is a question of respect, respect for the founding document of the Republic—oh, how precious it is, this founding document, the Constitution of the United States, the supreme law—the supreme law of the land. Any disrespect for the Constitution is a repudiation of the basic principles and laws of our country. I do not relish giving a tiny minority of troublemakers the ammunition to denigrate—yes, denigrate not only the flag but also the Constitution of the United States.

As I have stated repeatedly, this does not mean that I believe destruction of the flag is trivial or that encouraging reverence for the flag is not an important goal of our government. I simply do not believe that sporadic instances of flag burning should result in our advocating the course of amending the Constitution, amending the basic organic document on which this Republic was built and on which it stands, as a remedy. As I have recounted in prior speeches on this subject, the Constitutional Convention in 1787 debated in



much depth whether there should be any—whether there should be any—provision for amending the Constitution. Recognizing, however, that occasional revisions might be necessary—and thank God they recognized that occasional revisions might be necessary—the Convention finally agreed upon a compromise that deliberately made it difficult to amend the Constitution by requiring successive supermajorities. To that end, article V of the Constitution sets up a cumbersome troublesome, two-step process to amend the Constitution.

The first step is approval either by two-thirds of Congress, or—and this has never been done—by a convention called for by two-thirds of the States. The second step is ratification by three-fourths of the States.

So given the hurdles that were deliberately and knowingly and intentionally established by article V, it is no surprise that so few amendments to the Constitution have been approved. There are 27 amendments in all that have been approved, and the first 10 of the 27 were ratified en bloc in 1791. Those 10 constitute our Bill of Rights.

Think of it: In the 216 years that have subsequently ensued, there have been just 17 additional amendments. If we disregard the 18th and the 21st amendments, marking the beginning and end of Prohibition, then we are left with only 15 amendments in 216 years. Get that. Only 15 amendments in 216 years. As I have advised my colleagues before, and as they well know, these 15 amendments can generally be divided into two roughly equal categories. One category consists of those amendments that deal with the structure—the structure and the organization of the three branches of Government—the legislative, the executive, and the judiciary.

These include the 11th amendment, preventing the Federal courts from hearing suits against States by citizens of other States; the 12th amendment, regarding the election of the President and Vice President; the 17th amendment, establishing the direct election of Senators; the 20th amendment, regulating Presidential terms and related matters; the 22nd amendment, limiting the President to two terms; the 25th amendment, regarding Presidential succession; and the 27th amendment, deferring congressional pay raises until after an intervening election.

There is little need to justify the inclusion of these provisions in the Constitution; however we may feel about them personally, their subject matter—namely the structure of the Federal Government—fits perfectly within that of Articles I through IV.

The second category of constitutional amendments consists of those that narrow the powers of government and expand or protect fundamental personal rights. These include the 13th amendment, banning slavery; the 14th amendment, which extended citizenship to all persons “born or naturalized

in the United States, and subject to the jurisdiction thereof” and guaranteed all citizens certain basic protections; and the 15th, 19th, 23rd, 24th and 26th amendments, each of which extended the vote to new groups of citizens.

Clearly, the flag desecration amendment goes in a new direction. For constitutional purposes, as I have said before in these debates, it is neither fish nor fowl. It does not address a structural concern; it does not deal with Federal relations between the national and State governments; it extends, rather than narrows, the powers of government and it is antithetical to the whole thrust of the Constitution; and it does not protect a basic civil right. Indeed, many opponents of the amendment argue that it restricts personal liberty, namely the right of freedom of expression.

The 13th amendment forbidding slavery may be viewed as the only other amendment regulating the conduct of individuals. The 13th amendment was the product of a bitter, fiercely contested civil war, and it was necessary to end one of the most loathsome and shameful institutions in our Nation's history. This was an exceptional amendment necessitated by exceptional circumstances.

I have introduced a resolution in support of a constitutional amendment protecting voluntary prayer in school. This is also an exceptional amendment required by exceptional circumstances. Although the Supreme Court has never expressly prohibited children from voluntarily praying in school, children are discouraged from praying in school. School administrators are loathe to address the issue for fear they will be assailed, wrongly, for having broken the law. Confusion regarding the legal posture of voluntary prayer in school has created an impermissible, exceptional circumstance which, I believe, must be addressed in a way that permits school children to pray voluntarily as they deem appropriate. Consequently, I have proposed this year, as I have numerous times over the past 40 years, a constitutional amendment that simply clarifies that the first amendment neither requires nor prohibits voluntary prayer in school. This amendment would address the exceptional circumstances that afflict thousands of school children, nationwide, who mistakenly believe that prayer should not be a part of their daily lives at school.

In the final analysis, it is the Constitution that is the foundation and guarantor of the people's liberties, protecting their rights to freedom of speech and to worship as they please. The flag represents all of the cherished liberties which we as Americans enjoy—liberties explicitly protected by the text of the U.S. Constitution and the Bill of Rights. The flag is a symbol of all that we hold near and dear, and of our Nation's history. It is also a symbol of our Constitutional values. The flag lives only because the Constitution lives. Yet, as I have said in

past debates on this issue, the Constitution, unlike the flag, is not a symbol; it is the thing itself. I think it might be well if, in addition to focusing on efforts to protect the flag against injury, injury which, though reprehensible, does not damage Constitutional principles, we make a greater commitment to learning the historical context of our flag as well as the actual text and meaning of the United States Constitution.

I do not believe that Americans can participate meaningfully in their government if they do not know the legal foundation and principles upon which it is based. I believe that greater familiarity with the provisions of the Constitution would give all Americans not only an enhanced appreciation of the flag as being a symbol of the liberties that are enshrined in the Constitution and the Bill of Rights, but also a literal understanding of our Government's checks and balances, their purposes, and of the duties of each of our three branches of Government to protect our personal freedoms.

Finally, Old Glory lives because the Constitution lives, without which there would be no American Republic, there would be no American liberty, and there would be no American flag. We love that flag. But we must love the guarantees of the Constitution more. For the Constitution is not just a symbol; it is, as I say, the thing itself.

The PRESIDING OFFICER (Mr. ALEXANDER). The Senator from Illinois.

Mr. DURBIN. How much time is remaining on this side?

The PRESIDING OFFICER. The majority has 9 minutes; there remains 15½ minutes on the Democratic side.

Mr. DURBIN. I yield 5 minutes, at this time, to the Senator from Massachusetts.

The PRESIDING OFFICER. The Senator from Massachusetts is recognized.

Mr. KENNEDY. Will the Chair let me know when there is 30 seconds left, please?

The PRESIDING OFFICER. I will do that.

Mr. DURBIN. If the Senator will withhold for a moment?

Mr. KENNEDY. Yes.

AMENDMENT NO. 4543

Mr. DURBIN. I have an amendment at the desk. I call up amendment 4543.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Illinois [Mr. DURBIN], for himself, Mrs. CLINTON, Mr. BENNETT, and Mr. BINGAMAN, proposes an amendment numbered 4543.

Mr. DURBIN. I ask unanimous consent that the reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To provide a complete substitute)  
On page 2, line 2, strike “(two)” and all that follows and insert the following:  
**SECTION 1. FLAG PROTECTION.**

(a) **SHORT TITLE.**—This section may be cited as the “Flag Protection Act of 2006”.

(b) FINDINGS AND PURPOSE.—

(1) FINDINGS.—Congress finds that—

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

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

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

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

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

(c) PROTECTION OF THE FLAG OF THE UNITED STATES AGAINST USE FOR PROMOTING VIOLENCE.—

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

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

“(a) DEFINITION OF FLAG OF THE UNITED STATES.—In this section, the term ‘flag of the United States’ means any flag of the United States, or any part thereof, made of any substance, in any size, in a form that is commonly displayed as a flag and that would be taken to be a flag by the reasonable observer.

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

“(c) FLAG BURNING.—Any person who shall intentionally threaten or intimidate any person or group of persons by burning, or causing to be burned, a flag of the United States shall be fined not more than \$100,000, imprisoned for not more than 1 year, or both.

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

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

“(f) CONSTRUCTION.—Nothing in this section shall be construed to indicate an intent on the part of Congress to deprive any State,

territory, or possession of the United States, or the Commonwealth of Puerto Rico of jurisdiction over any offense over which it would have jurisdiction in the absence of this section.”.

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

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

(d) SEVERABILITY.—If any provision of this section, or the application of such a provision to any person or circumstance, is held to be unconstitutional, the remainder of the section, and the application of this section to any other person or circumstance, shall not be affected by such holding.

## SEC. 2. RESPECT FOR THE FUNERALS OF FALLEN HEROES.

(a) SHORT TITLE.—This section may be cited as the “Respect for the Funerals of Fallen Heroes Act of 2006”.

(b) IN GENERAL.—Section 1387 of title 18, United States Code, is amended to read as follows:

**“§ 1387. Prohibition on demonstrations at funerals of members or former members of the Armed Forces**

“(a) IN GENERAL.—It shall be unlawful for any person to engage in a demonstration during the period beginning 60 minutes before and ending 60 minutes after the funeral of a member or former member of the Armed Forces, any part of which demonstration—

“(1)(A) takes place within the boundaries of the location of such funeral and such location is not a cemetery under the control of the National Cemetery Administration or part of Arlington National Cemetery; or

“(B) takes place on the property of a cemetery under the control of the National Cemetery Administration or on the property of Arlington National Cemetery and the demonstration has not been approved by the cemetery superintendent or the director of the property on which the cemetery is located;

“(2)(A) takes place within 150 feet of the point of the intersection between—

“(i) the boundary of the location of such funeral; and

“(ii) a road, pathway, or other route of ingress to or egress from the location of such funeral; and

“(B) includes, as part of such demonstration, any individual willfully making or assisting in the making of any noise or diversion that disturbs or tends to disturb the peace or good order of the funeral of a member or former member of the Armed Forces; or

“(3) is within 300 feet of the boundary of the location of such funeral and impedes the access to or egress from such location.

