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Senate

The Senate met at 12 noon and was called to order by the President pro tempore (Mr. THURMOND).

PRAYER

The guest Chaplain, Bishop David R. Brown, Chaplain of the American Legion, offered the following prayer:

O God of our hearts, we thank You for the fullness of joy which has come to us from serving You and has made itself apparent in the growth of this great country. We ask for Your unwavering blessings that we may rediscover and strengthen the faith in ourselves, the faith in each other, the faith in the process, and the faith in You that we may live our motto ''In God We Trust.''

O God of hope, grant wisdom and guidance to these men and women who have been placed in positions of trust by their peers. Lead them, O Beloved, so that the desire in each of our hearts for justice and equality will resound as a clarion call throughout this hallowed Senate Chamber. We ask that Your all-encompassing love and forgiveness make equal the voice of the power broker and the most humble citizen; make equal the voice of every citizen regardless of race, creed, or gender.

Beloved, help us to renew our faith and trust in those deeply felt spiritual and reasonable truths of our forefathers that all men and women are created equal. They proposed a theory. We ask You for the strength of heart and will to give it life throughout this land of ours so that we might shine as a beacon of hope and equality, of faith and trust, for the rest of Your creation. Amen.

PLEDGE OF ALLEGIANCE

The Honorable CRAIG THOMAS, a Senator from the State of Wyoming, led the Pledge of Allegiance, as follows:

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.

RECOGNITION OF THE ACTING MAJORITY LEADER

The PRESIDENT pro tempore. The able Senator from Wyoming is recognized.

SCHEDULE

Mr. THOMAS. Mr. President, today the Senate will be in a period of morning business until 1:30, with Senators DURBIN and THOMAS in control of the time. Following the morning business period, the Senate will begin consideration of S. Res. 14 regarding the desecration of the flag. Under a previous agreement, amendments by Senators MCCONNELL and HOLLINGS will be debated throughout the day.

As previously announced, there will be no rollcall votes today, with any votes ordered in relation to the flag desecration measure scheduled to occur on Tuesday at 2:15 p.m. Any Senators interested in debating this important measure should be prepared to do so today or early tomorrow.

I thank my colleagues for their attention.

MEASURES PLACED ON THE CALENDAR—S. 2284 AND S. 2285

Mr. THOMAS. Mr. President, I understand there are two bills at the desk due for their second reading.

The PRESIDENT pro tempore. The clerk will read the bills by title.

The assistant legislative clerk read as follows:

A bill (S. 2284) to amend the Fair Labor Standards Act of 1938 to provide for an increase in the Federal minimum wage.

A bill (S. 2285) instituting a Federal fuels tax holiday.

Mr. THOMAS. Mr. President, I object to further proceedings on these bills at this time.

The PRESIDENT pro tempore. Under the rules, the bills will be placed on the calendar.

Mr. THOMAS. I yield the floor.

The PRESIDENT pro tempore. The able Senator from Nevada.

Mr. REID. Mr. President, it is my understanding that you have or will shortly call us into a period of morning business.

The PRESIDENT pro tempore. The Senator is correct.

RESERVATION OF LEADER TIME

The PRESIDING OFFICER (Mr. THOMAS). Under the previous order, the leadership time is reserved.

MORNING BUSINESS

The PRESIDING OFFICER. Under the previous order, there will now be a period for the transaction of morning business not to extend beyond the hour of 1:30 p.m., with Senators permitted to speak therein for not exceeding 10 minutes each.

Under the previous order, the Senator from Illinois, Mr. DURBIN, or his designee, will be in control of the first 45 minutes.

TOM FEREBEE SAW HIS DUTY AND HE DID IT AT HIROSHIMA

Mr. HELMS. Mr. President, when a remarkable North Carolina native died on March 16, a more perfect world would have dictated that his death be given far more attention than it received, attention that would have invoked memories of a distinguished, decorated war veteran; a career Air Force officer; and a conscientious, hard-working real estate agent; and most importantly, it would have kindled memories of a kind, gentle grandfather who enjoyed bass fishing and tending to his beloved roses.

But, when death came to Thomas Wilson Ferebee, some of the media mentioned these fine personal qualities only in passing, but many others will remember Tom Ferebee's carrying out his awesome, solemn responsibility as

lead bombardier on the *Enola Gay*. It was he, on duty that fateful day when the first atomic bomb was dropped on Hiroshima, helping to bring, finally, an end to the costly, destructive, most terrible conflict that history records as World War II.

The decision to use the atomic bomb was an extraordinarily difficult one. And, too often, revisionist historians have tried to rewrite the lessons of Hiroshima and Nagasaki, with unjustified suggestions that Harry Truman's decision to use the bomb to end the war was immoral.

What would have been immoral, of course, would have been to force the world into a further, protracted, bloody struggle when the means were available to end it—with, in the end, less suffering, destruction, and killing.

The weight of that decision was placed on the shoulders of the crew of the *Enola Gay*, among whom was a farm boy from Davie County, NC. In nearby Mocksville, where Tom Ferebee went to school, nobody could have predicted that this four-sport star of baseball, football, basketball, and track would be remembered one day around the world.

Throughout his later years, Tom Ferebee was often questioned about his *Enola Gay* role. One journalist after another with their minds made up in advance tried to press Tom Ferebee to admit guilt about his role—which Tom Ferebee rejected, saying, for example in 1995:

> I'm sorry an awful lot of people died from that bomb, and I hate that something like that had to happen to end the war. But it was war, and we had to do something to end it.
>
> None of us who were on the *Enola Gay* ever lost a minute's sleep over it. In fact, I sleep better because I feel a large part of the peace we have had in the last 50 years was what we brought about. If we hadn't forced the surrender, there would have had to be a land invasion of Japan and the estimates are that a million Americans and as many Japanese would have died in it.

Which is absolutely correct. The fact is, Mr. President, that Tom Ferebee and his comrades deserve better than to be symbols of phony guilt resulting from an absolute necessity of war. Tom Ferebee knew—as we do—that he did the right thing by carrying out his mission.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Nevada.

THE BUDGET

Mr. REID. Mr. President, last year we spent a great deal of time talking about whether or not we should have an $800 billion tax cut. We spent an inordinate amount of time working on that. The minority, the Democrats, thought we should not do that, that it was too much; that instead of having this large tax cut, we should have some targeted tax cut, much, much, much smaller. This debate went on for months. The sad part about it is, when we came to the appropriations bills, the 13 appropriations bills, suddenly there was no money. Even though there had been $800 billion set aside, supposedly for tax cuts, there was no money to take care of the expenses that were necessary in the funding of this country.

Day after day we were talked to—some say talked down to—by our friends on the other side of the aisle, that the economy would come to a grinding halt if we did not pass this $800 billion tax bill. Of course, that has not happened. Not only did the minority not buy the plan of the majority, but the American people did not buy the plan. In any poll taken, the American people decided there were more important priorities.

What were those priorities?

Education—when you have 3,000 children dropping out of high school every day, you would think that would be a priority.

Social Security is a priority. We have to make sure in the outyears Social Security is as good to people as it is today. Social Security is going to be doing just fine until the year 2035, maybe 2036. But after that period of time, people will only be able to draw 75 percent or 80 percent of their benefits. We need to make sure after that time they can draw all their benefits.

We have to make sure Medicare is taken care of, that we do something on this program that has been in existence for 35 years to take care of people who need prescription drugs; that is, all seniors. The average senior over age 65 fills 18 prescriptions a year. So we have to make sure Medicare, a very important program that has done a great deal to help the American senior population, that has allowed them to live longer and live more productive lives—we have to make sure that as a component of that there are some benefits for prescription drugs.

We have to make sure the debt is paid down. During the Bush-Reagan years, we accumulated a huge debt of some $5 trillion. It is time we started paying down that debt. We are not going to have the rosy economic scenario we now have forever. We are in the longest economic growth period in the history of this country. We are now in the 108th or 109th month, but that does not mean it will go on forever. It will not. I hope when the economic downturn comes, we will have paid down that debt and not have voted for irresponsible tax cuts.

It is interesting that the demagoguery and rhetoric has not stopped. It is at full blast—again, talking about tax cuts. Governor George W. Bush has recently proposed tax cuts which would add up to $1 trillion over 10 years. House Majority Whip DELAY from Texas—Congressman DELAY—last week, when asked about this, said let's do that and even more. He wants even larger tax cuts than George W. Bush has called for. I think there could be no better example of ignoring the wishes of the American people and ignoring what the economy needs.

As justification for this $1 trillion worth of tax cuts over programs such as saving Social Security, doing something about education, Medicare, and of course doing something about the national debt, the Governor and others in the majority continually point to the overwhelming tax burden on the American people. I imagine there were a few people around America this past Sunday wondering why have we been talking about that after reading newspapers all over America.

A column in the Washington Post from the front page reads: ''Federal Tax Level Falls for Most; Studies Show Burden Now Less Than 10%.''

This was not a partisan poll put out by the Democrats or some liberal think tank. This information is from a series of studies by liberal and conservative tax experts. It shows that taxes are at their lowest point in more than 40 years; Federal income taxes are at their lowest point in more than 40 years.

I ask unanimous consent the article that appeared in the Washington Post and other newspapers around the country be printed in the RECORD.

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

[From the Washington Post, March 26, 2000]

FEDERAL TAX LEVEL FALLS FOR MOST; STUDIES SHOW BURDEN NOW LESS THAN 10%

(By Glenn Kessler)

For all but the wealthiest Americans, the federal income tax burden has shrunk to the lowest level in four decades, according to a series of studies by liberal and conservative tax experts, the Clinton administration and two arms of the Republican-controlled Congress.

Each of the studies slices the data in different ways, but the bottom line is the same: Most Americans this year will have to fork over less than 10 percent of their income to the federal government when they file federal income taxes.

The Congressional Budget Office estimates the middle fifth of American families, with an average income of $39,100, paid 5.4 percent in income tax in 1999, compared with 8.3 percent in 1981. The Treasury Department estimates a four-person family, with the median income of $54,900, paid 7.46 percent of that in income tax, the lowest since 1965. And the conservative Tax Foundation figures that the median two-earner family, making $68,605, paid 8.8 percent in 1998, about the same as 1955.

Federal income taxes are so low for so many Americans that it is little wonder many voters place tax cuts near the bottom of their priorities in many opinion polls.

''It's a shocker,'' said Bill Ahern, spokesman of the Tax Foundation, of the group's calculation that families paid just 8.8 percent of their income in federal tax. Low federal taxes make it harder to make a case for tax cuts, he added. ''With the lower- to middle-income taxpayers paying so little . . . there won't be pressure'' for change.

George Velasquez agrees. ''I don't have any complaints on the federal side,'' said the 29-year-old network engineer as he left an H&R Block office in Falls Church last week. Velasquez, who says he makes about $50,000, said he got hit with unexpected state taxes

when he moved recently, but thinks his federal taxes are fair.

The low effective rates are the result of years of tinkering with the tax code by Congress and various administrations—rates were cut in the 1980s, millions of Americans were removed from the tax rolls in 1990s by an expansion of a tax credit for the working poor, and a bevy of tax credits for children and education was added in 1997. More than one-third of eligible taxpayers pay no income taxes, according to the congressional Joint Committee on Taxation.

These effective tax rates don't include payroll taxes to fund Social Security and Medicare, which have risen since the 1970s, now taking on average about 9 percent of income, the CBO says. Most Americans, however, now receive far more in benefits after retirement than they paid while working. Federal excise taxes for such items as alcohol, gasoline and cigarettes—on average 1 percent of income—also aren't included; neither are state and local taxes.

But federal income taxes are a key point of contention between Texas Gov. George W. Bush and Vice President Gore in the presidential race. Bush has proposed a tax cut estimated to cost from $1.1 trillion to $1.7 trillion over 10 years as the centerpiece of his economic plan, much of it aimed at cutting tax rates for all taxpayers.

Gore has countered with what is now $350 billion in tax cuts targeted at middle-income Americans. The size of Gore's package has grown in recent months as the vice president has added tax breaks aimed at what a spokesman describes as other burdens, such as the rising cost of college.

Neither man has suggested changing payroll taxes or significantly altering excise taxes. Bush has called for repealing 23 percent—4.3 cents—of the 18.4 cent federal gas tax.

''I look at the data all the time,'' said Bruce Bartlett, senior policy analyst at the Dallas-based National Center for Policy Analysis, a conservative group. ''Taxes are never showing up as a major factor. As far as people wanting a big Reaganesque tax cut, I just don't see it. People are satisfied with their economic situation.''

In the latest Battleground 2000 poll, conducted March 10–13 by the Tarrance Group and Lake, Snell Perry & Associates, only 6 percent of respondents listed reducing taxes as a very important issue—behind restoring moral values, improving education, strengthening Social Security and improving health care.

Celinda Lake, a Democratic pollster, conducted a series of focus groups earlier this year that in part looked at attitudes toward taxes. She said that in contrast to previous years, ''there was a lot less energy'' to the tax issue, in part because people are cynical about whether they will personally ever get much from a tax cut.

People appear more interested in government benefits that would put money in their pocket—such as for prescription drugs or college loans. Interestingly, Lake said, blue-collar workers were more interested in tax breaks than more affluent, college-educated workers who pay the bulk of taxes.

There now are five tax brackets that range from 15 percent to 39.6 percent, depending on income level. But deductions, exemptions and tax credits help to dramatically reduce the effective rate for many taxpayers. Bush has proposed replacing the current brackets with four ranging from 10 percent to 33 percent because, as he put it earlier this month, ''after eight years of Clinton-Gore, we have the highest tax burden since World War II.''

Bush acknowledged that polls show little support for tax cuts, but said: ''I'm not proposing tax relief because it's the popular thing to do; I'm proposing it because it's the right thing to do.''

Bush's assertion that the tax burden is so high is based on dividing tax revenue into the nation's gross domestic product. According to the Clinton administration's latest budget, anticipated federal tax revenue from both corporate and personal taxes will represent 20.4 percent of gross domestic product this year, which is the highest since 1945.

The booming economy has added millions of jobs to the work force, boosting tax revenue, and many economists also attribute the surge in tax revenue in part to increased capital gains revenue from the booming stock market.

But the gross domestic product, the broadest measure of the economy, does not include capital gains income, thus overstating the impact of increased capital-gains revenue. And taxpayers making more than $200,000 pay more than three-quarters of all capital gains taxes, according to calculations by the Institute on Taxation and Economic Policy, which uses a computer model to calculate the impact of tax policy for Citizens for Tax Justice, a progressive organization.

John Cogan, senior fellow at the Hoover Institution and a Bush economic adviser, said the ratio of taxes to the nation's goods and services is an accurate way to measure the nation's tax burden. But he acknowledged that taxes have declined for many low- and middle-income Americans.

''That's a point worth talking about,'' Cogan said. The burden of paying taxes has mostly shifted to high-income Americans while taxes have decreased for others, he said.

The CBO estimates the wealthiest 20 percent of families (with average income of $132,000) paid 16.1 percent of their income in federal taxes in 1999—about the same as the late 1970s, before the Reagan tax cuts took effect. The top 1 percent (with average income of $719,000) paid more, 22.2 percent—but still far from the 39.5 percent top rate.

Sen. William V. Roth Jr. (R-Del.), chairman of the Senate Finance Committee, acknowledged that federal taxes have declined for many working Americans. ''We made some progress because of the Republican Congress,'' he said, ''and we are very proud of that fact.'' But he said taxes are still too high, citing the ratio of tax revenue to the gross domestic product.

In many of Bush's speeches, he expresses concern for the tax burden of ordinary Americans, such as a waitress trying to raise two children on $22,000 a year, as their incomes increase. Larry Lindsey, Bush's chief economic adviser, agrees that tax credits and the like have reduced effective tax rates. But Lindsey said there is ''an egregious problem'' of higher marginal rates—how much of additional income goes to taxes—as the credits begin to phase out.

Bush's World Wide Web site (www.georgewbush.com) includes a ''Bush Tax Calculator,'' which also demonstrates how low taxes are for most Americans. A family of four making $56,000 pays 8.3 percent of its income in federal tax, according to the Bush online site, which Cogan said is based on the tax code.

The online site's calculator also says a single parent with two children making $22,000 a year pays $110 in federal income taxes, or 0.05 percent of her wages. But the Bush calculator doesn't include the impact of the earned-income tax credit, which results in a rebate of $1,700 for this wage-earner. A single parent with two children actually doesn't owe federal tax until her income reaches nearly $27,000.

Bush's plan would take many Americans who already pay relatively low taxes off the tax rolls. But because Bush has focused on cutting tax rates, the largest share of the tax savings would go to Americans who pay most of the taxes.

The institute on Taxation and Economic Policy estimated that the wealthiest 10 percent of taxpayers would receive more than 60 percent of the tax cuts in the Bush plan. Someone making $31,100 would receive a tax cut of $501, about 1.6 percent of income, while a taxpayer making $915,000 would receive a tax cut of $50,166—5.5 percent of income.

The Bush online calculator doesn't calculate taxes—or tax cuts—for people making more than $100,000.

Mr. REID. I draw my colleagues' attention to this front-page story and a few of the statistics the article discusses.

The middle fifth of American families with average incomes of $39,100 paid 5.4 percent in income tax in 1999, down from 8.3 percent in 1981. Families with an income of $54,900 paid 7.46 percent in income tax, the lowest level since 1965. Even the median two-earner families making $68,605 a year were at 8.8 percent, paying their lowest level of income tax in 50 years.

According to the Washington Post and other newspapers around America, even conservative think tanks see the writing on the wall. A spokesperson for the Conservative Tax Foundation said:

It's a shocker.

That was referring to the 8.8-percent income tax level.

Low Federal taxes make it harder to make a case for tax cuts. With the lower- to middle-income tax payers paying so little there won't be pressure [for change].

Bruce Bartlett, senior policy analyst at the Dallas-based National Center for Policy Analysis, another conservative group:

Taxes are never showing up as a major factor. As far as people wanting a big Reaganesque tax cut, I just don't see it. People are satisfied with their economic situation.

It is time we start addressing the real problems facing this country. Sure, we would all like less taxes, but let's look where the taxes are coming from. They are coming from State and local government, not from the Federal Government. Take a look at payroll taxes, but get off the income tax kick. The taxes are the lowest they have been in some 40 to 50 years, according to your tax category. Even a Bush adviser acknowledges that taxes have declined for many low- and middle-income Americans. I don't know if this adviser for Governor Bush will continue working for him.

The problem, which is what we have been saying, as quoted in the article:

Federal income taxes are so low for so many Americans that it is little wonder many voters place taxes near the bottom of their priorities in many opinion polls.

Why are our friends on the other side of the aisle not listening to the American people? The public continues to demand first things first. What are they? Save Social Security, especially when we have the budget surpluses which allow extending Social Security's long-term solvency. The fact

can't be ignored. We must do something about Social Security in the outyears. Republicans basically want to ignore Social Security, ignore the debt of $5 trillion, and squander this surplus with rhetoric which champions more than $1 trillion worth of tax cuts.

Remember, we have the lowest taxes in some 40 to 50 years, according to your tax category, yet most of the rhetoric on that side of the aisle has been: Lower Federal income taxes.

As I said on numerous occasions, paying down the debt is a tax cut for everyone. If we cut down the $5 trillion debt, which means we pay less interest every year as the Federal Government's biggest obligation, other than military, we would save billions and billions of dollars every month. It seems to me that is where we should put our priorities. Paying down the debt is a tax cut for everyone. Interest saved from paying down the debt could be credited to the Social Security and Medicare trust funds, which would extend their solvency and give us flexibility to target tax cuts. In other words, let's do tax cuts we can afford.

Certainly, there are some tax cuts that are necessary. We can increase the standard deduction for both single and married filers. We can provide tax relief to married couples who suffer as a result of their having been married. We can offer a long-term tax credit, providing a deduction for long-term-care insurance premiums. In America today, people are living longer, more productive lives. As a result, there are a lot of people going to extended-care facilities. It has become a tremendous burden for people placed in these institutions. We need to provide some tax credits for people who buy insurance for their golden years. This tax cut makes it easier not only for the people who buy the insurance but for families who care for their elderly family members.

We need to increase deductions to make health insurance more affordable and accessible, especially for self-employed Americans. We need to increase the maximum amount of child care expenses eligible for tax credit. These are targeted, reasonable tax cuts that would more evenly distribute the load.

I think it is remarkable we can pick up the paper Sunday and get the good news. The good news is, Federal income taxes are the lowest they have been in America for 40 to 50 years. I think that says a lot for the 1993 Budget Deficit Reduction Act that passed without a single Republican vote; we passed it. The Vice President came to the Senate and broke the tie. As a result of that, America has been put on a long-term economic upturn. Not only has there been great economic news in that the economy is doing well for a record amount of time but, in addition to that, taxes are lower than they have been in 40 to 50 years.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. DORGAN. Mr. President, I understand we have 45 minutes in morning business set aside.

The PRESIDING OFFICER. That is correct.

Mr. DORGAN. Mr. President, if I could be notified after 12 minutes.

NEED FOR ACTION ON PRESSING HEALTH ISSUES

Mr. DORGAN. Mr. President, I want to talk about two issues we must address in this Congress before the end of the year, both dealing with health care. I will describe very briefly why these are important and why many have been pushing for some long while to try to get the Senate to act on this issue.

First is prescription drugs and Medicare. On Friday of the past week, I was in New York City with Senator CHUCK SCHUMER holding a hearing on the issue of prescription drugs and Medicare. I have held similar hearings in Chicago, in Minneapolis, and various places around the country as the chairman of the Democratic Policy Committee. We have had virtually identical testimony no matter what part of the country we were in. Senior citizens say drug prices are very high. When they reach their senior years, living on fixed incomes, they are not able to access prescription drugs that they need.

In Dickinson, ND, a doctor told me of a patient of his who had breast cancer.

He told the woman after her surgery that she was going to have to take some prescription drugs in order to reduce the chances of the recurrence of breast cancer. When she found out what the cost of the prescription was, she said: I can't afford to take these drugs.

The doctor said: Taking them will reduce the risk of recurrence of breast cancer.

The woman said: I will just have to take my chances.

Why did she say that? Because there is no coverage in the Medicare program for prescription drugs and because many of these prescription drugs cost a significant amount of money. Senior citizens in this country are 12 percent of America's population, but they consume 33 percent of the prescription drugs in our country.

Last year, spending on prescription drugs in the United States increased 16 percent in 1 year. Part of this increase is the increase in drug prices and part is greater utilization of prescription drugs.

What does that mean? It means that everyone has a rough time paying for prescription drugs, especially senior citizens who live on fixed incomes. Many of us believe that were we to create a Medicare program today in the Congress, there is no question we would have a prescription drug benefit in that program.

Most of these lifesaving prescriptions were not available in the sixties when Medicare was created. But a lifesaving prescription drug can only save a life if those who need it can afford to access it. That is the point. That is why many of us want to include in the Medicare program a benefit for prescription drugs. We do not want to break the bank. We want to do it in a thoughtful way. We would have a copayment. We would have it developed in a manner that allows senior citizens to choose to access it or not. They could either participate in this Medicare prescription drug program or they could decide not to do it.

In any event, we ought to do something on this subject. Those of us who have come to the floor over and over again saying this is a priority believe with all our hearts this is something we should do for our country.

I will take a moment to describe part of the pricing problem with prescription drugs. The U.S. consumer pays the highest price for prescription drugs of anyone else in the world.

I ask unanimous consent to show a couple of pill bottles on the floor of the Senate.

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

Mr. DORGAN. Mr. President, these are two pill bottles. They are a different shape, but they contain the same pill made in the same factory, made by the same company.

This happens to be a pill most of us will recognize. It is called Claritin. It is commonly used for allergies. This bottle of 100 tablets, 10 milligrams each, is sold in the United States for $218. That is the price to the customer in the United States. This pill bottle is sold in Canada. It is the same pill made by the same company, in the same number of tablets and the same strength, but this bottle costs only $61. The same bottle of pills is $218 to the U.S. consumer; to the Canadian consumer, $61. By the way, the Canadian price has been converted into U.S. dollars.

One must ask the question: Do you think the pharmaceutical manufacturers are losing money in Canada selling it for $61? I guarantee you they would not sell it there if they were losing money, but they charge 358 percent more to the U.S. consumer. I will demonstrate another drug.

These two bottles contain Cipro. It is a common medicine to treat infection. This time, the drug is actually packaged in the same type of bottle, with the same marking, same coloring, and containing the same pills made by the same company. Incidentally, both were from facilities inspected by the FDA in the United States. Cipro, purchased in the United States, 500 milligram tablets, 100 tablets, costs $399. If one buys the pills in the same bottle in Canada, it is $171. The U.S. consumer is charged 233 percent more.

We need to do something about two issues: One, we need to put some downward pressure on pharmaceutical drug prices and to ask the legitimate question: Why should the American consumer pay higher prescription drug

prices than anyone else in the world? Is that fair? The answer, of course, is no.

What does it mean to those who can least afford it? It means lifesaving medicine is often not available to those who cannot afford access to it. I can tell my colleagues story after story of folks who came to hearings I held in Chicago, New York, and all around the country describing their dilemma. There were people who had double lung transplants, heart transplants and cancers, talking about $2,000 a month in prescription drug costs.

This is serious, and this is trouble for a lot of folks. We need to do something about putting downward pressure on prescription drug prices.

I have a solution for that, and that is to allow US pharmacists and distributors access to the same drugs in Canada and to bring it down and pass the savings along to the US consumers. We have to pass a law to do that. We are having a little trouble passing that bill.

Second, we need to add a prescription drug benefit to the Medicare program.

I will now turn to the Patients' Bill of Rights, which is the second piece of legislation we ought to get done. The Senate has passed a bill, some call it the ''Patients' Bill of Goods'' because it did not do much and it covered few people. The House passed a bipartisan bill, the Dingell-Norwood bill. Democrats and Republicans joined to pass this bill. It is a good bill.

The Senate and House bills are in conference. The House appointed conferees who voted against the House bill because the House leadership does not support the bipartisan bill that passed the House. We have a paradox of conferees from the House who, by and large, do not support the House bill, which is the only good bill called the Patients' Bill of Rights.

I will describe a couple of the elements of the Patients' Bill of Rights, which are so important.

First is the situation with Ethan Bedrick. One might say: You have done that before; that is unfair. It is not unfair. Health care denied to individuals is a very personal issue. When we have a framework for health care delivery in this country that denies basic health care services under certain HMOs and certain policies to people who need it, it is perfectly fair to talk to people in the Senate about the need to change public policy.

This is little Ethan Bedrick from Raleigh, NC. When he was born, his delivery was very complicated. It resulted in severe cerebral palsy and impaired the motor functions in his limbs. As you can see, he has bright eyes and a wonderful smile. When he was 14 months old, his insurance company curtailed his physical therapy. Why? Because they said he only had a 50-percent chance of walking by age 5. A 50-percent chance of walking by age 5 is not enough, they said. This is a matter of dollars and cents, so Ethan shall not get his physical therapy.

Is it fair to raise these questions? Of course it is. Should someone like Ethan with a 50-percent chance of walking by age 5 have an opportunity for the physical therapy he needs? You bet. Should we have a Patients' Bill of Rights that will guarantee him that access under an HMO contract? You bet.

We have in the House of Representatives Dr. GREG GANSKE, a Republican, and very courageous fellow, I might add. He is one of the key sponsors of the Patients' Bill of Rights in the House of Representatives. Dr. GANSKE is also someone who has done a substantial amount of reconstructive surgery.

He used this photograph, which is quite a dramatic photograph showing a baby born with a very serious defect, a cleft lip shown in this picture. Dr. GANSKE was a reconstructive surgeon before he came to Congress. He said he routinely saw HMOs turn down treatment for children with this kind of defect because they said it was not medically necessary.

I thought when I heard Dr. GANSKE make that presentation the first time: How can anyone say correcting this is not medically necessary?

Then Dr. GANSKE used a picture which showed what a correction looks like when reconstructive surgery is done. Isn't it wonderful what can happen with good medicine? But it can only happen if that child has access to that reconstructive surgery.

Is it a medical necessity? Is it fair for us to discuss and debate the Republican policy? The answer is clearly yes.

Let me also mention a case I have discussed before on the floor of the Senate, young Jimmy Adams. Jimmy is now 5. When he was 6 months old, he developed a 105-degree fever. When his mother called the family's HMO, they were told they should bring James to an HMO-participating hospital 42 miles away, even though there were emergency rooms much closer.

On that long trip to the hospital, this young boy suffered cardiac and respiratory arrest and lost consciousness. Upon arrival, the doctors were able to revive him, but the circulation in his hands and feet had been cut off. As you can see, he lost his hands and feet.

Why didn't they stop at the first emergency room or the second emergency room that was closer? Because the HMO said: We will only reimburse you if you stop at the emergency room we sanction. So 42 miles later, this young boy had these very serious problems and lost his hands and feet.

What are we to make of all this? We have very significant differences in the Patients' Bill of Rights between the House and the Senate. The differences in the bill of rights in the House and the Senate are the differences dealing with medical necessity. As used in HMO contracts:

> Medical necessity means the shortest, least expensive or least intense level of treatment, care or service rendered or provided, as determined by us.

The fact is, health care ought not be a function of someone's bottom line. Young Ethan, young Jimmy, or the young person born with a severe birth defect, like the cleft palate defect of the type I described, ought not be a function of some insurance company's evaluation of whether their profit or loss margin will suffer by providing treatment to these patients.

A woman fell off a cliff in Virginia, dropped 40 feet and was rendered unconscious. She went into a coma and was brought into an emergency room and treated for broken bones and a concussion. They wheeled her into the emergency room on a gurney, while unconscious, yet the HMO later, after she survived, said: We will not pay for your emergency room treatment because you did not have prior approval.

This is a woman, unconscious, in a coma, wheeled into an emergency room, but she did not get prior approval. That is the sort of thing that goes on too often in this country in health care. It ought to be stopped. It can be stopped if we pass a Patients' Bill of Rights. Not if we pass a patients' bill of goods that someone tries to misname to tell their constituents they have done something when, in fact, they stood up with the insurance companies, rather than with patients. We need a Patients' Bill of Rights that really digs in on these issues: What is a medical necessity? Do patients have a right to know all of their options for treatment, not just the cheapest? Do they have those rights?

The piece of legislation that was passed in the House gives patients those rights. The piece of legislation the majority passed in the Senate does not. We are going to continue to fight to try to get something out of this conference committee that medical patients in this country, that the American people can believe will give them some basic protection, some basic rights, so that the kinds of circumstances I have described will not continue to exist in this country.

Health care ought not be a function of someone's profit and loss statement. People who need lifesaving treatment ought to be able to get it. The ability to access an emergency room during an emergency ought not be something that is debatable between a patient and an HMO.

Those are the issues we need to deal with in the coming couple of months—both of them health care issues, both of them important to the American people. I hope that as this debate unfolds, we will have some bipartisan help in trying to address prescription drugs in Medicare, No. 1, and, No. 2, passing a real Patients' Bill of Rights, to give real help to the American people.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from South Dakota.

Mr. JOHNSON. Mr. President, I ask unanimous consent I be able to proceed in morning business for a period of 12 minutes.

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

BUDGET PRIORITIES

Mr. JOHNSON. Mr. President, this week the Senate Budget Committee is about to proceed with a markup of the budget resolution, an effort that is overdue. Nonetheless, it will be taken up this week. I think we should examine the context in which the budget resolution will be considered in the Senate.

There was some awfully good news for American families this weekend. It was announced this weekend that the Federal income tax burden for American families has shrunk to the lowest level in 40 years. Who says this? Studies by both liberal and conservative tax experts, the administration, and two arms of the Republican-controlled Congress confirmed that the Federal income tax burden for families in America is lower than it has been for 40 years.

The middle fifth of American families, with an average income of $39,100, paid 5.4 percent in income tax last year compared to 8.3 percent in 1981.

A four-person family, with a median income of $54,900, paid 7.46 percent of their income in income tax—the lowest since 1965. And a median two-earner family, making $68,605, paid 8.8 percent in 1988, which is about the same as in 1955.

In fact, one-third of American families no longer pay income tax.

That is the context in which we need to take up what we are going to do as a people relative to our newfound economic prosperity that is being projected by so many.

We need to remember, too, how we arrived at this point.

In 1993, when President Clinton took office, he inherited a budget with a record deficit of $290 billion per year. In 1993, we passed the Budget Act without a single Republican vote—none in the House; none in the Senate. In fact, Vice President AL GORE cast the deciding vote on this floor in the Senate and created a framework for a remarkable turnaround.

From almost 30 years of continuing hemorrhaging red ink and growing deficits, we then had 7 years in a row of declining deficits—in fact, the last 3 in surplus, even over and above that required for Social Security.

For fiscal year 2000, we are looking at a $26 billion surplus over and above Social Security. In the meantime, that set the framework for 107 consecutive months of economic growth. There have been 20.4 million new jobs since 1993. Home ownership is up a record 67 percent. Real wages have increased since the beginning of the Clinton administration by 6.6 percent, reversing a two-decade-long trend of declining real wages.

From 1993 to 1998, the number of poor people in America declined by 4.8 million and the number of poor children went down by 2.1 million. In these past 7 years, 7.2 million have left the welfare rolls—a 51-percent decline in the welfare rolls. Welfare recipients now account for the lowest percentage of the U.S. population since 1967, the height of the Vietnam war.

In 1999, Federal spending was the smallest share of our gross domestic product since 1966. Lower- and middle-income Americans had the smallest tax burden in 40 years, as noted by the study that came out this weekend. And we are now paying down debt.

By the end of fiscal year 2000, the Treasury expects to have reduced our debt held by the public by about $300 billion—that is ''billion'' with a ''B''—from where it was only 3 years ago.

