

News from Senator

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AMERICAN FLAG DESERVES NO LESS THAN CONSTITUTIONAL PROTECTION  
DOLE DETAILS PROUD HISTORY OF OLD GLORY  
DECLARATION OF INDEPENDENCE TO IWO JIMA THE MOON

MR. PRESIDENT, DURING THE PAST SEVERAL DAYS, WE HAVE HEARD A GREAT DEAL ABOUT THE FIRST AMENDMENT, THE BILL OF RIGHTS, SYMBOLIC SPEECH, THE CONSTITUTIONAL AMENDMENT PROCESS, THE PRUDENCE OF DRAFTING A STATUTE TO OVERTURN A SUPREME COURT DECISION, THE MEANING OF THE WORDS "DESECRATE," "DEFILE" -- EVEN THE MEANING OF THE WORD "PUBLICLY." THESE ARE ALL IMPORTANT SUBJECTS -- AND THEY HAVE BEEN AMPLY EXAMINED BY MEMBERS OF BOTH HOUSES OF CONGRESS.

THESE LEGAL SUBJECTS WERE EXAMINED EARLIER THIS WEEK BY JUDGE HEFLIN AND SENATOR HATCH -- TWO MEN WHO UNQUESTIONABLY RANK AMONG THE BEST LEGAL MINDS HERE IN THE SENATE -- AND IN THIS COUNTRY. AND I HOPE MY COLLEAGUES LISTENED CAREFULLY TO THEIR IMPORTANT REMARKS.

BUT IT HAS SURPRISED ME THAT WE HAVE HEARD VERY LITTLE -- DURING THIS DEBATE -- ABOUT THE HISTORY OF THE FLAG ITSELF. MANY SENATORS HAVE PROPERLY EXPLAINED THAT THE FLAG IS OUR NATIONAL SYMBOL, A SYMBOL THAT STANDS FOR FREEDOM, HOPE, AND THE GREAT SACRIFICES OF THOSE WHO HAVE DIED OVER THE YEARS WHILE DEFENDING THIS COUNTRY. BUT THERE HAS BEEN LITTLE DISCUSSION -- SURPRISINGLY -- ABOUT THE FLAG'S RICH HISTORY -- A HISTORY THAT SPANS MORE THAN 200 YEARS -- AND ONE THAT PROUDLY BEGAN EVEN BEFORE THE BIRTH OF OUR NATION.

SO I INTEND TODAY TO EXAMINE THE FLAG'S HISTORY -- FOR IT SEEMS TO ME -- THAT AN UNDERSTANDING OF THIS HISTORY IS ABSOLUTELY ESSENTIAL TO THE GRAVE TASK BEFORE US TODAY -- AND ESSENTIAL IF WE ARE TO PROPERLY UNDERSTAND WHY THE FLAG DESERVES CONSTITUTIONAL PROTECTION.

AND LET'S FACE IT: ONLY THE FOOL IGNORES HISTORY -- PARTICULARLY A HISTORY AS RICH AND AS BLESSED AS THE ONE THAT BELONGS TO OUR NATION'S FLAG.

## THE FLAG'S BEGINNINGS

WHEN OUR WAR FOR INDEPENDENCE BEGAN -- WHEN THE SHOTS FIRST RANG OUT IN CONCORD, MASSACHUSETTS -- AMERICANS MARCHED ONTO THE BATTLEFIELD UNDER MANY DIFFERENT FLAGS. THESE FLAGS WERE ADORNED WITH COLORFUL SYMBOLS SUCH AS BEAVERS, PINE TREES, ANCHORS, AND EVEN RATTLE SNAKES.

SEVERAL OF THE SOUTHERN COLONIES -- FOR EXAMPLE -- CHOSE THE RATTLE SNAKE AS THEIR EMBLEM FOR A SIMPLE REASON: THE RATTLE SNAKE WARNS EVERYONE -- EVEN ITS ENEMIES -- WITH ITS DISTINCTIVE RATTLING SOUND. BUT WHEN THE BATTLE STARTS, THERE IS NO COMPROMISING -- FOR THE RATTLE SNAKE FIGHTS UNTIL VICTORY OR DEATH.

THESE EARLY COLONIAL FLAGS ALSO BORE COLORFUL SLOGANS -- SLOGANS SUCH AS "LIBERTY OR DEATH," "HOPE," "AN APPEAL TO HEAVEN," AND "DON'T TREAD ON ME." THESE SLOGANS DEMONSTRATED THE COMMITMENT -- PERHAPS THE STUBBORNNES -- OF THE COLONISTS TO STAND UP TO WHAT THEY VIEWED AS THE OPPRESSIVE YOKE OF THE BRITISH EMPIRE.