“(b) PENALTY.—Any person who violates subsection (a) shall be fined under this title, imprisoned for not more than 1 year, or both.

“(c) DEFINITIONS.—In this section:

“(1) The term ‘Armed Forces’ has the meaning given the term in section 101 of title 10.

“(2) The term ‘funeral of a member or former member of the Armed Forces’ means any ceremony, procession, or memorial service held in connection with the burial or cremation of a member or former member of the Armed Forces.

“(3) The term ‘demonstration’ includes—

“(A) any picketing or similar conduct;

“(B) any oration, speech, use of sound amplification equipment or device, or similar conduct that is not part of a funeral, memorial service, or ceremony;

“(C) the display of any placard, banner, flag, or similar device, unless such a display

is part of a funeral, memorial service, or ceremony; and

“(D) the distribution of any handbill, pamphlet, leaflet, or other written or printed matter other than a program distributed as part of a funeral, memorial service, or ceremony.

“(4) The term ‘boundary of the location’, with respect to a funeral of a member or former member of the Armed Forces, means—

“(A) in the case of a funeral of a member or former member of the Armed Forces that is held at a cemetery, the property line of the cemetery;

“(B) in the case of a funeral of a member or former member of the Armed Forces that is held at a mortuary, the property line of the mortuary;

“(C) in the case of a funeral of a member or former member of the Armed Forces that is held at a house of worship, the property line of the house of worship; and

“(D) in the case of a funeral of a member or former member of the Armed Forces that is held at any other kind of location, the reasonable property line of that location.”.

(c) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 67 of such title is amended by striking the item relating to section 1387 and inserting the following new item:

“1387. Prohibition on demonstrations at funerals of members or former members of the Armed Forces.”.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, the Bill of Rights is our Nation's greatest accomplishment. It has been our great fortress against the passions and politics of every era. It has been our great beacon to the rest of the world, demonstrating that we value our liberty more deeply than power or riches. And it is fitting that such a document, which describes the rights inherent to a free people, has not been amended—not once—in its entire 217 years.

The Founders knew that the first amendment of the Bill of Rights would allow all manner of speech, including some speech that was contemptible. They were no strangers to fiery rhetoric. Most of them began their public lives not only by making speeches but by engaging in other expressive conduct, such as hanging King George's tax collectors in effigy and dumping tea into Boston Harbor. The breadth of the first amendment is not an accident; it is an essential part of the Founders' design.

For the 217 years that followed the adoption of the Bill of Rights, we have managed to preserve every word. Every generation of leaders—until today—considered the Bill of Rights to be sacred and recognized that they could not claim to be protecting our freedoms by curtailing them. And the past 217 years have proved that we can survive civil wars and world wars, fascism, communism, economic collapse and all manner of civil strife—all without diluting the Bill of Rights.

So why are we addressing flag burning? I completely agree that flag burning is a contemptible and malicious act, calculated to outrage rather than persuade. But flag burning occurs infrequently and can usually be punished

under existing laws. We are being asked to undermine the foundation of our democracy in order to squash a gnat.

We might be forgiven for focusing on this small problem if we were not inundated with great ones.

If the Senate wants to improve our Nation, why don't we turn today to legislation that would reduce the vast numbers of children who go to bed hungry each night?

If the Senate wants to prevent despicable behavior, why don't we hold comprehensive hearings on the billions of tax dollars that have been stolen and squandered by companies hired to rebuild Iraq?

If the Senate wants to keep faith with our veterans, why don't we leave the Constitution alone and work to improve our VA hospitals?

The inescapable answer is that our Republican leaders' priorities are being driven by election year politics. But this is even more than a case of misplaced priorities. It is playing politics with our most fundamental freedom. Doing so opens up a Pandora's box, and if our cherished Bill of Rights is further diluted by future generations, that loss of liberty will trace its heritage to this Senate.

Let me end with the words of our national anthem, the "Star Spangled Banner". As every schoolchild knows, the first stanza ends with these words: O say does that star spangled banner yet wave

O'er the land of the free and the home of the brave?

This amendment may protect our star spangled banner, but that flag will wave over a land that is a little less free and a little less brave. I urge this Senate to find the courage to leave the Bill of Rights intact.

I yield the remainder of my time.

Mr. DURBIN. How much time do we have?

The PRESIDING OFFICER. The Senator has 11 minutes.

Mr. DURBIN. I ask unanimous consent that we extend the time for debate 5 minutes on each side.

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

Mr. DURBIN. Mr. President, I would like to recognize the Senator from New York for 5 minutes.

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

Mrs. CLINTON. Mr. President, I am proud to stand here today and speak out for protecting the American flag and the Constitution, of which our flag is a revered and honored symbol. Whenever I see the flag of our country, I am reminded of how fortunate I am to have been born an American, born into a country that, at her best, nurtures our strengths and gives each of us the freedom to express our ideas, display our talents, and become the best we can be, to live up to our God-given potential.

That is what the flag means to me. It represents the best of us—our ideals,

our sense of duty and sacrifice: the American spirit. Those values transcend party, ethnicity, age, race, gender. Indeed, those values transcend even nationality. Around the world, our flag is a symbol of hope and freedom.

I understand the outrage that is expressed today by my colleagues, and I agree wholeheartedly that maliciously burning or destroying an American flag is a deeply offensive and despicable act. It disrespects our Nation. It belittles the sacrifices of our brave veterans. It even sends a message to the soldiers who fight today protecting our freedom that their service is in some way to be disrespected and discounted.

I have met with many veterans over the last many years, and I have heard the sense of betrayal that comes from those who risked their lives under that flag to protect our freedoms. That is why I support Federal legislation like the Durbin-Bennett amendment. When we think of all the flag symbolizes, I urge that we consider the very freedom and liberty the flag embodies. It is, in effect, a visual symbol of our Constitution and particularly our Bill of Rights. Our Founding Fathers were keenly aware that if the Constitution was to remain the cornerstone of our Government and laws, then changing it should be difficult. That is the system they set up.

The infrequency of amendments in our long history is telling. Constitutional amendments have historically met two sets of objectives. The first deals with the structure of our Government and the relationship between the executive, legislative, and judiciary branches—our system of checks and balances. The second protects fundamental rights, including the 13th amendment that bans slavery and the 15th, 19th, 23rd, 24th, and 26th amendments, all of which expanded the right to vote.

The amendment we debate today meets neither of these compelling objectives. The Constitution to which we all have sworn an oath is about protecting our rights. I believe we do that by honoring the Constitution, which has never been amended to deny or limit the Bill of Rights. I don't think we should start doing that today.

Fortunately, we have an opportunity to protect our flag in a bipartisan and constitutional way. Senator DURBIN's amendment, the Flag Protection Act of 2006, which I am cosponsoring, would among other things prohibit people from destroying a flag with the intent of inciting imminent violence, threatening someone by burning a flag, damaging a flag owned by the United States and damaging a flag that belongs to another while on Federal land.

I believe, as do many legal scholars, this legislation will stand up to constitutional scrutiny. It is different from previous bills that have been voted on in this Chamber before.

It adds a new provision that follows Supreme Court precedent, from the

case *Virginia v. Black* decided in 2003. In that case, the Supreme Court held that the Government may prohibit people from burning crosses with the intent to intimidate. That should be a pretty straightforward proposition, but it was called into question. So the case made its way to the Supreme Court. The Court concluded that laws may, in fact, ban cross burnings meant to intimidate "because burning a cross is a particularly virulent form of intimidation."

Burning a flag, to me, is also despicable, and I believe that there is no denying that when we talk about our flag, Americans' emotions run deep. We know when we look at a flag that is deliberately, maliciously destroyed, that is an intimidating experience in many instances.

I agree that this burning, this desecration that can happen to our flag, is something that people have a right to ask this body to try to prohibit and prevent.

I hope we can pass a law that criminalizes flag burning and desecration that is constitutional and can survive Supreme Court scrutiny.

I appreciate all the New Yorkers, especially the veterans whom I represent, many of whom have come to see me here and in my State. They expressed feelings both pro and con. I assure them that I will join with my colleagues to stand up for their needs and to stand up for the needs of those young men and women wearing the uniform today.

For those reasons, I am a proud cosponsor of Senator DURBIN's amendment, and I hope that we can come together and pass a constitutional law that protects our flag and reaffirms our commitment to our Nation's Constitution.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. HATCH. Mr. President, I yield 2 minutes to the distinguished Senator from Idaho.

The PRESIDING OFFICER. The Senator from Idaho is recognized.

Mr. CRAIG. Mr. President, it is an honor and a privilege to stand with my fellow cosponsors in support of S.J. Res. 12, an amendment designed not merely to protect the physical integrity of the American flag but the very heart of our democratic republic. From 1776 to today, from the Marines who fought their way to plant the flag at the top of Iwo Jima to the firefighters who lifted the flag above the ruins of the World Trade Center, it is clear that "Old Glory" represents so much more than a nation. In truth, the American flag represents thousands of years of struggle in human history to achieve political liberty, religious autonomy, and freedom from want. More important, our flag represents the inspiration of the life of our Nation and what humanity has the potential to accomplish.

Throughout our Nation's history, the American flag has enjoyed the protection not only of its people but its laws.

Unfortunately, this safeguard was eroded in 1989 by the Supreme Court decision in *Texas vs. Johnson*. This decision, which many of my colleagues and I agree was misguided, found within the Constitution a right that had never before existed: the right to physically assault the flag under the First Amendment. Since then, Members of Congress have been faced with reconciling the tension between “free speech” and the symbolic importance of the American flag. Many have argued that this tension exists between matters of fact and matters of the heart. But in my view, protecting our flag is a matter of both.