Now we have this great national debate. The experts in both the House and the Senate are projecting about a $3 trillion surplus over the coming 10 years, thanks, in very large part, to the decision made in 1993 to set that framework for prosperity and growth. We are talking about a $3 trillion surplus. And $2 trillion of that is attributable to Social Security. To the good credit of the President of the United States, he said: Save Social Security first. Our Republican friends have concurred. That is off the table.

The next question is, then: What do you do about the remaining $1 trillion over the coming 10 years? The first thing is to be very cautious. Indeed, we have a hard time projecting 1 year in advance, much less 10 years in advance, what is going to happen to our economy.

We cannot get too giddy about how to spend or give back or do whatever with $1 trillion that may or may not materialize. But that is the debate that is going on today. It is going on between the two Presidential candidates. It has been going on between the parties. The American public themselves are trying to digest what kind of vision we have for America in the first 10 years of this century, the first 10 years of this millennium.

George W. Bush has said he knows what to do with the $1 trillion dollars: essentially give it all back in a tax cut, commit to that now. If $1 trillion doesn't actually show up, too bad, because Social Security, Medicare, and virtually everything else we do will be in jeopardy.

There are others, including myself, who say, first, be prudent about whether this trillion is going to materialize. To the degree that it does, let us look at making sure that we protect the long-term viability of Medicare, which is in shaky financial condition. Most concur. Secondly, let us put some additional dollars towards paying down the debt. That will keep the interest rates down. It will continue to foster economic growth and prosperity. It will make the ability to buy a car, a house, to create new jobs, to run a farm or ranch all cost less. It will do more than many other things the Federal Government could do.

Third, let's make sure we do make key investments in our schools. We have crumbling schools all across the country. We have schools that have a greater need for better technology. We have teacher pay problems. We have problems all the way from Early Head Start through our graduate programs and research programs, including our technical and vocational programs. Let's put some dollars there as well. That will create a foundation for continued economic growth and prosperity, if we continue to invest in the minds of American citizens.

We are in a global economy today. The world is full of people who work as hard as any American for a dollar a day. The question is, Do American workers bring to the table more than just a willingness to work hard but also bring with them the technical skills and intellectual abilities to do things other people in the world cannot do? That is where we need this growing, developing, and constructive partnership between the Federal, State, and local government, public and private, whereby we empower more American citizens to take care of their own needs, to grow the economy, and to make sure America remains the foremost economic power in the world bar none.

Yes, in the context of how to use this $1 trillion, let's try to find some room for tax relief, too, but let's target it to middle-class and working families, families who have the most difficult time meeting their bills. When you look at George W. Bush's proposal, it is blown on a tax cut, with nothing for the schools, nothing to invest, nothing to reduce the deficit, nothing to protect Medicare, at least not to the degree that it needs to be done. Then look and see who are the winners and losers on this.

The typical middle-class family gets about a $500 tax cut; a-million-dollar-a-year income gets about a $50,000 tax cut. That is not fair, not when we are being told we don't have the money to build new schools. We can't pass a bond issue in most of the counties in my State of South Dakota. Real estate taxes are through the roof. Our ag economy is not doing well. We are wondering how to replace all those 1910, 1920 vintage schools across my State. We are looking at still a great many children who would benefit from Early Head Start programs, Head Start programs. We are looking at the need for better law enforcement. We are looking at the need for investing in our infrastructure, including our rural water. We are looking at all the things we need to do to prepare ourselves for the increasingly challenging economy of this coming century, the coming millennium.

That is where the American public is in concurrence with those of us who say, first be prudent about that $1 trillion, making sure that we stay in the black, that we don't go back into the bad red-ink days of the Reagan-Bush

years and the years before that which were bipartisan; both parties were in the red prior to 1993, for over 30 years. We don't want to go back to those days.

To the degree we have these dollars to utilize, let's make sure we cover an array of needs we have: paying down further debt; protecting Medicare; investing in our schools, education, making us a more competitive society; doing some things for our families; and, yes, some tax relief as well. But let's do it all in that package rather than some sort of radical libertarian vision of America where the role of the Federal Government is to guard the border and deliver the mail. Many of our friends seem to think we shouldn't be delivering the mail anymore either.

I think most Americans have a more moderate, mainstream view. The American people are not ideologues. They are not far to the left. They are not far to the right. They don't want the Government to do everything, and they don't want a situation where the Government does nothing. They are commonsense about their vision of where we need to be. I think we should use caution in taking public opinion polls too seriously around this place.

Time after time, poll after poll taken reveals the American public is on the side of this more balanced, thoughtful, deliberative approach to how we are going to position ourselves to be in a situation of strength in the years to come. A lot of people's eyes glass over when we talk about budget issues, dollars and cents, talking about trillions of dollars. It is almost unfathomable. Yet at the heart of it all, where our real values and priorities lie is determined by those dollars-and-cents decisions we make in this body and on which we are about to begin this week.

The rhetoric is never lacking. The rhetoric is always in favor of almost everything. But when it comes time to see whether we are going to protect the environment, whether we are going to help our kids, whether we are going to rebuild schools, strengthen Medicare, whether we are going to do something about prescription drugs and health care, as Senator DORGAN from North Dakota has noted, whether we are going to do these kinds of things is, in large measure, dictated by the dollar-and-cents decisions we make on this floor.

This is going to be a very crucial week. We will be establishing a budget resolution. I am fearful from what I see headed our way that there is a likelihood that it will be another partisan political exercise at a time when the American public is rightfully frustrated by the lack of ability of the two parties to work together as well as they should. If that is the case, we will see, as we go through the 13 separate appropriations bills or omnibus bill in the end, as may wind up being the case, whether we come out in a way that is, in fact, balanced, which does, in fact, use the resources necessary.

It is a once-in-a-lifetime opportunity. Two generations have gone by waiting for this opportunity to have our Federal Government in the black and to make some policy decisions about how we can partner together to continue opportunity and prosperity for all of our citizens and not just a few. How tragic it would be if we were to lose this opportunity, if we would say, no, there is no role for the Federal Government to improve Medicare, to keep our rural hospitals open with a decent level of reimbursement, to rebuild our schools, to do the things that need to be done while at the same time providing some tax relief and paying down debt. What a loss that would be if we were to miss that opportunity.

There is no more fundamental decision to be made in this the 2nd session of the 106th Congress than these budget issues that are before us this week. We can be proud and we can take some satisfaction in the fact that taxes for middle-class families are now the lowest in 40 years, that we have had 3 years in a row of budget surpluses over and above that required for Social Security, and that our economy has had 8 years in a row of continuous GDP growth. But there is no automatic pilot on which to put our economy. It requires difficult decisions to be made each and every year by the Congress to set the stage for continued prosperity.

That is the challenge before us. I am hopeful that before we adjourn at the end of this year, we will be able to look back at this 2nd session of the 106th Congress as truly a watershed time, a fork in the road where we chose the right road to go down in terms of strengthening our society and creating a framework for continued growth and prosperity.

I yield the floor.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. GRAMS. Mr. President, I understand there has been time set aside this morning?

The PRESIDING OFFICER. Under the previous order, the Senator from Wyoming or his designee shall be in control of the next 45 minutes which has now begun.

ENERGY

Mr. GRAMS. Mr. President, I rise to discuss our long-term energy needs and the energy problems we are currently facing in this country and to express my dismay with the Clinton administration last week because of the neglect of the long-term energy needs of our Nation's economy and its energy consumers.

I spent a great deal of time outlining my concern with the administration's failure to develop a coherent plan for reducing our reliance on foreign oil and for increasing our nation's energy security. I outlined my disgust for how this administration has ignored our nuclear waste storage crisis, moved to breach hydropower dams in the northwest, forced regulation upon regulation on other energy production technologies, and displayed a complete disregard for the men and women who find and produce domestic supplies of oil and natural gas.

In fact, this administration has virtually ensured that the oil price crisis we're now facing will pale in comparison to the electricity price and supply problems that are just around the corner for our nation's electricity consumers. I know both the energy producers and consumers of Minnesota are astutely aware of the generation and transmission problems that will grip our state in the not-too-distant future. Those problems are not confined to Minnesota. Many States in the upper Midwest face generation and transmission shortages, as do States across the country. Those problems are rooted in the failure of this administration to comprehend the generation needs of a growing economy and the transmission requirements of that growing demand.

While I strongly believe that, in the absence of a coherent administration energy policy, Congress needs to step in and forge its own path for meeting the long-term energy needs of our economy, I've come to the floor today to talk about the need for some short-term measures to address high oil prices.

In Minnesota, farmers are preparing to enter the fields for spring planting. They're trying to budget for the year and put in place a business plan that will put food on the table and put their children through school. As everyone knows, doing these most basic things is no easy task when commodity prices are low, the weather is uncooperative, and government regulations eat away at the ability to show a profit. This year, however, farmers have a new worry that threatens to make matters even worse—the growing price of diesel fuel and gasoline. Farming is an extremely energy intensive industry. Everything farmers do require energy; from plowing the field to milking the cows, energy is an essential part of a farm's bottom line.

Likewise, truckers throughout America are essential to delivering the products we use in our everyday lives to markets across the country. Without truckers, we wouldn't have access to most of the things we all take for granted on a daily basis. Even the internet becomes virtually worthless to consumers if truckers can't deliver to our doorsteps the products we buy. Like farmers, truckers rely heavily upon stable energy costs to make a living and run their businesses. When fuel prices go up, truckers feel the impact first. Too often, they have to absorb the increases in fuel prices, but it's not long before everything from fruits and vegetables to our children's school supplies begin to rise in price as a result of climbing fuel costs. We need look no further than the surcharges now being placed on delivery services to see the compounding negative impacts of increased transportation costs.

Many of us in the Senate have witnessed the stream of truckers from across the country who have descended upon Washington, DC, in recent weeks. They have come to their Nation's Capitol not because they want government to give them something, but because they cannot make a living when the Department of Energy is caught napping on the job. They expect, demand, and deserve an Energy Department that comprehends the importance of energy costs to our economy and has a long-term plan for meeting the needs of energy consumers.

Mr. President, I know I do not have to remind my colleagues of how the rising cost of oil threatens almost every aspect of our economy and communities. Senior citizens on fixed incomes cannot absorb wild fluctuations in their energy costs. Business travelers and airlines cannot afford dramatic increases in airline fuel costs. Families struggling to feed and educate their children cannot withstand higher heating bills, increasing gasoline costs, or the domino effect this crisis has on the costs of goods and services.

To begin addressing this problem, I have joined Majority Leader TRENT LOTT, Senator LARRY CRAIG, and a number of my colleagues in offering legislation to repeal the 4.3-cent gas tax while protecting the Highway Trust Fund and not spending any of the Social Security surplus. Our legislation is aimed at getting some short-term relief directly into the hands of energy consumers. Our bill will eliminate 4.3-cent tax on gasoline, diesel, and aviation fuel so the American consumer can see some relief at the pump when they fuel up for a day on the road, in the field, or traveling to and from school or work. Our bill will eliminate the 4.3-cent tax starting on April 16 through January 1, 2001. For farmers, truckers, airlines, and other large energy consumers, this action will have an even greater positive impact because of the large amounts of fuel they consume.

I have heard some of my colleagues argue that 4.3 cents a gallon has a negligible impact on consumers. To them, I say look at the amount of fuel a farmer or trucker consumes during an average week. Look at the thousands of gallons of diesel fuel required to operate a family farm or deliver products from California to Maine. Or look at the tight profit margins that can make the difference between going to work and being without a job. I'm convinced this action is going to help farmers, truckers, businesses, and families in Minnesota and that's why I strongly support it.

For those who are concerned that eliminating the 4.3-cent gas tax is going to deplete important highway and infrastructure funding, we've included language in this legislation that will ensure the Highway Trust Fund is completely protected. The Highway Trust Fund will be restored with on-budget surplus funds from the current fiscal year as well as the fiscal year 2001.

If gas prices reach $2 a gallon, on-budget surplus funds will allow additional reductions in the gas tax without impacting the Highway Trust Fund in any way. Depending on the size of the on-budget surplus, our legislation could provide a complete reduction of federal gas taxes until January 1, 2001 if prices rise to, and remain above, the $2 mark. Let me make this very clear: we are not going to raid the Highway Trust Fund with this legislation. In fact, we've ensured that the on-budget surplus will absorb all of the costs of the gas tax reduction. I also want to assure my colleagues and my constituents that this legislation walls off the Social Security surplus. We will not spend any of the Social Security surplus to pay for the gas tax reduction.

Our legislation is quite simply a tax cut for the American consumer at a time when it's needed most. We're going to use surplus funds—funds that have been taken from the American consumer above and beyond the needs of government—and give them back to consumers every day at the gasoline pumps.

For me, this legislation boils down to a very simple equation. Are we going to sit by and do nothing as farmers prepare to enter the fields this spring, or are we going to take whatever short-term actions we can to support our farmers and provide them with a needed boost? Are we going to help those most impacted by high fuel costs, or are we going to ignore their needs and let them absorb thousands of more dollars in fuel costs this summer? There is overwhelming proof that the Clinton administration's complete rejection of a national energy policy has caused this mess, so I believe the Congress must step in and help get them out of it.

I joined my colleagues in the Senate earlier this year in requesting and receiving emergency releases of Low-Income Home Energy Assistance funding. We did so on at least three separate occasions, and I've supported the President's request for $600 million in additional funding this year. This crucial funding for Minnesota and many other cold weather States was a vital short-term approach to mitigating the impact high fuel costs have had on senior citizens and low-income families. Our constituents were in need, and we responded exactly as we should have. Right now, even more of our constituents are in need, and by responding with a reduction in the Federal gasoline tax, Congress can again act in a way that is expected, even demanded, by our constituents.

As I started earlier, the gasoline crisis requires that Congress act now to stem rising energy costs in the near term. It also requires that elected officials and bureaucrats across Washington take a serious look at the direction in which our Nation is headed with its energy policy. I am prepared to take a hard look at any options that might help my constituents right now, and I demand that this administration explore options to ensure that our nation reduces its reliance on foreign oil and establishes a much more sound energy policy for decades to come, to make this country energy independent and not so dependent on foreign sources of energy that when they turn them on or off, it can have dramatic impact on our economy. While those solutions will not happen overnight, I believe a reduction in the gas tax will help. It is going to help now, and it is going to help when that help is needed the most.

I yield the floor. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. THOMAS. Mr. President, I ask unanimous consent to speak for about 15 minutes in morning business.

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

Mr. THOMAS. Thank you.

TAXES

Mr. THOMAS. Mr. President, I wish to talk a little bit about oil prices. I guess most everyone wants to talk about oil prices and gas prices at the pump—those things that affect each of us. First of all, I have had the opportunity to meet in the Chamber this morning and hear a little discussion about taxes. So I will comment for a moment on that.

We are now dealing with the budget, which of course is one of the basic responsibilities of Congress, and the question of how much money we spend in the Federal Government. That has to do with the whole philosophical question of how large a Government we want and the things we want the Federal Government to be involved in, how much involvement we want in all of those things—what is the division between the responsibility of the Federal Government, local government, and State government. I think these are obviously some of the most important issues with which we deal. These are broad issues. These are philosophical issues. The budget has a great deal to do with it.

In fact, I suspect that the total amount of expenditures is probably the most important issue we deal with all year, depending on how you view the role of Government. Keep in mind this year we will spend about $1.8 trillion. That is $1,800 billion in the Federal budget. About a third of that will be so-called discretionary funding, which is determined by the Congress. The remainder, two-thirds of that, $1,800 billion, will be mandatory spending—

things such as Social Security, Medicare, and others.

We are dealing with setting a budget that basically is an expenditure limit on that discretionary spending, which last year, as I recall, rose about 7.5 percent more, much more than inflation. This year I think there is an effort being made to see if we can control that level of spending. It has to do with the size of Government. Clearly, everyone has different views, of course, as to how to adequately fund programs we think are most important—the priorities the public sets through their representatives in terms of Government programs.

One of the things it seems to me we haven't done as well as we might is to review programs that have been in place for a very long time. Some of them, obviously, are important programs that need to go on. Others were designed to do something for a relatively short time, but they are always there. They never go away because we do not have the opportunity to have the oversight to see if, in fact, those programs have accomplished the things they were designed to accomplish, and if, indeed, those dollars can be spent more productively in some other programs.

We find ourselves in a situation of having these programs that have been in place forever and are almost automatically funded and the obvious need for new programs from time to time as time and needs change. It is simply an accumulation of programs. Those of us who occasionally say to ourselves that we ought to control the size of Government, have to take a look at those kinds of issues.

I hear my friends talk about the evils of tax reduction. They ought to review that a little bit, it seems to me.

First of all, we ought not spend Social Security dollars for operating funds. We have been doing that for 40 years, but we have not done that in the last 2 years. We hear our friends on the other side of the aisle and the administration and President Clinton saying: Save Social Security. Not one program has come from them as to how to do that.

These young pages sitting here will pay out of their first paycheck 12.5 percent for Social Security. The likelihood is, if we don't do something, that they will not have benefits when they are eligible for them.

We need to do something. We have a plan. We set aside at least a portion of that for individual retirement accounts. Let it belong to the persons who made it, and, indeed, let them invest in private sector equities or bonds so that the return is much higher.

The choices we have are fairly simple. We can reduce benefits. Nobody wants to do that. We can increase taxes. I don't know of anybody who wants to do that. Social Security taxes are the highest that most people pay of any tax. Or we can increase the return for the trust funds. We are for that. The administration has no plan at all other than to say: Save Social Security.

We need to do something about paying down the debt. Most everyone would agree with that. The debt that the President brags about paying down is taking Social Security money and putting it into debt. It would be replacing public debt. But it is still debt. It is debt to the Social Security trust fund.

What I propose and what I think we ought to do is set money aside just like with a home mortgage, and each year we will take so much money. It will take this amount of money to pay this year's obligation to pay off the debt in real dollars. So instead of being replaced by Social Security dollars, that debt is being reduced. That is what we are for. The President has no plan. All we hear is this great talk about it but nothing is happening.

Then, quite frankly, we talk about taxes. What we are talking about, at least to some extent, is not simply reducing debt. It is a fairness issue. The marriage penalty tax is a fairness issue. Why should two people who work independently and are married pay this amount of tax? That isn't fair. It is a fairness issue. It is not just tax reduction.

There are ways to change the estate taxes. The Presiding Officer has a proposal that estate taxes ought to be paid when they pay taxes as a matter of capital gains. Good idea. Then there is money left, unless one continues to spend it.

People talk about taxes and balancing the budget and the economy growing starting in 1993. I am sorry, it didn't start in 1993; it started in 1991. It has been going on for a good long time. I cannot imagine the President's tax increase has contributed a great deal to the economic growth.

People have different views. That is what it is all about. We have different views of how we best serve this country. There are many views.

We talk about energy. Thirteen leaders of the OPEC nations are meeting in Vienna to discuss boosting oil production. I appreciate the efforts of Secretary Richardson. I hope the answer is they will increase production. That is a good thing to have happen.

We have to talk about how we got ourselves in a position of having to go over to OPEC, saying: We have real problems; will you help us out? And then we do not get much of a response from the very group we have contributed so much to, not only in dollars but in the gulf war. Then we find them deciding whether they will do us a favor by increasing oil production.

How did we get where we are? I think we have had a lack of a policy regarding energy, not only in petroleum but in the whole sphere of energy. I come from the largest coal-producing State. This administration has made it increasingly difficult to produce energy as it has sought to close down energy powerplants because of maintenance.

We find ourselves depending on others and that puts at risk not only our economy but also our security. We find ourselves now in the neighborhood of 57-percent dependent on foreign oil. We see consumption going up each year; domestic production is going down at the same time.

What are some of the reasons? Some are what have happened in the last few months in terms of this administration which has set about to leave a ''land'' legacy—and I understand Presidents desire to have different legacies. This is called a land legacy where they will set aside more and more private lands and put them into public ownership to have a billion dollars a year they can spend at their own discretion without going through the process of Congress and appropriations to acquire more Federal lands.

In my State of Wyoming, nearly 50 percent of our land belongs to the Federal Government. Selfishly, it makes a lot of difference if the land can be used as multiple-use public lands, if we can protect the resource, protect the environment, but also use those lands—whether for hunting, for recreation, for grazing, whether it be for coal and gas production. We can do these things in such a way that we have multiple use as well as protection of the environment.

This administration has moved in a different direction. I have been on the Energy Committee since I came here in 1994. We have not had from the Energy Department a coherent policy on energy for a very long time. We had a meeting this morning on the Kyoto treaty, the meeting in Japan where we were supposed to sign a treaty which would reduce our energy by about 40 percent, while asking less of the rest of the world. Of course that has not been agreed to. As a matter of fact, this Senate voted 95–0 not to agree to it—not that we shouldn't be doing something about clean air, not that we shouldn't be doing something to reduce the effect of economic growth—but not to just sign a treaty that says we are going to put ourself at a disadvantage.

This is part of where we are, including access to Federal lands, where we have 40 million acres, using the Antiquities Act, to set aside other lands for single purpose uses. We have had for some time offshore oil drilling, one of the great opportunities to provide domestic oil. We have tried from time to time to do something to give a tax advantage for marginal oil wells so they would produce, but the administration is opposed.

We talked about looking at ANWR, to do something in Alaska, to provide more domestic oil so we are not totally dependent on foreign countries to provide that energy source. That is not only good for the economy and jobs, but it is a security measure.

Since 1992, oil production is down 17 percent in the United States; consumption is up 14 percent. In just 1 year under this administration, oil imports

increased almost 8 percent; they are now getting close to 60 percent. DOE predicts a 65-percent oil dependency on foreign oil by the year 2020. We have become even more dependent.

The United States spends about $300 million each day on imported crude oil, $100 billion each year. We are concerned the trade deficit from oil amounts to about one-third of the trade deficit. Now we are looking at short-term issues when what we have to do is take a look at the longer term resolution to these problems.

The policy that would change this, and one we look forward to, is increased access to public land, continuing to emphasize, however, the idea that we need also to protect the environment. We can do that.

I mentioned tax incentives that would increase production. We need to look at the Clean Air Act and the Clean Water Act which is being used to reduce the use of lands as well. It has a real impact to a lot of people in my State which is largely a State that has mineral production.

In 1990, U.S. jobs exploring and producing oil amounted to over 400,000; in 1999, these jobs are down to 293,000, a 27-percent reduction in the ability of America producing our own oil. In 1990, we had 657 working oil rigs; now it is down to 153, a 77-percent decline.

I think we need to take a long look at where we are and where we want to go. Any government looking at energy has to recognize the stewardship responsibility that we have for the environment. We do that. At the same time, we have to be able to produce for ourselves so we have the freedom and opportunity to continue to have the strongest economy in the world, the greatest for jobs, while strengthening our security.

I yield the floor.

The PRESIDING OFFICER. The Senator from Idaho.

ENERGY POLICY

Mr. CRAIG. Mr. President, I come to the floor this afternoon to join my colleague from Wyoming who has so clearly outlined in the last few moments part of the problems our country faces at this time in our history relating to energy policy, or a lack thereof.

As I speak on the floor, as my colleague has just completed his comments, all eyes are turned on Vienna. That is not Vienna, NY, that is Vienna, Austria, where the OPEC nation members are meeting to decide whether they will be generous enough to turn their valves on a little more and increase crude oil production to a million or a million and a half barrels a day so that our gas prices will come down at the pump. How can a great nation such as ours now find itself so dependent upon a group of nations, almost all of them quite small but all of them very rich in crude oil? How do we find ourselves dependent on their thinking? What is the reason we find ourselves dependent? This is part of what my colleague from Wyoming was talking about. It is the loss of production units and the drop in number of rigs out exploring, and that is all our fault, our fault collectively as a nation, for having failed over the last several decades to put in place an energy policy that had, as its first criterion, relative independence from other nations of the world as suppliers of our fundamental energy-based need for crude oil, crude oil production for our petrochemical industry.

I have been to the floor several times in the last couple of weeks to speak about this because the price at the pump today is not an aberration. It is not something that was just quick in coming. We, as a country, have known for some time this day would be at hand. Several years ago, we asked our Government to investigate whether a lack of domestic production would put us at some form of vulnerability as to our ability to defend ourselves. The answer was yes. Those studies were placed on the desk of our President, Bill Clinton. Nothing was done. A year ago similar studies were done, and they reside on the President's desk as we speak. They have been there since last November, and nothing has been done.

Only in the last month has the President sent his Secretary of Energy out and about the world, with his tin cup in hand, begging—begging producing nations to turn their valves on a little bit.

What is the consequence of turning your valve on at the pump? The consequence is a reduction in the overall world spot price of crude oil. When you do that, the cash-flow pouring out of this country to the OPEC nations of the world declines; oil production goes up, cash-flow declines. Why would they want to do that? Out of the generosity of their hearts?

For the last year-and-a-half or 2, they have been in political disarray. During that time, they were largely pumping at will into the world market. A year ago, we saw crude oil prices at $10 a barrel on the world market. Today, they are over $30. Now $10 a barrel is probably too low, but $30 is a huge and bountiful cash-flow to the treasuries of these countries—Saddam Hussein's country, the man whose country we fought against to free Kuwait and the Kuwaiti oil fields less than a decade ago.

In fact, it was Northeastern Senators who, some months ago, wrote a letter to our President asking him to become sensitive to this issue because they were aware, with the run-up in oil prices—and we knew it was coming the minute the OPEC nations got their act together—the Northeastern Senators would see their States hit by heavy home heating oil costs. Sure enough, that is what happened. It happened because of the run-up in price. It also happened because of a loss of refinery capacity that has been going on for some time.

What was going on in the Northeast, 2 and 3 months ago, is now going on across America. I come from the West, where energy prices are extremely high and the impact on goods and services, and our citizens, can be dramatic. So even if the OPEC oil countries decide to raise crude oil output, my guess is it will be just a little bit. It may sound like a lot to the average listener—a million, million-and-a-half barrels a day—and it could bring crude oil prices down a little bit. But the OPEC nations' goal is to keep crude oil prices above $20 a barrel and therefore keep regular gas at the pumps at somewhere in the $1.40 to $1.50 range. That is still a dramatic increase, nearly doubling east coast prices. It will be even higher on the west coast.

The failure of the Clinton-Gore administration to recognize it, to understand it, and therefore to deal with it, is one of the great domestic and foreign policy tragedies of the decade. I say that from an economic point of view, but it is true also from a defense point of view—our ability to defend ourselves and stand as an independent nation in a community of nations around the world.

Here are some statistics. Probably everyone's eyes glaze over a little bit when you use statistics, but it is important for the record. U.S. crude oil production is down by 17 percent since 1992. We have actually had wells shut off and shut in. What does that mean? The price of oil got so low, they could not afford to pump them. It cost money to produce. So they turn the well off and they shut the well in, meaning it no longer has the capability of producing.

U.S. crude oil consumption during that same period of time went up 14 percent: 17 percent down in production, 14 percent up in consumption. It sounds like a ready-made situation for a crisis, and that is exactly where we find ourselves today. The United States is 55-percent dependent upon those nations that are meeting in Vienna at this moment; 55-percent dependent for so much of what we do. That is dramatically up from just a couple of decades ago when we were in the mid-30s, relating to dependency.

While all of this is going on and nothing is being done by this administration, and most of what we are trying to do here has either been denied or vetoed or blocked by this administration, the U.S. Department of Energy estimates we will have a 65-percent dependency on foreign producers by the year 2020. Some would say that is good because we will not have the environmental risks in this country; we will not be drilling and we will not be refining as much, and therefore the environmental risks will be gone.

What they did not tell you is, it puts hundreds of new supertankers out there on the open ocean on a daily basis—even if our foreign neighbors will produce and even if they will sell to us, hundreds more of those huge supertankers out there in the open ocean,

coming into our ports, offloading. Let me tell you, there are greater environmental consequences for that than the use of today's technology on our land or out in our oceans, drilling, finding, and shipping to our refineries.

The United States is spending $300 million a day on imported crude oil. That is $100 billion a year flowing out of this country to the coffers of the OPEC nations. That is big money, huge money, in any sense of the words. We sit here and wring our hands over a balance of payments, yet we do nothing to bring that production back to our shores and to be able to control our own destiny in the production of crude oil.

As I mentioned, the world oil price reached over $30, about $34 a barrel on March 7. It is down a little bit now on speculation that the OPEC nations today will make decisions that will increase production. But, of course, we already know energy prices on the west coast are at nearly $2 a gallon at the pump and are certainly extremely high here. More than half of all crude oil we use, about 18 million barrels per day, goes directly into home heating oil, motor gasoline, diesel fuel, and other transportation fuels.

The Clinton-Gore administration has failed to do one single thing to develop more of our Nation's crude oil reserves, of which we have an abundance. In fact, I was watching CNN a few moments ago. Some people in the oil industry would suggest only about half of the crude oil capability of this Nation has been used since we first discovered crude oil. Only about half of it has been used. The rest of it is under the ground. It is more difficult to find, more expensive to produce, but it is still there, and the great tragedy is we are not producing it. In fact, we are doing quite the opposite.

Since this administration has come to town, there has been an anti-oil attitude from a standpoint of domestic production. From the very beginning, they pushed through a 4.3 percent gas tax increase. They argued it was for deficit reduction. But when one listens to the soundings of the Vice President when he talks about crude oil and combustion engines and how negative they are to the environment and we ought to tax them out of existence—and he has said all of those things; I am paraphrasing, but it is not new; he has been replete in those expressions over the years—it is not unexpected that he cast the single vote that broke the tie between Democrats and Republicans on this floor that put the gas tax in place.

We now are looking to try to take that gas tax off in the very near future, at least roll it back a ways, and give our consumers some flexibility. We are going to balance the budget this year and have surpluses. Why not use some of that surplus money to offset the runup in expenses that consumers are now feeling at the gas pump at this moment and that certainly our transportation industry is feeling? It ought to be something we do.

I argue that we hold the highway trust fund fully offset. That is the trust fund that funds the pouring of concrete for our roads and our bridges and creates hundreds of thousands of jobs a year in the building and rebuilding of our infrastructure. Those need to be funded. I do not argue they should not be. But here we are dealing with a surplus, fighting with our Democrat colleagues over whether we should give tax relief to the taxpayers this year. What better way to give some of it back than to reduce the cost at the pumps? Most Americans today who drive cars find themselves paying increasingly higher fuel bills.

For the next few moments, I will talk about rural America. I come from a rural State. Many of us do. While runups in energy costs are dramatically impacting urban America, it is even greater in rural America. Why? It is quite simple. Many of my friends in Idaho drive 50, 60, 70 miles a day to just get their kids to school or just to shop at the local grocery store. That is not unusual in rural America.

All of the goods and services that flow to our farms and from our farms travel on the backs of 18-wheeler trucks, all consuming diesel oil.

Diesel oil is now being acquired by farmers across the Nation as they enter our fields for the spring farming season. All of that is going to drive up the overall cost of the farmers this year. In agriculture, farmers have experienced a 4-year run of very low commodity prices and have found most of their farms and ranches below break even. Now, because of an absence of a national energy policy, they find their cost of production could double, at least in the energy field. Many of the tools they use—the insecticides, the pesticides, and the herbicides that are made up of oil bases—are going to go up dramatically in cost.

In my State of Idaho, farming and ranching, logging and mining are also an important part of the rural economy. All of them very energy intensive. Those industries have found themselves nearly on their backs from the last few years at a time when we see energy costs ready to double or triple.

We have heard it from the homeowner and the apartment dweller in the Northeast for the last several months, that their fuel costs have doubled, their heating bills have doubled. Some are having to choose food over warmth or warmth over food. Many are senior citizens on fixed incomes.

While we have tried to offset that some with help from Washington, we have not been able to do it all. And in the next month and a half, we are going to hear it from the farmers and the ranchers as their fuel bills skyrocket.

We have already heard from the truckers. They have been to town several times, and many of our independent truckers are literally driving their trucks into their driveways, shutting them down, and not turning them back on, therefore, risking bankruptcy and the loss of that income-making property because they cannot afford to pay the fuel bills.

Why? It is time we ask why, as a country, and it is time Congress dealt with at least some short-term provisions while we look at and strive for some long-term energy policy.

I do not think one can expect the Clinton-Gore administration to be very helpful, except begging at the doorsteps of the palaces of the sheiks of the OPEC nations, because that is their only energy policy.

Those are the kinds of things we are going to look at and abide by. I think this Congress will attempt to respond and respond in a positive way for the short-term provisions while we look at long-term policy to increase production of crude oil inside the 50 States of our Nation in a way that we can control it, we can shape our energy future without a group of energy nations meeting in Vienna having a choke hold around our very neck.

Secretary of the Interior Bruce Babbitt is talking about taking down valuable hydroelectric dams in the Pacific Northwest—the administration does not consider hydropower a renewable resource. Electricity from hydro meets about 10 to 12 percent of U.S. needs.

Environmental Protection Agency Administrator Carol Browner is trying to shut down coal fired electric generating plants in the midwest—which depends on those plants for 88 percent of its electricity. The U.S. depends on coal for 55 percent of its electricity needs.

While the Clinton-Gore administration tried to kill off the use of coal fired electricity it is doing nothing to increase the availability of domestic natural gas which is the fuel generators will use if they cannot use coal. To replace coal the U.S. must increase its use of natural gas by about 10 trillion cubic feet per year.

Federal land in the Rocky Mountain West could contain as much as 137 billion cubic feet of natural gas but the Clinton-Gore administration refuses to allow any oil and gas exploration on those lands.

Last week the President announced his plans for dealing with our current energy problem. Once again, his emphasis focused on conservation and renewable energy sources like solar, wind and biomass. We cannot put windmills on trucks or solar panels on trains or barges.