(more)



THE FIRST FLAG -- HOWEVER -- TO REPRESENT ALL THE COLONIES WAS THE CONTINENTAL COLORS -- ALSO KNOWN AS THE GRAND UNION FLAG. THIS FLAG -- WHICH HAD 13 STRIPES AND A REPRESENTATION OF THE BRITISH FLAG ON ITS UPPER-LEFT HAND CORNER -- WAS THE UNOFFICIAL FLAG OF THE AMERICAN COLONIES FROM 1775 TO 1777.

BUT THEN THAT GREAT DOCUMENT -- THE DECLARATION OF INDEPENDENCE -- WAS DRAFTED IN PHILADELPHIA. AND THE COLONISTS -- WHO VIEWED THEMSELVES NO LONGER AS COLONISTS, BUT AS CITIZENS OF A FREE, INDEPENDENT NATION -- DECIDED THAT THE FLAG OF THE BRITISH EMPIRE DID NOT BELONG ON THEIR FLAG. SO -- ON JUNE 14, 1777, THE CONTINENTAL CONGRESS RESOLVED TO CREATE AN OFFICIAL -- AND DISTINCTIVELY -- AMERICAN FLAG. THE CONGRESS RESOLVED THAT "THE FLAG OF THE UNITED STATES BE 13 STRIPES ALTERNATE RED AND WHITE, AND THE UNION BE 13 STARS, WHITE IN A BLUE FIELD REPRESENTING A NEW CONSTELLATION."

THE COLORS OF THE FLAG WERE CAREFULLY CHOSEN: THE RED FOR THE SACRIFICES -- SACRIFICES IN BLOOD -- ALL MADE FOR THE CAUSE OF NATIONAL INDEPENDENCE. THE WHITE FOR THE PURITY OF THIS CAUSE. AND THE BLUE FOR VIGILANCE, PERSISTENCE, AND JUSTICE.

#### **FRANCIS SCOTT KEY AND THE STAR-SPANGLED BANNER**

OUR YOUNG NATION WAS BARELY THIRTY YEARS OLD WHEN IT WENT TO WAR A SECOND TIME AGAINST THE BRITISH EMPIRE -- IN THE WAR OF 1812. DURING THIS WAR, THE BRITISH NAVAL FORCES BURNED DOWN THIS CITY, OUR NATION'S CAPITOL. THEY THEN SAILED UP THE PATAPSCO RIVER TO INFLICT A SIMILAR FATE ON THE CITY OF BALTIMORE.

BUT THE BRITISH FLEET HAD TO FIRST CONTEND WITH FORT MCHENRY, STANDING PROUDLY AT THE MOUTH OF BALTIMORE HARBOR. AND WHILE THE BRITISH FLEET WAS BOMBARDING THE FORT, THE STARS AND STRIPES WAVED UNDAUNTED THROUGHOUT THE NIGHT OF THE BOMBARDMENT -- "UNTIL THE DAWN'S EARLY LIGHT" -- INSPIRING WASHINGTON LAWYER FRANCIS SCOTT KEY TO WRITE THE WORDS OF OUR NATIONAL ANTHEM.

THESE WORDS ARE SUNG BY MILLIONS OF AMERICANS EVERY DAY. AND THEY WILL BE SUNG LATER THIS WEEK -- DURING THE WORLD SERIES.

THE FLAG IN CRISIS: THE CIVIL WAR

THE FLAG CONTINUED TO WAVE DURING THE MOST TRAGIC CHAPTER IN OUR NATION'S HISTORY -- THE CIVIL WAR. THE WAR BEGAN WHEN THE AMERICAN FLAG WAS LOWERED AT FORT SUMTER -- WHICH SOMEHOW MANAGED TO SURVIVE A 33-HOUR BOMBARDMENT BY CONFEDERATE TROOPS.

ABRAHAM LINCOLN'S INAUGURATION DAY ON MARCH 4, 1861, WAS ALSO THE DATE ON WHICH THE CONFEDERATE CONGRESS ADOPTED ITS FIRST NATIONAL FLAG, THE "STARS AND BARS" -- WHICH CAME TO SYMBOLIZE THE CONFEDERACY'S SEPARATION FROM THE UNION.