Whether we choose to acknowledge them or not, acts of violence or desecration towards our flag have become a grave reality in our country. Since the Texas decision in 1989, there have been more than 120 reported cases of flag degradation across the United States, and this number reflects only those events that were publicized by the media. Even with that reality in mind, we must remember that the point is not how often the flag has been burned, defaced, trampled, or torn or even those responsible for such heinous acts. Rather, the point has to do with our response—especially our official response—to those events. As citizens, we can no longer allow flag burning to be considered a “norm” in our society. Although we can do nothing when terrorists or those with anti-American sentiments defile our flag abroad, we owe it to our brave service men and women, to ourselves, and to our children to do something when it happens on our own soil.

Prior to the Texas decision, 48 out of our 50 States had statutes prohibiting flag desecration on the books. And since 1989, support for protecting our flag has only increased. Today, as the distinguished Majority Leader, Senator FRIST, has said, an overwhelming 80 percent of the American public and all 50 State legislatures agree that the Constitution should allow States and the Federal Government to protect the flag. This is exactly what this resolution was designed to do. The amendment does not prohibit flag desecration itself, but will give Congress and democratically elected State legislatures the opportunity to deliberate and ultimately decide how they will guard the United States flag.

It is important to note that the amendment process is not something that we as citizens or Congressmen should take lightly. However, when we look back in history, it is clear that constitutional amendments have only taken effect when both citizens and legislators have joined together to demand change, after prolonged periods of social unrest. As we look forward to our Nation's birthday next week, it is clear that now is the time to put an end to this political dissension and embrace the freedom and the responsibility we inherited from our forefathers. The amendment process is a

fundamental provision of the Constitution, and by making use of it, we not only reaffirm its foundation, but we reveal the virtue embedded in democracy.

Ultimately, we must remember that democracy, from 2500 years ago when originally articulated by philosophers like Aristotle, to more modern discussions about democratic nation-building in the Middle East, has always encompassed much more than a structural or institutional framework for government. Although elements such as free elections, dispersed power, basic human freedoms, equality, and an involved citizenry are important in thinking about democratic governments, the idea itself revolves around a vision. That vision acknowledges human beings are capable of securing their liberty but also establishing a free, prosperous, and ultimately, unified society. It is a vision that has inspired people everywhere, but especially Americans, with hope, optimism, and an unwavering sense of loyalty. Such a vision is best expressed in the waving stars and stripes of Old Glory.

We often warn our children “If you can't stand for something, you'll fall for anything.” Today, it is my hope that we will come together and agree that there is nothing we would rather stand up for than the American flag.

Let me speak specifically to a provision—the Durbin amendment—that should be troubling to all of us.

Just this past month, this body voted unanimously to support, and the President has just signed, an act called the Respect for America's Fallen Heroes Act.

The legislation that was authorized and moved out of the Veterans' Affairs Committee speaks to those who choose to demonstrate during periods in the ceremony at a cemetery in the burial of one of our fallen heroes.

This body rightfully protected those families and those mourners in certain demonstrations at the VA's 223 national cemeteries and at Arlington National Cemetery. We differed a little with the House, and the reason we differed with the House is quite clear. There were two constitutional reasons for differing with the House.

The first amendment right to assemble peacefully was one of those, and the second one was a federalism principle that I think the Senator from Illinois walks all over—that recognizes we only have the right to shape those activities on Federal property.

The Durbin amendment fails miserably to adhere to the federalism principles—the very principle that drove my amendment to the House-passed version of the Fallen Heroes Act. Therefore, I am here today to urge my colleagues to oppose the Durbin amendment on two grounds.

First of all, the courts have said we can't legislate as it relates to flag burning; secondly, we ought not be telling States what to do as it relates to private cemeteries or State cemeteries. I think that is very clear.

I said at the time we voted on the Fallen Heroes Act that I would ask that federalism be protected.

I must say in conclusion that there is no commerce nexus in what the Senator from Illinois is attempting to do. This clearly is a federalism argument. It is a State and local responsibility to protect that which the Senator from Illinois is asking us to protect.

We have already acted in defense of our fallen heroes on Federal property, as we should rightfully have done.

Mr. HATCH. Mr. President, I yield 2 minutes to the Senator from Georgia.

The PRESIDING OFFICER. The Senator from Georgia is recognized for 2 minutes.

Mr. CHAMBLISS. Mr. President, we are in the midst of a debate that, frankly, I think we ought to have, and I am proud to be a cosponsor of this resolution. I share the view of the majority of Georgians that the American flag symbolizes the strong values that our country stands for—freedom, liberty and representative democracy. And most importantly, our American flag represents the generations of men and women who have fought and died defending those values. I have the privilege of representing a proud military state, and nothing makes me more proud when traveling around Georgia than to stand with the folks I represent, face our flag—place my hand over my heart—and recite the Pledge of Allegiance.

The flag represents our way of life. It hangs in our classrooms, over our police stations, fire stations, and courthouses. It flies above this historic Capitol. It was borne by troops in battle to protect our liberties and has covered the caskets of fallen soldiers, airmen, and marines who made the ultimate sacrifice for us. It is an emotional symbol to so many of us.

I have had the opportunity to travel around the world to represent my state and my country—and the one symbol that everybody in and particularly outside of America looks to when they think about America is that great flag that we have lived under for all these many years. And for anybody to think that they ought to be able to stomp on that flag, or trample that flag or burn that flag or destroy that flag in any way other than a professional way is simply wrong.

There are those who say we ought not “change” the Constitution. Yet, for 200 years the legislative branch of our governmental had the power under our Constitution to prohibit the desecration of the flag. Only in 1989 and 1990 did a divided Supreme Court, for the first time in our history, “change” the Constitution to say that Congress no longer had that power. I believe the amendment process, provided for by the Constitution itself, is the lawful means by which the American people may restore common sense when the Supreme Court abandons it.

Let me take a moment to say that I understand that a substitute has been

filed and that the substitute has in it language to prohibit protests at military funerals. The language is basically the same language as the bill that Senator BAYH and I introduced months ago.

I hope we can work together to get this bill passed as a stand-alone bill. We need to ensure that families can bury their servicemembers in the peace and dignity and respect they have earned.

I ask that a vote be made against the substitute and for the underlying resolution.

The PRESIDING OFFICER. Who yields time?

Mr. HATCH. Mr. President, I reserve the remainder of my time.

Mr. DURBIN. Mr. President, I yield 3 minutes to the Senator from New Jersey.

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

Mr. LAUTENBERG. Mr. President, I stand here proud of my country, proud of our liberties, proud of our flag. I went to Europe as a young man during World War II—the first time I was out of the country—and put on a uniform to defend the honor and freedoms that this country represents.

Now we talk about flag desecration by the actions of a few who dare burn our flag. It is a repulsive, ugly act. We never want to see it. But do we take away their right to dissent and do we say America is a country that can't stand dissent? No. One's patriotism may be another person's desecration.

Here's a picture—I show this poster not at all to denigrate the President of the United States, but that is the hand of the President of the United States using a magic marker to write on this flag. He never intended to be disrespectful; he loves this country. I differ with him on policy, but is that desecration, I ask you?

I think this second poster is another example that represents desecration. Here he is, Kid Rock, with his head through the flag. Is that a desecration? It was such a desecration that he was invited to perform in a concert at the Republican Convention, and they partied with him. They loved him.

What constitutes desecration? A lapel pin? We worry about what we do for our soldiers and say that we love the flag so much, but we won't allow news photos of flag-draped coffins coming into Dover? Pictures of those flags are banned?

What is going on here? This is politicking at its worst. We should not violate the freedoms guaranteed by our Constitution and the Bill of Rights. It is raw politics. It doesn't demonstrate patriotism. I invite everybody to have the courage to vote against this amendment and show their courage and not to be intimidated by wondering what this one will think or wondering what that one will think.

We are invited here to think about the freedoms that our country offers and our responsibility, and it is not

only protecting the flag, it is protecting our liberties. It is making sure that we protect our veterans, that we give them the right kind of equipment, and that we give them the resources they need. That, to me, is the kind of patriotism that ought to be rewarded—not to say if you write in ink or you tear the flag that we are going to amend the Constitution to get at you. A half dozen or a dozen people have done that to offend everybody. That should not let us be stampeded into amending our Constitution.

The PRESIDING OFFICER. Who yields time?

Mr. HATCH. Mr. President, I yield 2 minutes to the distinguished Senator from South Carolina.

Mr. GRAHAM. Mr. President, whether it would ever be a crime to write on the flag or wear it at a concert, who knows? This whole debate is about restoring the power of elected officials to be able to manage such events. The Supreme Court, in a 5-to-4 decision, took the power away from everyone who is elected to have any say about the flag. This happened in 1989.

We have lived here free, open, safe, and secure of being able to regulate conduct toward disrespecting the flag for most of our life. Only since 1989 and a 5-to-4 decision have we had this problem.

I stand here wanting every elected official to have the constitutional power that we previously possessed before the 5-to-4 decision. And we will decide among ourselves what a good statute might be or may not be. Everybody can go through that process and be answerable to the people.

I do not believe it is a burden to place on our citizens at large not to disrespect the flag. It is a burden we can bear as a people. If you do not like me, there are a million ways you can show your displeasure with my time in the Senate. But the fact is, I am an elected representative. All I am asking citizens as a whole is that we have one thing in common—that we are able to talk with each other and debate issues without destroying the flag.

To me, that is a burden that we can bear. Freedom without responsibility is chaos. So it doesn't bother me one bit to turn to my worst enemy and say: This one thing is out of bounds. Have your say, have your fun, do what you are going to do, speak as loudly as you want to speak, but this is one thing I ask of you: please don't destroy the flag.

To the few citizens who feel a need to do that, it doesn't bother me one bit for them to be told no. That is what is wrong with our country today. Nobody is afraid to tell anybody else no. I am not afraid at all; to the few who want to destroy the flag, I am gladly willing to tell you no. That doesn't make me any less free or you any less free.

Mr. DURBIN. Mr. President, I yield 3 minutes to the ranking member, the distinguished Senator from Vermont.

The PRESIDING OFFICER. The Senator from Vermont is recognized.

Mr. LEAHY. Mr. President, I thank the distinguished Senator.