The Clinton-Gore administration has refused to even consider allowing exploration in the Alaska National Wildlife Refuge which could contain up to 16 billion barrels of domestic crude oil which could easily be moved to refineries in the lower 48 through the Alaska pipeline.

The Vice President has vowed to prohibit any future exploration for oil and natural gas on the Federal outer continental shelf when there are clearly

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

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

Clearly, there is a pattern.

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

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

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

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

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

I yield the floor.

FLAG DESECRATION CONSTITUTIONAL AMENDMENT

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

The legislative clerk read as follows:

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

The Senate proceeded to consider the joint resolution.

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

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

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

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

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

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

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

Under our flag, we are united.

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

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

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

AMENDMENT NO. 2889

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

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

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

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

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

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

The amendment is as follows:

Strike all after the resolving clause and insert the following:

SECTION 1. SHORT TITLE.

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

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress finds that—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

FAIRFAX STATION, VA,
May 11, 1999.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sincerely,

ROBERT S. PECK, Esq.

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

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

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

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

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

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

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

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

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

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

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

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

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

Footnontes at end of letter.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sincerely,

WILLIAM VAN ALSTYNE.

FOOTNOTES

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[17] 491 U.S. at 399.

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

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

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

[21] Id at 406.

[22] Id at 412.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sincerely,

COLIN L. POWELL.

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

The PRESIDING OFFICER. Who yields time?

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

The PRESIDING OFFICER. The Senator from Utah is recognized.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

I yield the floor.

The PRESIDING OFFICER. Who yields time?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

I thank the Senator from Utah.

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

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

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

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

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

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

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

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

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

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

Let me read the letter from Gen. Colin Powell.

He said:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

I yield the floor.

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

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

I thank my friend from North Dakota.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

George Washington described the flag in much the same way:

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

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

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

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

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

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

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

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

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

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

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

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

Whatever that meant, that is what the flag meant.

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

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

Henry Ward said:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

William Rehnquist said:

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

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

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

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

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

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

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

The assistant legislative clerk proceeded to call the roll.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

I suggest the absence of a quorum.

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

The assistant legislative clerk proceeded to call the roll.

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

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

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

The PRESIDING OFFICER. The Senator has 5½ minutes remaining.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

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

The PRESIDING OFFICER. The Senator has 10 minutes remaining.

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

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

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

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

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

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

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

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

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

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

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

I ask unanimous consent that the letter from the American Law Division addressed to me be printed in the RECORD.

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

CONGRESSIONAL RESEARCH SERVICE,
THE LIBRARY OF CONGRESS,
Washington, DC, November 8, 1995.

To: Honorable Kent Conrad Attention: Dan Kelly

From: American Law Division

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

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

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

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

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

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

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

Footnotes at end of analysis.

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

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

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

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

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

FOOTNOTES

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

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

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

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

(See exhibit 1.)

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

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

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

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

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

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

I hope my colleagues will support this approach.

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

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

I thank the Chair and yield the floor.

EXHIBIT 1

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

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

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

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

ANGIE LEKANDER,
President.
VICKIE TRIMMER,
Secretary.

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

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

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

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

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

Sincerely,

BOB HANSON,
State Secretary, ND VVA.

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

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

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

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

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

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

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

RANDALL A. LEKANDER,
Commander.

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

The PRESIDING OFFICER. The Senator from Kentucky.

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

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

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

Madam President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator has 30 seconds.

Mr. MCCONNELL. I yield it back.

The PRESIDING OFFICER. The Senator from Alabama.

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

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

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

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

The PRESIDING OFFICER. All time has been yielded back.

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

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

The PRESIDING OFFICER. Is there objection?

Mr. HOLLINGS. Thirty minutes when?

Mr. SESSIONS. Whenever.

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

Mr. SESSIONS. In the next hour.

The PRESIDING OFFICER. Following Senator HOLLINGS?

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

Mr. HOLLINGS. No objection.

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

The Senator from South Carolina.

AMENDMENT NO. 2890

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

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

The PRESIDING OFFICER. The amendment is at the desk.

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

The legislative clerk read as follows:

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

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

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

The amendment is as follows:

On page 2, line 4, strike beginning with ''article'' through line 10 and insert the following: ''articles are proposed as amendments to the Constitution of the United States, either or both of which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States within 7 years after the date of submission for ratification:''.

''ARTICLE—

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

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

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

''ARTICLE—''.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Let me read exactly what it says:

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

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

Section 2—this is why we added it—

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

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

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

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

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

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

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

PANDER GAP

(By Richard Morin)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

I yield to the Senator from Kentucky.

The PRESIDING OFFICER. The Senator from Kentucky is recognized.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Yours truly,

ROGER PILON,
Vice President for Legal Affairs.

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

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

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

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

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

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

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

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

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

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

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

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

Extending the franking privilege to all legally qualified candidates,

Providing assistance to candidates for broadcast advertising,

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

Providing resources for candidate travel.

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

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

Sincerely,

LAURA W. MURPHY,
Director.

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

WRONG WAY ON CAMPAIGN FINANCE

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

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

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

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

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

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

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

The PRESIDING OFFICER. The Senator has 32 minutes remaining.

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

The PRESIDING OFFICER. The Senator from Utah is recognized.

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

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

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

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

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

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

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

He goes on in the column to say:

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

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

He concludes his column by saying:

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

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

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

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

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

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

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

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

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

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

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

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

Boy, that is draconian—

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

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

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

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

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

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

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

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

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

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

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

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

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

How much time do I have left?

The PRESIDING OFFICER. The Senator has 21 minutes remaining.

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

The PRESIDING OFFICER. The Senator from Washington is recognized.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The PRESIDING OFFICER. At 9:30.

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

The PRESIDING OFFICER. That's correct.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

I yield the floor.

The PRESIDING OFFICER. The distinguished Senator from Pennsylvania.

Mr. SPECTER. I thank the Chair.

The PRESIDING OFFICER. Who yields time to the Senator?

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

The PRESIDING OFFICER. The Senator is recognized.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

This is a commercial for President Clinton's reelection.

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

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

Try another one:

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

Try this one on for size:

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

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

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

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

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

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

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

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

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

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

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

I yield the floor.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Then Justice Kennedy:

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

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

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

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

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

Quoting further:

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

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

Quoting further:

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

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

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

Listen to this sentence:

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

Let me quote that one more time:

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

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

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

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

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

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

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

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

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

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

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

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

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

Governor Bush:

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

I am quoting it verbatim here as written.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

FUNNELING TO CAMPAIGNS MAY BE WIDESPREAD

(By James W. Brosnan)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Empire Sanitary Landfill of Scranton, Pa., pleaded guilty to contributing $110,000 to the Dole and other Republican campaigns through employees and paid an $8 million fine.

Independent counsel Donald Smaltz was appointed to investigate football game tickets and other gifts to former Agriculture secretary Mike Espy, but his four-year probe has produced six convictions for illegal corporate campaign contributions.

In one case, lobbyist Jim Lake arranged for $5,000 in contributions to the 1994 Mississippi congressional campaign of Espy's brother, Henry Espy, and then padded his expense account to get the money back. He was fined $150,000 and ordered to write and send descriptions of the campaign finance law to 2,000 lobbyists.

In another, New Orleans attorney Alvarez Ferrouilet was sentenced to one year in prison for disguising $20,000 in illegal contributions to Espy.

The other cases have resulted in fines of $1.5 million against Sun-Diamond Growers, $480,000 against Sun-Land Products $80,000 against American Family Life Assurance Co., and $2 million against Crop Growers Corp.

Mr. HOLLINGS. Mr. President, this is the pertinent part.

Simon Fireman, a national vice chairman of Dole's campaign, funneled $100,000 into Dole's campaign using employees of his company, Aqua Leisure Industries of Avon, MA. He paid a $6 million fine.

Empire Sanitary Landfill of Scranton, PA, pleaded guilty to contributing $110,000 to Dole and other Republican campaigns through employees and paid an $8 million fine.

Independent counsel Donald Smaltz was appointed to investigate Mike Espy, which we all know about.

I don't know what happened to Haney, or whether or not he was found innocent. But let's assume so. I am not trying to disparage. I am just trying to say here is the corruption that actually goes on.

In one case, lobbyist Jim Lake arranged for a $5,000 contribution to the 1994 Mississippi congressional campaign of Espy's brother and then padded his expense account to get the money back. He was fined $150,000 and ordered to write and send descriptions of the campaign finance law to 2,000 lobbyists.

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The other cases have resulted in fines of $1.5 million against Sun-Diamond Growers, $480,000 against Sun-Land Products, $80,000 against American Family Life Assurance Company, and $2 million against the Crop Growers Corporation.

This corruption is rampant, and you can't stop it unless you get this constitutional amendment. Everyone understands what Justice Kennedy said—that you are not going to have this covert speech. You are not going around, and you are not going to employees, because the name of the game is—I know because I ran for President. I know one State that I believe I could have taken, but the one who succeeded in taking it spent *x* thousands of dollars above the limit. It was 2 years later they found out that he spent over the limit. That was the end of that.

What I am saying is, you can't control this. It is a Federal election campaign practices commission because it is all ex post facto. It is lost in the dust.

This has been going on, particularly with you and I serving in the Senate. We can't talk sense, we can't debate, we can't get measures up, and we can't deliberate because we have been corrupted by the money chase.

Mondays and Fridays, gone; Tuesday morning, gone; windows here and there and yonder for lunches, dinners, fund raisers, breaks now every month of the year. Why: They go raise some more money, and we are not getting the work of the people done.

I was here when it worked, when we met at 9 o'clock on Monday morning. Nobody was here at 9 o'clock this Monday morning. Nobody is here now because they are all out raising money. I can tell you, we worked until Friday afternoon at 5 o'clock. Ask Senator BYRD. He remembers. He knows how hard we worked in those days when he was leader.

But the system and the Buckley v. Valeo cancer are overtaking all of us. We are all part of it. I have asked for windows, and I have had to chase at holidays. I continue to do so. I am saying to myself and to all of us that it is time we sort of fess up and understand that this has to stop. We have to start working on behalf of the people and not ourselves. Let's do away with the corruption. Let's get back to the original intent of Buckley v. Valeo, which was totally bipartisan and overwhelmingly passed. That was to limit spending or stop the buying of the office.

We had that enough in 1978, which I explained because I know what was called upon in cash moneys in my particular State. It was listed all over the country. Connolly asked the President, and he went down to collect. They put up with Dick Tuck in the Brinks truck as it turned into the ranch in order to have the barbecue so the President could thank his contributors whom he had not even met.

We all were so embarrassed. It is bad when there is not even any embarrassment in this body. The corruption is exacerbated. I learned that word having come to Washington—''exacerbate.'' It continues to exacerbate, and it gets worse and worse.

I yield back the remainder of our time, and I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. FITZGERALD). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. SESSIONS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

CLOTURE MOTION

Mr. SESSIONS. Mr. President, on behalf of the leader, it is the leader's hope and intention to have a final vote on the pending concurrent resolution before the Senate adjourns on Tuesday, March 28. However, if a consent agreement cannot be reached, a cloture vote will occur on Wednesday morning. With that in mind, I send a cloture motion to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The legislative clerk read as follows:

CLOTURE MOTION

We the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on Calendar No. 98, S. J. Res. 14, an amendment to the Constitution of the United States authorizing the Congress to prohibit the physical desecration of the flag of the United States.

Trent Lott, Orrin Hatch, Bill Roth, Peter Fitzgerald, Rod Grams, Ted Stevens, Chuck Hagel, Thad Cochran, Paul Coverdell, Pat Roberts, Phil Gramm, Frank H. Murkowski, Don Nickles, Bob Smith of New Hampshire, Susan Collins, and Tim Hutchinson.

Mr. SESSIONS. It is the leader's hope the final vote will occur tomorrow. However, if this cloture vote is necessary, I now ask consent it occur at 10 a.m. on Wednesday and the mandatory quorum under rule XXII be waived.

The PRESIDING OFFICER. Without objection, it is so ordered.

MORNING BUSINESS

Mr. SESSIONS. Mr. President, I ask consent there be a period for the transaction of routine morning business with Senators permitted to speak for up to 10 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

THE OIL CRISIS

Mr. MURKOWSKI. Mr. President, there has been a great deal of anticipation today on what OPEC might do. For those of you who do not recall the sequence, several weeks ago, our Secretary of Energy went over to OPEC, encouraging them to increase production. The concern was that we were approximately 56-percent dependent on imported oil. A good portion of that came from OPEC. As we saw with the Northeast Corridor crisis on heating oils, there was concern over the availability of adequate supplies of crude oil. It appears that we are using somewhere in the area of 2 million barrels a day more in the world than are being produced currently. That sent a shock through the oil marketeers and resulted in our Secretary going over to OPEC and meeting with the Saudis and urging them to increase production.

They indicated they were going to have a meeting on March 27, which is today, and would respond to us at that time. The Secretary indicated that this was a dire emergency, that oil prices were increasing and the East Corridor was looking at oil prices in the area of nearly one and a half dollars and he needed relief now. The OPEC nations—particularly the Saudis—indicated they would address it at the March 27 meeting. So, in other words, the Secretary was somewhat stiff-armed.

Well, the Secretary, as you know, went to Mexico and encouraged the Mexicans to increase production. The Mexicans listened patiently, but they reminded the Secretary that last year when oil was $10, $11, $12, $13 a barrel, and the Mexican economy was in the bucket, where was the United States? The Secretary indicated we would help Mexico out with the tesobonos, ensuring that they would be bailed out. But to make a long story short, we didn't get any relief from Mexico.

Well, today, we didn't get any relief from OPEC. OPEC said they would address it tomorrow. So the question of whether or not we are going to get relief, I think, points to one thing: We have become addicted to imported oil. We are like somebody on the street who has to have a fix. The fix is more imported oil. And when the supply is disrupted, we look at what it takes to get more.

Well, it takes maybe a higher payment, a shortage of supply. It makes the price go up. That is the position we are in. I encourage my colleagues to look very closely at what OPEC does tomorrow—indeed, if they do anything—because what they have been doing so far is cheating. Who have they been cheating on? They have been cheating, in effect, on themselves at our expense because last year they agreed to cut production. They developed a discipline within OPEC to cut production back to 23 million barrels per day. But they did not keep that commitment. They are currently producing 24.2 million barrels a day. That is about 1.2 million over the agreement.

So if they come up tomorrow and announce they are going to come out with a million and a half barrels a day increase, that isn't a million and a half barrels net; the net is 300,000 barrels a day. So we better darn well look at that arithmetic. If they come up with 2 million barrels a day, that is relief, in a sense, but in the last year our demand increase has been a million and a half barrels a day in addition, and I did not take into account my arithmetic. Remember, we are not the only ones in the world who consume oil from OPEC. Those other countries are going to have to share in whatever increased production comes out.

So it is indeed a rather interesting dilemma that we find ourselves in as we now are dependent 56 percent on imported oil. The Department of Energy tells us that in the years from 2015 and 2020, we will be 65-percent dependent on imported oil. Well, some people say you learn by history. Others say you do not learn very much. Obviously, we have not learned very much.

There is one other factor I think the American people ought to understand. Where has our current increase been coming from? It has been coming from Iraq. Last year, we imported 300,000 barrels a day from Iraq. Today, we are importing 700,000 barrels a day from Iraq. Today, the Department of Commerce lifted some sanctions off of Iraq to allow the Iraqis to import from the United States certain parts so they could increase—these are refinery parts—refining capacity by 600,000 barrels a day in addition.

So here we are, importing 700,000 barrels a day currently from Iraq. Some people forgot we fought a war over there not so many years ago—in 1991. What happened in that war? We lost 147 American lives; 423 were wounded in action, and we had 26 taken prisoner. In addition, the American taxpayer took it. Where did he take it? He took it in the shorts because since the end of the Persian Gulf war in 1991, just to contain Saddam Hussein and keep him within his boundaries, the cost of enforcing the no-fly zone and other things is costing the American taxpayer $10 billion.

So here we are today looking at OPEC for relief, allowing them to get parts for their refineries so they can increase production. Here we are depending and begging and passing the tin cup for OPEC production. The answer lies in decreasing our imports on foreign oil and, as a consequence, producing more oil and gas in the United States. We can do it safely. We have the American technology. We have the overthrust belt, the Rocky Mountains, Colorado, Wyoming, Utah, Montana, Louisiana, Texas, those States that want OCS activity.

My State of Alaska is perfectly capable of producing more oil. We produce nearly 20 percent of the total crude oil; it used to be 25. We have the technology. We know how to open up the Arctic areas and make sure the animals and the character of the land are protected because we only operate in the wintertime. Our roads are ice roads. They melt in the spring. There is no footprint. If there is no oil there, there is no footprint of any kind. We can do that in these areas. But as a consequence, we have to look for a solution.

I hope my colleagues really pick up on this. If OPEC does increase production, there are going to be those who claim victory, that we got relief. But it is going to be a hollow victory because that victory simply says our Nation becomes more dependent on imported oil. I think most Americans are waking up to the reality that that is a very dangerous policy. To suggest we got caught by surprise—I will conclude with two little notes. In 1994, Secretary of Commerce Brown requested that the independent petroleum producers do an evaluation on the national energy security of this country and came to the conclusion that we were too dependent on imported oil.

Last March, Members of the Senate wrote a bipartisan letter to the Secretary of Commerce, Secretary Daley, asking for an evaluation on the national security interests of our country relative to our increased dependence on imported oil. He released that report in November. It sat on the President's desk until Friday. They finally released it in a brief overview. The conclusion was that we have become too

dependent on imported sources of oil and it affects the national security of this country. What do they propose to do about it? They don't have an answer.

I will talk more on this tomorrow when we have further information on OPEC.

THE VERY BAD DEBT BOXSCORE

Mr. HELMS. Mr. President, at the close of business Friday, March 24, 2000, the Federal debt stood at $5,730,876,091,058.27 (Five trillion, seven hundred thirty billion, eight hundred seventy-six million, ninety-one thousand, fifty-eight dollars and twenty-seven cents).

One year ago, March 24, 1999, the Federal debt stood at $5,645,339,000,000 (Five trillion, six hundred forty-five billion, three hundred thirty-nine million).

Five years ago, March 24, 1995, the Federal debt stood at $4,846,988,000,000 (Four trillion, eight hundred forty-six billion, nine hundred eighty-eight million).

Twenty-five years ago, March 24, 1975, the Federal debt stood at $505,328,000,000 (Five hundred five billion, three hundred twenty-eight million) which reflects a debt increase of more than $5 trillion—$5,225,548,091,058.27 (Five trillion, two hundred twenty-five billion, five hundred forty-eight million, ninety-one thousand, fifty-eight dollars and twenty-seven cents) during the past 25 years.

ADDITIONAL STATEMENTS

SEAPOWER

• Mr. CLELAND. Mr. President, over the past several years, our nation's military has become increasingly overcommitted and underfunded—facing problems from recruiting and retention, to cuts in active fleet numbers and a dwindling active duty force. Yet in spite of these problems, the United States' naval power, with it's fleet of nuclear-powered attack submarines, life-saving Coast Guard and Merchant Marine forces, and highly skilled sailors and mariners, is the best in the world. These components are a part of one of the most technologically sophisticated defense systems in the world. In Kings Bay, Georgia, we are fortunate to be home to the greatest submarine base in the nation, Kings Bay Naval Submarine Base. During my visits there, however, I have heard time and again how detrimental the growing gap between commitments and funding has become.

I believe that by appropriating additional funds to our nation's defense system and by supporting efforts to create a larger force structure, we will resolve or at least begin to remedy some of these problems that are facing today's military forces. Since I came to the Senate in 1997, I have supported funding for procurement, research and development, and readiness. In order for the United States to retain it's role as a military super power, we must pay attention to the gaps that exist today and prevent further deterioration in our armed forces. If we do not reverse this trend now, a very high price will be paid tomorrow for our collective lethargy on defense issues and for the massive under-funding of our armed forces.

Mr. President, I now respectfully request that an article from the January, 2000 edition of Seapower magazine be inserted into the RECORD, as I believe it accurately and appropriately outlines the existing gap between our commitments and resources, and effectively argues the case for remedying this situation.

Thank you.

[From Almanac of Seapower, Jan. 2000]

A TALE OF TWO CENTURIES

(By John Fisher)

The old century had come to an end and the United States, its armed services triumphant from victory in a splendid little war over a technologically inferior adversary, as ready to take its rightful place among the major military and economic powers of the world. A former assistant secretary of the Navy, who became a national hero in that war, was soon to become president and use his bully pulpit for, among other things, the building of a Great White Fleet that was the first step in making the United States a naval power ''second to none.''

That former assistant secretary, later president, Theodore Roosevelt, was a shrewd judge of human nature and a life-long student of American history. He knew that most of his fellow Americans had little if any interest in foreign affairs, or in national-security issues in general. Roosevelt himself was a staunch advocate of the seapower principles postulated by Alfred Thayer Mahan, whom he greatly admired. So to remedy the situation he helped found the Navy League of the United States in 1902, contributing significant financial as well as moral support.

There were many, of course, in the Congress and in the media—indeed, in Roosevelt's own cabinet—who were not sure that the Great White Fleet was needed. It cost too much and, despite its fine appearance, would have little if any practical value for a nation unchallenged in its own hemisphere and unlikely ever to send its sons to fight in Europe's wars, much less Asia's. Besides, there might be an occasional colonial war here and there, but the possibility of a direct war between the major powers of Europe was becoming more and more remote with each passing year.

Within less than five years the vision of a lasting peace throughout the world was demolished when the Japanese Navy shocked the world by defeating the Russian Navy in the Battle of Tsushima (27–28 May 1905), sinking eight Russian battleships and seven Russian cruisers. The Japanese fleet, which started the war a year earlier with a surprise attack on Russian ships anchored in Port Arthur, lost three torpedo boats at Tsushima.

Less than a decade later The Great War—''the war to end all wars,'' it was called—started in Europe. The United States remained a nonparticipant until April 1917, but then entered the war in force. U.S. seapower contributed significantly to the eventual Allied success. The joyous Armistice of 11 November 1918, however, was followed by the debacle at Versailles that sowed the seeds of World War II.

Again, America and its allies were not prepared. The United States once again stayed on the sidelines until jolted out of its lethargy by the Japanese attack on Pearl Harbor: That put 15 million American men and women in uniform, led to total mobilization of the U.S. economy—and of the mighty U.S. industrial base—and resulted in millions of deaths later on the unconditional surrender of both Nazi Germany and Imperial Japan. The century was less than half over, but it was already the most violent in all human history.

This time around, some lessons were learned—but not very well, and they were not remembered very long. When North Korea invaded South Korea the United States again was unprepared—as it was a generation later in Vietnam. The Cold War cast a nuclear shadow over the entire world for more than four decades, though, and forced the much-needed rebuilding, modernization, and upgrading of America's armed forces.

As the world enters a new century, and new millennium, those forces are the most powerful, most mobile, and most versatile in the world. Moreover, the young Americans in service today are the best-led, best-trained, and best-equipped in this nation's history. But that does not mean that they are capable of carrying out all of the numerous difficult and exceedingly complex missions they have been assigned. The victories of the past are no guarantee of success in future conflicts. And it is not foreordained that the so-called ''American century'' that has now ended will be extended by another uninterrupted period of U.S. economic and military dominance.

Operation Allied Force, the U.S./NATO air war over Kosovo, is a helpful case in point. The precision strikes against Serbian forces, and against the civilian infrastructure of the former Yugoslavia, eventually led to the withdrawal of Serbian troops from Kosovo and the occupation of that battered province by U.S./NATO and Russian peacekeepers. The one-sided ''war'' lasted much longer than originally estimated, though. It did not ''stop the killings'' (of ethnic Albanians), the original purpose of the war. And it left Slobodan Milosevic still in power in Belgrade.

It is perhaps inevitable that political leaders will focus almost exclusively on the ''victories''—however fleeting and however gossamer—that can be claimed. The prudent military commander, though, will focus on the problem areas, the near-defeats and potential disasters, the ''What-ifs'' and the close calls. There were an abundance of all of these in Kosovo last year—just as there were in the war with Iraq in 1990–91.

Logistics is the first and perhaps most important of those problem areas—and the biggest ''What if'' as well. In both conflicts. In the war with Iraq the question was ''What if Saddam Hussein had not stopped with Kuwait but continued into Saudi Arabia and all the way to Riyadh?'' The answer—on this, virtually all military analysts agree—is that the war would have lasted much longer and would have cost much more in both lives and money. As it was, it took the greatest sealift in history before the vastly superior U.S./coalition forces could defeat the previously overrated Iraqi army. That massive sealift—more than 10 million tons of supplies carried halfway around the world—would have been impossible, though, were it not for the fact that, on the receiving end, Saudi Arabia had built a large, modern, and well-protected port infrastructure.

Logistics was not a problem in Kosovo, either—but only because the U.S./NATO air

forces accomplished their mission (belatedly), and ground forces did not have to be brought in. It was a close call, though—more so than is generally realized—and the end result was due more to good fortune than to careful planning. The ports in the area that might have been available to U.S./NATO shipping are few in number, inefficient, extremely limited in their throughput capacity, and vulnerable both to sabotage and to attack by ground forces. Which is exactly why U.S. sealift planners say that a ground war in Kosovo would have been ''a logistics nightmare.''

Nightmares aside, there are other problems, of much greater magnitude, affecting all of the nation's armed forces. All are underfunded. All are overcommitted—usually, in recent years, to humanitarian and peacekeeping missions that, however worthwhile in themselves, detract from operational readiness and from the training required for actual combat missions.

There is more: The U.S. defense structure is the leanest it has been in the post-WWII era. Funding for the acquisition and procurement of ships, aircraft, weapons, and avionics/electronics systems has been cut precipitously in recent years and the result has been a steady decline in the size—and, therefore, responsiveness—of the vital U.S. defense industrial base.

Except for the Marine Corps, all of the services also are suffering from prolonged recruiting and retention problems that, if not resolved, will lead to a ''hollow force'' of the early 21st century similar to that of the late 1970s. There is increasing evidence, anecdotal but mounting, that combat readiness has declined.

Following are some particulars about how the various problem areas enumerated above have affected the nation's sea services—balanced by a report on the current strengths and capabilities, as well as needs, of each service.

Since the end of the Cold War the Navy's active fleet has been cut almost in half, and is now just over 300 ships, the lowest level since the early 1930s. What makes the situation worse is that the administration's future-years defense plan (FYDP) calls for construction of only 6–7 ships per year for the foreseeable future, whereas a building rate of 9–10 ships is needed to meet the minimum requirement of 305 ships postulated by the Quadrennial Defense Review. Independent defense analysts say that a more realistic estimate of Navy fleet requirements would be anywhere from 350 to 400 ships, depending on the scenarios postulated. To maintain a fleet of that size would require a building rate of 10–12 ships per year.

Exacerbating the ship-numbers problem is the fact that, because hundreds of Cold War U.S. air and ground bases overseas have now been closed, and hundreds of thousands of troops have returned to CONUS (the Continental United States), a much heavier share of the collective defense burden is now borne by the Navy's forward-deployed carrier battle groups (CVBGs) and Navy/Marine Corps amphibious ready groups (ARGs). In many areas of the world the CVBGs and ARGs are now the only combat-ready forces immediately available to the national command authorities.

The difficulties imposed on Navy carriers are particularly heavy. The Joint Chiefs of Staff have told Congress that a minimum of 15 active-fleet carriers are needed to maintain a continuous presence in the most likely areas of international crisis—i.e., the Persian Gulf, the Mediterranean, and the Western Pacific (particularly the waters off the Korean Peninsula and, more recently, in the Taiwan Strait between the People's Republic of China on the mainland and the Republic of China on Taiwan). With only 12 carriers now available—11 in the active fleet and one reserve carrier used primarily for training purposes—the Navy has had to adopt a ''gapping'' strategy that leaves one or more of these ''hot spots'' without a carrier for several weeks, or sometimes months, at a time. In today's fast-paced era of naval warfare, the Navy League said last year, the gapping strategy is ''not a prudent risk, as it is sometimes described, but an invitation to conflict.''

The Navy's fleet of nuclear-powered attack submarines (SSNs) is the best in the world, but also undersized to meet all current as well as projected commitments. According to force requirements provided to the Joint Chiefs of Staff by the regional commanders in chief, more than 70 SSNs are needed to meet all of the Navy's worldwide commitments—but there will be only 50 available unless the QDR levels are revised upward. This could pose major risks in areas where land-based enemy aircraft and missiles make it difficult for carriers and other surface ships to operate close to the littorals.

The Navy's SSBN (nuclear-powered ballistic missile submarine) force continues to be the dominant and most survivable leg of the U.S. strategic-deterrent ''triad'' of SSBNs, manned bombers, and intercontinental ballistic missiles. There are now 18 Trident SSBNs in the active fleet, but only 14 are likely to be needed in the future. The proposed conversion into an SSGN (nuclear-powered guided-missile submarine) configuration of the four SSBNs now slated for deactivation would add significantly to the Navy's overall power-projection capabilities and compensate to some extent for current deficiencies in surface combatants.

Perhaps the brightest stars in the current fleet inventory are the Aegis guided-missile cruisers and destroyers that played such a key role in the Gulf War and in several lower-scale combat actions since then. The combat-proven effectiveness of the Aegis fleet has made it a strong candidate to serve as the principal building block for the national-missile-defense system favored by Congress and likely to be built in the first decade of the new century.

Navy aircraft and weapon systems also are the best and most technologically sophisticated in the world. Because of the continued underfunding in procurement and acquisition, however, all of these fleet assets have been considerably overworked, a spare parts shortage has developed, and the maintenance workload has increased significantly.

The U.S. Marine Corps has changed commandants, but continues the march—and its proud tradition of always being ''the most ready when the nation is least ready.''

That mandate from Congress is more daunting on the eve of the 21st century than it has been at any previous time since the dark days preceding World War II and the Korean War. In both of those conflicts the Marines suffered a disproportionate number of casualties, particularly in the early months of fighting—primarily because forward-deployed Marine units had to hold the line until the nation (and the other armed forces) could catch up to the Marines in readiness.

Today, all of the nation's armed services are in a reasonable state of readiness. But the operating tempo is the highest it has ever been in peacetime, and most deployments in the past several years have been for humanitarian and peacekeeping assignments rather than for combat missions. Training has suffered, therefore, and there has been a slow but steady degradation of combat readiness—well-documented in hearings before the House Armed Services Committee.

Under former commandant Gen. Charles C. Krulak the USMC's senior leaders developed a cogent and forward-looking plan to field a 21st-century Marine Corps that will be fully combat-ready to meet the assymetric challenges likely in the foreseeable future. It will be up to Gen. James L. Jones Jr., who succeeded Krulak on 1 July 1999, to implement that plan. But significant additional funding will be needed for, among other things:

Maintaining the Corps at its current authorized strength of approximately 172,000 Marines on active duty and in the Reserves;

Modernizing the Corps' Total Force with the aircraft, weapons, rolling stock, electronics and avionics systems, and other supplies and equipment needed to maintain combat superiority on the littoral and inland battlefields of the future;

Building, upgrading, and maintaining a self-sustaining expeditionary tactical aviation force, including the revolutionary V–22 Osprey tiltrotor aircraft, which can operate from aircraft carriers, amphibious assault ships, and/or expeditionary airfields ashore.

Expediting the early development and procurement of: (a) the joint strike fighter, which USMC leaders have told Congress is urgently needed both to maintain a modern tactical aviation force and to replace the obsolescent aircraft now in the Corps' inventory; and (b) advanced amphibious assault vehicles capable of safely and swiftly carrying Marines and their equipment to and over the beaches to positions that in some combat scenarios will be far inland; and

Implementing Corps-sponsored initiatives to develop and field the advanced-capability shallow-water mine countermeasures systems needed to allow future Marine assault forces to maneuver safely through the littorals.

Alone of all the services, the Marine Corps has consistently met its recruiting and retention goals in recent years. Several studies suggest that this is because the Marine Corps keeps a clear focus on its highest priorities—''Making Marines and Winning Battles''—and that young men and women respond more readily to that inspiring challenge than they do to the less lofty appeal of material benefits.

Today's Coast Guard remains Semper Paratus—but just barely, and at a very high price. The U.S. Coast Guard is perhaps the most overworked and underfunded agency in government today, but it carries out—efficiently and at minimum cost to the taxpayer—a multitude of missions that increase almost annually. Several studies suggest that the Coast Guard returns a minimum of four dollars in services for every tax dollar provided to the multimission service in appropriations.

The Coast Guard is also the world's premier lifesaving organization, and in recent years has saved an annual average of more than 5,000 lives—and has assisted many more thousands of people in distress on the seas, on the Great Lakes, and in the nation's inland and coastal waterways.

But lifesaving is only one of the many ''services to taxpayers'' in the USCG portfolio. In recent years the Coast Guard has also, on average: conducted 44,000 law-enforcement boardings, identifying 24,000 violations; seized 76,000 pounds of marijuana and 62,000 pounds of cocaine; investigated 6,200 marine accidents; inspected 23,000 commercial vessels; responded to 12,400 spills of oil or hazardous materials; serviced 55,000 aids to navigation; and interdicted 10,000 illegal migrants.

To carry out all of those missions in the future, however—and several others likely to be added—the Coast Guard needs a major recapitalization of virtually its entire physical plant: ships, aircraft, electronic and sensor systems, and shore facilities. To its credit,

the Coast Guard itself has taken the initiative by developing a so-called IDS (Integrated Deepwater System) plan that, if fully funded, would permit an orderly and cost-effective replacement of cutters, aircraft, and other assets over a period of years. Failure of the executive and legislative branches of government to support and fully fund that plan would cripple the Coast Guard's continued effectiveness—and would cost the American people in numerous ways.