AND THE CIVIL WAR GAVE US "BARBARA FRETCHIE" WHO -- THE POET JOHN GREENLEAF WHITTIER TELLS US -- STOOD FACE-TO-FACE -- EYEBALL-TO-EYEBALL -- WITH STONEWALL JACKSON. "SHOOT IF YOU MUST, THIS OLD GREY HEAD, BUT SPARE YOUR COUNTRY'S FLAG, SHE SAID!"

WELL, OUR COUNTRY'S FLAG WAS SPARED -- AND WHEN THIS UGLY AND BLOODY WAR FINALLY ENDED -- OUR FLAG FLEW ONCE AGAIN OVER "AN INDESTRUCTIBLE UNION, COMPOSED OF INDESTRUCTIBLE STATES."

#### **THE ESTABLISHMENT OF FLAG DAY**

IN 1915, PRESIDENT WILSON -- INSPIRED BY THE SACREDNESS OF THIS UNION AND BY THE CATASTROPHES THEN RAGING ACROSS EUROPE -- ESTABLISHED JUNE 14TH AS NATIONAL FLAG DAY. DURING THE PROCLAMATION CEREMONY, PRESIDENT WILSON MADE THESE POIGNANT REMARKS:

"MANY CIRCUMSTANCES HAVE RECENTLY CONSPIRED TO TURN OUR THOUGHTS TO A CRITICAL EXAMINATION OF THE CONDITIONS OF OUR NATIONAL LIFE, OF THE INFLUENCES WHICH HAVE SEEMED TO THREATEN TO DIVIDE US IN INTEREST AND SYMPATHY, OF FORCES WITHIN -- AND FORCES WITHOUT -- THAT SEEMED LIKELY TO DRAW US AWAY FROM THE HAPPY TRADITIONS OF UNITED PURPOSE AND ACTION OF WHICH WE HAVE BEEN SO PROUD."

"IT HAS THEREFORE SEEMED TO ME FITTING THAT I SHOULD CALL YOUR ATTENTION TO THE APPROACH OF THE ANNIVERSARY OF THE DAY UPON WHICH THE FLAG OF THE UNITED STATES WAS ADOPTED BY CONGRESS AS THE EMBLEM OF THE UNION, AND TO SUGGEST TO YOU THAT IT SHOULD, THIS YEAR AND THE YEARS TO COME, BE GIVEN SPECIAL SIGNIFICANCE AS A DAY OF RENEWAL AND REMINDER, A DAY UPON WHICH WE SHOULD DIRECT OUR MINDS WITH A SPECIAL DESIRE OF RENEWAL TO...THE IDEALS AND PRINCIPLES OF WHICH WE HAVE SOUGHT TO MAKE OUR GREAT GOVERNMENT THE EMBODIMENT."

(more)



PRESIDENT WILSON'S WORDS STILL RING TRUE TODAY BECAUSE THE "IDEALS AND PRINCIPLES" THAT THE FLAG REPRESENTS STILL RING TRUE TODAY. JUST LOOK AT THE COMMUNIST WORLD -- A WORLD THAT IS SLOWLY MOVING AWAY FROM TYRANNY AND FEAR -- AND TOWARDS FREEDOM AND DEMOCRACY -- TOWARDS HOPE -- TOWARDS THE VERY IDEALS THAT OUR FLAG UNABASHEDLY REPRESENTS.

AND FLAG DAY -- PROPOSED BY PRESIDENT WILSON MORE THAN SEVENTY YEARS AGO -- SERVES AS A REMINDER OF OUR LUCKY WE REALLY ARE -- OUR LUCKY WE ARE THAT THESE IDEALS STILL PROSPER TODAY -- IN THIS, OUR COUNTRY.

#### RAISING THE FLAG ON MOUNT SURIBACHI

PERHAPS THE MOST SHINING MOMENT IN THE FLAG'S HISTORY OCCURRED NOT HERE IN THE UNITED STATES, BUT IN A VERY STRANGE AND DISTANT LAND -- ON THE ISLAND OF IWO JIMA. FIVE MARINES AND A SAILOR SCALED THE SLOPE OF MOUNT SURIBACHI -- ENCOUNTERING THE CREAM OF THE JAPANESE ARMY EVERY INCH OF THE WAY -- SO THAT THE FLAG COULD BE FIRMLY PLANTED ON THE FIRST JAPANESE TERRORITY CAPTURED IN WORLD WAR II.