As we close this debate and move on to a vote on this proposal, I commend to all Senators the words of the senior Senator from Hawaii, a war hero and veteran, a patriot, an American of the first order. He was long denied the Congressional Medal of Honor that he earned long ago and paid for dearly. He knows why he fought and sacrificed. No one on this floor has fought harder for this country, for its flag, for our freedoms or for our veterans and their families. He has shown characteristic leadership and courage in his statement today against doing damage to our Constitution through this proposed amendment. I am honored to stand with him in this fight to preserve our Bill of Rights. I commend the other veterans, as well, Senators LAUTENBERG and KERRY. I thank the Senators from West Virginia and Massachusetts for their statements and the Senator from New York.

The action by the Republican leadership on this amendment reminds me of the action they forced in connection with the Terri Schiavo case. Then the President hurried back from a vacation with great fanfare to sign a bill rushed through the Republican-led Congress to intrude into a family and personal tragedy. The politicians overreached and the American people saw through it. Here, too, this election-year exercise will be seen for what it is.

This is the second constitutional amendment that the Senate has considered this month in the Republican runoff to the November election. Of course, among the amendments the Republican majority has chosen not to consider is the one promised by the 2000 Republican Party Platform, to require a balanced budget. Even Republican partisans must be embarrassed at the deficits that the Bush-Cheney administration and the Republican Congress have generated as they turned an historic budget surplus into an historic deficit.

This proposed amendment regarding flag desecration is another in a series of amendments Republicans have pressed that would result in restricting the rights of the American people. It is one of more than 65 constitutional amendments introduced so far in this Congress alone, and more than 11,000 since the First Congress convened in 1789. Can you imagine what the Constitution would look like if even a small fraction of these amendments had been adopted? The Constitution that we now revere as fundamental law, that provides us with unity and stability in times of trouble, would be like the old French Constitution—filed under “p” for “periodicals.” We honor our Senate oath when we “support and defend” the Constitution. That is what I will be doing by voting today to uphold the Constitution and by voting against amending it.

I am encouraged by the Senate's bipartisan rejection of action on S.J.

Res.1, the proposal to federalize marriage by way of a constitutional amendment. Forty-eight Senators voted against cloture, and I believe that others who voted in favor of more debate were nonetheless troubled by the proposal. The failure of the Republican leadership to obtain even a simple majority of Senators to support their efforts, on a procedural vote, should indicate to them how unwise it is to abuse the Constitution in a partisan election-year tactic.

Like the marriage amendment, the flag amendment would artificially create division among the American people. The timing of this consideration, 4 months before the mid-term election, raises concerns, again, that the Constitution is being misused for partisan purposes. That is wrong.

We act here in the Senate as stewards of the Constitution, guardians and trustees of a precious legacy. The truly precious part of that legacy does not lie in outward things—in monuments or statues or flags. All that these tangible things can do is remind us of what is truly precious: our liberty.

This proposed amendment would be the first amendment to the Constitution that would narrow the precious freedoms enjoyed by Americans under the Bill of Rights. The infringement would fall on the first amendment, the cornerstone and foundation of all of our rights, of which we must be especially protective. The first amendment has stood up in times of war, during times of bitter protest. It has been one of the rocks on which our national unity and our national stability are built.

The proposed amendment is a wrong-headed response to a crisis that does not exist. It would be an unprecedented limitation on the freedom Americans enjoy under the Bill of Rights and would do nothing to bolster respect for the flag. Respect for the flag flows from the freedoms we enjoy and from the sacrifices of those who have protected that freedom. Our cherished flag is the symbol of our Nation and of the Constitution that is the foundational keystone of our Republic, and of our freedom. This is about defending the Constitution, my friends, for which our flag stands. Each generation of Americans owes the next generations the effort and the dedication it takes to pass along the torch of freedom, undiminished. We owe it to them, and to those who have sacrificed so much for us, to cherish and to protect freedom, and the Constitution which is the written promise of that freedom.

Rather than face the solemn responsibility of justifying an amendment to the Constitution, proponents of S.J. Res 12 have urged that we just pass it on to the States and let them decide. They said that Senators should abdicate their responsibility to exercise their best judgment and simply pass the buck. I could hardly believe my ears.

Have we utterly forgotten the words of James Madison and the conservative

conception of amendment the Founders built into our Constitution? The Constitution intentionally makes it difficult to pass amendments to our fundamental law. No amendment can pass unless every level of government, from the House to the Senate to the States, overwhelmingly supports it. Our system is undermined if each institution of government does not exercise independent judgment, if we do not fulfill our constitutional responsibility.

This is the fifth time that this body has considered a constitutional amendment to punish flag burners. Some of us have voted on the proposal before; others have not. But either way, we are undertaking the gravest of responsibilities. We are taking in our hands the inalienable rights of Americans, today and the generations that follow long after we have gone. We are handling the most precious heirloom that we have, the finest thing that we can hope to pass on to our children and grandchildren. I would hope that at this of all times we would give the Constitution the respect that it deserves and support and defend it.

This week we returned to use what little time left to the Senate this year to revisit a debate on that has wisely been rejected in this chamber four times in the last 17 years: a proposed amendment that would roll back our first amendment freedoms for the first time in our Nation's history. While we devote precious floor time to debate this matter, the Nation is gripped by the ongoing war in Iraq, the continuing threat of terrorism, soaring energy and health care prices, rising inflation, and a burgeoning deficit.

Indeed, this debate is another illustration of the Republican leadership's disregard for the needs of the American people and the institutional responsibilities of this body. They continue to mistreat our Constitution as if it were a bulletin board on which to hang political posters or bumper stickers. The Constitution is too important to be used for partisan political purposes, and so is the American flag.

The timing of this debate raises the question of why the Republican leadership has made this issue its top priority in the face of an unfinished agenda of legislative matters that do concern Americans day in and day out. The Senate has hardly made progress on a legislative agenda. We have yet to consider any of the 13 appropriations bills for the year. We have yet to enact a budget resolution, which was required by law to be in place on April 15. We have yet to enact a lobbying reform bill, a comprehensive immigration bill, or pension protection legislation. We have yet to consider or pass asbestos litigation reform legislation, patent reform legislation or the reauthorization of the Voting Rights Act. We have yet to pass a long overdue raise in minimum wage, to take action to lower gas prices, health care costs or health insurance costs. Instead, with less than 10 weeks left in this session of Con-

gress, the Republican leadership will work on none of those important matters.

The amendment we consider today would artificially create division among the American people, and the timing of this debate—squarely in the middle of an election year—demonstrates, again, that the Constitution is being misused for partisan purposes. The Constitution deserves our respect, vigilant protection and in the words of our Senate oath our “support”. We have a duty to defend it. The Constitution is not a blog for venting political opinions, curry favoring with voters or trying to bump up sagging poll numbers.

The flag is an important symbol of all that makes America great. But the cynical use of symbolic politics in an election year will not address the very real needs of veterans and other Americans that are being left unmet by this administration and the Republican Congress.

I know that many veterans support the flag desecration amendment and I respect their views. We must not forget though that there also are many veterans who oppose it. I appeared with a number of distinguished veterans on Flag Day who spoke about their dedication to the principles that make this country great and for which they fought and sacrificed. Those principles include our precious freedoms under the first amendment. These veterans of World War II, Korea, Vietnam, the First Gulf War and Iraq made clear that they fought for what the flag stands for, not just the symbol itself.

Former Senator John Glenn, a combat veteran, wrote: “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.”

The late John Chafee, a distinguished member of this body and a highly decorated veteran of World War II and Korea, opposed this amendment because, he said: “We cannot mandate respect and pride in the flag. In fact taking steps to require citizens to respect the flag, sullies its symbolism and significance.”

Flag desecration is a despicable and reprehensible act. We agree with that—all of us agree that it is contemptible. That is not the issue, instead, the issue before us is whether we should amend the Constitution of the United States with all the risks that that entails and whether, for the first time in our history, we should narrow the precious freedoms ensured by the first amendment. Should we amend the first amendment so that the government can prosecute the handful of individuals who show contempt for the flag, those General Powell called miscreants? Such a monumental step is unwarranted and unwise.

We are being tested. This generation of Americans is being tested by the



threat of international terrorism. America wins when it meets that challenge without allowing those who threaten us to compromise us. We suffer losses not only when we suffer attacks as we did toward the end of President Bush's first year in office, but also when we give up those freedoms that define us as Americans. For the Congress to surrender our fundamental rights as Americans as proposed in the constitutional amendment is wrong.

Following the very real attacks on 9/11, Americans embraced the flag like never before, proudly displaying flags and flag symbols as a sign of unity and strength in the wake of those horrible acts against our nation. People around the world grieved for us, cared for us, and joined with us to fight terrorism. Over time, missteps and arrogance by the Bush-Cheney administration have alienated much of the world. Still, Americans of all political persuasions have not needed a law to tell them how precious our freedoms are or how to honor the Stars and Stripes.

Supporters of this constitutional amendment seem to believe that Americans need rules about respecting the flag punishable by law. I strongly disagree and the American people have already proven them wrong. The American people do not need a lesson in cherishing and honoring our flag and the Republic for which it stands. That may be necessary in Saddam Hussein's Iraq or in Stalin's Soviet Union or in Castro's Cuba, but not in America.

In fact, respect cannot be coerced or compelled. It can only be given voluntarily. We respect and love our country, but not because we are told to. Americans do not love our country because we would be punished if we did not. Some may find it more comfortable to silence dissenting voices, but coerced silence creates resentment, disrespect, and disunity. I proudly fly the flag at my farm in Vermont because, as an American, it is what I choose to do.

In every hamlet and city and on every rural route in America, you can see our flag being flown with pride. Americans in overwhelming numbers are honoring our flag, not defacing it.

Of course, there are times when individuals deface the flag or violate the rules for its care. For example, President Bush was captured on film signing a hand-held flag at a campaign rally in the summer of 2004. Appropriate or not, these acts are protected by our Constitution. They do not need to be punished by Congress after we pass a constitutional amendment restricting the first amendment rights of all Americans.