Even today, very few Americans realize how dependent the United States is on the U.S.-flag Merchant Marine for national defense and its continued economic well-being. In times of war or international crises that might lead to war 95 percent or more of the weapons, supplies, and equipment needed by U.S. forces overseas must be carried by ship—usually over thousands of miles of ocean. It would be military folly to rely on foreign-flag shipping to carry that cargo.

Most innovations in the maritime industries in the post-WWII era—e.g., containerization, LASH (lighter aboard ship) vessels, and RO/ROs (roll-on/roll-off ships)—have been of American origin, and the United States is by far the greatest trading nation in the entire world. Literally millions of U.S. jobs, and billions of tax dollars, are generated by the import and export of raw materials and finished products into and out of U.S. ports.

The port infrastructure itself is badly in need of renovation and remodernization, however. Because of short-sighted laissez-faire economic policies, U.S.-flag ships today carry only a minor fraction of America's two-way foreign trade. The result is the loss of thousands of seafaring jobs, significantly reduced U.S. sealift capacity, and a Merchant Marine that is now in extremis.

The creation of the Maritime Security Program was a helpful first step toward recovery, but it will take many years, perhaps decades, before the U.S.-flag fleet can regain its traditional title as ''the vital Fourth Arm'' of national defense.

Additional funding, and a larger force structure, will resolve or at least ameliorate some of the most difficult problems now facing the nation's armed services, not only in procurement and RDT&E (research, development, test, and evaluation) but also in readiness. More and better equipment, combined with a lower operating tempo and higher pay, would in turn have a salutary effect on both recruiting and retention.

There are more intractable problems, though, that all the money in the world will not resolve—and that should be of major concern not only to the nation's armed services and defense decision makers, but to all Americans. The most difficult and most obvious of these problems is the proliferation in recent years of weapons of mass destruction (WMDs), and the means to deliver them. There already are a dozen or more nations—several of them extremely hostile to the United States—that already possess (or are close to acquiring) more destructive power than was unleashed by all the armies and navies in the world during World II.

It can be taken for granted that WMDs soon will be available to terrorist groups as well. But what is even more alarming is the near certainty that neither the United States nor the so-called ''global community'' at large will take the probably draconian steps that would be needed to counter this unprecedented threat. Not, that is, until weapons of mass destruction are actually used by terrorists. The only real question here is not ''if,'' but ''when.''

There are other dangers, other problems, other defense issues of transcendent importance that must be attended to at the start of this new century and new millennium. The succession in Russia, for example. In China as well. The mentally unbalanced military adventurism of the leaders of North Korea. The list could go on and on.

Quite possibly the greatest threats to world peace, though, are American complacency and American lethargy. The history of the 20th century shows that, once aroused to action, the American people can and will unite to defeat any enemy, no matter how long it takes or how much it costs. That history also shows, though, that it takes more than education and persuasion to unite the American people. It takes sudden and painful shock.

The problem here is that, in the past, the nation always had time to recuperate from its initial losses, and even from a Pearl Harbor. That may no longer be the case. There is now a bipartisan consensus that the United States should build and deploy a national-mission-defense (NMD) system as soon as ''practicable.'' If that consensus had existed several years ago the need today might not be so urgent. As it is, relatively few Americans realize that the United States is still absolutely vulnerable to enemy missile attacks. Another way of saying it is that not one U.S. missile-defense system has yet been deployed that could shoot down even one incoming enemy missile. That is a sobering thought.

The old axiom says that leadership ''begins at the top.'' But in a democracy that is not entirely true. If the American people demand a certain course of action loud enough and long enough,the elected ''leaders'' in the executive and legislative branches of government almost always will follow. In the field of national defense the American people have demanded very little in recent years, and, with a few notable exceptions, that is exactly what they have been provided.

In his prescient ''Prize Essay'' (The Foundation of Naval Policy) in the April 1934 Naval Institute Proceedings Lt. Wilfred J. Holmes argued persuasively that the size of the fleet (and, by implication, the size and composition of all naval/military forces) should always be consistent with national policy. ''Failure to adjust the size of navies to the needs of external [i.e., national] policy—or, conversely, to adjust external national policy to the strength of the military fleet—has, in the past, frequently led to disaster,'' Holmes said. At the 1922 Limitation of Armaments conference, he noted, the United States ''relinquished naval primacy in the interests of worldwide limitations of armaments.'' Unfortunately, though, ''the retrenchment in [U.S.] naval strength was not followed by retrenchment in the field of national policy.''

The circumstances are not exactly the same today—but they are close enough. The current operating tempo, for all of the nation's armed services, is the highest it has ever been in peacetime. Commitments have been increasing annually, without commensurate increases in funding. Ships, aircraft, and weapon systems are wearing out—and so are our military people. The ''gapping'' of aircraft carriers in areas of potential crisis is an invitation to disaster—and, therefore, represents culpable negligence on the part of America's defense decision makers.

Eventually, a very high price will have to be paid for these many long years of national lethargy, for the massive underfunding of the nation's armed forces, and for the continued mismatch between commitments and resources. When that time comes—sooner is much more likely than later—it may well be the darkest day in this nation's history.

Is there still time to reverse course? Perhaps. But not much time. And the leadership may well have to come not from those who hold high office in Washington, but from the American people themselves.

If they do provide that leadership, there will indeed be another American century. It will not be another century of violence, but of peace.

Peace on earth, for all mankind.●

JOHN MCCAIN, AN AMERICAN HERO

● Mr. CLELAND. Mr. President, I want to take this opportunity to salute my dear friend and colleague, the distinguished Senator from Arizona, JOHN MCCAIN. Although he has suspended his campaign for President, he should nonetheless know that he has scored a great victory in American electoral politics. More so than any other candidate in recent memory, Senator MCCAIN has beaten two of the greatest enemies facing our political system in the twenty-first century—apathy and cynicism. We should all be grateful to him for reminding Americans that ''politics'' is not a dirty word, that campaigns can be about more than 30 second sound bites, and that heroes still exist. We in the Senate should all feel proud to call him one of our own.

I think I and the four other Vietnam veterans in the Senate feel a particular kinship with Senator MCCAIN, for obvious reasons. You do not go through an experience like combat without being profoundly affected. You recognize a change in yourself when you come home, and you recognize it in others when you meet them for the first time. You are brothers. We are brothers. But why did the rest of America respond to Senator MCCAIN so strongly? Why did the ''Straight Talk Express'' appear every night on the evening news? Why did so many people want to see Luke Skywalker emerge out of the Death Star?

I believe it is because JOHN MCCAIN reacts to challenges the way we wish we would ourselves, but fear we might not. He remained in the Hanoi Hilton for seven years with his fellow P.O.W.'s even when he could have left. He fights for campaign finance reform, for strong action to reduce youth smoking, and for curbs in pork barrel spending even when he knows it will make him unpopular with his party. He shoots from the hip. He tells reporters how he really feels. He loves his family.

He is not perfect, but none of us are. He and I disagree on many issues, but we agree on this: that the purpose of politics is to generate hope, that serving our country—as a soldier or a sailor or a Senator—is the greatest honor of a person's life, and that, in the words of Babe Ruth, ''It's hard to beat a person who won't give up.''

Speaking for myself, I am a loyal Democrat who strongly supports the candidacy of AL GORE. But as an American and as a fellow Vietnam veteran, I am proud of the work JOHN has done, and will no doubt continue to do, in restoring the public's faith in their government and the political process.

Mr. President, JOHN MCCAIN is an authentic American hero, and I am proud to serve along side him.●

HEROES OF THE STORM

● Mr. CLELAND. Mr. President, it is with great pride that I come before my colleagues today to pay tribute to the many brave Georgians who pulled together to support one another in the aftermath of the devastating tornadoes that hit Southwest Georgia earlier this month. In the pre-dawn hours of Valentine's day, February 14th, the town of Camilla, Georgia was hit by a series of brutal tornadoes that took the lives of nearly twenty people. This storm caused not only terrible damage—destroying homes, farms and businesses—but it tested the limits of residents across the Southwest portion of the state. It has been said that ''Poor is the nation which has no heroes. Poorer still is the nation which has them, but forgets.'' When the storm calmed, true heroes emerged and they should be recognized.

I ask that I may be able to insert into the Congressional RECORD a list of individuals, organizations, and area businesses that made all the difference in preparing the people of Mitchell, Grady, Colquitt, and Tift counties for recovery from this tragic event. This list reflects only a portion of the many groups and individuals who reached out to our communities in their time of need. There are others who are often lost in the shuffle, whose movements and actions did not attract the media's spotlight. From the children who donated their own toys, to the families who reached into their savings, to the people who opened their doors for relatives or strangers who needed a place to find refuge.

The people and groups mentioned in this insert are not well known. These are everyday people—everyday Georgians. Individually, they each make a small contribution, collectively they make a tremendous difference.

The list follows:

Governor Roy Barnes and the Georgia Legislature; Law Enforcement officials from Mitchell, Colquitt, Tift, and Grady Counties; Chatam County Emergency Management; Mitchell County Community Response Team; Mitchell County Chamber of Commerce; Calhoun County Public Works; C–E Minerals Inc. in Andersonville; Mitchell County Ministerial Alliance of Camilla; Lions Club; Search and rescue teams from Albany/Dougherty, Macon, Colquitt, and Worth Counties; United States Marine Corps; MCLB Fire and Rescue; Georgia K–9 Rescue Association; University of Georgia Department of Student Affairs; Federal Emergency Management Association (FEMA).

Georgia Emergency Management Association (GEMA); U.S. Small Business Administration; Georgia State Highway Patrol; Georgia Legal Services; Georgia Department of Labor; Georgia Department of Family and Children's Services; American Red Cross; United Way; Salvation Army; Mitchell County Hospital; Phoebe-Putney Hospital; Homebuilders Association of Georgia; Lowes in Albany; Home Depot in Albany; Adventists Disaster Response; Fort Benning Air Force Command Center; Randolph Southern School; Dry Bank Elementary School; USS *Maryland* SSBN–738 Gold; Dothan Fire Department; Church of Gainesville; Camilla Lawn and Garden; The Mennonites.

Georgia Baptist Convention Relief Organization; United Methodist Church of Centreville and Macon; Emmanuel Baptist Church of James County; Chestnut Grove Baptist Church; Pitts Chapel United Methodist Church of Macon; Plainfield Baptist Church; Turner County Special Services School; United Methodist Mission Volunteers from Tallahassee, Florida, Lee United Methodist Church, Ebenezer UNC, and Macon Methodist Church; Griffin Church; Chapel Wood United Church of Athens; Zion Hill Baptist Church of Atlanta; Antioch Baptist Church of North Atlanta; County Line Church of Macon.

Waukeenah Methodist Church of Cairo; Calvary Baptist Church; First Baptist of Tifton; Beulah Baptist Church of Camilla; First United Methodist Church of Camilla; East Pelham Baptist Church; First Baptist Church of Camilla; First Baptist Church of Eufala, Alabama; Southern Baptist Group of Georgia; Union Baptist Church of Camilla; and First United Methodist Church of Thomasville.●

TRIBUTE TO THE NATIONAL EXCHANGE CLUB'S 89TH ANNIVERSARY

● Mr. GRAMS. Mr. President, I rise today to commend an organization that has given consistently to our communities over the past 89 years. I am proud to honor the National Exchange Club—an organization that can be characterized by the word ''service''—as it celebrates the anniversary of its founding.

The National Exchange Club is a volunteer group of men and women dedicated to serving their communities. Founded in 1911 by Charles A. Berkey, the organization has grown from a single group in Detroit, Michigan to nearly 1,000 clubs and 33,000 members throughout the United States and Puerto Rico. in my home state of Minnesota, there are more than 20 clubs committed to making our state and nation a better place to live.

In keeping with its rich history of helping others, the Exchange Club has established Child Abuse Prevention as its national project. By utilizing a wide array of educational programs, local clubs work to create public awareness of child abuse and develop relationships with parents to counter abuse. This program has helped more than 140,000 children since 1979.

Exchange members participate in a variety of other services, such as Youth Programs and Americanism. The Exchange Club's variety of youth programs encourage and recognize students who display good citizenship, community involvement, and scholastic achievement, and serve as volunteers. Clearly, its efforts are shaping the citizens of the future. Exchange's Americanism efforts spread pride in our nation and work to foster an awareness of the wonderful freedoms with which our country is blessed.

The numerous other community service activities the National Exchange Club undertakes are focused on helping the largest number of citizens as possible in their respective communities. All individuals in a community benefit from the club's crime and fire prevention efforts, its Book of Golden Deeds Award, and the Service to Seniors program.

For 89 years, the volunteers of the National Exchange Club have dedicated themselves to the betterment of our communities. I applaud them on their achievements and wish them a prosperous future.●

TRIBUTE TO MR. THOMAS BRASHER UPON HIS RETIREMENT FROM THE U.S. POSTAL INSPECTION SERVICE

● Mr. BREAUX. Mr. President, I rise to pay tribute to Thomas D. Brasher, a native of my home state of Louisiana, who will be retiring at month's end after a thirty-five-year career in law enforcement, including thirty years as a postal inspector with the U.S. Postal Inspection Service. At the time of his retirement, he will be sixth in seniority among the nation's 2,115 postal inspectors. Although a native of Alexandria, Louisiana, Mr. Brasher has worked with the U.S. Postal Inspection Service in California.

Tom Brasher began his law enforcement career in Lafayette, Louisiana, in 1964, when he joined that city's auxiliary police force while attending the University of Southwestern Louisiana. He became a regular officer in 1965 and worked in patrol. He joined the Louisiana State Police in 1966, where he worked until 1970 when he was recruited by the Postal Inspection Service.

Mr. Brasher's Inspection Service career was in the San Francisco Division, now the Northern California Division. Except for a four-year stint in San Francisco, he worked his entire career in San Jose. Mr. Brasher was primarily involved in investigating external crimes and was the first External Crimes Prevention Specialist for the division. He covered all of seven states and the Pacific Islands in that assignment. He also had assignments in child pornography, embezzlements, and the monitoring of the design and construction of post offices. He also served as an ad-hoc EEO counselor for a four-division area. His last assignments have been on the San Jose External Crimes Team, the San Francisco Bay Area Violent Crimes Team, the Northern California Workplace Violence Team and a detail to the Postal Service's robbery task force.

While Mr. Brasher will retire, his wife, Gay Ann, an award-winning school teacher in San Jose, will continue her teaching career. Together they will continue their travels, which so far have taken them to 94 countries around the world.

I know I speak for my Senate colleagues when I wish Tom and Gay Ann Brasher all the best in this new phase of their lives and thank him for thirty years of distinguished service to the United States of America.●

LOUISIANA BUSINESS LEADER BILL RAINEY TO RETIRE

Mr. BREAUX. Mr. President, I rise today to honor longtime Baton Rouge business and community leader Bill Rainey, site manager of ExxonMobil's Baton Rouge Chemical Plant. Bill is retiring at the end of this month after a 33-year Exxon career that began at the company's Baton Rouge Refinery in 1966.

Those of us in government who spent parts of our careers in Baton Rouge recognize Bill Rainey as one of the most tireless community leaders and effective problem solvers in the Louisiana capital. Bill's leadership in the community and direction of ExxonMobil's philanthropic works will be hard to replace and the company's more than 4,000 employees in Baton Rouge will miss his steady hand on the ExxonMobil rudder.

A native of Auburn, Alabama, Bill earned a bachelor's degree in chemical engineering from Auburn University in 1966 before embarking on his Exxon career. He left Baton Rouge in 1973 for a three-year stint in Exxon USA's Houston headquarters but returned to the Refinery in 1976 to accept the first of many management positions in Baton Rouge. In 1985, he became manager of the Exxon Research and Development Laboratories (ERDL) in Baton Rouge before returning to the Refinery as mechanical manager in 1988.

Like many of Exxon's top performers around the world, he was called to Valdez, Alaska in 1989 where he served as operations manager for Exxon's oil spill recovery and cleanup operations. In 1992, he was named manager of the Baton Rouge Refinery, where he served with distinction until moving up Scenic Highway to the adjacent Baton Rouge Chemical Plant as site manager in 1996.

While moving up the ranks to ExxonMobil's two top positions in Baton Rouge, Bill also moved up the ranks in almost every industry and charitable organization in which he was involved. He is a member of the board of directors and the executive committee of the Louisiana Chemical Association and has served with distinction as chairman of the board of directors of the Louisiana Chemical Industry Alliance since 1996. While refinery manager he served on the board of directors of the Louisiana MidContinent Oil and Gas Association and provided outstanding leadership to that organization's initiatives and responses to various legislative proposals over the years.

One of the organizations that will miss Bill the most is the Capital Area United Way, which he served as board chair in 1996–97. ExxonMobil's annual combined corporate and employee and annuitant contribution of more than $1 million makes it the largest United Way supporter in the state and says volumes about his leadership of that essential and worthwhile effort.

Bill also serves currently as a member of the board of directors of the Greater Baton Rouge Chamber of Commerce and the Partnership for Excellence Board of LSU's E.J. Ourso College of Business Administration and as co-chair of Community Action for Children.

Among Bill's many awards are the 1998 Alumni Recognition Award for Community Services from the LSU School of Social Work and the 1998 Volunteer CEO of the Year Award from the Volunteer Baton Rouge Corporate Volunteer Council.

Probably Bill's most notable accomplishment since arriving in Baton Rouge 33 years ago, though, was discovering his lovely wife, the former Emilie Steffek of Baton Rouge, and with her raising their three sons—Will, 29; Chase, 27; and Kyle, 25—all of whom make their homes in Baton Rouge.

I know that Bill and Emilie will continue to be active in their efforts to help others and I hope to be able to call on Bill from time to time as oil and gas or petrochemical industry issues critical to our state arise.

Bill is a frequent visitor to Washington and I know the entire Louisiana delegation joins me in wishing both him and Emilie a long and happy retirement.

CAPTAIN JERRY BURKE, EVERETT POLICE DEPARTMENT

● Mr. GORTON. Mr. President, throughout Washington state there are thousands of people who volunteer their free time to tutor, mentor, support our teachers and make a difference in their communities and in lives of our children. I would like to take this opportunity to recognize an outstanding volunteer, Captain Jerry Burke of the Everett Police Department who has passed his love of the theater onto a group of elementary students at Madison Elementary in Everett. For his efforts, I am proud to award him with my ''Innovation in Education'' Awards.

Captain Burke participates in a program in which members of the Police Command Staff adopt an elementary school in the Everett School District. While it is no surprise to see a police officer donating his or her time to a local school, Captain Burke is teaching something a little out of the ordinary for a cop who used to go undercover to bust drug dealers—he teaches a drama class.

When Captain Burke first approached principal Joyce Stewart, she was intrigued by his Fine Arts Degree in Designing for the Theater and his experience teaching theater arts prior to entering law enforcement. Furthermore, she was already interested in creating a drama program to expose interested students to the fine arts. Though he had no prior experience in creating such a program, or in teaching drama to elementary school students, Captain Burke agreed to take on the challenge.

This program has been a tremendous success. Captain Burke and the school created a drama club open to fourth and fifth graders that meets after school one day a week. The program continues to grow and approximately 35 students are now participating. The program combines lectures with creative drama games that emphasize communication, visualization, creativity, and improvisation. More importantly, the students enjoy the club and Captain Burke. Fourth grader Shawn Cook said, ''Police officers are always supposed to be tough. Mr. Burke is funny and tough.''

This spring's club is limited to 10 weeks since Captain Burke is attending the FBI academy in April, but he and Ms. Stewart are already considering options for spring of 2001 that would create a second creative drama class of third and fourth graders. The more experienced fifth grade students from this year's club are planning to put on the school's first ever dramatic production. Clearly, Captain Burke has made a significant contribution to the lives of these students and given them an interest that will last throughout their life.

One remarkable aspect of this program is that it demonstrates the importance of community involvement in our local schools. From this program, students will not only have an appreciation for the fine arts, but the will also have an appreciation for police officers and have a greater sense of community. I applaud the work of Captain Burke and wish his students the best of luck in producing their first play. Thank you to Captain Burke, and to all the members of the Everett Police Command staff for your contributions to local elementary schools.●

PALADIN DATA SYSTEMS SUPPORT OF THE WEST SOUND CONSORTIUM

● Mr. GORTON. Mr. President, when I travel across Washington state, one of the first topics I hear about from local businesses and high-tech companies is their need for people with high-tech skills. A Poulsbo company, Paladin Data, has taken their efforts to find skilled employees to a new level by donating its time and resources to train teachers in some of Washington state's public schools. For its commitment to working with teachers, improving student learning and expanding their skills, I am pleased to present Paladin Data with one of my ''Innovation in Education'' Awards.

Several years ago, seven school districts in Kitsap, Mason, and Pierce Counties developed the West Sound School-to-Career Consortium which provides approximately 14,000 students with high-tech classes. This year Paladin Data will begin its first year of a three-year project that provides high-tech training to teachers involved with the West Sound School-to-Career program. Paladin Data is also contributing $50,000 in matching funds to a state grant of $100,000 to provide needed curriculum materials and onsite

teacher training in either a Paladin facility in Poulsbo or at a designated school district site. Moreover, each school district will determine what training their teachers will received based on the needs of their district and their students.

Paladin is giving our teachers more information and skills that they can take back to their classrooms and shows teachers what skills employers are looking for in perspective employees, giving their students a leg up on the competition. Paladin's involvement is not only improving the education of our students, but also giving them an accurate picture of what skills they need well-before they enter the job market.

The Washington Software Alliance reports that over 64,000 computer-related jobs are currently unfilled in the State of Washington—all for lack of properly trained workers. I find it encouraging to see companies like Paladin Data, that are contributing to our booming economy, are taking an active role in ensuring the quality education of our children. I am proud to acknowledge Paladin Data Systems Corporation's commitment to education and I look forward to hearing about more companies making a contribution to our children's future.●

HONORING DR. WAYNE S. KNUTSON

● Mr. JOHNSON. Mr. President, I rise today to recognize Dr. Wayne S. Knutson, of Vermillion, South Dakota, a distinguished member of the arts community. On December 11, 1999, the University of South Dakota renamed Theatre I of the Warren M. Lee Center for the Fine Arts in Dr. Knutson's honor. This is an honor he richly deserves.

Dr. Knutson has had a distinguished career as an educator, artist, and administrator at the University of South Dakota and in the state arts community over the past fifty years. His tenure at USD began in 1952 as Professor of Speech and Dramatic Art and Director of University Theatre. Subsequently, he has also held the positions of Professor and Chair of the Department of English (1966–1971), Dean and Professor of Fine Arts (1972–1980), Vice-President for Academic Affairs and Professor of Fine Arts (1980–1982), and Professor of English and Theatre (1982–1986). In 1987, Dr. Knutson was appointed by the South Dakota Board of Regents as the first University Distinguished Professor.

As a member of the arts community, he has also served on the Literature Panel of the National Endowment for the Arts (1975–1977) and as chairperson of both the South Dakota Arts Council (1971–1978) and the South Dakota Humanities Council (1989–1991).

Dr. Knutson's honors include a Distinguished Service Award from the Speech Communication Association of South Dakota, the Governor's Award for Distinction in the Arts, the Burlington-Northern Faculty Achievement Award, a South Dakota Arts Council Senior Fellowship for Play Direction, and an award for Outstanding Achievement in the Humanities from the South Dakota Humanities Council.

In addition to his instrumental work as a professor and an actively involved member of the arts community, Dr. Knutson is also an accomplished author, director, and playwright. He wrote ''The Dakota Descendants of Ola Rue'' and ''Dream Valley'', as well as a number of articles on theatre for Dramatics magazine and a short history of the University of South Dakota. He has directed over sixty-five plays and musicals for USD, the Black Hills Playhouse, Pierre Players, Lewis and Clark Theatre, and the Group Theatre of Rapid City. He has also written ten plays and opera librettos, one of which was aired on Voice of America.

Mr. President, Dr. Knutson has a immensely enriched life in South Dakota and the honor of having Theatre I at USD renamed the ''Wayne S. Knutson'' is one he highly deserves. He has been an extraordinary pioneer and supporter of the arts. He is a man of great scholarship and knowledge, and will continue to shape the arts community for years to come. It is an honor for me to share the accomplishments of Dr. Wayne S. Knutson with my colleagues and to publicly commend him on his talent and commitment to the arts and education.●

HONORING BRIANNE COX AND GIRL SCOUT TROOP 290

Mr. JOHNSON. Mr. President, I rise today to publicly commend Girl Scout Troop 290 of Yankton, South Dakota.

● The girls of Troop 290 have worked especially hard this last year, donating their time and energy to the community. Their wonderful efforts to enhance the lives of many unfortunate South Dakotans at Christmas and Thanksgiving, to assist the community's elderly, to aid impoverished people in Haiti, and to undertake many other key projects has had a very important positive impact in the world around them.

Sadly, on November 24, 1999, Brianne Cox, a member of Troop 290, was killed in a tragic accident. She was active not only in Scouts, but enjoyed soccer, softball, dance, violin, trumpet, cross country, basketball, and many other activities. This young lady had a wonderful spirit that touched everyone who knew her.

In her name, the Troop 290 scouts have undertaken a very special project. These wonderful girls want to keep Brianne's memory alive and stay close to her family. To this end, they hold a fundraiser every summer to raise money for the 'Brianne Cox Memorial Fund'. This effort, in the name of a special girl, will designate funds to other middle school students who wish to participate in the many activities Brianne enjoyed, and who otherwise could not afford it.

Mr. President, these girls are true examples of charity and goodness. Their work to elevate the spirit of their hometown is inspiration in itself, but added to their work to keep Brianne Cox's memory alive, is truly extraordinary. I am pleased to be able to share their story with my colleagues and to be able to publicly commend their work.●

THE SAGINAW COUNTY COMMISSION ON AGING HONORS MS. HAZEL WILSON

● Mr. ABRAHAM. Mr. President, on March 31, 2000, the Saginaw County Commission on Aging will hold a luncheon honoring four women who have selflessly dedicated a significant amount of their time and their energy to improving the community of Saginaw, Michigan. Their tremendous efforts over the years have not only touched a great many lives, they have truly changed lives, whether by providing those in need with food and clothing, saving seniors hundreds of dollars in medical insurance payments, mentoring elementary school students, or helping people to understand and accept a culture different from their own. Thus, I rise today on behalf not only of myself, but also of the entire Saginaw County, Michigan, community, to sincerely thank Ms. Hazel Wilson, Ms. Mary Flannery, Ms. Sue Kaltenbach, and Ms. Yoko Mossner for their incredible efforts.

Ms. Hazel Wilson has been a Saginaw community leader for more than thirty years. Her charitable endeavors include working for the Family Indepence Agency in the 1960s, counseling laid-off auto workers for the UAW–GM Human Resource Center in the late eighties, serving on the Board of Trustees for the Saginaw Public Schools, and also serving on the Board of Directors for the Saginaw Voluntary Action Center. For the last ten years, she has been employed by the Saginaw County Community Mental Health Authority as a Prevention Coordinator.

Ms. Wilson demonstrated her outstanding leadership capabilities, and indelibly left her mark on the Saginaw community, when in the early 1970s she established the Good Neighbors Mission. Ms. Wilson's original goal in establishing this organization was to provide needy families with food and clothing. But because of her dedication the Good Neighbors Mission has continually grown, to the point where today it stands as a community resource center, a hub of activity, and, I am told, a virtual clearinghouse, where people can find help fulfilling much more than just their food and clothing needs.

Aside from working as a Prevention Coordinator, Ms. Wilson is also currently a member of the Zion Baptist Church, Zeta Phi Beta sorority, the Michigan T.A.G. Workgroup, and the

Michigan Prevention Association. I take great pride in recognizing community-oriented constituents like Ms. Wilson, and I applaud the Saginaw County Commission on Aging for ensuring that her efforts are not overlooked. On behalf of the United States Senate, I extend gratitude to Ms. Wilson for her dedication and work for her community.●

THE SAGINAW COUNTY COMMISSION ON AGING HONORS MS. MARY FLANNERY

● Mr. ABRAHAM. Mr. President, on March 31, 2000, the Saginaw County Commission on Aging will hold a luncheon honoring four women who have selflessly dedicated a significant amount of their time and their energy to improving the community of Saginaw, Michigan. Their tremendous efforts over the years have not only touched a great many lives, they have truly changed lives, whether by providing those in need with food and clothing, saving seniors hundreds of dollars in medical insurance payments, mentoring elementary school students, or helping people to understand and accept a culture different from their own. Thus, I rise today on behalf not only of myself, but also of the entire Saginaw County, Michigan, community, to sincerely thank Ms. Hazel Wilson, Ms. Mary Flannery, Ms. Sue Kaltenbach, and Ms. Yoko Mossner for their incredible efforts.

Ms. Mary Flannery has been a resident of Saginaw, Michigan, long enough to remember that an ice cream cone once cost a mere three cents there. For many years, she was an employee of the Family Independence Agency. Fortunately for the citizens of Saginaw, no one has reminded Ms. Flannery that she has in fact retired from her position there. She remains a regular fixture at local hospitals and nursing homes, and also continues to volunteer her time at the Commission on Aging.

At the Commission on Aging, she shares the knowledge and skills she collected while working at the Family Independence Agency, assisting seniors who have questions related to Medicare, Medicaid, and general health insurance. I am told that Ms. Flannery's expertise, and her willingness to venture beyond the call of duty, have saved Saginaw's seniors thousands of dollars they may have spent on duplicated medical bills or services. I guess when one has lived their life aiding individuals in need, even retirement cannot prevent them from continuing to do so.

Mr. President, on behalf of the entire United States Senate, I take pride in extending gratitude to Ms. Mary Flannery for her dedication to making the lives of others better. She is truly a role model for us all.●

THE SAGINAW COUNTY COMMISSION ON AGING HONORS MS. SUE KALTENBACH

● Mr. ABRAHAM. Mr. President, on March 31, 2000, the Saginaw County Commission on Aging will hold a luncheon honoring four women who have selflessly dedicated a significant amount of their time and their energy to improving the community of Saginaw, Michigan. Their tremendous efforts over the years have not only touched a great many lives, they have truly changed lives, whether by providing those in need with food and clothing, saving seniors hundreds of dollars in medical insurance payments, mentoring elementary school students, or helping people to understand and accept a culture different from their own. Thus, I rise today on behalf not only of myself, but also of the entire Saginaw County, Michigan, community, to sincerely thank Ms. Hazel Wilson, Ms. Mary Flannery, Ms. Sue Kaltenbach, and Ms. Yoko Mossner for their incredible efforts.

Ms. Sue Kaltenbach has been a resident of Saginaw County for thirty-seven years. During this time, she has served the Saginaw Township Community School Board in many ways: as president, vice president, secretary and treasurer. She was also once president of the Saginaw County School Board Association, a vice president of the Assistance League of Saginaw, president of the Saginaw County Lawyer's Auxiliary. In addition, Ms. Kaltenbach served the Junior League of Saginaw Valley as a corresponding secretary and the Street Smarts Investment Club as recorder.

Ms. Kaltenbach has been a mentor at Coulter Elementary School since 1996, as part of the H.O.S.T.S. program. She participates on the Election Scheduling Committee for Saginaw County, and is involved with numerous educational programs dealing with art, literature, drug abuse prevention and law related education. She is also chairperson of Family in Action, a former member of the Christian Service Commission and the Paris Council and a member at St. Stephen's Church.

Perhaps the most remarkable thing about Ms. Kaltenbach is that she has managed to do all of this while placing her primary focus upon raising her own three children. Mr. President, on behalf of the entire United States Senate, I applaud Ms. Sue Kaltenbach for her outstanding contributions to her community.●

THE SAGINAW COMMISSION ON AGING HONORS MS. YOKO MOSSNER

● Mr. ABRAHAM. Mr. President, on March 31, 2000, the Saginaw County Commission on Aging will hold a luncheon honoring four women who have selflessly dedicated a significant amount of their time and their energy to improving the community of Saginaw, Michigan. Their tremendous efforts over the years have not only touched a great many lives, they have truly changed lives, whether by providing those in need with food and clothing, saving seniors hundreds of dollars in medical insurance payments, mentoring elementary school students, or helping people to understand and accept a culture different from their own. Thus, I rise today on behalf not only of myself, but also of the entire Saginaw County, Michigan, community, to sincerely thank Ms. Hazel Wilson, Ms. Mary Flannery, Ms. Sue Kaltenbach, and Ms. Yoko Mossner for their incredible efforts.

During the forty-three years that she has lived in Saginaw County, Ms. Yoko Mossner has become involved with numerous organizations. She served as president and treasurer of People to People Chapter Seven, was a member of the Board of Trustees of People to People International, and has also held various leadership roles in the Saginaw's Culture Club, the Women's National Farm and Garden Association, the Saginaw County Lawyers' Auxiliary, and the Valparaiso University Guild. She is a former member of the Saginaw Zonta Club, and is currently a member of the Good Shepherd Lutheran Church.

More importantly, Ms. Mossner has played a leading role in finding Japanese culture a place in Saginaw County. For the last six years, she has served as volunteer director for the Japanese Cultural Center and Tea House, a project that was made possible by her efforts as a member of the Board of Trustrees of the Saginaw County Building Fund Committee. She also serves as Special Envoy and Liaison Officer from Saginaw to its Sister City, Tokushima, Japan. Undoubtedly, her efforts in this regard have played a significant role in expanding the cultural awareness of an entire community.