In all of the hearings, all of the debate that we have devoted to this topic over the past 17 years, not one single person has testified that he respects the flag less because a protestor burned it, wrote on it, sewed it in the seat of his pants, or otherwise misused it. Not one.

Not one single person has testified that they love our country less because

Americans are free to express themselves in this way. Not one. There is not a single indication that any act of flag burning has lessened the respect that any American has for the flag or for our country. It would be pathetic if our love of country or respect for its fundamental principles was so weak that it could be diminished by such an act. We know that it is not.

The truth is just the opposite. Occasional insults to the flag do nothing to diminish our respect for it. Rather, they remind us of our love for the flag, for our country, and for our freedom to speak, think and worship as we please.

Our flag is a cherished symbol. As are the freedoms for which it stands, including the freedom to express unpopular speech or ideas—even extremely unpopular ideas.

As I have said many times throughout this debate, I wish the Senate would, instead, use its time to discuss and solve the real problems that real Americans are facing right now, instead of trying to stir public passions for political ends.

I respectfully suggest that in the less than 10 weeks left to us in session this year, the Senate's resources would be better spent working to improve veterans' health care services, survivors' benefits and protecting veterans' and Americans' privacy. There are so many issues that we could turn to that would help improve the lives of our veterans and their families. Why not focus on them?

Just today on the front page of the newspaper, we learned that this Government's bureaucratic bungling has resulted in widows of those who have served this Nation and sacrificed for all of us are being denied the survivors' benefits to which they should be entitled. This news follows closely public reports that post-traumatic stress disorders among our veterans are on the rise.

Instead of seeking to turn the flag into a partisan political weapon and the Constitution into a billboard for political slogans, for partisan gain, we could be spending time debating these real issues or much-needed funding for services to our veterans. This President's budget requests have consistently fallen short of the levels needed to provide necessary services and care. President Bush's budgets force our veterans to subsidize their government health care and simply does not account for the increase in demand for VA services due to the Iraq war.

We could also be taking real action to prevent the kind of data losses that just affected millions of our veterans. We just witnessed the largest theft of private information from the Government ever, the loss of information on more than 26.5 million American veterans, including more than 2 million who are in active service, nearly 80 percent of our active-duty force and a large percentage of our National Guard and the Reserve.

Last year, Senator SPECTER and I introduced the Personal Data Privacy and Security Act, which requires Fed-

eral agencies and private data brokers to give prompt notice when sensitive personal information has been breached or stolen. The Judiciary Committee overwhelmingly approved this bill last fall, but almost a year later, the Senate has still not acted on this legislation. Had this bill been enacted, it would have required the VA to promptly notify the millions of veterans now at risk of identity theft about the theft of their personal data. Our bill also addresses the Government's use of personal data by putting privacy and security front and center in evaluating whether data brokers can be trusted with Government contracts that involve sensitive information about the American people.

The Nation's veterans—who have been willing to make the ultimate sacrifice for their country—deserve to have the best tools available to protect themselves and their families from identity theft. The Senate should be acting to consider and pass comprehensive data privacy and security legislation.

Sadly, the list of what we are not accomplishing goes on and on. The way things are going, under Republican leadership, this session will make the "do nothing" Congress against which President Harry Truman ran seem like a legislative juggernaut.

The days we have spent on this amendment could be spent more productively on any of the matters I have mentioned. There are less than 10 weeks remaining in the Senate's scheduled work year. It seems that even with all that remains undone, at this point in this election year, floor time is available only for matters that advance the Republicans narrow political agenda.

Republicans have the Senate majority; they control the schedule, they set the priorities. In my view, it reflects a strange set of priorities to think our national interest is best served at this time by debating a constitutional amendment to roll back the Bill of Rights for the first time in our history.

I treat proposals to amend the Constitution with utmost seriousness, for it is a serious responsibility. I began this debate by noting my home State of Vermont's tradition of independence and commitment to the Bill of Rights. Vermont did not and would not become a State until 1791, the year the Bill of Rights was ratified. At one time, we declared ourselves an independent republic.

I plan to proudly uphold that tradition today by voting against this amendment, and I hope, although likely in vain, that the Senate will move on to more pressing matters that directly affect the lives and livelihoods of the American people.

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

JUNE 8, 2006.—Now that the Republican leaders in the Senate have finished wasting

the nation's time over a constitutional ban on gay marriage, we're bracing for Act Two of the culture-war circus that the White House is staging to get out the right-wing vote this fall.

Senator Bill Frist, the majority leader, plans to continue to set aside work on pressing issues facing the country to vote on yet another unworthy constitutional amendment—a prohibition on burning the American flag.

If the gay marriage amendment was a pathetic attempt to change the subject in an election year, the flag-burning proposal is simply ridiculous. At least there actually is a national debate about marriage, and many thousands of gay couples want to wed. Flag burning is an issue that exists only for the purpose of pandering to a tiny slice of voters. Supporters of the amendment cannot point to a single instance of anti-American flag burning in the last 30 years. The video images that the American Legion finds so offensive to veterans and other Americans are either of Vietnam-era vintage or from other countries.

Nevertheless, flag burning remains one of those "wedge issues" that Republicans use to denigrate the patriotism of Democratic candidates or to get the party's base out to vote.

The other big difference between the two amendments is that the ban on gay marriage was never going to get the two-thirds vote in Congress required to send it to the states for ratification. Yesterday, the Senate rejected it by 49 to 48, with the help of seven Republicans.

The flag-burning amendment, on the other hand, actually could pass. A realistic nose count based on members' public statements and how they voted when the measure last came up, in 2000, suggests the Senate may be just a single vote short of punching a hole in free speech.

Senator Harry Reid, the minority leader, should be rallying Democrats to join the small handful of principled Republicans so far willing to oppose the amendment. But as things stand, he is among the Democrats who plan to vote for this constitutional vandalism. Opponents of the amendment, like Senator Patrick Leahy, Democrat of Vermont, are standing on firm ground in trying to protect the Bill of Rights from an election-year stunt.

It is the patriotic thing to do.

#### CONGRESS NEARS CHOICE: PROTECT FREEDOM OR STOKE ANGER?

In early June an allegedly drunken man in West Haven, Conn., yelled racial epithets and tore up an American flag while arguing with police and passersby. Earlier in the spring, instances of vandalism involving flags were reported in New Hampshire and New York.

Those three episodes of 2006—as compiled by the Citizens Flag Alliance, a group pushing for a constitutional amendment to protect the flag—constitute the raging menace of flag desecration.

In fact, they show what a non-issue flag desecration is. Instances are rare and easily addressed by local laws. They hardly require the extraordinary act of amending the Constitution.

But in a Congress unwilling to address important matters—its own ruinous spending and flagrant corruption to name just two—symbolism is the politically convenient substitute for substance. The Senate will soon take up an amendment to stop flag burning, and the vote is expected to be razor close. The House of Representatives has passed it, meaning that it could soon be sent to state legislatures, where it would be ratified if three-quarters approve.

While it's tempting to dismiss this as trivial election-year posturing, the precedent is troubling. It would for the first time alter the cornerstone of American freedom, the Constitution's First Amendment.

That is not a small matter. The First Amendment is the reason Americans are free to say what they think. It is also the reason people here can worship as they wish, associate with whomever they please, and get news and information from a free and independent press. It gives citizens a right to have grievances redressed. To limit those rights—especially for so trivial a reason—is to say they are no longer sacrosanct.

They should be. They are what makes America unique.

If Congress banned something as pathetic as flag desecration to score political points, surely it would consider limiting other unpopular speech.

The amendment's wording virtually guarantees that outcome. Would it, for instance, cover depictions of flags as well as actual cloth banners? Would sitting on a flag patch sewn onto the back of a pair of jeans count?

And what about the issue of flying a flag upside down? This has already become the preferred form of protest for people pushing for everything from an immediate withdrawal from Iraq to better psychiatric care for veterans. These protesters often say that they respect the values the flag represents, but that they believe those values are being subverted by people in power. Does this country really want to criminalize such a nuanced form of political dissent?

These issues would be left to legislation drafted by future Congresses and interpreted by courts. All of that, in turn, would weaken individual rights that are at the Constitution's heart.

And for what gain? Proponents of an amendment say the flag is such an important symbol of American democracy that it deserves a special status. But the Connecticut flag burner was charged with seven offenses ranging from public consumption of alcohol to criminal mischief. Surely, that is sufficient.

In fact, what makes the flag so special is this: It stands for a nation that deems individual liberties so important, it tolerates unpopular minority opinion.

The main threat to the flag comes not from the occasional burning of Old Glory. It comes from those who would sacrifice the principles the flag represents.

[washingtonpost.com, June 21, 2006]

#### FLAG BURNING REDUX

With Congressional elections coming, the Republican leadership has found a pivotal issue. Terrorism? Hardly. Entitlement reform? Don't be silly. We're talking about the grave threat to America known as flag burning. Yes, that election-year favorite is back: the proposed amendment to the Constitution of the United States allowing Congress to criminally punish the "physical desecration" of the American national banner. If you haven't noticed a rash of flag-burning incidents sweeping the nation that's because, well, there isn't one. But that doesn't stop Republicans from trotting it out as a more-patriotic-than-thou card.

They are, as always, close to having the votes to send it to the states for ratification. The House of Representatives has passed the measure and the vote will be tight in the Senate, where the Judiciary Committee approved the amendment 11 to 7. We hope the amendment will fall short of the needed two-thirds majority on the Senate floor; it's depressing enough that a majority of senators will support it.

The amendment would soil the First Amendment's command that Congress shall

"make no law . . . abridging the freedom of speech." Flag burning is an odious form of expression. But there are lots of odious forms of expression the First Amendment protects: Holocaust denial and swastikas, racist rants and giant Confederate flags, hammers and sickles. The amendment's power is in its self-confident sweep: Speech, including expressive acts, will not be censored. Government cannot punish ideas. Members of Congress who would protect the flag thus do it far greater damage than a few miscreants with matches.

The PRESIDING OFFICER. The assistant Democratic leader is recognized.

Mr. DURBIN. Mr. President, I have spoken to the Senator from Utah, and I would like to ask how much time I have remaining.

The PRESIDING OFFICER. Four minutes.

Mr. DURBIN. I understand the Senator from Utah will then close.

The PRESIDING OFFICER. He has 6 minutes.

Mr. DURBIN. Thank you, Mr. President.

Mr. President, first, I ask unanimous consent that Senators CARPER and BOXER be added as cosponsors to my pending amendment, and I ask unanimous consent that three commentaries in opposition to the flag amendment be printed in the RECORD.

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

[From the Chicago Sun Times, June 21, 2006]

#### ILL-STARRED FLAG AMENDMENT WOULD DO NATION NO GOOD

Nearly 30 years after Cubs outfielder Rick Monday snatched an American flag from two idiots at Dodger Stadium who had doused it in lighter fluid and were trying to light it with a match, we still applaud him for his exemplary act of patriotism—for acting on our behalf. As devoted as we are to free speech, we would have been hard-pressed to bottle our anger over the desecration of the Stars and Stripes before tens of thousands of spectators.

Our appreciation of Monday was not diminished by his appearance last week at a rally for a proposed flag desecration amendment—an event at which he exhibited the rescued flag, which was presented to him by the Dodgers. But however heartfelt this gesture was, it was wrongheaded in lending support to a manufactured cause with no real value except a political one, the equivalent of throwing red meat on the table.

You would think, from the emotional momentum this issue has gained in recent times, there is a pressing need for an anti-flag-burning amendment. Most Americans are in favor of it. The House has backed the amendment, and the Senate may well follow suit next week, when it is scheduled to decide on the constitutional ban. Reportedly, it is within a vote or two of the two-thirds majority it needs. In 2000, it fell four votes short.

But, in fact, this is a classic example of a solution in search of a problem. Flag burnings, which most of us associate with Vietnam-era protests, have all but disappeared from the American landscape. No protests of the war in Iraq (which have been relatively few) have featured flag desecrations. The closest anyone has come to publicly mistreating the flag, arguably, was a case of two athletes wrapping themselves in it at the Olympics.

You might also think this is an issue in need of legal clarification. But, no, the Supreme Court ruled in 1989 that as distasteful or offensive as this kind of protest is, it is protected by the First Amendment. A year later, the high court overturned the federal Flag Protection Act. The fact that yet another effort is being mounted tells you not that the principles have changed, but the political climate has. Sorry, but that's not a good enough reason to alter the Constitution.

This represents the consensus of the Sun-Times News Group of 100 newspapers in the metro Chicago area.

#### EMERGENCY COMMITTEE TO DEFEND THE FIRST AMENDMENT

The following statement was released today by Professors Norman Dorsen and Charles Fried, Co-chairs of the Emergency Committee to Defend the First Amendment. The Committee is composed of prominent Americans—conservative, moderate and liberal—including former officials of the Reagan Administration, former Republican members of Congress, senior professors of constitutional law, several former presidents of the American Bar Association, and leaders of other national organizations.

The First Amendment to the United States Constitution has served us since 1791 through wars, including a Civil War, and crises of every sort without the need for amendment. It is an icon of our freedom. To amend it now comes close to vandalism.

The proposed constitutional amendment limits how people may protest and sets a precedent for banning other forms of dissent. If the flag, why not the Great Seal of the United States or the Constitution? Why not the Bible or (to be ecumenical) religious icons of all faiths? The founders of this country would have been shocked at the notion that the government could restrict ways by which the people can protest conditions in the country or the government's own policies.

As the Boston Tea Party illustrates, the founders were familiar with symbolic protest. Moreover, the American revolutionaries were also not exactly kind to their country's flag, the Union Jack. George Washington ordered thirteen red and white stripes sewn onto it and called it the "Thirteen Rebellious Stripes." Pennsylvania's first flag after declaring independence was a British flag with a coiled serpent ready to strike at the English ensign. These protests "desecrated" the country's then-existing flag.

Totalitarian countries fear dissenters sufficiently to suppress their protests. A free nation relies on having the better argument. It is possible to burn a particular flag, but no one can destroy the symbol and meaning of the flag. No matter how many flags are burned, the American flag will still exist, untarnished and waving bravely in the breeze.

The Emergency Committee urges the Senate to demonstrate the sort of statesmanship of which it is capable by rejecting the proposed constitutional amendment.

#### EMERGENCY COMMITTEE TO DEFEND THE FIRST AMENDMENT:

Terry Anderson; Writer, former Journalist; Former Lebanese Hostage.

Derek Bok; President, Harvard University (1971–1991); Dean, Harvard Law School (1968–1971).

Clint Bolick; Litigation Director, Institute for Justice.

Benjamin Civiletti; Partner, Venable, Baetjer & Howard; U.S. Attorney General (1979–1981).

John J. Curtin, Jr.; Partner, Bingham Dana & Gould; President, American Bar Association (1990–1991).

Norman Dorsen; Stokes Professor of Law, New York University Law School; Counselor to the President of New York University; President, American Civil Liberties Union (1976–1991).

Bruce Fein; Lawyer and Journalist; Former Department of Justice Attorney.

Charles Fried; The Beneficial Professor of Law, Harvard Law School; Solicitor-General of the United States (1985–1989).

Shirley M. Hufstедler; Of Counsel, Morrison and Forster; Circuit Judge, U.S. Court of Appeals, 9th Circuit (1968–1979).

Martin Lipton, Partner, Wachtell, Lipton, Rosen & Katz.

Robert MacCrate; Partner, Sullivan & Cromwell; President, American Bar Association (1987–1988).

Charles McC. Mathias, Jr.; Partner, Jones, Day, Reavis & Pogue; U.S. Senator (R-MD, 1969–1987).

J. Michael McWilliams; Partner, Tydings & Rosenberg; President, American Bar Association (1992–1993).

Robert M. O'Neil; Director of the Thomas Jefferson Center; President, University of Virginia (1985–1990).

Roswell B. Perkins; Partner, Debevoise & Plimpton; Former President, American Law Institute.

Roger Pilon; Director, Center for Constitutional Studies, The Cato Institute.

E. Barrett Prettyman, Jr.; Partner, Hogan & Hartson; Trustee, National Council on Crime and Delinquency.

Roberta Cooper Ramo; Partner, Modrall, Sperling, Roehl, Harris & Sisk; President, American Bar Association (1995–1996).

James H. Warner; Lawyer; White House Domestic Policy Staff (1985–1989); Former Vietnam POW.

#### THE AMERICAN LEGION, AMERICAN LEGION POST #315, San Francisco, CA, July 14, 2005.

Re Oppose S.J. Res. 12, the Flag "Desecration" Constitutional Amendment.

DEAR SENATOR: As the Commander of American Legion Post #315 in San Francisco, CA, I write to urge you to oppose S.J. Res. 12, the proposed constitutional amendment to prohibit "desecration" of the flag. Although the national American Legion leadership supports this amendment, I wish to express my disagreement with that position and my dismay with the apparent willingness of Congress to amend the First Amendment to restrict free speech.

Acts of burning or otherwise defacing the flag are rare, but they can be a powerful form of expression. I should be clear that it saddens me to think of those who would damage the flag, but I believe it my duty to defend their right to do so. The flag stands for freedom, yet this constitutional amendment would diminish fundamental freedoms by undermining the right to free expression guaranteed by the Bill of Rights.

American Legion posts across the country recently marked the passing of Flag Day by organizing flag burning ceremonies to dispose of worn and damaged flags. Proponents of the flag amendment say they seek to ban an act, not a form of expression. Surely they do not mean to ban respectful flag disposal ceremonies like these. Rather, they seek to prohibit acts of flag desecration that are intended to convey a certain political message. When the founders drafted the First Amendment, they intended to protect peaceful expression, however unpopular and offensive. In fact, it is precisely such unpopular speech that requires the protection afforded by the Constitution.

There is significant diversity of opinion among veterans in general and American Legion members in particular on this issue. In fact, just last year a past National Com-

mander of the Legion, Keith Kreul, gave Senate testimony in opposition to the flag amendment. I suggest, as Mr. Kreul did, that this amendment is not an appropriate way to honor the service of this nation's veterans. There are many pressing concerns facing our veterans and active duty troops, including shortfalls in funding for veterans healthcare and daily dangers facing troops serving in Iraq. The flag amendment is an unfortunate distraction from these issues.

If passed, the flag amendment would constitute the first-ever restriction on the Bill of Rights. I urge you to oppose this measure. In doing so, you will defend the true spirit of the Constitution, and the freedoms for which the flag stands.

Sincerely,

SHARON LEE KUFELDT,  
Commander, American Legion Post #315,  
U.S. Air Force Veteran.

Mr. DURBIN. Mr. President, you have heard the debate for 2 days now. On one side of the aisle, those supporting this amendment have summarized their feelings in three words: Respect the flag. On the other side of the debate are those who say: Respect the Constitution. They understand that what we are being asked to do is historic. Senator BYRD has reminded us. This would be the first time in the history of the United States of America that we would amend the Bill of Rights.

It is a historic moment. And it takes some audacity and bravado for any sitting Member of the U.S. Senate to believe they have a better idea than James Madison, Thomas Jefferson, and our Founding Fathers had over 200 years ago. It takes a special circumstance for us to even consider changing that beloved first amendment, which has guided us for more than two centuries.

The incidents of flag burning are rare. They are disgusting. But there are ways we can deal with this without defiling this Constitution.

Senator HATCH's amendment says do not desecrate the flag. I believe we should not desecrate the Constitution. There is a way. The pending amendment points to the way: a Federal criminal statute carefully drawn to meet the Supreme Court test that would really deal with preserving and protecting the flag as we know it, as an important symbol of America, without invading our Bill of Rights. And the second part of my amendment which I am offering is one that you know about because you hear about it all the time.