Perhaps the most remarkable thing about Ms. Mossner is that she has managed to do all of this while placing her primary focus upon raising her own three children. Mr. President, on behalf of the entire United States Senate, I applaud Ms. Mossner for her dedication to expanding the cultural knowledge in Michigan. I am sure that the effects of her work are immeasurable.●

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Ms. Evans, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting withdrawals and sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

REPORT ON THE NATIONAL EMERGENCY WITH RESPECT TO THE NATIONAL UNION FOR THE TOTAL INDEPENDENCE OF ANGOLA (UNITA)—MESSAGE FROM THE PRESIDENT—PM 96

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on Banking, Housing, and Urban Affairs.

To the Congress of the United States:

As required by section 401(c) of the National Emergencies Act, 50 U.S.C. 1641(c), and section 204(c) of the International Emergency Economic Powers Act, 50 U.S.C. 1703(c), I transmit herewith a 6-month periodic report on the national emergency with respect to the National Union for the Total Independence of Angola (UNITA) that was declared in Executive Order 12865 of September 26, 1993.

WILLIAM J. CLINTON.
THE WHITE HOUSE, *March 27, 2000.*

SEMIANNUAL REPORT ON PAYMENTS TO CUBA WITH RESPECT TO TELECOMMUNICATIONS SERVICES—MESSAGE FROM THE PRESIDENT—PM 97

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on Foreign Relations.

To the Congress of the United States:

As required by section 1705(e)(6) of the Cuban Democracy Act of 1992, 22 U.S.C. 6004(e)(6), as amended by section 102(g) of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996, Public Law 104–114, 110 Stat. 785, I transmit herewith a semiannual report ''detailing payments made to Cuba . . . as a result of the provision of telecommunications services'' pursuant to Department of the Treasury specific licenses.

WILLIAM J. CLINTON.
THE WHITE HOUSE, *March 27, 2000.*

MESSAGE FROM THE HOUSE

At 1:05 p.m., a message from the House of Representatives, delivered by Ms. Niland, one of its reading clerks, announced that the House has agreed to the following concurrent resolution, in which it requests the concurrence of the Senate:

H. Con. Res. 290. Concurrent resolution establishing the congressional budget for the United States Government for fiscal year 2001, revising the congressional budget for the United States Government for fiscal year 2000, and setting forth appropriate budgetary levels for each of fiscal years 2002 through 2005.

MEASURE REFERRED

The following concurrent resolution was read and referred as indicated:

H. Con. Res. 290. Concurrent resolution establishing the congressional budget for the United States Government for fiscal year 2001, revising the congressional budget for the United States Government for fiscal year 2000, and setting forth appropriate budgetary levels for each of fiscal years 2002 through 2005; to the Committee on the Budget.

MEASURE READ THE FIRST TIME

The following bill was read the first time:

H.R. 2366. An act to provide small business certain protections from litigation excesses and to limit the product liability of nonmanufacturer product sellers.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC–8146. A communication from the Chief, Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Request for Comments on the Revision of Proposed Section 987 Regulations'' (Notice 2000–20) (OGI–116999–99), received March 21, 2000; to the Committee on Finance.

EC–8147. A communication from the General Counsel, Department of the Treasury, transmitting a draft of proposed legislation entitled ''Customs Automation Modernization Act of 2000''; to the Committee on Finance.

EC–8148. A communication from the Chief, Regulations Branch, U.S. Customs Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Technical Corrections to Customs Forms'' (T.D. 00–12), received March 23, 2000; to the Committee on Finance.

EC–8149. A communication from the Chief, Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Fringe Benefits Aircraft Valuation Formula'' (Rev. Rul. 2000–13), received March 22, 2000; to the Committee on Finance.

EC–8150. A communication from the Chief, Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Tax Treatment of Cafeteria Plans'' (RIN 1545–AX58), received March 23, 2000; to the Committee on Finance.

EC–8151. A communication from the Director, Office of Management and Budget, Executive Office of the President, transmitting a draft of proposed legislation entitled ''Medicare Modernization Act of 2000''; to the Committee on Finance.

EC–8152. A communication from the Acting Assistant Secretary, Land and Minerals Management, Department of the Interior, transmitting a draft of proposed legislation entitled ''Melrose Range and Yakima Training Center Transfer Act''; to the Committee on Energy and Natural Resources.

EC–8153. A communication from the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Agency, Department of Justice transmitting, pursuant to law, the report of a rule entitled ''Schedules of Controlled Substances: Addition of Gamma-Hydroxbutyric Acid to Schedule I'' (DEA–200F), received March 23, 2000; to the Committee on the Judiciary.

EC–8154. A communication from the Assistant General Counsel for Regulatory Law, Department of Energy, transmitting, pursuant to law, the report of a rule entitled ''Backup Power Sources for DOE Facilities'' (DOE–STD 3003–2000), received March 23, 2000; to the Committee on Energy and Natural Resources.

EC–8155. A communication from the Assistant General Counsel for Regulatory Law, Department of Energy, transmitting, pursuant to law, the report of a rule entitled ''The DOE Corporate Lessons Learned Program'' (DOE–STD 7501–99), received March 23, 2000; to the Committee on Energy and Natural Resources.

EC–8156. A communication from the Assistant General Counsel for Regulatory Law, Department of Energy, transmitting, pursuant to law, the report of a rule entitled ''Internal Dosimetry'' (DOE–STD 1121–98), received March 23, 2000; to the Committee on Energy and Natural Resources.

EC–8157. A communication from the President and Chairman, Export-Import Bank of the United States, transmitting, pursuant to law, a report relative to a transaction involving U.S. exports to Turkey; to the Committee on Banking, Housing, and Urban Affairs.

EC–8158. A communication from the Director, Corporate Policy and Research Department, Pension Benefit Guaranty Corporation, transmitting, pursuant to law, the report of a rule entitled ''Allocation of Assets in Single-Employer Plans; Interest Assumptions for Valuing Benefits'', received March 21, 2000; to the Committee on Health, Education, Labor, and Pensions.

EC–8159. A communication from the Assistant Secretary, Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, a report relative to certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more to Japan; to the Committee on Foreign Relations.

EC–8160. A communication from the Assistant Secretary, Legislative Affairs, Department of State, transmitting, pursuant to law, the report of a rule entitled ''VISAS: Nonimmigrant classes; Irish Peace Process Cultural and Training Program'', received March 16, 2000; to the Committee on Foreign Relations.

EC–8161. A communication from the Director, Office of Regulatory Management and Information, Office of Policy, Planning and Evaluation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Prevention of Significant Deterioration Delegation of Authority to Medocino County Air Pollution Control District to Administer Permits Issued by EPA'' (FRL # 6561–8), received March 16, 2000; to the Committee on Environment and Public Works.

EC–8162. A communication from the Director, Office of Regulatory Management and Information, Office of Policy, Planning and Evaluation, Environmental Protection Agency, transmitting, a report entitled ''Guidance Regarding Re-Certification Under the Urban Bus Rebuild Program''; to the Committee on Environment and Public Works.

EC–8163. A communication from the Director, Office of Regulatory Management and Information, Office of Policy, Planning and Evaluation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Outer Continental Shelf Air Regulations Consistency Update for California'' (FRL # 6563–9), received March 21, 2000; to the Committee on Environment and Public Works.

EC–8164. A communication from the Director, Office of Regulatory Management and Information, Office of Policy, Planning and Evaluation, Environmental Protection Agency, transmitting, pursuant to law, the report

of a rule entitled ''Approval of Revisions to Ventura County APCD, Monterey Bay Unified APCD and Santa Barbara County APCD'' (FRL # 6563–3), received February 8, 2000; to the Committee on Environment and Public Works.

EC–8165. A communication from the Director, Office of Regulatory Management and Information, Office of Policy, Planning and Evaluation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of Municipal Solid Waste Landfills State Plan for Designated Facilities and Pollutants; Idaho'' (FRL # 6566–2), received March 23, 2000; to the Committee on Environment and Public Works.

EC–8166. A communication from the Director, Office of Regulatory Management and Information, Office of Policy, Planning and Evaluation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of State Plans for Designated Facilities and Pollutants; Indiana; Control of Landfill Gas Emissions from Existing Municipal Solid Waste Landfills'' (FRL # 6566–7), received March 23, 2000; to the Committee on Environment and Public Works.

EC–8167. A communication from the Director, Office of Regulatory Management and Information, Office of Policy, Planning and Evaluation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Finding of Failure to Submit a Required State Implementation Plan for Carbon Monoxide; Fairbanks, Alaska'' (FRL # 6566–5), received March 23, 2000; to the Committee on Environment and Public Works.

EC–8168. A communication from the Director, Office of Regulatory Management and Information, Office of Policy, Planning and Evaluation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Finding of Failure to Submit a Required State Implementation Plan for Carbon Monoxide; Spokane, Washington'' (FRL # 6566–9), received March 23, 2000; to the Committee on Environment and Public Works.

EC–8169. A communication from the Director, Office of Regulatory Management and Information, Office of Policy, Planning and Evaluation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Oklahoma; Final Authorization of State Hazardous Waste Management Program Revisions'' (FRL # 6565–4), received March 23, 2000; to the Committee on Environment and Public Works.

EC–8170. A communication from the Director, Office of Regulatory Management and Information, Office of Policy, Planning and Evaluation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''West Virginia: Final Determination of Partial Program Adequacy of the State's Municipal Solid Waste Landfill Permitting Program'' (FRL # 6565–6), received March 23, 2000; to the Committee on Environment and Public Works.

EC–8171. A communication from the Assistant General Counsel for Regulatory Law, Department of Energy, transmitting, pursuant to law, the report of a rule entitled ''Preparation Guide for U.S. Department of Energy Nonreactor Nuclear Facility Safety Analysis Reports'' (DOE STD 3009–94), received March 23, 2000; to the Committee on Energy and Natural Resources.

EC–8172. A communication from the Chief, Endangered Species Division, Office of Protected Resources, National Oceanic and Atmospheric Administration, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Critical Habitat for 19 Evolutionary Significant Units of Salmon and Steelhead in Washington, Oregon, Idaho and California'' (RIN0648–AG49), received March 20, 2000; to the Committee on Environment and Public Works.

EC–8173. A communication from the Under Secretary of Defense, Comptroller reporting a violation of the Antideficiency Act; to the Committee on Appropriations.

EC–8174. A communication from the Chief, Programs and Legislation Division, Office of Legislative Liaison, Department of the Air Force, transmitting, a report relative to a cost comparison conducted at Kirtland Air Force Base, NM; to the Committee on Armed Services.

EC–8175. A communication from the Under Secretary of Defense, Acquisition and Technology, transmitting, pursuant to law, a report relative to the DoD Chemical and Biological Defense Program, dated February 2000; to the Committee on Armed Services.

EC–8176. A communication from the Program Manager, Pentagon Renovation Program, Department of Defense transmitting, pursuant to law, a report relative to the renovation of the Pentagon Reservation; to the Committee on Armed Services.

EC–8177. A communication from the Assistant Secretary of Defense, Health Affairs, transmitting, pursuant to law, a report relative to TRICARE Managed Care Support Contractors; to the Committee on Armed Services.

EC–8178. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 13–264, ''School Proximity Traffic Calming Act of 2000''; to the Committee on Governmental Affairs.

EC–8179. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 13–265, ''Child Helmet Safety Amendment Act of 2000''; to the Committee on Governmental Affairs.

EC–8180. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 13–266, ''District of Columbia Uniform Disposition of Unclaimed Property Amendment Act of 2000''; to the Committee on Governmental Affairs.

EC–8181. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 13–267, ''Underground Facilities Protection Amendment Act of 2000''; to the Committee on Governmental Affairs.

EC–8182. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 13–268, ''Litter Control Administration Amendment Act of 2000''; to the Committee on Governmental Affairs.

EC–8183. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 13–271, ''Compensating-Use Tax Act of 2000''; to the Committee on Governmental Affairs.

EC–8184. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 13–270, ''Bread for the City & Zacchaeus Free Clinic Equitable Real Property Tax Relief Act of 2000''; to the Committee on Governmental Affairs.

EC–8185. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 13–272, ''Victory Memorial Baptist Church Equitable Real Property Tax Relief Act of 2000''; to the Committee on Governmental Affairs.

EC–8186. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 13–273, ''Muhammad Mosque No. 4 Equitable Real Property Tax Relief Act of 2000''; to the Committee on Governmental Affairs.

EC–8187. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 13–287, ''Long-Term Care Insurance Act of 2000''; to the Committee on Governmental Affairs.

EC–8188. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 13–295, ''School Governance Charter Amendment Act of 2000''; to the Committee on Governmental Affairs.

EC–8189. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 13–291, ''Tax Conformity Temporary Act of 2000''; to the Committee on Governmental Affairs.

EC–8190. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 13–288, ''Medicare Supplement Insurance Minimum Standards Amendment Act of 2000''; to the Committee on Governmental Affairs.

EC–8191. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 13–289, ''Recreation Volunteer Background Check and Screening Act of 2000''; to the Committee on Governmental Affairs.

EC–8192. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 13–290, ''Closing of Public Alley in Square 6159, S.O. 98–125 Act of 2000''; to the Committee on Governmental Affairs.

EC–8193. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 13–269, ''University of the District of Columbia Board of Trustees Residency Requirement Amendment Act of 2000''; to the Committee on Governmental Affairs.

EC–8194. A communication from the Associate Administrator, Agricultural Marketing Service, Fruit and Vegetable Programs, Department of Agriculture transmitting, pursuant to law, the report of a rule entitled ''Raisins Produced from Grapes Grown in California; Changes in Reporting Requirements'' (Docket Number FV00–989–1 FR), received March 23, 2000; to the Committee on Agriculture, Nutrition, and Forestry.

EC–8195. A communication from the Associate Administrator, Agricultural Marketing Service, Fruit and Vegetable Programs, Department of Agriculture transmitting, pursuant to law, the report of a rule entitled ''Avocados Grown in South Florida; Relaxation of Container and Pack Requirements'' (Docket Number FV00–915–1 FIR), received March 23, 2000; to the Committee on Agriculture, Nutrition, and Forestry.

EC–8196. A communication from the Associate Administrator, Agricultural Marketing Service, Fruit and Vegetable Programs, Department of Agriculture transmitting, pursuant to law, the report of a rule entitled ''Nectarines and Peaches Grown in California; Revision of Handling Requirements for Fresh Nectarines and Peaches'' (Docket Number FV00–916–1 IFR), received March 23, 2000; to the Committee on Agriculture, Nutrition, and Forestry.

EC–8197. A communication from the Director, Office of Regulatory Management and Information, Office of Policy, Planning and Evaluation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Dichlormid: Time-Limited Pesticide Tolerance'' (FRL # 6498–7), received March 23, 2000; to the Committee on Agriculture, Nutrition, and Forestry.

EC–8198. A communication from the Division Chief, Telecommunications Consumers Division, Enforcement Bureau, Federal Communications Commission and Federal Trade Commission transmitting, pursuant to law, the report of a rule entitled ''Joint FCC/FTC Policy Statement for the Advertising of Dial-Around and Other Long-Distance Services to Consumers'' (File No. 00–EB–TCD–1[PS], FCC 00–72), received March 22, 2000; to the Committee on Commerce, Science, and Transportation.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. HATCH, from the Committee on the Judiciary:

Report to accompany the bill (S. 2251) to amend the Trademark Act of 1946 to provide for the registration and protection of trademarks used in commerce, in order to carry out provisions of certain international conventions, and for other purposes (Rept. No. 106–249).

By Mr. THOMPSON, from the Committee on Governmental Affairs, without amendment:

H.R. 1374: A bill to designate the United States Post Office building located at 680 State Highway 130 in Hamilton, New Jersey, as the ''John K. Rafferty Hamilton Post Office Building.''

H.R. 3189: A bill to designate the United States post office located at 14071 Peyton Drive in Chino Hills, California, as the ''Joseph Ileto Post Office.''

EXECUTIVE REPORTS OF A COMMITTEE

The following executive reports of a committee were submitted:

By Mr. WARNER for the Committee on Armed Services.

Herschelle S. Challenor, of Georgia, to be a Member of the National Security Education Board for a term of four years. (Reappointment)

Rudy deLeon, of California, to be Deputy Secretary of Defense.

Douglas A. Dworkin, of Maryland, to be General Counsel of the Department of Defense.

(The above nominations were reported with the recommendation that they be confirmed subject to the nominees' commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mr. SANTORUM (for himself, Mr. EDWARDS, Mr. HELMS, Mr. MURKOWSKI, and Mrs. HUTCHISON):

S. 2293. A bill to amend the Federal Deposit Insurance Act and the Federal Home Loan Bank Act to provide for the payment of Financing Corporation interest obligations from balances in the deposit insurance funds in excess of an established ratio and, after such obligations are satisfied, to provide for rebates to insured depository institutions of such excess reserves; to the Committee on Banking, Housing, and Urban Affairs.

By Mrs. FEINSTEIN (for herself and Mrs. BOXER):

S. 2294. A bill to establish the Rosie the Riveter-World War II Home Front National Historical Park in the State of California, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. DURBIN:

S. 2295. A bill to provide for the liquidation or reliquidation of certain entries of copper and brass sheet and strip; to the Committee on Finance.

By Mr. CRAPO:

S. 2296. A bill to provide grants for special environmental assistance for the regulation of communities and habitat (SEARCH) to small communities; to the Committee on Environment and Public Works.

By Mr. CRAPO (for himself, Mr. REID, Mr. SMITH of New Hampshire, and Mr. BAUCUS):

S. 2297. A bill to reauthorize the Water Resources Research Act of 1984; to the Committee on Environment and Public Works.

By Mr. JEFFORDS (for himself, Mr. REED, and Mr. LEAHY):

S. 2298. A bill to amend title XVIII of the Social Security Act to clarify the definition of homebound with respect to home health services under the medicare program; to the Committee on Finance.

By Mr. L. CHAFEE (for himself and Ms. SNOWE):

S. 2299. A bill to amend title XIX of the Social Security Act to continue State Medicaid disproportionate share hospital (DSH) allotments for fiscal year 2001 at the levels for fiscal year 2000; to the Committee on Finance.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mrs. FEINSTEIN (for herself and Mrs. BOXER):

S. 2294. A bill to establish the Rosie the Riveter-World War II Home Front National Historical Park in the State of California, and for other purposes; to the Committee on Energy and Natural Resources.

ROSIE THE RIVETER-WORLD WAR II HOME FRONT NATIONAL HISTORICAL PARK ACT

Mrs. FEINSTEIN. Mr. President, I am proud to introduce this bill today to establish the Rosie the Riveter/World War II Home Front National Historic Park. This park will be constructed on the former site of Richmond Kaiser Shipyard #2 which produced WWII ships at the site of the present-day Marina Park in Richmond California.

The Home Front industrial buildup in Richmond, California and across America to strengthen U.S. military capability and eventually win World War II started in early 1941 with the Lend Lease Program. Employment at the Richmond Shipyards peaked at 90,000 and forced an unprecedented integration of workers into the nation's work force.

''Rosie the Riveter'' was a term coined to help recruit female civilian workers and came to symbolize a workforce mobilized to fill the gap created by working men who left their jobs for active military duty. Nationwide, six million women entered the WWII Home Front workforce, which also provided unprecedented opportunities for minorities.

I am proud to offer this legislation to commemorate these invaluable contributions to the U.S. victory in World War II, and I urge my colleagues to support this bill.

By Mr. CRAPO:

S. 2296. A bill to provide grants for special environmental assistance for the regulation of communities and habitat (SEARCH) to small communities; to the Committee on Environment and Public Works.

PROJECT SEARCH

Mr. CRAPO. Mr. President, I rise today to introduce legislation to authorize a national environmental grants program for small communities called Project SEARCH.

The national Project SEARCH (Special Environmental Assistance for the Regulation of Communities and Habitat) concept is based on a demonstration program that has been operating with great success in Idaho in 1999 and 2000. In short, the bill establishes a simplified application process for communities of under 2,500 individuals to receive assistance in meeting a broad array of federal, state, or local environmental regulations. Grants would be available for initial feasibility studies, to address unanticipated costs arising during the course of a project, or when a community has been turned down or underfunded by traditional sources. The grant program would require no match from the recipients.

Some of the major highlights of the program are:

A simplified application process—no special grants coordinators required;

No unsolicited bureaucratic intrusions into the decision-making process;

Communities must first have attempted to receive funds from traditional sources;

It is open to studies or projects involving any environmental regulation;

Applications are reviewed and approved by citizens panel of volunteers;

The panel chooses number of recipients and size of grants;

The panel consists of volunteers representing all regions of the state; and

No local match is required to receive the SEARCH funds.

Over the past several years, it has become increasing apparent that small communities are having problems complying with environmental rules and regulations due primarily to lack of funding, not a willingness to do so. They, like all of us, want clean water and air and a healthy natural environment. Sometimes, they simply cannot shoulder the financial burden with their limited resources.

In addition, small communities wishing to pursue unique collaborative efforts might be discouraged by grant administrators who prefer conformity. Some run into unexpected costs during a project and have borrowed and bonded to the maximum. Others are in critical habitat locations and any project may have additional costs, which may not be recognized by traditional financial sources. Still others just need help

for the initial environmental feasibility study so they can identify the most effective path forward.

With these needs in mind, in 1998, I was able to secure $1.3 million through the Environmental Protection Agency (EPA) for a demonstration grant program for Idaho's small communities. Idaho's program does not replace other funding sources, but serves as a final resort when all other means have been exhausted.

The application process was simplified so that any small town mayor, county commissioner, sewer district chairman, or community leader could manage it without hiring a professional grant writer. An independent citizens committee with statewide representation was established to make the selections and get the funds on the ground as quickly as possible. No bureaucratic or political intrusions were permitted.

Although the EPA subsequently insisted that grants be limited to water and wastewater projects, forty-four communities in Idaho ultimately applied, not including two that failed to meet the eligibility requirements. Ultimately, twenty-one communities were awarded grants in several categories, and ranged in size from $9,000 to $319,000. A Native American community, a migrant community, and several innovative collaborative efforts were included in the successful applicants. The communities that were not selected are being given assistance in exploring other funding sources and other advice.

The response and feedback from all participants has been overwhelming positive. Environmental officials from the state and EPA who witnessed the process have stated that the process worked well and was able to accomplish much on a volunteer basis. There was even extraordinary appreciation from other funding agencies because some communities they were not able to reach were provided funds for feasibility studies. The only negative comments were from those who wished that the EPA had not limited the program to water and wastewater projects.

The conclusion of all participants was that Project SEARCH is a program worthy of being expanded nationally. So many small communities in so many states can benefit from a program that assists underserved and often overlooked communities. This legislation provides us the opportunity to help small communities throughout the United States.

By Mr. JEFFORDS (for himself, Mr. REED, and Mr. LEAHY):

S. 2298. A bill to amend title XVIII of the Social Security Act to clarify the definition of homebound with respect to home health services under the Medicare Program; to the Committee on Finance.

THE HOMEBOUND CLARIFICATION ACT

● Mr. JEFFORDS. Mr. President, I am here today to introduce the Homebound Clarification Act of 2000. This important bill has been crafted to protect Medicare beneficiaries from a growing problem that is impeding access to vital home care services. I want to recognize my cosponsors, Senator REED of Rhode Island and Senator LEAHY, for their continued effort and dedication to protecting access to home health care.

Federally funded home health care is an often quiet but invaluable part of life for America's seniors. Medical treatment can often mean being subjected to a strange and unfamiliar environment. For our nation's elderly, who may have special needs, this inconvenience can be more severe and detrimental to successful recovery. Home health care means that people recovering from surgery can go home sooner—it means that someone recovering from an accident can get physical therapy in their home, it means our seniors can stay at home, and out of nursing homes.

The sooner you can return patients to their homes, the sooner they can recover. The familiar environment of the home, family, and friends is more nurturing to recovering patients than the often stressful and unfamiliar surroundings of a hospital. Home health is also a great avenue for education. It empowers families to assist in the care of their loved ones. It is smart policy from human and financial standpoints.

But there are some seniors who are being denied access to this smart policy. An individual must be considered ''homebound'' to qualify for Medicare reimbursement for home health. Though an individual is not required to be bed-ridden, the condition of the individual should include ''a normal inability to leave the home.'' Under the current definition, an individual is ''homebound'' if ''leaving the home requires a considerable and taxing effort by the individual, and that absences of the individual from home are infrequent and of short duration, or are attributable to the need to receive medical treatment.'' The definition allows for ''infrequent'' or ''short duration,'' recognizing that short excursions may be a part of a successful recovery process, but leaves it up to fiscal intermediaries to interpret exactly what number is frequent and how short an absence must be. Interpretation of this definition has varied widely.

Sadly, there is a ready supply of disturbing examples of the overzealous and arbitrary interpretation of the definition. Many seniors have found themselves virtual prisoners in their homes, threatened with loss of coverage if they attend adult day care, weekly religious services, or even visit family members in the hospital. This makes no sense because all of these activities are steps on the road to successful and healthy recovery. Often, health professionals want patients to get outside for fresh air or exercise, as part of their care plan. This helps fight off depression.

Seniors deserve a more consistent standard to depend upon, rather than a completely arbitrary number of absences from the home. In April 1999, Secretary of Health and Human Services Donna Shalala sent a report to Congress on the homebound definition. The report identifies the wide variety in interpretation of the definition and the absurdity of some coverage determinations that follow. While the Administration unfortunately stopped short of taking action themselves, Shalala did propose that a clarification of the definition is needed to improve uniformity of determination.

The Homebound Clarification Act states that eligibility of an individual depends on the condition of the patient, how ''taxing'' it is for the patient to leave home. It strikes the clause that states: ''that absences of the individual from home are infrequent or of relatively short duration, or are attributable to the need to receive medical treatment.'' This is consistent with the intent of Congress and the Administration. This will not open the door to wider coverage of home health, but rather protect coverage for those who need it.

We ask that seniors put their trust in the Medicare program. We are responsible for making sure that the Medicare program lives up to its promise and that home health will be available to those who need it. Once again, I would like to thank my cosponsors, Senators REED and LEAHY for their work. We look forward to working with the rest of Congress to turn this legislation into law.●

By Mr. L. CHAFEE (for himself and Ms. SNOWE):

S. 2299. A bill to amend title XIX of the Social Security Act to continue State Medicaid disproportionate share hospital (DSH) allotments for fiscal year 2001 at the levels for fiscal year 2000; to the Committee on Finance.

THE MEDICAID DSH PRESERVATION ACT OF 2000

Mr. L. CHAFEE. Mr. President, I am pleased to be joined today by Senator SNOWE in introducing the Medicaid DSH Preservation Act of 2000. This legislation will freeze Medicaid disproportionate share hospital (DSH) reductions at Fiscal Year 2000 levels, thereby mitigating the forthcoming reductions in Fiscal Years 2001 and 2002. This bill will also provide a growth rate adjustment to help compensate for the increases in the cost of providing care to the most needy and indigent patients.

In addition to the Medicare payment reductions in the Balanced Budget Act of 1997 (BBA), federal payments to the Medicaid DSH program were also reduced by $10.4 billion over 5 years, with these reductions being absorbed by States and our Nation's vulnerable safety net hospitals. Medicaid DSH payments help reimburse hospitals' costs of treating Medicaid patients, particularly those with complex medical needs. These payments also make it possible for communities to care for the uninsured—a population that is projected to increase considerably during the next few years.

The impact of these financial pressures was not fully anticipated at the time the BBA was enacted. Other Financial pressures such as declining Medicaid enrollment have had a significant impact on these safety net hospitals, thereby adding to the rapidly rising number of Americans without health insurance. At a time when our Nation's uninsured rate continues to climb above 44 million, it makes little sense to be reducing much-needed Medicaid DSH payments to our nation's safety net hospitals.

Hospitals in Rhode Island will absorb $400 million in reductions as a result of changes made to the Medicare and Medicaid programs in the BBA. Ten out of fourteen hospitals in my State had operating losses in 1999. After the BBA was enacted, it was predicted that cuts in federal Medicare and Medicaid payments would cost hospitals in Rhode Island $220 million over 5 years; however, this estimate has proven to be about $180 million off the mark. Every other State is experiencing similar problems. Since the BBA was signed into law, the American Hospital Association commissioned a study by the Lewin Group, which estimated that there would be $71 billion less paid to hospitals nationwide over 5 years. The original estimate of the impact of the BBA was $18 billion. While the Balanced Budget Refinement Act of 1999 provided some relief to our Nation's financially strapped hospitals, that relief was targeted to the Medicare program. Clearly, more needs to be done to keep our vulnerable safety net hospitals from continuing on this downward spiral.

This legislation we are introducing today represents a commonsense compromise that will help prevent the further erosion of our Nation's safety net hospitals and the long-term viability of our country's health care system.

I urge my colleagues to join me in supporting this important legislation and I ask unanimous consent that the legislation be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2299

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Medicaid DSH Preservation Act of 2000''.

SEC. 2. CONTINUATION OF MEDICAID DSH ALLOTMENTS AT FISCAL YEAR 2000 LEVELS FOR FISCAL YEAR 2001.

Section 1923(f) of the Social Security Act (42 U.S.C. 1396r–4(f)), as amended by section 601 of the Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999, as enacted into law by section 1000(a)(6) of Public Law 106–113 (113 Stat. 1501A–394), is amended—

(1) in paragraph (2)—

(A) in the heading, by striking ''2002'' and inserting ''2001'';

(B) in the matter preceding the table, by striking ''2002'' and inserting ''2001''; and

(C) in the table in such paragraph, by striking the column labeled ''FY 02'' relating to fiscal year 2002; and

(2) in paragraph (3)—

(A) in the heading, by striking ''2003'' and inserting ''2002''; and

(B) in subparagraph (A), by striking ''2003'' and inserting ''2002''.●

ADDITIONAL COSPONSORS

S. 59

At the request of Mr. THOMPSON, the name of the Senator from Alabama (Mr. SESSIONS) was added as a cosponsor of S. 59, a bill to provide Government-wide accounting of regulatory costs and benefits, and for other purposes.

S. 210

At the request of Mr. MOYNIHAN, the name of the Senator from Rhode Island (Mr. REED) was added as a cosponsor of S. 210, a bill to establish a medical education trust fund, and for other purposes.

S. 512

At the request of Mr. GORTON, the name of the Senator from Georgia (Mr. CLELAND) was added as a cosponsor of S. 512, a bill to amend the Public Health Service Act to provide for the expansion, intensification, and coordination of the activities of the Department of Health and Human Services with respect to research on autism.

S. 818

At the request of Mr. DEWINE, the name of the Senator from Nevada (Mr. BRYAN) was added as a cosponsor of S. 818, a bill to require the Secretary of Health and Human Services to conduct a study of the mortality and adverse outcome rates of medicare patients related to the provision of anesthesia services.

S. 873

At the request of Mr. DURBIN, the name of the Senator from Maryland (Ms. MIKULSKI) was added as a cosponsor of S. 873, a bill to close the United States Army School of the Americas.

S. 890

At the request of Mr. WELLSTONE, the name of the Senator from California (Mrs. FEINSTEIN) was added as a cosponsor of S. 890, a bill to facilitate the naturalization of aliens who served with special guerrilla units or irregular forces in Laos.

S. 931

At the request of Mr. MCCONNELL, the name of the Senator from Connecticut (Mr. LIEBERMAN) was added as a cosponsor of S. 931, a bill to provide for the protection of the flag of the United States, and for other purposes.

S. 1037

At the request of Mrs. BOXER, the name of the Senator from Wisconsin (Mr. FEINGOLD) was added as a cosponsor of S. 1037, a bill to amend the Toxic Substances Control Act to provide for a gradual reduction in the use of methyl tertiary butyl ether, and for other purposes.

S. 1180

At the request of Mr. HELMS, his name was withdrawn as a cosponsor of S. 1180, a bill to amend the Elementary and Secondary Education Act of 1965, to reauthorize and make improvements to that Act, and for other purposes.

S. 1196

At the request of Mr. COVERDELL, the name of the Senator from Pennsylvania (Mr. SPECTER) was added as a cosponsor of S. 1196, a bill to improve the quality, timeliness, and credibility of forensic science services for criminal justice purposes.

S. 1361

At the request of Mr. STEVENS, the name of the Senator from Kentucky (Mr. BUNNING) was added as a cosponsor of S. 1361, a bill to amend the Earthquake Hazards Reduction Act of 1977 to provide for an expanded Federal program of hazard mitigation, relief, and insurance against the risk of catastrophic natural disasters, such as hurricanes, earthquakes, and volcanic eruptions, and for other purposes.

S. 1558

At the request of Mr. BAUCUS, the names of the Senator from Michigan (Mr. LEVIN) and the Senator from Virginia (Mr. ROBB) were added as cosponsors of S. 1558, a bill to amend the Internal Revenue Code of 1986 to provide a tax credit for holders of Community Open Space bonds the proceeds of which are used for qualified environmental infrastructure projects, and for other purposes.

S. 1810

At the request of Mrs. MURRAY, the name of the Senator from Georgia (Mr. CLELAND) was added as a cosponsor of S. 1810, a bill to amend title 38, United States Code, to clarify and improve veterans' claims and appellate procedures.

S. 1858

At the request of Mr. BREAUX, the name of the Senator from Maryland (Mr. SARBANES) was added as a cosponsor of S. 1858, a bill to revitalize the international competitiveness of the United States-flag maritime industry through tax relief.

S. 1900

At the request of Mr. LAUTENBERG, the name of the Senator from North Dakota (Mr. DORGAN) was added as a cosponsor of S. 1900, a bill to amend the Internal Revenue Code of 1986 to allow a credit to holders of qualified bonds issued by Amtrak, and for other purposes.

S. 1938

At the request of Mr. CRAIG, the name of the Senator from Wyoming (Mr. ENZI) was added as a cosponsor of S. 1938, a bill to provide for the return of fair and reasonable fees to the Federal Government for the use and occupancy of National Forest System land under the recreation residence program, and for other purposes.