There is this demented group—I will not even give the full name of this church from Topeka, KS, because I do not want to give them any publicity. But this demented group is appearing now at military funerals, the funerals of veterans and soldiers, demonstrating. Here they are issuing a press release that says: "Thank God for IEDs (Improvised Explosive Devices)," announcing they are coming to my home State of Illinois to picket the funeral of Army SPC Brian Romines, who was 20 years old, at the Anna Heights Baptist Church in Anna, IL. It is disgusting: this family, racked with grief,

trying to get through the most difficult day of their lives, having to walk through the lines of demonstrators this demented person would bring to the funeral.

Well, the Senator from Idaho has said on the floor that I have gone too far with my amendment, I have gone too far in limiting these demonstrations at military funerals. I think he is wrong. These demonstrations are wrong not just in national cemeteries, they are wrong in all cemeteries. They are wrong at all churches. They are wrong at all funerals. And the Senate will have a chance, with my amendment, to vote and say that we will limit this kind of disgusting activity that disrespects the men and women who have fought and died for America.

That is the amendment before us, an amendment to protect our flag and to protect the memory of those who have fought and died for our country. I am proud to offer this bipartisan amendment. It is an amendment which, at the end of the day, we can point to with pride because we have done something important.

But I urge my colleagues, think long and hard about being the first to amend the Bill of Rights in the history of the United States of America. We have given our oath to uphold and defend that Constitution. Today we will be put to the test. Will we uphold and defend that Constitution from a change that is totally unnecessary?

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator's time has expired.

The Senator from Utah.

Mr. HATCH. Mr. President, what does the Bill of Rights have to do with this? That argument is not a valid argument. Look at what the amendment says:

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

There is no interference with the Bill of Rights. Yet the Senator—the Senators—who want to so-called protect the Bill of Rights have come up with a statute that does exactly the opposite, according to their way of looking at it.

Frankly, there are only five Justices who said that defecating on the flag, urinating on the flag, burning it with contempt, and stomping on it is not a violation of the first amendment.

But this amendment does not have anything to do with that. All this amendment says is that we are going to give the power back to the people and to the people's representatives in Congress, and they will make the determination as to how we protect the flag, if they decide to. In other words, we are going to restore the Constitution to what it was before these unelected five Justices on the Supreme Court changed it. And four others disagreed with them.

By the way, the distinguished Senator from Massachusetts said this is election-year politics. I wonder how he explains the 6 years in a row that the

House of Representatives, in bipartisan votes, has passed this amendment by the requisite two-thirds vote? I wonder how he is going to explain that 48 States had antiflag desecration statutes before the Supreme Court wiped all of that out and all of the people's work and all of the people's will out. What is he going to say about the 50 States, including his, that have petitioned us for this amendment? Fifty State legislatures have asked for this amendment.

There are 60 cosponsors in the Senate. There are at least six others who have always voted to protect the flag. I question whether all six of those will vote for this. But the fact is, they should because they have always voted for it. So there are at least 66 people who should be voting for it.

There is no narrowing of the Bill of Rights by this amendment. That argument would have to take place after this amendment passes by the two-thirds vote, if it could, and then is ratified by 38 States. Then there would be a debate where they could raise all the issues they want about the first amendment, faulty though they are.

The fact is that I was asked this afternoon by a large body of media: Is this the most important thing the Senate could be doing at this time? I can tell you, you're darn right it is. The fact is, we had five unelected Justices who overturned 100 years of Supreme Court precedent, backing up 48 States that have had antiflag desecration amendments. We have had 50 States ask for a change here so we can go back to protecting our flag.

What we would be doing is sending a message to the Court: You cannot usurp the power of the Congress of the United States. That is what is involved. I hear time after time complaints about the courts usurping the powers of the Congress and other branches usurping the powers of the Congress. Here is a chance to bring that power back to the Congress where it belongs and then have that debate. It would still take 60 votes because of the opposition of some. It would still take 60 votes to pass a statute if we could pass this amendment.

The fact is, if you want to respect the Constitution, let's restore it to what the Constitution was before five unelected jurists changed that Constitution. The fact is, this amendment is one of the most important things we can do to send a message to the U.S. Supreme Court that: You cannot usurp the power of the legislative branch of this Government.

It does nothing about the Bill of Rights. That would have to be argued later if we pass this amendment and have it ratified. Then we could argue about the Bill of Rights later. And I will bet you money, the only reason Senators are claiming the Bill of Rights is to try to justify their vote. But now, if they believe the Bill of Rights is being interfered with, then why would they come up with a statute

to do the very same thing they are saying this amendment does? Why have they always come up with a statute that basically, if you use their logic, invades the first amendment to the Constitution? Why would they do that? There is only one reason. It is a political reason to cover their backsides.

Mr. President, I thank the Senate.

The PRESIDING OFFICER. The majority leader is recognized.

Mr. FRIST. Mr. President, in a few moments we will be voting on the two amendments, which really follows the good debate we have had since yesterday when we began debate on this flag protection amendment. As I promised early in the year, I brought this joint resolution to the floor this week in part in anticipation of the Fourth of July recess—a time when all of us go back and think about the flag and the enduring ideals of freedom and opportunity that it represents.

It has been 6 years since we have had that debate on this floor. It is something that comes to the House each and every Congress, and they vote on that. So I felt it would be appropriate. Indeed, in listening to the debate—the Constitution issues and the importance of the flag—I have been very pleased, and I hope that debate reflects passage of the amendment in a few moments.

It is my hope, when we return to our home States next week or later this weekend to celebrate the anniversary of America's independence, we will be able to tell our fellow citizens that we did the right thing here in Congress and voted to give Congress the power to protect the Stars and Stripes.

Americans have so much to be proud of. We enjoy a greater measure of liberty and justice and equality than any other country in human history. Millions upon millions of people have come to these shores seeking a better life, and they have found it here. We are a nation of hopeful, resourceful people who continually strive to live up to our ideals and provide greater and better opportunities for our children. There is one symbol that above all others encapsulates that hope, that freedom, our history and our values, and that is the American flag.

From the time we are schoolchildren, we honor our flag and all it stands for. With our hand over our heart, each morning here in this body, the U.S. Senate, we honor it. In times of crisis, raising those Stars and Stripes has symbolized our unity, our perseverance as a nation, as a people. Whether it is the marine struggling to plant the flag on Iwo Jima or firefighters lifting the flag above the ruins of the World Trade Center, it is that flag which inspires us to great acts of heroism, of courage, of strength.

Unfortunately, however, there are no laws on the books to stop anyone from destroying this cherished symbol. Although the vast majority of Americans—over 80 percent—and all 50 of our State legislatures believe the flag

should be protected, the Federal Government is currently powerless to enforce flag protection laws. That is because in 1989, as we talked about, the Supreme Court, in a 5-to-4 decision, overturned 200 years of precedent and struck down all laws prohibiting flag desecration. As our colleague from Utah just said, it was a one-vote margin, 5 to 4, with five Judges stripping the right of the American people—through their voice, through this body—to protect that flag. It is my hope and really my purpose in bringing that amendment to the floor to reverse this decision, this activist decision, and return to the American people the ability to protect the flag, if they so wish.

So in a few minutes in the Senate, we are going to have a vote to return to the people, through this body, the opportunity to protect the flag. And it is one single, simple sentence:

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

That is what we will be voting on. Key words: "The Congress shall have the power." All 50 States have passed resolutions calling on the Congress to pass a flag amendment. The House passed a constitutional amendment to protect against desecration of the American flag in this Congress and in the last Congress, in the last Congress, in the last Congress, in the last Congress, and now it is time for us to do the same. We have failed to muster those two-thirds votes in the past.

Today, we have a new opportunity to change that and to honor the wishes of the American people. We are a Nation founded on principles. Our flag is what binds us to those principles, to one another; it is that physical symbol of our values, liberty, justice, freedom, and independence. It commands our loyalty. To countless people around the world, the red, white, and blue represents the highest of human ideals—freedom.

I know we have heard again and again through the media the whole issue about flag burning being protected as an exercise of free speech. But is defacing a Government building free speech? Do we let our monuments be vandalized? Clearly, the answer is no. I believe that our American flag deserves the same respect. America is the freest country in the world and we have the right to express dissent and persuade fellow citizens of our views. But destroying the very emblem of that freedom is just plain wrong. Countless brave men and women have died defending the flag. It is but a small, humble act for us to defend it.

I will close with the words of our esteemed colleague, Senator HATCH, who has done such a wonderful job in managing this particular bill and a tireless advocate for the amendment. Here are his words:

Whatever our differences of party, race, religion, or socioeconomic status, the flag re-

minds us that we are very much one people, united in a shared destiny, bonded in a common faith in our Nation and the profound belief in personal liberty that our Nation protects.

Mr. President, I yield the floor.

The PRESIDING OFFICER. Under the previous order, the question is on agreeing to the Durbin amendment.

Mr. DURBIN. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The clerk will call the roll.

The legislative clerk called the roll.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 36, nays 64, as follows:

[Rollcall Vote No. 188 Leg.]

#### YEAS—36

Akaka	Dorgan	McConnell
Bennett	Durbin	Menendez
Biden	Harkin	Mikulski
Bingaman	Inouye	Murray
Boxer	Jeffords	Obama
Byrd	Kennedy	Pryor
Cantwell	Kerry	Reed
Carper	Kohl	Reid
Chafee	Lautenberg	Salazar
Clinton	Leahy	Sarbanes
Conrad	Levin	Schumer
Dodd	Lieberman	Wyden

#### NAYS—64

Alexander	Domenici	Murkowski
Allard	Ensign	Nelson (FL)
Allen	Enzi	Nelson (NE)
Baucus	Feingold	Roberts
Bayh	Feinstein	Rockefeller
Bond	Frist	Santorum
Brownback	Graham	Sessions
Bunning	Grassley	Shelby
Burns	Gregg	Smith
Burr	Hagel	Snowe
Chambliss	Hatch	Specter
Coburn	Hutchison	Stabenow
Cochran	Inhofe	Stevens
Coleman	Isakson	Sununu
Collins	Johnson	Talent
Cornyn	Kyl	Thomas
Craig	Landrieu	Thune
Crapo	Lincoln	Vitter
Dayton	Lott	Voinovich
DeMint	Lugar	Warner
DeWine	Martinez	
Dole	McCain	

The amendment (No. 4543) was rejected.

The PRESIDING OFFICER. The question is on the engrossment and third reading of the joint resolution.

The joint resolution was ordered to be engrossed for a third reading and was read the third time.

The PRESIDING OFFICER. The joint resolution having been read the third time, the question is, Shall the joint resolution, as amended, pass?

Mr. HATCH. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second. The clerk will call the roll.

The assistant legislative clerk called the roll.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The yeas and nays resulted—yeas 66, nays 34, as follows:

[Rollcall Vote No. 189 Leg.]

#### YEAS—66

Alexander	Domenici	Murkowski
Allard	Ensign	Nelson (FL)
Allen	Enzi	Nelson (NE)
Baucus	Feinstein	Reid
Bayh	Frist	Roberts
Bond	Graham	Rockefeller
Brownback	Grassley	Salazar
Bunning	Gregg	Santorum
Burns	Hagel	Sessions
Burr	Hatch	Shelby
Chambliss	Hutchison	Smith
Coburn	Inhofe	Snowe
Cochran	Isakson	Specter
Coleman	Johnson	Stabenow
Collins	Kyl	Stevens
Cornyn	Landrieu	Sununu
Craig	Lincoln	Talent
Crapo	Lott	Thomas
Dayton	Lugar	Thune
DeMint	Martinez	Vitter
DeWine	McCain	Voinovich
Dole	Menendez	Warner

#### NAYS—34

Akaka	Dorgan	Lieberman
Bennett	Durbin	McConnell
Biden	Feingold	Mikulski
Bingaman	Harkin	Murray
Boxer	Inouye	Obama
Byrd	Jeffords	Pryor
Cantwell	Kennedy	Reed
Carper	Kerry	Sarbanes
Chafee	Kohl	Schumer
Clinton	Lautenberg	Wyden
Conrad	Leahy	
Dodd	Levin	

The PRESIDING OFFICER. On this vote, the yeas are 66, the nays are 34. A quorum being present, two-thirds of the Senators voting not having voted in the affirmative, the joint resolution is rejected.

The Senator from California.

Mrs. BOXER. Mr. President, I would like to make a statement explaining my vote. I wonder if that is in order at this time.

The PRESIDING OFFICER. Without objection, the Senator is recognized.

Mrs. BOXER. Mr. President, I had tried to get time earlier in the day. Unfortunately, I was tied up in a markup. I want to express myself briefly on the constitutional amendment.

I opposed it, even though clearly it was far more popular in the country to support it. I did so because of my love of our country, our Constitution, and our freedoms. The love of country runs deep in my veins, as I know it does in those of every Senator.

My family came here in the early years of the 20th century to be safe from the Holocaust in Europe, the nightmare that took the lives of our relatives and so many innocent people. To my family and to me, America was not only a land of strength and courage but a land of compassion and acceptance. My father, who was a CPA, always said to me: Kiss the ground when you pay your taxes to America because you are helping to build our military, our schools, our roads, and our infrastructure.

My mother said that being an American meant being free to live your dreams, and only in this country, she would say, in America, where she was brought as a baby by her family, would that be possible.

I was taught not to be afraid of disagreement, not to fear words and not

to shrink from an argument in this, the greatest country on Earth. In a great country like the United States of America, you don't fear dissent. In a great country you allow dissent, even if it is ugly, even if it makes you sick to your stomach, even if it disgusts you. We are so strong as a Nation that we know if someone takes one of our beautiful symbols and destroys it or burns it or spits on it or steps on it, that person will not win respect but will lose it. That person will not win friends but in fact will turn people away. That person will gain nothing for his cause but, in fact, will be ridiculed and marginalized.

Now if a flag is burned or if a copy of the Bill of Rights or a copy of the Constitution is burned and that act is meant to incite others and it places people in danger, we should have laws to punish those who would endanger other lives. That is why I was proud to support the Bennett-Clinton-Durbin amendment, to do just that. I can certainly understand how seeing our flag burn would inflame passions and incite outrage. It does so in me.

The flag to me is a symbol of something I hold near and dear to my heart—our democracy, our country, our history. And I am outraged when I think about someone treating the flag in a disrespectful manner. But I am also outraged when I see or hear about a group of people protesting at the funeral of a fallen soldier, saying things like “thank God for dead soldiers” or “God is America's terrorist.” That is what is going on today at soldiers' funerals.

Such despicable speech and disrupting the most sacred funerals of our heroes makes no sense to me, and I can't begin to imagine the emotions of the families of the soldiers who must endure these senseless protests at a time of such loss. My instinct is to haul these protesters away. My colleague, Senator DURBIN, proposed an amendment that would prohibit these awful protests at all funerals for our fallen heroes, regardless of where the funerals take place, whether at a national or private cemetery, a funeral home or a house of worship. I was proud to support that amendment, and I was stunned to see how many of my colleagues turned away from it.

I agree with the approach of Senator DURBIN to the protests—proposing a statutory solution to address a problem rather than unnecessarily amending our Constitution. There are many things in life that we find offensive, repugnant to beliefs that we hold dear, but we cannot amend the Constitution every time there is something we consider outrageous, offensive, or repugnant.

We have only amended our Constitution 16 times after the Bill of Rights was passed in 1791—16 times over 214 years. But the Republican leadership has decided the best use of our precious little working time is to amend the Constitution—not amend it to guar-

antee equal rights for women, which still has not been done, not to amend it to allow limits on wealthy individuals buying Federal office—but for an issue which I believe we can address by statute, as I believe Senators BENNETT and CLINTON and DURBIN did.

Some have suggested that this constitutional amendment is necessary to honor our veterans. I think Senator SPECTER spoke eloquently on the point. I say, if we want to honor our veterans we should take care of our brave men and women in uniform who serve our Nation.

For example, just last week my good friend from Maine, Senator SNOWE, and I were able to get an amendment agreed to by the Senate which would make all prisoners of war who die in captivity eligible for the Purple Heart. Also last week Senator LIEBERMAN and I were able to get an amendment agreed to by the Senate improving the mental health screening and monitoring for members of our Armed Forces.

I think we honor our veterans and Armed Forces when we make sure that we are looking out for them, keeping our promises to them. Right now we are not.

We should provide them with all the equipment they need while they are deployed and all the health care they need when they come home.

Let's make sure our men and women have adequate body armor. Let's find ways to expand health care coverage for the members of the Guard and Reserves. Let's make sure the Veterans Administration is adequately funded to meet the needs of our veterans at a time when we are seeing horrific post-traumatic stress: suicides are up, divorces are up. These are the ways we honor our veterans.

We love the flag—yes. We love our veterans—yes. But I think we can do both without having to amend the Constitution.

I believe the flag is a beautiful symbol of the freedom and liberty on which this proud Nation has been built. The flag is a reminder of the democracy we all hold so dear in our hearts. When I see the flag displayed in an inappropriate way—I think Senator LAUTENBERG showed it—on underwear or on pajamas, I don't think that is respectful. But that is what we see every day. I don't like it, but, you know what, this Constitution is more than an outlet for our justifiable frustrations. This Constitution is more than just an outlet for our justifiable frustrations.

It is concise. It has worked. It is the enduring ideal of our Nation, and we should not unnecessarily amend it.

I yield the floor.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. DEWINE. Mr. President, seeing a number of my colleagues on the floor, and I have talked to them, I ask unanimous consent that the following Senators be able to speak in morning business as follows, in this order: Senator

SALAZAR for 5 minutes, Senators WYDEN and SMITH for a total of 10 minutes, and Senator DEWINE for 45 minutes.

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

The Senator from Colorado is recognized.

Mr. SALAZAR. Mr. President, I rise to speak about the flag desecration amendment and talk about the nature of the debate we have seen in the Senate over the last 2 days. First, let me be clear. I support the amendment that came before the Senate today, and I just cast my vote for it. The American flag is a unique symbol of our heritage, our principles, and everything the citizens of this great country have done to sacrifice for it. I do not believe laws narrowly prohibiting the desecration of our flag in any way undercut the principles embedded in the first amendment.

However, it is important to emphasize certain points as we debate these issues. First, as is often the case when we consider whether to amend the Constitution, this is not a simple question. It is not a question that is cut and dried.

I understand the strong feelings of those who oppose this amendment. I understand their argument that the freedoms the American flag stands for, including the freedom of speech and expression, are as important as the flag itself. We must not separate the flag from the cherished principles that it represents.

In keeping with that concept, I believe it is wrong for proponents of the flag desecration amendment to question the patriotism of those who oppose it. Simply because Senator DURBIN, Senator MCCONNELL, Senator FEINGOLD, Senator BENNETT, and others oppose this amendment does not mean they believe the flag should be desecrated, nor does it mean that they view the flag as any less important a symbol. As anyone who has worked with these Senators knows, nothing could be further from the truth.

Finally, my support for this amendment is based on the premise that the flag is unique and deserves special protection. But for the same reason I believe the flag should be protected, I also firmly believe it should not be politicized for partisan gain. The American citizens who pledge allegiance to this flag, who believe in what it represents, and who live and work under it every day deserve better.

I also believe that we should be working as a Congress and as a Senate just as hard to strengthen our national and homeland security, improve our energy security, relieve the health care crisis that faces America's businesses and America's families, educate our children, and strengthen the American family.

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

The PRESIDING OFFICER. The Senator from Oregon is recognized.