S. 1969

At the request of Mr. CRAIG, the name of the Senator from Utah (Mr. HATCH) was added as a cosponsor of S. 1969, a bill to provide for improved

management of, and increases accountability for, outfitted activities by which the public gains access to and occupancy and use of Federal land, and for other purposes.

S. 2003

At the request of Mr. JOHNSON, the name of the Senator from Utah (Mr. BENNETT) was added as a cosponsor of S. 2003, a bill to restore health care coverage to retired members of the uniformed services.

S. 2018

At the request of Mrs. HUTCHISON, the names of the Senator from Alabama (Mr. SESSIONS), the Senator from Nebraska (Mr. HAGEL), and the Senator from South Carolina (Mr. HOLLINGS) were added as cosponsors of S. 2018, a bill to amend title XVIII of the Social Security Act to revise the update factor used in making payments to PPS hospitals under the medicare program.

S. 2046

At the request of Mr. FRIST, the name of the Senator from Massachusetts (Mr. KERRY) was added as a cosponsor of S. 2046, a bill to reauthorize the Next Generation Internet Act, and for other purposes.

S. 2068

At the request of Mr. GREGG, the names of the Senator from Nevada (Mr. REID), the Senator from South Carolina (Mr. THURMOND), and the Senator from Oregon (Mr. SMITH) were added as cosponsors of S. 2068, a bill to prohibit the Federal Communications Commission from establishing rules authorizing the operation of new, low power FM radio stations.

S. 2070

At the request of Mr. FITZGERALD, the names of the Senator from Indiana (Mr. BAYH) and the Senator from Nevada (Mr. BRYAN) were added as cosponsors of S. 2070, a bill to improve safety standards for child restraints in motor vehicles.

S. 2132

At the request of Mr. KERRY, the name of the Senator from Vermont (Mr. LEAHY) was added as a cosponsor of S. 2132, a bill to create incentives for private sector research related to developing vaccines against widespread diseases and ensure that such vaccines are affordable and widely distributed.

S. 2181

At the request of Mr. BINGAMAN, the name of the Senator from New Jersey (Mr. LAUTENBERG) was added as a cosponsor of S. 2181, a bill to amend the Land and Water Conservation Fund Act to provide full funding for the Land and Water Conservation Fund, and to provide dedicated funding for other conservation programs, including coastal stewardship, wildlife habitat protection, State and local park and open space preservation, historic preservation, forestry conservation programs, and youth conservation corps; and for other purposes.

S. 2215

At the request of Mr. HUTCHINSON, the name of the Senator from New Hampshire (Mr. SMITH) was added as a cosponsor of S. 2215, a bill to clarify the treatment of nonprofit entities as noncommercial educational or public broadcast stations under the Communications Act of 1934.

S. 2255

At the request of Mr. MCCAIN, the name of the Senator from Oregon (Mr. WYDEN) was added as a cosponsor of S. 2255, a bill to amend the Internet Tax Freedom Act to extend the moratorium through calendar year 2006.

S. 2277

At the request of Mr. ROTH, the names of the Senator from Alaska (Mr. MURKOWSKI), the Senator from Wyoming (Mr. THOMAS), the Senator from California (Mrs. FEINSTEIN), the Senator from Arkansas (Mrs. LINCOLN), the Senator from Montana (Mr. BAUCUS), the Senator from Nebraska (Mr. HAGEL), the Senator from Minnesota (Mr. GRAMS), the Senator from Connecticut (Mr. LIEBERMAN), and the Senator from Kansas (Mr. ROBERTS) were added as cosponsors of S. 2277, a bill to terminate the application of title IV of the Trade Act of 1974 with respect to the People's Republic of China.

S. 2281

At the request of Mr. SMITH of New Hampshire, the names of the Senator from Arkansas (Mr. HUTCHINSON) and the Senator from Oklahoma (Mr. INHOFE) were added as cosponsors of S. 2281, a bill to name the United States Army missile range at Kwajalein Atoll in the Marshall Islands for former President Ronald Reagan.

S. 2284

At the request of Mr. KENNEDY, the name of the Senator from Maryland (Ms. MIKULSKI) was added as a cosponsor of S. 2284, a bill to amend the Fair Labor Standards Act of 1938 to provide for an increase in the Federal minimum wage.

S. CON. RES. 69

At the request of Ms. SNOWE, the name of the Senator from Alabama (Mr. SESSIONS) was added as a cosponsor of S. Con. Res. 69, a concurrent resolution requesting that the United States Postal Service issue a commemorative postal stamp honoring the 200th anniversary of the naval shipyard system.

S. CON. RES. 98

At the request of Mr. DEWINE, the names of the Senator from Vermont (Mr. LEAHY), the Senator from Nebraska (Mr. HAGEL), and the Senator from Mississippi (Mr. LOTT) were added as cosponsors of S. Con. Res. 98, a concurrent resolution urging compliance with the Hague Convention on the Civil Aspects of International Child Abduction.

S. RES. 87

At the request of Mr. DURBIN, the name of the Senator from North Carolina (Mr. EDWARDS) was added as a cosponsor of S. Res. 87, a resolution commemorating the 60th Anniversary of the International Visitors Program.

S. RES. 253

At the request of Mr. SPECTER, the name of the Senator from Montana (Mr. BAUCUS) was added as a cosponsor of S. Res. 253, a resolution to express the sense of the Senate that the Federal investment in biomedical research should be increased by $2,700,000,000 in fiscal year 2001.

S. RES. 271

At the request of Mr. WELLSTONE, the name of the Senator from Montana (Mr. BAUCUS) was added as a cosponsor of S. Res. 271, a resolution regarding the human rights situation in the People's Republic of China.

AMENDMENTS SUBMITTED

CONSTITUTIONAL AMENDMENT PROHIBITING THE DESECRATION OF THE FLAG

MCCONNELL (AND OTHERS) AMENDMENT NO. 2889

Mr. MCCONNELL (for himself, Mr. BINGAMAN, Mr. BENNETT, Mr. CONRAD, Mr. DORGAN, Mr. DODD, Mr. TORRICELLI, Mr. BYRD, and Mr. LIEBERMAN) proposed the following amendment to the joint resolution (S.J. Res. 14) proposing an amendment to the Constitution of the United States authorizing Congress to prohibit the physical desecration of the flag of the United States; as follows:

Strike all after the resolving clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Flag Protection and Free Speech Act of 1999''.

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress finds that—

(1) the flag of the United States is a unique symbol of national unity and represents the values of liberty, justice, and equality that make this Nation an example of freedom unmatched throughout the world;

(2) the Bill of Rights is a guarantee of those freedoms and should not be amended in a manner that could be interpreted to restrict freedom, a course that is regularly resorted to by authoritarian governments which fear freedom and not by free and democratic nations;

(3) abuse of the flag of the 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

(4) destruction of the flag of the United States can be intended to incite a violent response rather than make a political statement and such conduct is outside the protections afforded by the first amendment of the Constitution.

(b) PURPOSE.—The purpose of this Act is to provide the maximum protection against the use of the flag of the United States to promote violence while respecting the liberties that it symbolizes.

SEC. 3. PROTECTION OF THE FLAG OF THE UNITED STATES AGAINST USE FOR PROMOTING VIOLENCE.

(a) IN GENERAL.—Section 700 of title 18, United States Code, is amended to read as follows:

''§ 700. Incitement; damage or destruction of property involving the flag of the United States

''(a) DEFINITION OF FLAG OF THE UNITED STATES.—In this section, the term 'flag of the United States' means any flag of the United States, or any part thereof, made of any substance, in any size, in a form that is commonly displayed as a flag and that would be taken to be a flag by the reasonable observer.

''(b) ACTIONS PROMOTING VIOLENCE.—Any person who destroys or damages a flag of the United States with the primary purpose and intent to incite or produce imminent violence or a breach of the peace, and under circumstances in which the person knows that it is reasonably likely to produce imminent violence or a breach of the peace, shall be fined not more than $100,000, imprisoned not more than 1 year, or both.

''(c) DAMAGING A FLAG BELONGING TO THE UNITED STATES.—Any person who steals or knowingly converts to his or her use, or to the use of another, a flag of the United States belonging to the United States, and who intentionally destroys or damages that flag, shall be fined not more than 2 years, or both.

''(d) DAMAGING A FLAG OF ANOTHER ON FEDERAL LAND.—Any person who, within any lands reserved for the use of the United States, or under the exclusive or concurrent jurisdiction of the United States, steals or knowingly converts to his or her use, or 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.

''(e) CONSTRUCTION.—Nothing in this section shall be construed to indicate an intent on the part of Congress to deprive any State, territory, or possession of the 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.''.

(b) CLERICAL AMENDMENT.—The analysis for chapter 33 of title 18, United States Code, is amended by striking the item relating to section 700 and inserting the following:

''700. Incitement; damage or destruction of property involving the flag of the United States.''.

HOLLINGS (AND OTHERS) AMENDMENT NO. 2890

Mr. HOLLINGS (for himself, Mr. SPECTER, and Mr. REID) proposed the following amendment to the joint resolution, S.J. Res. 14, supra; as follows:

On page 2, line 4, strike beginning with ''article'' through line 10 and insert the following: ''articles are proposed as amendments to the Constitution of the United States, either or both of which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States within 7 years after the date of submission for ratification:''.

'''Article —

'''SECTION 1. Congress shall have power to set reasonable limits on the amount of contributions that may be accepted by, and the amount of expenditures that may be made by, in support of, or in opposition to, a candidate for nomination for election to, or for election to, Federal office.

'''SECTION 2. A State shall have power to set reasonable limits on the amount of contributions that may be accepted by, and the amount of expenditures that may be made by, in support of, or in opposition to, a candidate for nomination for election to, or for election to, State or local office.

'''SECTION 3. Congress shall have power to implement and enforce this article by appropriate legislation.

'''Article —''.

AUTHORITY FOR COMMITTEE TO MEET

SPECIAL COMMITTEE ON AGING

Mr. GRAMS. Mr. President, I ask unanimous consent that the Special Committee on Aging be authorized to meet on March 27, 2000, from 2 p.m.–4:30 p.m. in Dirksen 562 for the purpose of conducting a hearing.

The PRESIDING OFFICER. Without objection, it is so ordered.

PRIVILEGE OF THE FLOOR

Mr. DORGAN. Mr. President, I ask unanimous consent that Theresa Mullin be allowed floor privileges during my speech today.

The PRESIDING OFFICER. Without objection, it is so ordered.

CONTINUATION OF FEDERAL WATER POLLUTION CONTROL ACT REPORTS

Mr. SESSIONS. Mr. President, I ask unanimous consent that the Senate now proceed to the consideration of Calendar No. 324, S. 1730.

The PRESIDING OFFICER. The clerk will report the title.

The legislative clerk read as follows:

A bill (S. 1730) to amend the Federal Water Pollution Control Act to provide that certain environmental reports shall continue to be required to be submitted.

There being no objection, the Senate proceeded to consider the bill.

Mr. SESSIONS. Mr. President, I ask unanimous consent that the bill be read the third time and passed, the motion to reconsider be laid upon the table, and any statements relating to the bill be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill (S. 1730) was read the third time and passed, as follows:

S. 1731

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. CONTINUATION OF SUBMISSION OF CERTAIN ENVIRONMENTAL REPORTS.

(a) WATER QUALITY INVENTORY.—Section 305(b) of the Federal Water Pollution Control Act (33 U.S.C. 1315(b)) is amended—

(1) in paragraph (1), by striking ''Each'' and inserting ''Notwithstanding section 3003 of Public Law 104–66 (31 U.S.C. 1113 note; 109 Stat. 734), each''; and

(2) in paragraph (2), by striking ''The'' and inserting ''Notwithstanding section 3003 of Public Law 104–66 (31 U.S.C. 1113 note; 109 Stat. 734), the''.

(b) CLEAN WATER NEEDS SURVEY.—Section 516 of the Federal Water Pollution Control Act (33 U.S.C. 1375) is amended by striking ''The'' and inserting ''Notwithstanding section 3003 of Public Law 104–66 (31 U.S.C. 1113 note; 109 Stat. 734), the''.

(c) EFFECTIVE DATE.—The amendments made by this section take effect on the earlier of—

(1) the date of enactment of this Act; or

(2) December 19, 1999.

CONTINUATION OF A CLEAN AIR ACT REPORT

Mr. SESSIONS. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 325, S. 1731.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 1731) to amend the Clean Air Act to provide that certain environmental reports shall continue to be required to be submitted.

There being no objection, the Senate proceeded to consider the bill.

Mr. SESSIONS. Mr. President, I ask unanimous consent that the bill be read a third time and passed, the motion to reconsider be laid upon the table, and that any statements relating to the bill be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill (S. 1731) was read the third time and passed, as follows:

S. 1731

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. CONTINUATION OF SUBMISSION OF CERTAIN ENVIRONMENTAL REPORTS.

(a) ATMOSPHERIC DEPOSITION TO GREAT WATERS REPORT.—Section 112(m)(5) of the Clean Air Act (42 U.S.C. 7412(m)(5)) is amended by striking ''Within'' and inserting ''Notwithstanding section 3003 of Public Law 104–66 (31 U.S.C. 1113 note; 109 Stat. 734), within''.

(b) EFFECTIVE DATE.—The amendment made by this section takes effect on the earlier of—

(1) the date of enactment of this Act; or

(2) December 19, 1999.

CONTINUATION OF AN ENDANGERED SPECIES ACT REPORT

Mr. SESSIONS. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 329, S. 1744.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 1744) to amend the Endangered Species Act of 1973 to provide certain species conservation reports shall continues to be required to be submitted.

There being no objection, the Senate proceeded to consider the bill.

Mr. SESSIONS. Mr. President, I ask unanimous consent that the bill be read a third time and passed, the motion to reconsider be laid upon the table, and any statements relating to the bill be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill (S. 1744) was read the third time and passed, as follows:

S. 1744

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. CONTINUATION OF SUBMISSION OF CERTAIN SPECIES CONSERVATION REPORTS.

(a) ANNUAL COST ANALYSIS.—Section 18 of the Endangered Species Act of 1973 (16 U.S.C. 1544) is amended by striking ''On'' and inserting ''Notwithstanding section 3003 of Public Law 104–66 (31 U.S.C. 1113 note; 109 Stat. 734), on''.

(b) EFFECTIVE DATE.—The amendment made by this section takes effect on the earlier of—

(1) the date of enactment of this Act; or

(2) December 19, 1999.

COMMEMORATING THE 60TH ANNIVERSARY OF THE INTERNATIONAL VISITORS PROGRAM

Mr. SESSIONS. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 442, S. Res. 87.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The legislative clerk read as follows:

A resolution (S. Res. 87) commemorating the 60th Anniversary of the International Visitors Program.

There being no objection, the Senate proceeded to consider the resolution.

Mr. SESSIONS. Mr. President, I ask unanimous consent that the resolution be agreed to, the preamble be agreed to, the motion to reconsider be laid upon the table, and any statements relating to the resolution be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The resolution (S. Res. 87) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 87

Whereas the year 2000 marks the 60th Anniversary of the International Visitors Program;

Whereas the International Visitors Program is the public diplomacy initiative of the United States Department of State that brings distinguished foreign leaders to the United States for short-term professional programs under the authority of the Mutual Educational and Cultural Exchange Act of 1961;

Whereas the purposes of the International Visitors Program include—

(1) increasing mutual understanding and strengthening bilateral relations between the United States and other nations;

(2) developing the web of human connections essential for successful economic and commercial relations, security arrangements, and diplomatic agreements with other nations; and

(3) building cooperation among nations to solve global problems and to achieve a more peaceful world;

Whereas during 6 decades more than 122,000 emerging leaders and specialists from around the world have experienced American democratic institutions, cultural diversity, and core values firsthand as participants in the International Visitors Program;

Whereas thousands of participants in the International Visitors Program rise to influential leadership positions in their countries each year;

Whereas among the International Visitors Program alumni are 185 current and former Chiefs-of-State or Heads of Government, and more than 600 alumni have served as cabinet level ministers;

Whereas prominent alumni of the International Visitors Program include Margaret Thatcher, Anwar Sadat, F.W. de Klerk, Indira Gandhi, and Tony Blair;

Whereas a new configuration of domestic forces has emerged which is shaping global policy and empowering private citizens to an unprecedented degree;

Whereas each year more than 80,000 volunteers affiliated with 97 community-based member organizations and 7 program agency members of the National Council for International Visitors across the United States are actively serving as ''citizen diplomats'' organizing programs and welcoming International Visitors Program participants into their homes, schools, and workplaces;

Whereas all of the funds appropriated for the International Visitors Program are spent in the United States, and such spending leverages private contributions at a ratio of 1 to 12;

Whereas the International Visitors Program corrects distorted images of the United States, effectively countering misperceptions, underscoring common human aspirations, advancing United States democratic values, and building a foundation for national and economic security;

Whereas the International Visitors Program provides valuable educational opportunities for United States citizens through special ''Back to School With International Visitor'' programs and events that increase the knowledge of Americans about foreign societies and cultures, and bring attention to international issues crucial to interests of the United States;

Whereas the International Visitors Program offers emerging foreign leaders a unique view of America, highlighting its vibrant private sector, including both businesses and nonprofit organizations, through farm stays, home hospitality, and meetings with their professional counterparts; and

Whereas the International Visitors Program introduces foreign leaders, specialists, and scholars to the American tradition of volunteerism through exposure to the daily work of thousands of ''citizen diplomats'' who share the best of America with those foreign leaders, specialists, and scholars: Now, therefore, be it

Resolves, That the Senate—

(1) commemorates the 60th Anniversary of the International Visitors Program and the remarkable public-private sector partnership that sustains it; and

(2) commends the achievements of the thousands of volunteers who are part of the National Council for International Visitors ''citizen diplomats'' who for 6 decades have daily worked to share the best of America with foreign leaders, specialists, and scholars.

EXPRESSING SENSE OF THE SENATE REGARDING U.S. POSITION OF INCREASING WORLD CRUDE OIL SUPPLIES

Mr. SESSIONS. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 444, S. Res. 263.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The legislative clerk read as follows:

A resolution (S. Res. 263) expressing the sense of the Senate that the President should communicate to the members of the Organization of Petroleum Exporting Countries (''OPEC'') cartel and non-OPEC countries that participate in the cartel of crude oil producing countries, before the meeting of the OPEC nations in March 2000, the position of the United States in favor of increasing world crude oil supplies so as to achieve stable crude oil prices.

There being no objection, the Senate proceeded to consider the resolution, which was reported by the Committee on Foreign Relations, with an amendment to strike out all after the resolving clause and insert the part printed in italic, as follows:

S. RES. 263

Whereas the United States currently imports roughly 55 percent of its crude oil;

Whereas ensuring access to and stable prices for imported crude oil for the United States and major allies and trading partners of the United States is a continuing critical objective of United States foreign and economic policy for the foreseeable future;

Whereas the 11 countries that make up the Organization of Petroleum Exporting Countries (''OPEC'') produce 40 percent of the world's crude oil and control 77 percent of proven reserves, including much of the spare production capacity;

Whereas beginning in March 1998, OPEC instituted 3 tiers of production cuts, which reduced production by 4,300,000 barrels per day and have resulted in dramatic increases in crude oil prices;

Whereas in August 1999, crude oil prices had reached $21 per barrel and continued rising, exceeding $25 per barrel by the end of 1999 and $27 per barrel during the first week of February 2000;

Whereas crude oil prices in the United States rose $14 per barrel during 1999, the equivalent of 33 cents per gallon;

Whereas the increase has translated into higher prices for gasoline and other refined petroleum products; in the case of gasoline, the increases in crude oil prices have resulted in a penny-for-penny passthrough of increases at the pump;

Whereas increases in the price of crude oil result in increases in prices paid by United States consumers for refined petroleum products, including home heating oil, gasoline, and diesel fuel; and

Whereas increases in the costs of refined petroleum products have a negative effect on many Americans, including the elderly and individuals of low income (whose home heating oil costs have doubled in the last year), families who must pay higher prices at the gas station, farmers (already hurt by low commodity prices, trying to factor increased costs into their budgets in preparation for the growing season), truckers (who face an almost 10-year high in diesel fuel prices), and manufacturers and retailers (who must factor in increased production and transportation costs into the final price of their goods): Now, therefore, be it

Resolved, That it is the sense of the Senate that—

(1) the President and Congress should take both a short-term and a long-term approach to reducing and stabilizing crude oil prices as well as reducing dependence on foreign sources of energy;

(2) to address the problem in the short-term, the President should communicate to the members of the Organization of Petroleum Exporting Countries (''OPEC'') cartel and non-OPEC countries that participate in the cartel of crude oil producing countries, prior to their scheduled meeting on March 27, 2000, that—

(A) the United States seeks to maintain strong relations with crude oil producers around the world while promoting international efforts to

remove barriers to energy trade and investment and increased access for United States energy firms around the world;

(B) the United States believes that restricting supply in a market that is in demand of additional crude oil does serious damage to the efforts that OPEC members have made to demonstrate that they represent a reliable source of crude oil supply;

(C) the United States believes that stable crude oil prices and supplies are essential for strong economic growth throughout the world; and

(D) the United States seeks an immediate increase in the OPEC crude oil production quotas and not simply an agreement at the March 27, 2000, meeting to lift production quotas at a later date;

(3) the President should be commended for sending Secretary of Energy Richardson to personally communicate with leaders of several members of the Organization of Petroleum Exporting Countries on the need to increase the supply of crude oil;

(4) to ameliorate the long-term problem of the United States dependence on foreign oil sources, the President should—

(A) review all administrative policies, programs, and regulations that put an undue burden on domestic energy producers; and

(B) consider lifting unnecessary regulations that interfere with the ability of United States' domestic oil, gas, coal, hydro-electric, biomass, and other alternative energy industries to supply a greater percentage of the energy needs of the United States; and

(5) to ameliorate the long-term problem of United States dependence on foreign oil sources, the Senate should appropriate sufficient funds for the development of domestic energy sources, including measures to increase the use of biofuels and other renewable resources.

Mr. SESSIONS. Mr. President, I ask unanimous consent that the committee amendment be agreed to.

The PRESIDING OFFICER. Without objection, it is so ordered.

The committee amendment was agreed to.

Mr. SESSIONS. Mr. President, I ask unanimous consent that the resolution, as amended, be agreed to, the preamble be agreed to, the motion to reconsider be laid upon the table, and any statements relating to this resolution be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The resolution (S. Res. 263), as amended, was agreed to.

The preamble was agreed to.

MEASURE READ THE FIRST TIME—H.R. 2366

Mr. SESSIONS. Mr. President, I understand that H.R. 2366 is at the desk, and I ask for its first reading.

The PRESIDING OFFICER. The clerk will read the title of the bill for the first time.

The legislative clerk read as follows:

A bill (H.R. 2366) to provide small businesses certain protections from litigation excesses and to limit the product liability of nonmanufacturer product sellers.

Mr. SESSIONS. Mr. President, I now ask for its second reading and object to my own request.

The PRESIDING OFFICER. Under the rule, the bill will be read for a second time on the next legislative day.

CIVIL ASSET FORFEITURE REFORM ACT OF 2000

Mr. SESSIONS. Mr. President, I ask unanimous consent that the Senate now proceed to the consideration of H.R. 1658, reported today by the Judiciary Committee.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (H.R. 1658) to provide a more just and uniform procedure for Federal civil forfeitures, and for other purposes.

There being no objection, the Senate proceeded to consider the bill, which had been reported by the Committee on the Judiciary with an amendment to strike out all after the enacting clause and insert the part printed in italic, as follows:

H.R. 1658

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Civil Asset Forfeiture Reform Act of 2000''.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

SEC. 2. CREATION OF GENERAL RULES RELATING TO CIVIL FORFEITURE PROCEEDINGS.

(a) IN GENERAL.—Chapter 46 of title 18, United States Code, is amended by inserting after section 982 the following:

''§ 983. General rules for civil forfeiture proceedings

''(a) NOTICE; CLAIM; COMPLAINT.—

''(1)(A)(i) Except as provided in clauses (ii) through (v), in any nonjudicial civil forfeiture proceeding under a civil forfeiture statute, with respect to which the Government is required to send written notice to interested parties, such notice shall be sent in a manner to achieve proper notice as soon as practicable, and in no case more than 60 days after the date of the seizure.

''(ii) No notice is required if, before the 60-day period expires, the Government files a civil judicial forfeiture action against the property and provides notice of that action as required by law.

''(iii) If, before the 60-day period expires, the Government does not file a civil judicial forfeiture action, but does obtain a criminal indictment containing an allegation that the property is subject to forfeiture, the government shall either—

''(I) send notice within the 60 days and continue the nonjudicial civil forfeiture proceeding under this section; or

''(II) terminate the nonjudicial civil forfeiture proceeding, and take the steps necessary to preserve its right to maintain custody of the property as provided in the applicable criminal forfeiture statute.

''(iv) In a case in which the property is seized by a State or local law enforcement agency and turned over to a Federal law enforcement agency for the purpose of forfeiture under Federal law, notice shall be sent not more than 90 days after the date of seizure by the State or local law enforcement agency.

''(v) If the identity or interest of a party is not determined until after the seizure or turnover but is determined before a declaration of forfeiture is entered, notice shall be sent to such interested party not later than 60 days after the determination by the Government of the identity of the party or the party's interest.

''(B) A supervisory official in the headquarters office of the seizing agency may extend the period for sending notice under subparagraph (A) for a period not to exceed 30 days (which period may not be further extended except by a court), if the official determines that the conditions in subparagraph (D) are present.

''(C) Upon motion by the Government, a court may extend the period for sending notice under subparagraph (A) for a period not to exceed 60 days, which period may be further extended by the court for 60-day periods, as necessary, if the court determines, based on a written certification of a supervisory official in the headquarters office of the seizing agency, that the conditions in subparagraph (D) are present.

''(D) The period for sending notice under this paragraph may be extended only if there is reason to believe that notice may have an adverse result, including—

''(i) endangering the life or physical safety of an individual;

''(ii) flight from prosecution;

''(iii) destruction of or tampering with evidence;

''(iv) intimidation of potential witnesses; or

''(v) otherwise seriously jeopardizing an investigation or unduly delaying a trial.

''(E) Each of the Federal seizing agencies conducting nonjudicial forfeitures under this section shall report periodically to the Committees on the Judiciary of the House of Representatives and the Senate the number of occasions when an extension of time is granted under subparagraph (B).

''(F) If the Government does not send notice of a seizure of property in accordance with subparagraph (A) to the person from whom the property was seized, and no extension of time is granted, the Government shall return the property to that person without prejudice to the right of the Government to commence a forfeiture proceeding at a later time. The Government shall not be required to return contraband or other property that the person from whom the property was seized may not legally possess.

''(2)(A) Any person claiming property seized in a nonjudicial civil forfeiture proceeding under a civil forfeiture statute may file a claim with the appropriate official after the seizure.

''(B) A claim under subparagraph (A) may be filed not later than the deadline set forth in a personal notice letter (which deadline may be not earlier than 35 days after the date the letter is mailed), except that if that letter is not received, then a claim may be filed not later than 30 days after the date of final publication of notice of seizure.

''(C) A claim shall—

''(i) identify the specific property being claimed;

''(ii) state the claimant's interest in such property (and provide customary documentary evidence of such interest if available) and state that the claim is not frivolous; and

''(iii) be made under oath, subject to penalty of perjury.

''(D) A claim need not be made in any particular form. Each Federal agency conducting nonjudicial forfeitures under this section shall make claim forms generally available on request, which forms shall be written in easily understandable language.

''(E) Any person may make a claim under subparagraph (A) without posting bond with respect to the property which is the subject of the claim.

''(3)(A) Not later than 90 days after a claim has been filed, the Government shall file a complaint for forfeiture in the manner set forth in the Supplemental Rules for Certain Admiralty and Maritime Claims or return the property pending the filing of a complaint, except that a court in the district in which the complaint will be filed may extend the period for filing a complaint for good cause shown or upon agreement of the parties.

''(B) If the Government does not—

''(i) file a complaint for forfeiture or return the property, in accordance with subparagraph (A); or

''(ii) before the time for filing a complaint has expired—

''(I) obtain a criminal indictment containing an allegation that the property is subject to forfeiture; and

''(II) take the steps necessary to preserve its right to maintain custody of the property as provided in the applicable criminal forfeiture statute,

the Government shall promptly release the property pursuant to regulations promulgated by the Attorney General, and may not take any further action to effect the civil forfeiture of such property in connection with the underlying offense.

''(C) In lieu of, or in addition to, filing a civil forfeiture complaint, the Government may include a forfeiture allegation in a criminal indictment. If criminal forfeiture is the only forfeiture proceeding commenced by the Government, the Government's right to continued possession of the property shall be governed by the applicable criminal forfeiture statute.

''(D) No complaint may be dismissed on the ground that the Government did not have adequate evidence at the time the complaint was filed to establish the forfeitability of the property.

''(4)(A) In any case in which the Government files in the appropriate United States district court a complaint for forfeiture of property, any person claiming an interest in the seized property may file a claim asserting such person's interest in the property in the manner set forth in the Supplemental Rules for Certain Admiralty and Maritime Claims, except that such claim may be filed not later than 30 days after the date of service of the Government's complaint or, as applicable, not later than 30 days after the date of final publication of notice of the filing of the complaint.

''(B) A person asserting an interest in seized property, in accordance with subparagraph (A), shall file an answer to the Government's complaint for forfeiture not later than 20 days after the date of the filing of the claim.

''(b) REPRESENTATION.—

''(1)(A) If a person with standing to contest the forfeiture of property in a judicial civil forfeiture proceeding under a civil forfeiture statute is financially unable to obtain representation by counsel, and the person is represented by counsel appointed under section 3006A of this title in connection with a related criminal case, the court may authorize counsel to represent that person with respect to the claim.

''(B) In determining whether to authorize counsel to represent a person under subparagraph (A), the court shall take into account such factors as—

''(i) the person's standing to contest the forfeiture; and

''(ii) whether the claim appears to be made in good faith.

''(2)(A) If a person with standing to contest the forfeiture of property in a judicial civil forfeiture proceeding under a civil forfeiture statute is financially unable to obtain representation by counsel, and the property subject to forfeiture is real property that is being used by the person as a primary residence, the court, at the request of the person, shall insure that the person is represented by an attorney for the Legal Services Corporation with respect to the claim.

''(B)(i) At appropriate times during a representation under subparagraph (A), the Legal Services Corporation shall submit a statement of reasonable attorney fees and costs to the court.

''(ii) The court shall enter a judgment in favor of the Legal Services Corporation for reasonable attorney fees and costs submitted pursuant to clause (i) and treat such judgment as payable under section 2465 of title 28, United States Code, regardless of the outcome of the case.

''(3) The court shall set the compensation for representation under this subsection, which shall be equivalent to that provided for court-appointed representation under section 3006A of this title.

''(c) BURDEN OF PROOF.—In a suit or action brought under any civil forfeiture statute for the civil forfeiture of any property—

''(1) the burden of proof is on the Government to establish, by a preponderance of the evidence, that the property is subject to forfeiture;

''(2) the Government may use evidence gathered after the filing of a complaint for forfeiture to establish, by a preponderance of the evidence, that property is subject to forfeiture; and

''(3) if the Government's theory of forfeiture is that the property was used to commit or facilitate the commission of a criminal offense, or was involved in the commission of a criminal offense, the Government shall establish that there was a substantial connection between the property and the offense.

''(d) INNOCENT OWNER DEFENSE.—

''(1) An innocent owner's interest in property shall not be forfeited under any civil forfeiture statute. The claimant shall have the burden of proving that the claimant is an innocent owner by a preponderance of the evidence.

''(2)(A) With respect to a property interest in existence at the time the illegal conduct giving rise to forfeiture took place, the term 'innocent owner' means an owner who—

''(i) did not know of the conduct giving rise to forfeiture; or

''(ii) upon learning of the conduct giving rise to the forfeiture, did all that reasonably could be expected under the circumstances to terminate such use of the property.

''(B)(i) For the purposes of this paragraph, ways in which a person may show that such person did all that reasonably could be expected may include demonstrating that such person, to the extent permitted by law—

''(I) gave timely notice to an appropriate law enforcement agency of information that led the person to know the conduct giving rise to a forfeiture would occur or has occurred; and

''(II) in a timely fashion revoked or made a good faith attempt to revoke permission for those engaging in such conduct to use the property or took reasonable actions in consultation with a law enforcement agency to discourage or prevent the illegal use of the property.

''(ii) A person is not required by this subparagraph to take steps that the person reasonably believes would be likely to subject any person (other than the person whose conduct gave rise to the forfeiture) to physical danger.

''(3)(A) With respect to a property interest acquired after the conduct giving rise to the forfeiture has taken place, the term 'innocent owner' means a person who, at the time that person acquired the interest in the property—

''(i) was a bona fide purchaser or seller for value (including a purchaser or seller of goods or services for value); and

''(ii) did not know and was reasonably without cause to believe that the property was subject to forfeiture.

''(B) An otherwise valid claim under subparagraph (A) shall not be denied on the ground that the claimant gave nothing of value in exchange for the property if—

''(i) the property is the primary residence of the claimant;

''(ii) depriving the claimant of the property would deprive the claimant of the means to maintain reasonable shelter in the community for the claimant and all dependents residing with the claimant;

''(iii) the property is not, and is not traceable to, the proceeds of any criminal offense; and

''(iv) the claimant acquired his or her interest in the property through marriage, divorce, or legal separation, or the claimant was the spouse or legal dependent of a person whose death resulted in the transfer of the property to the claimant through inheritance or probate;

except that the court shall limit the value of any real property interest for which innocent ownership is recognized under this subparagraph to the value necessary to maintain reasonable shelter in the community for such claimant and all dependents residing with the claimant.

''(4) Notwithstanding any provision of this subsection, no person may assert an ownership interest under this subsection in contraband or other property that it is illegal to possess.

''(5) If the court determines, in accordance with this section, that an innocent owner has a partial interest in property otherwise subject to forfeiture, or a joint tenancy or tenancy by the entirety in such property, the court may enter an appropriate order—

''(A) severing the property;

''(B) transferring the property to the Government with a provision that the Government compensate the innocent owner to the extent of his or her ownership interest once a final order of forfeiture has been entered and the property has been reduced to liquid assets; or

''(C) permitting the innocent owner to retain the property subject to a lien in favor of the Government to the extent of the forfeitable interest in the property.

''(6) In this subsection, the term 'owner'—

''(A) means a person with an ownership interest in the specific property sought to be forfeited, including a leasehold, lien, mortgage, recorded security interest, or valid assignment of an ownership interest; and

''(B) does not include—

''(i) a person with only a general unsecured interest in, or claim against, the property or estate of another;

''(ii) a bailee unless the bailor is identified and the bailee shows a colorable legitimate interest in the property seized; or

''(iii) a nominee who exercises no dominion or control over the property.

''(e) MOTION TO SET ASIDE FORFEITURE.—

''(1) Any person entitled to written notice in any nonjudicial civil forfeiture proceeding under a civil forfeiture statute who does not receive such notice may file a motion to set aside a declaration of forfeiture with respect to that person's interest in the property, which motion shall be granted if—

''(A) the Government knew, or reasonably should have known, of the moving party's interest and failed to take reasonable steps to provide such party with notice; and

''(B) the moving party did not know or have reason to know of the seizure within sufficient time to file a timely claim.

''(2)(A) Notwithstanding the expiration of any applicable statute of limitations, if the court grants a motion under paragraph (1), the court shall set aside the declaration of forfeiture as to the interest of the moving party without prejudice to the right of the Government to commence

a subsequent forfeiture proceeding as to the interest of the moving party.

''(B) Any proceeding described in subparagraph (A) shall be commenced—

''(i) if nonjudicial, within 60 days of the entry of the order granting the motion; or

''(ii) if judicial, within 6 months of the entry of the order granting the motion.

''(3) A motion under paragraph (1) may be filed not later than 5 years after the date of final publication of notice of seizure of the property.

''(4) If, at the time a motion made under paragraph (1) is granted, the forfeited property has been disposed of by the Government in accordance with law, the Government may institute proceedings against a substitute sum of money equal to the value of the moving party's interest in the property at the time the property was disposed of.

''(5) A motion filed under this subsection shall be the exclusive remedy for seeking to set aside a declaration of forfeiture under a civil forfeiture statute.

''(f) RELEASE OF SEIZED PROPERTY.—

''(1) A claimant under subsection (a) is entitled to immediate release of seized property if—

''(A) the claimant has a possessory interest in the property;

''(B) the claimant has sufficient ties to the community to provide assurance that the property will be available at the time of the trial;

''(C) the continued possession by the Government pending the final disposition of forfeiture proceedings will cause substantial hardship to the claimant, such as preventing the functioning of a business, preventing an individual from working, or leaving an individual homeless;

''(D) the claimant's likely hardship from the continued possession by the Government of the seized property outweighs the risk that the property will be destroyed, damaged, lost, concealed, or transferred if it is returned to the claimant during the pendency of the proceeding; and

''(E) none of the conditions set forth in paragraph (8) applies.

''(2) A claimant seeking release of property under this subsection must request possession of the property from the appropriate official, and the request must set forth the basis on which the requirements of paragraph (1) are met.

''(3)(A) If not later than 15 days after the date of a request under paragraph (2) the property has not been released, the claimant may file a petition in the district court in which the complaint has been filed or, if no complaint has been filed, in the district court in which the seizure warrant was issued or in the district court for the district in which the property was seized.

''(B) The petition described in subparagraph (A) shall set forth—

''(i) the basis on which the requirements of paragraph (1) are met; and

''(ii) the steps the claimant has taken to secure release of the property from the appropriate official.

''(4) If the Government establishes that the claimant's claim is frivolous, the court shall deny the petition. In responding to a petition under this subsection on other grounds, the Government may in appropriate cases submit evidence ex parte in order to avoid disclosing any matter that may adversely affect an ongoing criminal investigation or pending criminal trial.

''(5) The court shall render a decision on a petition filed under paragraph (3) not later than 30 days after the date of the filing, unless such 30-day limitation is extended by consent of the parties or by the court for good cause shown.

''(6) If—

''(A) a petition is filed under paragraph (3); and

''(B) the claimant demonstrates that the requirements of paragraph (1) have been met;

the district court shall order that the property be returned to the claimant, pending completion of proceedings by the Government to obtain forfeiture of the property.

''(7) If the court grants a petition under paragraph (3)—

''(A) the court may enter any order necessary to ensure that the value of the property is maintained while the forfeiture action is pending, including—

''(i) permitting the inspection, photographing, and inventory of the property;

''(ii) fixing a bond in accordance with rule E(5) of the Supplemental Rules for Certain Admiralty and Maritime Claims; and

''(iii) requiring the claimant to obtain or maintain insurance on the subject property; and

''(B) the Government may place a lien against the property or file a lis pendens to ensure that the property is not transferred to another person.

''(8) This subsection shall not apply if the seized property—

''(A) is contraband, currency, or other monetary instrument, or electronic funds unless such currency or other monetary instrument or electronic funds constitutes the assets of a legitimate business which has been seized;

''(B) is to be used as evidence of a violation of the law;

''(C) by reason of design or other characteristic, is particularly suited for use in illegal activities; or

''(D) is likely to be used to commit additional criminal acts if returned to the claimant.

''(g) PROPORTIONALITY.—

''(1) The claimant under subsection (a)(4) may petition the court to determine whether the forfeiture was constitutionally excessive.

''(2) In making this determination, the court shall compare the forfeiture to the gravity of the offense giving rise to the forfeiture.

''(3) The claimant shall have the burden of establishing that the forfeiture is grossly disproportional by a preponderance of the evidence at a hearing conducted by the court without a jury.

''(4) If the court finds that the forfeiture is grossly disproportional to the offense it shall reduce or eliminate the forfeiture as necessary to avoid a violation of the Excessive Fines Clause of the Eighth Amendment of the Constitution.

''(h) CIVIL FINE.—

''(1) In any civil forfeiture proceeding under a civil forfeiture statute in which the Government prevails, if the court finds that the claimant's assertion of an interest in the property was frivolous, the court may impose a civil fine on the claimant of an amount equal to 10 percent of the value of the forfeited property, but in no event shall the fine be less than $250 or greater than $5,000.

''(2) Any civil fine imposed under this subsection shall not preclude the court from imposing sanctions under rule 11 of the Federal Rules of Civil Procedure.

''(3) In addition to the limitations of section 1915 of title 28, United States Code, in no event shall a prisoner file a claim under a civil forfeiture statute or appeal a judgment in a civil action or proceeding based on a civil forfeiture statute if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous or malicious, unless the prisoner shows extraordinary and exceptional circumstances.

''(i) CIVIL FORFEITURE STATUTE DEFINED.—In this section, the term 'civil forfeiture statute'—

''(1) means any provision of Federal law providing for the forfeiture of property other than as a sentence imposed upon conviction of a criminal offense; and

''(2) does not include—

''(A) the Tariff Act of 1930 or any other provision of law codified in title 19;

''(B) the Internal Revenue Code of 1986;

''(C) the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.);

''(D) the Trading with the Enemy Act (50 U.S.C. App. 1 et seq.); or

''(E) section 1 of title VI of the Act of June 15, 1917 (40 Stat. 233; 22 U.S.C. 401).''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The analysis for chapter 46 of title 18, United States Code, is amended by inserting after the item relating to section 982 the following:

''983. General rules for civil forfeiture proceedings.''.

(c) STRIKING SUPERSEDED PROVISIONS.—

(1) CIVIL FORFEITURE.—Section 981(a) of title 18, United States Code, is amended—

(A) in paragraph (1), by striking ''Except as provided in paragraph (2), the'' and inserting ''The''; and

(B) by striking paragraph (2).

(2) DRUG FORFEITURES.—Paragraphs (4), (6) and (7) of section 511(a) of the Controlled Substances Act (21 U.S.C. 881(a) (4), (6) and (7)) are each amended by striking '', except that'' and all that follows before the period at the end.

(3) AUTOMOBILES.—Section 518 of the Controlled Substances Act (21 U.S.C. 888) is repealed.

(4) FORFEITURES IN CONNECTION WITH SEXUAL EXPLOITATION OF CHILDREN.—Paragraphs (2) and (3) of section 2254(a) of title 18, United States Code, are each amended by striking '', except that'' and all that follows before the period at the end.

(d) LEGAL SERVICES CORPORATION REPRESENTATION.—Section 1007(a) of the Legal Services Corporation Act (42 U.S.C. 2996f(a)) is amended—

(1) in paragraph (9), by striking ''and'' after the semicolon;

(2) In paragraph (10), by striking the period and inserting ''; and''; and

(3) by adding at the end the following:

''(11) ensure that an indigent individual whose primary residence is subject to civil forfeiture is represented by an attorney for the Corporation in such civil action.''

SEC. 3. COMPENSATION FOR DAMAGE TO SEIZED PROPERTY.

(a) TORT CLAIMS ACT.—Section 2680(c) of title 28, United States Code, is amended—

(1) by striking ''any goods or merchandise'' and inserting ''any goods, merchandise, or other property'';

(2) by striking ''law-enforcement'' and inserting ''law enforcement''; and

(3) by inserting before the period at the end the following: '', except that the provisions of this chapter and section 1346(b) of this title apply to any claim based on injury or loss of goods, merchandise, or other property, while in the possession of any officer of customs or excise or any other law enforcement officer, if—

''(1) the property was seized for the purpose of forfeiture under any provision of Federal law providing for the forfeiture of property other than as a sentence imposed upon conviction of a criminal offense;

''(2) the interest of the claimant was not forfeited;

''(3) the interest of the claimant was not remitted or mitigated (if the property was subject to forfeiture); and

''(4) the claimant was not convicted of a crime for which the interest of the claimant in the property was subject to forfeiture under a Federal criminal forfeiture law.''.

(b) DEPARTMENT OF JUSTICE.—

(1) IN GENERAL.—With respect to a claim that cannot be settled under chapter 171 of title 28, United States Code, the Attorney General may settle, for not more than $50,000 in any case, a claim for damage to, or loss of, privately owned property caused by an investigative or law enforcement officer (as defined in section 2680(h) of title 28, United States Code) who is employed by the Department of Justice acting within the scope of his or her employment.

(2) LIMITATIONS.—The Attorney General may not pay a claim under paragraph (1) that—

(A) is presented to the Attorney General more than 1 year after it accrues; or

(B) is presented by an officer or employee of the Federal Government and arose within the scope of employment.

SEC. 4. ATTORNEY FEES, COSTS, AND INTEREST.

(a) IN GENERAL.—Section 2465 of title 28, United States Code, is amended to read as follows:

''§ 2465. Return of property to claimant; liability for wrongful seizure; attorney fees, costs, and interest

''(a) Upon the entry of a judgment for the claimant in any proceeding to condemn or forfeit property seized or arrested under any provision of Federal law—

''(1) such property shall be returned forthwith to the claimant or his agent; and

''(2) if it appears that there was reasonable cause for the seizure or arrest, the court shall cause a proper certificate thereof to be entered and, in such case, neither the person who made the seizure or arrest nor the prosecutor shall be liable to suit or judgment on account of such suit or prosecution, nor shall the claimant be entitled to costs, except as provided in subsection (b).

''(b)(1) Except as provided in paragraph (2), in any civil proceeding to forfeit property under any provision of Federal law in which the claimant substantially prevails, the United States shall be liable for—

''(A) reasonable attorney fees and other litigation costs reasonably incurred by the claimant;

''(B) post-judgment interest, as set forth in section 1961 of this title; and

''(C) in cases involving currency, other negotiable instruments, or the proceeds of an interlocutory sale—

''(i) interest actually paid to the United States from the date of seizure or arrest of the property that resulted from the investment of the property in an interest-bearing account or instrument; and

''(ii) an imputed amount of interest that such currency, instruments, or proceeds would have earned at the rate applicable to the 30-day Treasury Bill, for any period during which no interest was paid (not including any period when the property reasonably was in use as evidence in an official proceeding or in conducting scientific tests for the purpose of collecting evidence), commencing 15 days after the property was seized by a Federal law enforcement agency, or was turned over to a Federal law enforcement agency by a State or local law enforcement agency.

''(2)(A) The United States shall not be required to disgorge the value of any intangible benefits nor make any other payments to the claimant not specifically authorized by this subsection.

''(B) The provisions of paragraph (1) shall not apply if the claimant is convicted of a crime for which the interest of the claimant in the property was subject to forfeiture under a Federal criminal forfeiture law.

''(C) If there are multiple claims to the same property, the United States shall not be liable for costs and attorneys fees associated with any such claim if the United States—

''(i) promptly recognizes such claim;

''(ii) promptly returns the interest of the claimant in the property to the claimant, if the property can be divided without difficulty and there are no competing claims to that portion of the property;

''(iii) does not cause the claimant to incur additional, reasonable costs or fees; and

''(iv) prevails in obtaining forfeiture with respect to one or more of the other claims.

''(D) If the court enters judgment in part for the claimant and in part for the Government, the court shall reduce the award of costs and attorney fees accordingly.''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The analysis for chapter 163 of title 28, United States Code, is amended by striking the item relating to section 2465 and inserting following:

''2465. Return of property to claimant; liability for wrongful seizure; attorney fees, costs, and interest.''.

SEC. 5. SEIZURE WARRANT REQUIREMENT.

(a) IN GENERAL.—Section 981(b) of title 18, United States Code, is amended to read as follows:

''(b)(1) Except as provided in section 985, any property subject to forfeiture to the United States under subsection (a) may be seized by the Attorney General and, in the case of property involved in a violation investigated by the Secretary of the Treasury or the United States Postal Service, the property may also be seized by the Secretary of the Treasury or the Postal Service, respectively.

''(2) Seizures pursuant to this section shall be made pursuant to a warrant obtained in the same manner as provided for a search warrant under the Federal Rules of Criminal Procedure, except that a seizure may be made without a warrant if—

''(A) a complaint for forfeiture has been filed in the United States district court and the court issued an arrest warrant in rem pursuant to the Supplemental Rules for Certain Admiralty and Maritime Claims;

''(B) there is probable cause to believe that the property is subject to forfeiture and—

''(i) the seizure is made pursuant to a lawful arrest or search; or

''(ii) another exception to the Fourth Amendment warrant requirement would apply; or

''(C) the property was lawfully seized by a State or local law enforcement agency and transferred to a Federal agency.

''(3) Notwithstanding the provisions of rule 41(a) of the Federal Rules of Criminal Procedure, a seizure warrant may be issued pursuant to this subsection by a judicial officer in any district in which a forfeiture action against the property may be filed under section 1355(b) of title 28, and may be executed in any district in which the property is found, or transmitted to the central authority of any foreign state for service in accordance with any treaty or other international agreement. Any motion for the return of property seized under this section shall be filed in the district court in which the seizure warrant was issued or in the district court for the district in which the property was seized.

''(4)(A) If any person is arrested or charged in a foreign country in connection with an offense that would give rise to the forfeiture of property in the United States under this section or under the Controlled Substances Act, the Attorney General may apply to any Federal judge or magistrate judge in the district in which the property is located for an ex parte order restraining the property subject to forfeiture for not more than 30 days, except that the time may be extended for good cause shown at a hearing conducted in the manner provided in rule 43(e) of the Federal Rules of Civil Procedure.

''(B) The application for the restraining order shall set forth the nature and circumstances of the foreign charges and the basis for belief that the person arrested or charged has property in the United States that would be subject to forfeiture, and shall contain a statement that the restraining order is needed to preserve the availability of property for such time as is necessary to receive evidence from the foreign country or elsewhere in support of probable cause for the seizure of the property under this subsection.''.

(b) DRUG FORFEITURES.—Section 511(b) of the Controlled Substances Act (21 U.S.C. 881(b)) is amended to read as follows:

''(b) SEIZURE PROCEDURES.—Any property subject to forfeiture to the United States under this section may be seized by the Attorney General in the manner set forth in section 981(b) of title 18, United States Code.''.

SEC. 6. USE OF FORFEITED FUNDS TO PAY RESTITUTION TO CRIME VICTIMS.

Section 981(e) of title 18, United States Code, is amended by striking paragraph (6) and inserting the following:

''(6) as restoration to any victim of the offense giving rise to the forfeiture, including, in the case of a money laundering offense, any offense constituting the underlying specified unlawful activity; or''.

SEC. 7. CIVIL FORFEITURE OF REAL PROPERTY.

(a) IN GENERAL.—Chapter 46 of title 18, United States Code, is amended by inserting after section 984 the following:

''§ 985. Civil forfeiture of real property

''(a) Notwithstanding any other provision of law, all civil forfeitures of real property and interests in real property shall proceed as judicial forfeitures.

''(b)(1) Except as provided in this section—

''(A) real property that is the subject of a civil forfeiture action shall not be seized before entry of an order of forfeiture; and

''(B) the owners or occupants of the real property shall not be evicted from, or otherwise deprived of the use and enjoyment of, real property that is the subject of a pending forfeiture action.

''(2) The filing of a lis pendens and the execution of a writ of entry for the purpose of conducting an inspection and inventory of the property shall not be considered a seizure under this subsection.

''(c)(1) The Government shall initiate a civil forfeiture action against real property by—

''(A) filing a complaint for forfeiture;

''(B) posting a notice of the complaint on the property; and

''(C) serving notice on the property owner, along with a copy of the complaint.

''(2) If the property owner cannot be served with the notice under paragraph (1) because the owner—

''(A) is a fugitive;

''(B) resides outside the United States and efforts at service pursuant to rule 4 of the Federal Rules of Civil Procedure are unavailing; or

''(C) cannot be located despite the exercise of due diligence,

constructive service may be made in accordance with the laws of the State in which the property is located.

''(3) If real property has been posted in accordance with this subsection, it shall not be necessary for the court to issue an arrest warrant in rem, or to take any other action to establish in rem jurisdiction over the property.

''(d)(1) Real property may be seized prior to the entry of an order of forfeiture if—

''(A) the Government notifies the court that it intends to seize the property before trial; and

''(B) the court—

''(i) issues a notice of application for warrant, causes the notice to be served on the property owner and posted on the property, and conducts a hearing in which the property owner has a meaningful opportunity to be heard; or

''(ii) makes an ex parte determination that there is probable cause for the forfeiture and that there are exigent circumstances that permit the Government to seize the property without prior notice and an opportunity for the property owner to be heard.

''(2) For purposes of paragraph (1)(B)(ii), to establish exigent circumstances, the Government shall show that less restrictive measures such as a lis pendens, restraining order, or bond would not suffice to protect the Government's interests in preventing the sale, destruction, or continued unlawful use of the real property.

''(e) If the court authorizes a seizure of real property under subsection (d)(1)(B)(ii), it shall conduct a prompt post-seizure hearing during which the property owner shall have an opportunity to contest the basis for the seizure.

''(f) This section—

''(1) applies only to civil forfeitures of real property and interests in real property;

''(2) does not apply to forfeitures of the proceeds of the sale of such property or interests, or of money or other assets intended to be used to acquire such property or interests; and

''(3) shall not affect the authority of the court to enter a restraining order relating to real property.''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The analysis for chapter 46 of title 18, United States Code, is amended by inserting after the item relating to section 984 the following:

''985. Civil forfeiture of real property.''.

SEC. 8. STAY OF CIVIL FORFEITURE CASE.

(a) IN GENERAL.—Section 981(g) of title 18, United States Code, is amended to read as follows:

''(g)(1) Upon the motion of the United States, the court shall stay the civil forfeiture proceeding if the court determines that civil discovery will adversely affect the ability of the Government to conduct a related criminal investigation or the prosecution of a related criminal case.

''(2) Upon the motion of a claimant, the court shall stay the civil forfeiture proceeding with respect to that claimant if the court determines that—

''(A) the claimant is the subject of a related criminal investigation or case;

''(B) the claimant has standing to assert a claim in the civil forfeiture proceeding; and

''(C) continuation of the forfeiture proceeding will burden the right of the claimant against self-incrimination in the related investigation or case.

''(3) With respect to the impact of civil discovery described in paragraphs (1) and (2), the court may determine that a stay is unnecessary if a protective order limiting discovery would protect the interest of 1 party without unfairly limiting the ability of the opposing party to pursue the civil case. In no case, however, shall the court impose a protective order as an alternative to a stay if the effect of such protective order would be to allow 1 party to pursue discovery while the other party is substantially unable to do so.

''(4) In this subsection, the terms 'related criminal case' and 'related criminal investigation' mean an actual prosecution or investigation in progress at the time at which the request for the stay, or any subsequent motion to lift the stay is made. In determining whether a criminal case or investigation is 'related' to a civil forfeiture proceeding, the court shall consider the degree of similarity between the parties, witnesses, facts, and circumstances involved in the 2 proceedings, without requiring an identity with respect to any 1 or more factors.

''(5) In requesting a stay under paragraph (1), the Government may, in appropriate cases, submit evidence ex parte in order to avoid disclosing any matter that may adversely affect an ongoing criminal investigation or pending criminal trial.

''(6) Whenever a civil forfeiture proceeding is stayed pursuant to this subsection, the court shall enter any order necessary to preserve the value of the property or to protect the rights of lienholders or other persons with an interest in the property while the stay is in effect.

''(7) A determination by the court that the claimant has standing to request a stay pursuant to paragraph (2) shall apply only to this subsection and shall not preclude the Government from objecting to the standing of the claimant by dispositive motion or at the time of trial.''.

(b) DRUG FORFEITURES.—Section 511(i) of the Controlled Substances Act (21 U.S.C. 881(i)) is amended to read as follows:

''(i) The provisions of section 981(g) of title 18, United States Code, regarding the stay of a civil forfeiture proceeding shall apply to forfeitures under this section.''.

SEC. 9. CIVIL RESTRAINING ORDERS.

Section 983 of title 18, United States Code, as added by this Act, is amended by adding at the end the following:

''(j) RESTRAINING ORDERS; PROTECTIVE ORDERS.—

''(1) Upon application of the United States, the court may enter a restraining order or injunction, require the execution of satisfactory performance bonds, create receiverships, appoint conservators, custodians, appraisers, accountants, or trustees, or take any other action to seize, secure, maintain, or preserve the availability of property subject to civil forfeiture—

''(A) upon the filing of a civil forfeiture complaint alleging that the property with respect to which the order is sought is subject to civil forfeiture; or

''(B) prior to the filing of such a complaint, if, after notice to persons appearing to have an interest in the property and opportunity for a hearing, the court determines that—

''(i) there is a substantial probability that the United States will prevail on the issue of forfeiture and that failure to enter the order will result in the property being destroyed, removed from the jurisdiction of the court, or otherwise made unavailable for forfeiture; and

''(ii) the need to preserve the availability of the property through the entry of the requested order outweighs the hardship on any party against whom the order is to be entered.

''(2) An order entered pursuant to paragraph (1)(B) shall be effective for not more than 90 days, unless extended by the court for good cause shown, or unless a complaint described in paragraph (1)(A) has been filed.

''(3) A temporary restraining order under this subsection may be entered upon application of the United States without notice or opportunity for a hearing when a complaint has not yet been filed with respect to the property, if the United States demonstrates that there is probable cause to believe that the property with respect to which the order is sought is subject to civil forfeiture and that provision of notice will jeopardize the availability of the property for forfeiture. Such a temporary order shall expire not more than 10 days after the date on which it is entered, unless extended for good cause shown or unless the party against whom it is entered consents to an extension for a longer period. A hearing requested concerning an order entered under this paragraph shall be held at the earliest possible time and prior to the expiration of the temporary order.

''(4) The court may receive and consider, at a hearing held pursuant to this subsection, evidence and information that would be inadmissible under the Federal Rules of Evidence.''.

SEC. 10. COOPERATION AMONG FEDERAL PROSECUTORS.

Section 3322(a) of title 18, United States Code, is amended—

(1) by striking ''civil forfeiture under section 981 of title 18, United States Code, of property described in section 981(a)(1)(C) of such title'' and inserting ''any civil forfeiture provision of Federal law''; and

(2) by striking ''concerning a banking law violation''.

SEC. 11. STATUTE OF LIMITATIONS FOR CIVIL FORFEITURE ACTIONS.

Section 621 of the Tariff Act of 1930 (19 U.S.C. 1621) is amended by inserting '', or in the case of forfeiture, within 2 years after the time when the involvement of the property in the alleged offense was discovered, whichever was later'' after ''within five years after the time when the alleged offense was discovered''.

SEC. 12. DESTRUCTION OR REMOVAL OF PROPERTY TO PREVENT SEIZURE.

Section 2232 of title 18, United States Code, is amended—

(1) by striking subsections (a) and (b);

(2) by inserting ''(e) FOREIGN INTELLIGENCE SURVEILLANCE.—'' before ''Whoever, having knowledge that a Federal officer'';

(3) by redesignating subsection (c) as subsection (d); and

(4) by inserting before subsection (d), as redesignated, the following:

''(a) DESTRUCTION OR REMOVAL OF PROPERTY TO PREVENT SEIZURE.—Whoever, before, during, or after any search for or seizure of property by any person authorized to make such search or seizure, knowingly destroys, damages, wastes, disposes of, transfers, or otherwise takes any action, or knowingly attempts to destroy, damage, waste, dispose of, transfer, or otherwise take any action, for the purpose of preventing or impairing the Government's lawful authority to take such property into its custody or control or to continue holding such property under its lawful custody and control, shall be fined under this title or imprisoned not more than 5 years, or both.

''(b) IMPAIRMENT OF IN REM JURISDICTION.—Whoever, knowing that property is subject to the in rem jurisdiction of a United States court for purposes of civil forfeiture under Federal law, knowingly and without authority from that court, destroys, damages, wastes, disposes of, transfers, or otherwise takes any action, or knowingly attempts to destroy, damage, waste, dispose of, transfer, or otherwise take any action, for the purpose of impairing or defeating the court's continuing in rem jurisdiction over the property, shall be fined under this title or imprisoned not more than 5 years, or both.

''(c) NOTICE OF SEARCH OR EXECUTION OF SEIZURE WARRANT OR WARRANT OF ARREST IN REM.—Whoever, having knowledge that any person authorized to make searches and seizures, or to execute a seizure warrant or warrant of arrest in rem, in order to prevent the authorized seizing or securing of any person or property, gives notice or attempts to give notice in advance of the search, seizure, or execution of a seizure warrant or warrant of arrest in rem, to any person shall be fined under this title or imprisoned not more than 5 years, or both.''.

SEC. 13. FUNGIBLE PROPERTY IN BANK ACCOUNTS.

(a) IN GENERAL.—Section 984 of title 18, United States Code, is amended—

(1) by striking subsection (a) and redesignating subsections (b), (c), and (d) as subsections (a), (b), and (c), respectively;

(2) in subsection (a), as redesignated—

(A) by striking ''or other fungible property'' and inserting ''or precious metals''; and

(B) in paragraph (2), by striking ''subsection (c)'' and inserting ''subsection (b)'';

(3) in subsection (c), as redesignated—

(A) by striking paragraph (1) and inserting the following: ''(1) Subsection (a) does not apply to an action against funds held by a financial institution in an interbank account unless the account holder knowingly engaged in the offense that is the basis for the forfeiture.''; and

(B) in paragraph (2), by striking ''(2) As used in this section, the term'' and inserting the following:

''(2) In this subsection—

''(A) the term 'financial institution' includes a foreign bank (as defined in section 1(b)(7) of the International Banking Act of 1978 (12 U.S.C. 3101(b)(7))); and

''(B) the term''; and

(4) by adding at the end the following:

''(d) Nothing in this section may be construed to limit the ability of the Government to forfeit property under any provision of law if the property involved in the offense giving rise to the forfeiture or property traceable thereto is available for forfeiture.''.

SEC. 14. FUGITIVE DISENTITLEMENT.

(a) IN GENERAL.—Chapter 163 of title 28, United States Code, is amended by adding at the end the following:

''§ 2466. Fugitive disentitlement

''A judicial officer may disallow a person from using the resources of the courts of the United States in furtherance of a claim in any related

civil forfeiture action or a claim in third party proceedings in any related criminal forfeiture action upon a finding that such person—

''(1) after notice or knowledge of the fact that a warrant or process has been issued for his apprehension, in order to avoid criminal prosecution—

''(A) purposely leaves the jurisdiction of the United States;

''(B) declines to enter or reenter the United States to submit to its jurisdiction; or

''(C) otherwise evades the jurisdiction of the court in which a criminal case is pending against the person; and

''(2) is not confined or held in custody in any other jurisdiction for commission of criminal conduct in that jurisdiction.''.

(b) CONFORMING AMENDMENT.—The analysis for chapter 163 of title 28, United States Code, is amended by adding at the end the following:

''2466. Fugitive disentitlement.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to any case pending on or after the date of enactment of this Act.

SEC. 15. ENFORCEMENT OF FOREIGN FORFEITURE JUDGMENT.

(a) IN GENERAL.—Chapter 163 of title 28, United States Code, is amended by adding at the end the following:

''§2467. Enforcement of foreign judgment

''(a) DEFINITIONS.—In this section—

''(1) the term 'foreign nation' means a country that has become a party to the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (referred to in this section as the 'United Nations Convention') or a foreign jurisdiction with which the United States has a treaty or other formal international agreement in effect providing for mutual forfeiture assistance; and

''(2) the term 'forfeiture or confiscation judgment' means a final order of a foreign nation compelling a person or entity—

''(A) to pay a sum of money representing the proceeds of an offense described in Article 3, Paragraph 1, of the United Nations Convention, or any foreign offense described in section 1956(c)(7)(B) of title 18, or property the value of which corresponds to such proceeds; or

''(B) to forfeit property involved in or traceable to the commission of such offense.

''(b) REVIEW BY ATTORNEY GENERAL.—

''(1) IN GENERAL.—A foreign nation seeking to have a forfeiture or confiscation judgment registered and enforced by a district court of the United States under this section shall first submit a request to the Attorney General or the designee of the Attorney General, which request shall include—

''(A) a summary of the facts of the case and a description of the proceedings that resulted in the forfeiture or confiscation judgment;

''(B) certified copy of the forfeiture or confiscation judgment;

''(C) an affidavit or sworn declaration establishing that the defendant received notice of the proceedings in sufficient time to enable the defendant to defend against the charges and that the judgment rendered is in force and is not subject to appeal; and

''(D) such additional information and evidence as may be required by the Attorney General or the designee of the Attorney General.

''(2) CERTIFICATION OF REQUEST.—The Attorney General or the designee of the Attorney General shall determine whether, in the interest of justice, to certify the request, and such decision shall be final and not subject to either judicial review or review under subchapter II of chapter 5, or chapter 7, of title 5 (commonly known as the 'Administrative Procedure Act').

''(c) JURISDICTION AND VENUE.—

''(1) IN GENERAL.—If the Attorney General or the designee of the Attorney General certifies a request under subsection (b), the United States may file an application on behalf of a foreign nation in district court of the United States seeking to enforce the foreign forfeiture or confiscation judgment as if the judgment had been entered by a court in the United States.

''(2) PROCEEDINGS.—In a proceeding filed under paragraph (1)—

''(A) the United States shall be the applicant and the defendant or another person or entity affected by the forfeiture or confiscation judgment shall be the respondent;

''(B) venue shall lie in the district court for the District of Columbia or in any other district in which the defendant or the property that may be the basis for satisfaction of a judgment under this section may be found; and

''(C) the district court shall have personal jurisdiction over a defendant residing outside of the United States if the defendant is served with process in accordance with rule 4 of the Federal Rules of Civil Procedure.

''(d) ENTRY AND ENFORCEMENT OF JUDGMENT.—

''(1) IN GENERAL.—The district court shall enter such orders as may be necessary to enforce the judgment on behalf of the foreign nation unless the court finds that—

''(A) the judgment was rendered under a system that provides tribunals or procedures incompatible with the requirements of due process of law;

''(B) the foreign court lacked personal jurisdiction over the defendant;

''(C) the foreign court lacked jurisdiction over the subject matter;

''(D) the defendant in the proceedings in the foreign court did not receive notice of the proceedings in sufficient time to enable him or her to defend; or

''(E) the judgment was obtained by fraud.

''(2) PROCESS.—Process to enforce a judgment under this section shall be in accordance with rule 69(a) of the Federal Rules of Civil Procedure.

''(e) FINALITY OF FOREIGN FINDINGS.—In entering orders to enforce the judgment, the court shall be bound by the findings of fact to the extent that they are stated in the foreign forfeiture or confiscation judgment.

''(f) CURRENCY CONVERSION.—The rate of exchange in effect at the time the suit to enforce is filed by the foreign nation shall be used in calculating the amount stated in any forfeiture or confiscation judgment requiring the payment of a sum of money submitted for registration.''.

(b) CONFORMING AMENDMENT.—The analysis for chapter 163 of title 28, United States Code, is amended by adding at the end the following:

''2467. Enforcement of foreign judgment.''.

SEC. 16. ENCOURAGING USE OF CRIMINAL FORFEITURE AS AN ALTERNATIVE TO CIVIL FORFEITURE.

Section 2461 of title 28, United States Code, is amended by adding at the end the following:

''(c) If a forfeiture of property is authorized in connection with a violation of an Act of Congress, and any person is charged in an indictment or information with such violation but no specific statutory provision is made for criminal forfeiture upon conviction, the Government may include the forfeiture in the indictment or information in accordance with the Federal Rules of Criminal Procedure, and upon conviction, the court shall order the forfeiture of the property in accordance with the procedures set forth in section 413 of the Controlled Substances Act (21 U.S.C. 853), other than subsection (d) of that section.''.

SEC. 17. ACCESS TO RECORDS IN BANK SECRECY JURISDICTIONS.

Section 986 of title 18, United States Code, is amended by adding at the end the following:

''(d) ACCESS TO RECORDS IN BANK SECRECY JURISDICTIONS.—

''(1) IN GENERAL.—In any civil forfeiture case, or in any ancillary proceeding in any criminal forfeiture case governed by section 413(n) of the Controlled Substances Act (21 U.S.C. 853(n)), in which—

''(A) financial records located in a foreign country may be material—

''(i) to any claim or to the ability of the Government to respond to such claim; or

''(ii) in a civil forfeiture case, to the ability of the Government to establish the forfeitability of the property; and

''(B) it is within the capacity of the claimant to waive the claimant's rights under applicable financial secrecy laws, or to obtain the records so that such records can be made available notwithstanding such secrecy laws;

the refusal of the claimant to provide the records in response to a discovery request or to take the action necessary otherwise to make the records available shall be grounds for judicial sanctions, up to and including dismissal of the claim with prejudice.

''(2) PRIVILEGE.—This subsection shall not affect the right of the claimant to refuse production on the basis of any privilege guaranteed by the Constitution of the United States or any other provision of Federal law.''.

SEC. 18. APPLICATION TO ALIEN SMUGGLING OFFENSES.

(a) AMENDMENT OF THE IMMIGRATION AND NATIONALITY ACT.—Section 274(b) of the Immigration and Nationality Act (8 U.S.C. 1324(b)) is amended to read as follows:

''(b) SEIZURE AND FORFEITURE.—

''(1) IN GENERAL.—Any conveyance, including any vessel, vehicle, or aircraft, that has been or is being used in the commission of a violation of subsection (a), the gross proceeds of such violation, and any property traceable to such conveyance or proceeds, shall be seized and subject to forfeiture.

''(2) APPLICABLE PROCEDURES.—Seizures and forfeitures under this subsection shall be governed by the provisions of chapter 46 of title 18, United States Code, relating to civil forfeitures, including section 981(d) of such title, except that such duties as are imposed upon the Secretary of the Treasury under the customs laws described in that section shall be performed by such officers, agents, and other persons as may be designated for that purpose by the Attorney General.

''(3) PRIMA FACIE EVIDENCE IN DETERMINATIONS OF VIOLATIONS.—In determining whether a violation of subsection (a) has occurred, any of the following shall be prima facie evidence that an alien involved in the alleged violation had not received prior official authorization to come to, enter, or reside in the United States or that such alien had come to, entered, or remained in the United States in violation of law:

''(A) Records of any judicial or administrative proceeding in which that alien's status was an issue and in which it was determined that the alien had not received prior official authorization to come to, enter, or reside in the United States or that such alien had come to, entered, or remained in the United States in violation of law.

''(B) Official records of the Service or of the Department of State showing that the alien had not received prior official authorization to come to, enter, or reside in the United States or that such alien had come to, entered, or remained in the United States in violation of law.

''(C) Testimony, by an immigration officer having personal knowledge of the facts concerning that alien's status, that the alien had not received prior official authorization to come to, enter, or reside in the United States or that such alien had come to, entered, or remained in the United States in violation of law.''.

(b) TECHNICAL CORRECTIONS TO EXISTING CRIMINAL FORFEITURE AUTHORITY.—Section 982(a)(6) of title 18, United States Code, is amended—

(1) in subparagraph (A)—

(A) by inserting ''section 274(a), 274A(a)(1), or 274A(a)(2) of the Immigration and Nationality Act or'' before ''section 1425'' the first place it appears;

(B) in clause (i), by striking ''a violation of, or a conspiracy to violate, subsection (a)'' and inserting ''the offense of which the person is convicted''; and

(C) in subclauses (I) and (II) of clause (ii), by striking ''a violation of, or a conspiracy to violate, subsection (a)'' and all that follows through ''of this title'' each place it appears and inserting ''the offense of which the person is convicted'';

(2) by striking subparagraph (B); and

(3) in the second sentence—

(A) by striking ''The court, in imposing sentence on such person'' and inserting the following:

''(B) The court, in imposing sentence on a person described in subparagraph (A)''; and

(B) by striking ''this subparagraph'' and inserting ''that subparagraph''.

SEC. 19. ENHANCED VISIBILITY OF THE ASSET FORFEITURE PROGRAM.

Section 524(c)(6) of title 28, United States Code, is amended to read as follows:

''(6)(A) The Attorney General shall transmit to Congress and make available to the public, not later than 4 months after the end of each fiscal year, detailed reports for the prior fiscal year as follows:

''(i) A report on total deposits to the Fund by State of deposit.

''(ii) A report on total expenses paid from the Fund, by category of expense and recipient agency, including equitable sharing payments.

''(iii) A report describing the number, value, and types of properties placed into official use by Federal agencies, by recipient agency.

''(iv) A report describing the number, value, and types of properties transferred to State and local law enforcement agencies, by recipient agency.

''(v) A report, by type of disposition, describing the number, value, and types of forfeited property disposed of during the year.

''(vi) A report on the year-end inventory of property under seizure, but not yet forfeited, that reflects the type of property, its estimated value, and the estimated value of liens and mortgages outstanding on the property.

''(vii) A report listing each property in the year-end inventory, not yet forfeited, with an outstanding equity of not less than $1,000,000.

''(B) The Attorney General shall transmit to Congress and make available to the public, not later than 2 months after final issuance, the audited financial statements for each fiscal year for the Fund.

''(C) Reports under subparagraph (A) shall include information with respect to all forfeitures under any law enforced or administered by the Department of Justice.

''(D) The transmittal and publication requirements in subparagraphs (A) and (B) may be satisfied by—

''(i) posting the reports on an Internet website maintained by the Department of Justice for a period of not less than 2 years; and

''(ii) notifying the Committees on the Judiciary of the House of Representatives and the Senate when the reports are available electronically.''.

SEC. 20. PROCEEDS.

(a) FORFEITURE OF PROCEEDS.—Section 981(a)(1)(C) of title 18, United States Code, is amended by striking ''or a violation of section 1341'' and all that follows and inserting ''or any offense constituting 'specified unlawful activity' (as defined in section 1956(c)(7) of this title), or a conspiracy to commit such offense.''.

(b) DEFINITION OF PROCEEDS.—Section 981(a) of title 18, United States Code, is amended by adding at the end the following:

''(2) For purposes of paragraph (1), the term 'proceeds' is defined as follows:

''(A) In cases involving illegal goods, illegal services, unlawful activities, and telemarketing and health care fraud schemes, the term 'proceeds' means property of any kind obtained directly or indirectly, as the result of the commission of the offense giving rise to forfeiture, and any property traceable thereto, and is not limited to the net gain or profit realized from the offense.

''(B) In cases involving lawful goods or lawful services that are sold or provided in an illegal manner, the term 'proceeds' means the amount of money acquired through the illegal transactions resulting in the forfeiture, less the direct costs incurred in providing the goods or services. The claimant shall have the burden of proof with respect to the issue of direct costs. The direct costs shall not include any part of the overhead expenses of the entity providing the goods or services, or any part of the income taxes paid by the entity.

''(C) In cases involving fraud in the process of obtaining a loan or extension of credit, the court shall allow the claimant a deduction from the forfeiture to the extent that the loan was repaid, or the debt was satisfied, without any financial loss to the victim.''.

SEC. 21. EFFECTIVE DATE.

Except as provided in section 14(c), this Act and the amendments made by this Act shall apply to any forfeiture proceeding commenced on or after the date that is 120 days after the date of enactment of this Act.

Mr. HATCH. Mr. President, I am pleased to announce that Chairman HYDE, Senator LEAHY and I reached an agreement with the Department of Justice and Senators SESSIONS and SCHUMER yesterday on civil forfeiture reform legislation. This is an important issue, and I am proud to support this legislation. While civil forfeiture is a valuable law enforcement tool, it has become increasingly clear that some reform of civil forfeiture law is necessary given the numerous controversial seizures of property in the last decade.

Federal civil forfeiture procedures, which are based largely on 19th century admiralty law, provide inadequate protections for private property. For example, under current Federal law, once the government seizes property, the burden of proof is on the property owner to prove that the property is not subject to forfeiture. After property is seized, the property owner must post a cost bond in order to contest the forfeiture. This bond requirement does not entitle the property owner to the return of the property, but merely allows the claimant to contest the forfeiture. If the property owner files a claim to the property, the government has up to five years to file a complaint for forfeiture.

The legislation agreed to today increases protections for property owners, while respecting the interests of law enforcement. Among other provisions, the bill places the burden of proof in civil forfeiture cases on the government throughout the proceeding; places reasonable time limits on the government in civil forfeiture actions; awards attorney fees and costs to property owners who prevail against the government in civil forfeiture cases; authorizes the court to release property pending trial in appropriate circumstances; eliminates the cost bond; and provides a uniform innocent owner defense to all federal civil forfeitures affected by the bill.

All of us here are committed to depriving criminals of the proceeds of crime. To further this goal, the bill increases the ability of the Justice Department to target criminal proceeds. The bill also extends criminal forfeiture authority to any Federal statute in which civil forfeiture authority exists in order to encourage the use of criminal forfeiture. In addition, the bill contains several mechanisms to deter and punish frivolous claims to seized property. Senator SESSIONS will describe these provisions in detail.

A broad coalition of organizations support this bill, including the Chamber of Commerce, the American Bankers Association, the National Association of Homebuilders, the National Association of Relators, the Institute for Justice, Americans for Tax Reform, the National Rifle Association, the American Bar Association, and the Fraternal Order of Police. In addition, six former Attorneys General—William Barr, Richard Thornburg, Edwin Meese, Benjamin Civiletti, Griffin Bell, and Nicholas Katzenbach—have endorsed the bill.

In closing, I would like to thank Senators SESSIONS and SCHUMER for their patience and cooperation. This agreement would not be possible without their hard work and dedication. Senator SESSIONS is to be especially commended. As a former United States Attorney and state Attorney General, he has more experience in civil forfeiture actions that any member of Congress. Senator SESSIONS has been an outstanding representative of the law enforcement community, and I am proud to have his support.

Finally, I would like to thank House Judiciary Chairman HENRY HYDE. No one has done more to advance the cause of civil forfeiture reform than Chairman HYDE. His 1995 book on civil forfeiture helped draw national attention to the need for reform. Last June, the House overwhelmingly passed the Hyde-Conyers civil forfeiture reform bill. This victory for forfeiture reform was due in large measure to HENRY HYDE's stature and commitment.

Thank you for your attention to this important reform legislation.

Mr. LEAHY. Mr. President, at long last, after years of effort and several weeks of intensive, tedious and seemingly endless negotiations, we have reached agreement on civil asset forfeiture reform legislation. This is a significant improvement over the current system and should go a long way toward stemming the abuses that have so offended Americans across the country and the political spectrum. It is not often that we see the U.S. Chamber of Commerce, ACLU, NRA, National Association of Criminal Defense Lawyers, American Bankers Association, the Institute of Justice, Americans for Tax Reform, and the American Bar Association joining together on the same side of a legislative effort. Working with Chairman HATCH, Chairman HYDE, Mr. CONYERS, Senator SESSIONS and Senator SCHUMER, we have crafted a good

bill, a balanced bill and a reform package that should move forward as consensus legislation and be enacted without further delay this year. I want to thank all who have worked with us in this process. In particular, I want to thank Janet Reno, our Attorney General, for working with us, meeting with us and lending her support to this effort and joining our coalition by agreeing to the consensus civil asset forfeiture reform legislation that the Senate is passing today.

Asset forfeiture is a powerful crime-fighting tool. It has been a particularly potent weapon in the war on drugs, allowing the government to take the cars and boats and stash houses amassed by drug dealers and put them to honest use. Last year alone, the government was able to seize nearly half a billion dollars worth of assets, cutting a big chunk out of criminals' profit stream and returning it to the law-abiding community.

Unfortunately, our nation's asset forfeiture is not fail-safe; it can be and has been abused. In hearings on this issue, the Judiciary Committee has heard examples of what happens when prosecutorial zeal skirts the boundaries of due process, leading to the taking of private property regardless of whether the owner is innocent of, or even cognizant of, the property's use in an illegal act, or whether the seizure is entirely out of proportion to the criminal conduct alleged.

I am well aware from incidents in Vermont about how aggressive use by Federal and State law enforcement official of civil asset forfeiture laws can appear unfair and excessive, and thereby fuel public distrust of the government in general and law enforcement in particular. For example, in 1989, federal prosecutors seized a Vermont homestead that a family had built and lived in for over a decade. The husband had pleaded guilty in State court to growing six marijuana plants, without his wife's knowledge, and was sentenced to 50 hours of community service, which he fulfilled by building bookshelves for the local public library.

Yet, one year after his arrest, Vermont State police brought his arrest to the attention of the federal authorities and Federal marshals seized the family's home and 49 surrounding acres. Hundreds of Vermonters rallied to the family's defense, including former prosecutors, until the case was settled with no seizure of the property.

In another civil asset forfeiture case, federal prosecutors again seized the home and 10 acres of a Vermont woman in Richmond, Vermont, after two hidden patches of marijuana plants were discovered on her property. Criminal charges against the woman were dismissed when she established she was unaware that her daughter and daughter's boyfriend were cultivating the plants. Three years after the seizure, in 1990, a federal judge ordered the government to return the property to the woman, but by that time it had been destroyed by fire.

By contrast to the obligation under Vermont law that law enforcement agencies must ''ensure that the property is properly maintained,'' 18 V.S.A. § 4246, the federal authorities who made the seizure of this property had no such obligation and did not take good care of the property.

In yet another civil asset forfeiture case, federal prosecutors in 1990, seized the home and 10.7 acres of a family in Craftsbury Common, Vermont, after the homeowners were convicted in State court of cultivating marijuana and given suspended sentences three years earlier in 1987.

Given the fact that in each of these cases, the underlying criminal charges were prosecuted by the State but the forfeiture action was taken federally, one might ask why these related proceedings were divided between the State and Federal authorities? The answer is simple: Vermont law does not allow the forfeiture of real property ''which is occupied as the primary residence of a person involved in the violation and a member or members of that person's family.'' 18 V.S.A. § 4241(a)(5).

Moreover, under Vermont law, state law enforcement authorities carry a heavier burden ''of proving all material facts by clear and convincing evidence.'' 18 V.S.A. § 4244(c). By contrast, federal forfeiture procedures provide more latitude on the property subject to seizure and more lenient requirements for federal law enforcement authorities to meet.

While federal authorities in Vermont have in recent years avoided such egregious asset forfeiture abuses, that is not the situation in other jurisdictions, prompting increasing and exceedingly sharp criticism from scholars and commentators of the federal asset forfeiture system, which in general requires far less from the government than any State forfeiture law.

Federal judges have also added their voices to the growing chorus of concern. In 1992, the Second Circuit Court of Appeals stated: ''We continue to be enormously troubled by the government's increasing and virtually unchecked use of the civil forfeiture statutes and the disregard for due process that is buried in those statutes.'' Four years later, the Eighth Circuit rebuked the government for capitalizing on the claimants' confusion to forfeit over $70,000 of their currency, and expressed alarm that:

> [T]he war on drugs has brought us to the point where the government may seize . . . a citizen's property without any initial showing of cause, and put the onus on the citizen to perfectly navigate the bureaucratic labyrinth in order to liberate what is presumptively his or hers in the first place. . . . Should the citizen prove inept, the government may keep the property, without ever having to justify or explain its actions.

Similarly, the Seventh Circuit recently expressed its belief that ''the government's conduct in forfeiture cases leaves much to be desired,'' and ordered the return of over $500,000 in currency that had been improperly seized from a Chicago pizzeria.

Under current law, the property owner—not the government—bears the burden of proof. All the government must do is make an initial showing of probable cause that the property is ''guilty'' and subject to forfeiture. The property owner must then prove a negative—that the property was not involved in any wrongdoing. It is time to bring this law in line with our modern principles of due process and fair play, and reform forfeiture procedures to ensure that innocent property owners are adequately protected.

The Hyde-Conyers civil asset forfeiture reform bill, H.R. 1658, passed the House by an overwhelming bipartisan majority (375–48) last June. After lengthy negotiations with the Department of Justice, Chairman HATCH and I introduced a Senate civil asset forfeiture reform bill, S.1931. Our bill addressed every major concern that the Department had raised in our hearings and in the Statement of Administration Policy regarding the Hyde-Conyers bill, and struck a fair compromise on those issues.

For example, the Hyde-Conyers bill put the burden of proof on the Government by clear and convincing evidence. We put the burden of proof on the Government by a preponderance of the evidence. The preponderance standard is used in virtually all other civil cases, and we believe it is sufficient to protect the interests of property owners.

The Hyde-Conyers bill authorized courts to appoint counsel for any indigent person who asserted an interest in seized property. Although I am sympathetic to that proposal—justice should not be only for the wealthy—the Administration strongly opposed it. We provided for appointment of counsel only in the rare case where the property subject to forfeiture was the claimant's primary residence. In other cases, a claimant could recoup attorney fees only if she substantially prevailed in challenging the forfeiture.

We are grateful for the support of so many members of the Committee and others over the last year. The Hatch-Leahy bill was endorsed by the last six Attorneys General of the United States from both parties, William Barr, Richard Thornburgh, Edwin Meese, Benjamin Civiletti, Griffin Bell, and Nicholas Katzenbach, and a wide range of organizations.

Although I knew that we had met the Department more than half way in our bill, we did not stop there. We have met with and worked with Senators SESSIONS and SCHUMER, who had introduced a different type of bill, to see whether we might find common ground. After weeks of intensive efforts, we succeeded in coming together. For our part, Chairman HATCH and I accepted more than 30 substantive changes to the provisions in the Hatch-Leahy bill, plus about a dozen new sections to the bill that give law enforcement new, but measured, authority. In

essence we combined the Hatch-Leahy Civil Asset Forfeiture Reform Act, S. 1931, with suggestions from the Sessions-Schumer bill to form a civil asset forfeiture legislative package that we can all agree to support.

Among the important reforms made by the Hatch-Leahy-Sessions-Schumer substitute amendment to H.R. 1658, which the Senate passes today, are the following:

Burden of proof. The substitute amendment puts the burden of proof on the government by a preponderance of the evidence.

Cost bond. Another core reform of the substitute amendment is the elimination of the so-called ''cost bond.'' Under current law, a property owner who seeks to recover his property after it has been seized by the government must pay for the privilege by posting a bond with the court. No other federal statute requires a cost bond, and no State requires a cost bond in civil forfeiture cases.

The government has defended the cost bond, not as a device for ensuring that its court costs are covered, but as a way of deterring frivolous claims. Of course, we are all in favor of deterring frivolous claims, but there are ways to deter frivolous claims without offending the fundamental principle of equal and open access to the courts, a bedrock of our American system of justice.

The substitute amendment provides that a person who challenges a forfeiture must file his claim on oath, under penalty of perjury. It also provides for imposition of a civil fine, in cases where the claimant's assertion of an interest in the property was frivolous. In addition, claimants will continue to bear the substantial costs of litigating their claims in court, and they and their attorneys will remain subject to the general sanctions for bad faith in instituting or conducting litigation. Frivolous prisoner claimants will be barred from repeated filings on proper court findings. The added burden of the ''cost bond'' serves no legitimate purpose.

Legal assistance and attorney fees. The substitute amendment permits courts to authorize counsel to represent an indigent claimant only if the claimant is already represented by a court-appointed attorney in connection with a related federal criminal case. This is both fair and efficient, and eliminates any appearance that the government chose to pursue the forfeiture in a civil proceeding rather than as part of the criminal case in order to deprive the claimant of his right to counsel.

Beyond this, the substitute amendment ensures that when the government seeks to forfeit an indigent person's primary residence, that person will be afforded representation by the Legal Services Corporation. When a forfeiture action can result in a claimant's eviction and homelessness, there is more at stake than just a property interest, and it is fair and just that the claimant be provided with an attorney if he cannot otherwise afford one. The Legal Services Corporation will be paid by the government for providing representation in these cases.

For claimants who are not provided with counsel, the substitute allows for the recovery of reasonable attorney fees and costs if they substantially prevail on their claim. The bill also makes the government liable for post-judgment interest on any money judgment, and imputed interest in certain cases involving currency or negotiable instruments.

Filing deadlines. Under current law, a property owner has only 20 days from the date of first publication of the notice of seizure to file a claim challenging an administrative forfeiture, and only 10 days to file a claim challenging a judicial forfeiture. It is therefore unlikely that anyone who misses the first of three published notices will be able to file a timely claim. The substitute extends the property owner's time to file a claim following the commencement of an administrative or judicial forfeiture action to 30 days. The bill also codifies current Department of Justice policy with respect to the time period for sending notice of seizure, and establishes a 90-day period for filing a complaint.

Release of property for hardship. The substitute will allow a property owner to hold on to his property pending the final disposition of the case, if he can show that continued possession by the government will cause the owner substantial hardship, such as preventing him from working, and that this hardship outweighs the risk that the property will be destroyed or concealed if returned to the owner during the pendency of the case. Unlike H.R. 1658, the substitute adopts the primary safeguards that the Justice Department wanted added to the provision—that property owners must have sufficient ties to the community to provide assurance that the property will not disappear, and that certain property, such as currency and property particularly outfitted for use in illegal activities, shall not be returned. Government cannot obtain a grand jury subpoena to obtain such documents.

Criminal proceeds. The substitute also brings clarity and fairness to the confused body of case law concerning the definition of criminal proceeds. Specifically, in cases involving lawful goods or lawful services that are sold or provided in an illegal manner, the term ''proceeds'' is defined to mean the amount of money acquired through the illegal transactions resulting in the forfeiture, less the direct costs incurred in providing the goods or services. An exception is made for cases involving certain health care fraud schemes, since it would make no sense to allow those who provide unnecessary services to deduct the cost of those unnecessary services. Having resolved this important matter, the substitute amendment broadly extends the government's authority to forfeit criminal proceeds under the civil asset forfeiture laws.

Fugitive disentitlement. The Supreme Court in 1996 disallowed the judge-made doctrine that a fugitive avoiding the jurisdiction of the U.S. courts in a criminal case may not contest a civil forfeiture; however, the Court left open the possibility that Congress could establish such doctrine by statute. The Court was responding, in part, to the government's record of seeking forfeiture of property even though the property is not subject to forfeiture (e.g., because the statute of limitations has expired), when the government believes that the fugitive owner will not be permitted to contest the forfeiture. Opponents of the fugitive disentitlement doctrine say that the prosecutors have gone so far as to indict people whom they know will never return to this country, so that they can invoke the doctrine in civil forfeiture proceedings against such persons' U.S. assets. The substitute provides a statutory basis for a judge to disallow a civil asset forfeiture claim by a fugitive, while leaving judges discretion to allow such a claim in the interests of justice.

Senator HATCH and I share a long-standing and deeply-held appreciation for law enforcement and the officers who work on the front lines to protect our families and communities, and we have worked together on a number of crime-related issues in the past. Recently, for example, we have led the Senate in passing a number of legislative initiatives of importance to State and local law enforcement, including the Bulletproof Vests Partnership Act of 1998, Crime Identification Technology Act of 1998, Care for Police Survivors Act of 1998, the Railroad Police Officers Training Act of 1999, and the Methamphetamine Anti-Proliferation Act of 1999. I want to commend him for his commitment, not just to law enforcement, but to the rights of all Americans. It has been my pleasure to work with him on this issue, to bring balance back in the relationship between our police forces and the citizens of this country.

It has been a privilege to work with Representatives HYDE and CONYERS on this important legislation. And we greatly appreciate the contributions made by Senators SESSIONS and SCHUMER, both knowledgeable and experienced legislators in this area.

I would also like to thank the Senate and House staff who worked so hard to bring this matter to closure: On my staff, Julie Katzman and Beryl Howell; in addition, George Fishman, who has been dedicated to this project for so many years, Manus Cooney, Rhett DeHart, Ed Haden, Ben Lawsky, Tom Mooney, John Dudas, Julian Epstein, Perry Apelbaum, and Cori Flam—their efforts made this day possible. Thanks are also due to Bill Jensen and the other hardworking members of the Senate's Office of Legislative Counsel.

Finally, I would like to express my gratitude to David Smith, a leading expert on civil asset forfeiture, who gave tirelessly of his time over the past few months. His expertise and good counsel were invaluable in producing the legislation that the Senate passes today.

It is time for Congress to catch up with the American people and the courts and do the right thing on this important issue of fairness. I am glad that the Senate is acting without delay to pass this long overdue reform legislation.

Mr. SESSIONS. Mr. President, I ask unanimous consent that the committee substitute be agreed to, the bill be read a third time and passed, the motion to reconsider be laid upon the table, and that any statements relating to the bill be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The committee substitute was agreed to.

The bill (H.R. 1658), as amended, was read a third time and passed.

Mr. SESSIONS. Mr. President, the bill we have just considered is a very important piece of legislation that has been the subject of considerable effort for over a year now in the Judiciary Committee in the House.

Great efforts have been expended by all parties interested in this legislation to achieve a piece of legislation that would provide enhanced protections to private property owners and at the same time would not undermine, in a real and significant and unnecessary way, the ability of law enforcement agencies to seize and forfeit to the interest of the Government assets from illegal drug dealers and other criminal assets that are forfeited.

In the early 1980s, this Congress passed one of its most historic pieces of legislation that attacked crime in America. It was the asset forfeiture law. At that time, I was a U.S. attorney in Mobile, AL. This Federal law became a daily part of the work of my office.

We instructed our assistant U.S. attorneys that whenever they were prosecuting a drug case, it was not just enough to sentence and punish the criminal, they ought to be sure the ill-gotten gains, the profits they made from selling illegal substances in this country, would be seized and forfeited to the United States.

On a regular basis that was done all over this country. It was a major, important, historic step against crime, particularly against drug crime in America. Hundreds of millions, perhaps billions of dollars, have been forfeited from illegal enterprises since that day. The forfeitures are conducted under this Federal law, although States have the ability to forfeit assets, too.

In Federal court, the Government had to prove its case, seize the asset; a cost bond would be posted by the defendant if he wished to contest the seizure, and a court would hear the case and make a ruling in that fashion.

A number of people believed strongly that requiring a person to post a cost bond was not a healthy thing under our legal system. They wanted to change that. Chairman HENRY HYDE in the House Judiciary Committee felt that way; so did Senator ORRIN HATCH, chairman of the Senate Judiciary Committee. We began to analyze and study what we could do to deal with this problem of asset forfeiture.

At the time, Senators SCHUMER, THURMOND, BIDEN, and myself introduced asset forfeiture reform legislation in the Senate. Senators HATCH and LEAHY introduced another piece of legislation that was closer to the Hyde bill.

For some months now, we have worked together to see what we could do to protect legitimate constitutional rights of American citizens, while at the same time protecting this tremendous asset to law enforcement of the seizing and forfeiting of assets.

It is wrong, in my opinion, for a person who has made his money and his livelihood for years selling dope in America to go to jail and leave a mansion out there that he can come back to and the Federal taxpayers having to pay for his time in jail, or to have bank accounts with hundreds of thousands of dollars in them and not have that seized by the Government but, in fact, serving his time in jail and getting out and living high off the ill-gotten gains he achieved as a drug trafficker.

I would say, 98 percent of forfeitures in America today in Federal court are as a result of drug cases.

In my relatively small office in Alabama, when I was a U.S. attorney, we seized probably $8 million to $10 million that we actually turned into the Federal Treasury, after expenses and other items were paid.

In one case, we seized a Corvette automobile that was rumored to be worth hundreds of thousands of dollars because it was a unique Corvette. In fact, the drug dealer's car eventually was sold for $170,000, as I remember. We seized mansions in Florida on the Gulf Coast. We seized bank accounts in foreign countries—big freighters, small boats, expensive sail boats, automobiles of all kinds, and bank accounts into the millions of dollars.

These are effective tools against the drug trafficking industry. In fact, many countries now recognize that, and they are at this time attempting to pass similar laws in their countries. It certainly is important to America.

I believed very strongly that when we set about amending this law, we do not need to place any unnecessary burdens on law enforcement and the prosecutors who will have to handle these cases. In fact, a large percentage, perhaps 90 percent or more, of these cases are confessed by the defendant because he has to establish where he got this money. Not many people can explain why they have $50,000 in cash in the trunk of their car along with maybe a few kilograms of cocaine. Normally, there is evidence in addition that they have been a drug dealer and that they haven't had employment; that their house note is being paid in cash. Oftentimes they paid for their Mercedes automobile in cash, those kinds of things. So the proof turns out to be pretty good, as a normal rule.

I believe the negotiation over this legislation was a fine example of the Senate at work; the Senate and House, as a matter of fact. We believe the agreement that has been reached today will both satisfy the House Judiciary Committee leadership and the Senate Judiciary Committee leadership. Now it has already passed the Senate. If the identical bill passes in the House, it will become law. We will have done what we set out to do, to pass legislation that will strengthen protections and civil liberties in America without undermining the rule of law in this country.

I was proud to be a part of that. We worked very hard on it. I express particular appreciation to my staff on the Judiciary Committee: Kristi Lee, who is now U.S. Magistrate in Mobile, AL, and Ed Haden, who is with me today, who both worked with extraordinary skill to make this legislation become a reality.

In recent weeks, I am particularly proud of the work Ed Haden has done to be firm and strong for good, solid legislation that could have the support of law enforcement in America.

I also express my appreciation for the leadership of Senator HATCH who chairs the Judiciary Committee. His skill and knowledge on these issues is unsurpassed, and his dedication to American law is unsurpassed.

I also was extraordinarily impressed with the commitment and knowledge and ability of Chairman HENRY HYDE of the House Judiciary Committee. His insight and commitment to making this law better was remarkable, and I think the result has been something of which we can all be proud.

ORDER FOR STAR PRINT—S. 2285

Mr. SESSIONS. Mr. President, I ask unanimous consent that a star print of S. 2285 be made with the changes that are at the desk.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDERS FOR TUESDAY, MARCH 28, 2000

Mr. SESSIONS. Mr. President, I ask unanimous consent that when the Senate completes its business today, it adjourn until the hour of 9:30 a.m. on Tuesday, March 28. I further ask unanimous consent that on Tuesday, immediately following the prayer, the Journal of proceedings be approved to date, the morning hour be deemed expired, the time for the two leaders be reserved for their use later in the day, and the Senate resume consideration of S.J. Res. 14, as under the previous agreement.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SESSIONS. I ask unanimous consent that the Senate stand in recess from the hours of 12:30 to 2:15 for the weekly party luncheons.

The PRESIDING OFFICER. Without objection, it is so ordered.

PROGRAM

Mr. SESSIONS. For the information of all Senators, tomorrow morning the Senate will resume consideration of the pending flag desecration resolution. Under the order, there will be 2 hours remaining for debate relating to the Hollings amendment, to be followed by an additional hour for general debate. At 2:15 on Tuesday, following the party luncheons, the Senate will proceed to two consecutive votes on the pending amendments to the flag desecration resolution. It is hoped that following those votes, the Senate will be able to reach a consent agreement regarding the passage vote of S. J. Res. 14. As a reminder, if an agreement is not reached for a vote on passage, then under the provisions of rule XXII, a cloture vote will occur on Wednesday of this week.

I thank all the Members for their attention.

ADJOURNMENT UNTIL 9:30 A.M. TOMORROW

Mr. SESSIONS. If there is no further business to come before the Senate, I now ask the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 6:45 p.m., adjourned until Tuesday, March 28, 2000, at 9:30 a.m.

NOMINATIONS

Executive nominations received by the Senate March 27, 2000:

DEPARTMENT OF STATE

GREGORY G. GOVAN, OF VIRGINIA, FOR THE RANK OF AMBASSADOR DURING HIS TENURE OF SERVICE AS CHIEF U.S. DELEGATE TO THE JOINT CONSULTATIVE GROUP. (NEW POSITION)

THE JUDICIARY

BEVERLY B. MARTIN, OF GEORGIA, TO BE UNITED STATES DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF GEORGIA, VICE G. ERNEST TIDWELL, RETIRED.

ROGER L. HUNT, OF NEVADA, TO BE UNITED STATES DISTRICT JUDGE FOR THE DISTRICT OF NEVADA, VICE A NEW POSITION CREATED BY PUBLIC LAW 106–113, APPROVED NOVEMBER 29, 1999.

WITHDRAWALS

Executive messages transmitted by the President to the Senate on March 27, 2000, withdrawing from further Senate consideration the following nominations:

THE JUDICIARY

GAIL S. TUSAN, OF GEORGIA, TO BE UNITED STATES DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF GEORGIA, VICE G. ERNEST TIDWELL, RETIRED, WHICH WAS SENT TO THE SENATE ON AUGUST 3, 1999.

DEPARTMENT OF JUSTICE

JOSE ANTONIO PEREZ, OF CALIFORNIA, TO BE UNITED STATES MARSHAL FOR THE SOUTHERN DISTRICT OF CALIFORNIA FOR THE TERM OF FOUR YEARS, VICE STEPHEN SIMPSON GREGG, WHICH WAS SENT TO THE SENATE ON JANUARY 6, 1999.