THE MEN WHO RAISED THE SURIBACHI FLAG -- SERGEANT MICHAEL STRANK, CORPORAL HARLAN BLOCK, PRIVATE FIRST CLASS IRA HAMILTON HAYES, PRIVATE FIRST CLASS RENE ARTHUR GAGNON, PRIVATE FIRST CLASS FRANKLIN RUNYON SOUSLEY, PHARMACIST'S MATE JOHN HENRY BRADLEY -- WERE NOT CONSTITUTIONAL SCHOLARS. THEY WERE NOT LEGAL EXPERTS. THEY WERE YOUNG MEN -- ENLISTED MEN -- WHO GOT CAUGHT UP IN WAR THAT THEY DID NOT START.

BUT THEY LOVED THE FLAG -- AND THEY FOUGHT TO DEFEND IT. AND SO, TOO, DID THE SIX THOUSAND AMERICAN BOYS WHO GAVE THEIR LIVES SO THAT THE FLAG COULD BE RAISED THAT DAY.

AND IT WAS ONLY FITTING THAT PRESIDENT BUSH CHOSE THE IWO JIMA MEMORIAL AS THE SITE AT WHICH TO PROPOSE THIS CONSTITUTIONAL AMENDMENT.

#### THE FLAG ON THE MOON

SOME 25 YEARS AFTER IWO JIMA, OUR FLAG MADE HISTORY AGAIN. FOR IN 1969, THE FLAG WAS THRUST INTO A DRY, ROCK-STREWN PLANE, NOT ON THIS WORLD, BUT ON ANOTHER WORLD -- ON THE SURFACE OF THE MOON -- SOME 239,000 MILES AWAY. AND WHO CAN FORGET THE WORDS LEFT BEHIND BY NEIL ARMSTRONG AND BUZ ALDRIN -- ON A PLAQUE DESCRIBING THEIR EPOCH-MAKING JOURNEY: "WE CAME IN PEACE FOR ALL MANKIND!"

#### THE UNIQUENESS OF THE FLAG

SO -- YOU CAN SEE -- THE FLAG HAS HAD A UNIQUE AND EXTRAORDINARY HISTORY. IT IS A HISTORY RICH WITH HOPE, RICH WITH PERSONAL COURAGE, AND RICH WITH THE PROMISE OF AMERICA. AND IT IS A HISTORY THAT ALL AMERICANS CAN PROUDLY SHARE.

SHORTLY AFTER HE LEFT OFFICE, PRESIDENT CALVIN COOLIDGE -- NOT MY FAVORITE PRESIDENT BUT A FAVORITE PRESIDENT -- I KNOW -- OF SOME OTHER POLITICIANS -- ASKED THIS SIMPLE QUESTION: "WHAT COULD BE SAVED IF THE FLAG OF THE AMERICAN NATION WERE TO PERISH?"

INDEED, WHAT COULD BE SAVED? WHAT COULD BE SAVED IF THE FLAG DID NOT SURVIVE THE BOMBARDMENT AT FORT MCHENRY? IF THE FLAG DID NOT SURVIVE THE FIERCE BATTLES OF THE CIVIL WAR? IF THE FLAG DID NOT SURVIVE MOUNT SURIBACHI -- AND THE OTHER MOUNTAINS AND HILLS THAT NOW SERVE AS THE GRAVESITES FOR COUNTLESS THOUSANDS OF AMERICAN SOLDIERS?

WE WOULD BE IN BIG, BIG TROUBLE -- AND WE PROBABLY WOULD NOT BE HERE TODAY -- DELIBERATING PEACEFULLY OVER A CONSTITUTIONAL AMENDMENT.

YOU KNOW, I HAVE HEARD SOME OF THOSE SENATORS WHO OPPOSE THE CONSTITUTIONAL AMENDMENT ARGUE THAT PROTECTING OUR FLAG WILL OPEN A PANDORA'S BOX -- THAT THERE OUR OTHER NATIONAL SYMBOLS -- NO DIFFERENT FROM THE FLAG -- THAT WOULD ALSO CLAMOR FOR CONSTITUTIONAL PROTECTION.

I DON'T BUY THIS ARGUMENT FOR A MINUTE. AND A SIMPLE UNDERSTANDING OF THE FLAG'S HISTORY WOULD EASILY DISPEL THE NOTION THAT ANY OTHER NATIONAL SYMBOL RIVALS THE FLAG IN IMPORTANCE AND IN THE DEVOTION OF THE AMERICAN PEOPLE.

DO WE PLEDGE ALLEGIANCE TO THE CONSTITUTION, OR TO THE PRESIDENTIAL SEAL, OR TO ANY OTHER NATIONAL SYMBOL? OF COURSE, WE DO NOT.

FLAG DAY -- JUNE 14 -- IS A NATIONAL HOLIDAY -- BUT DO WE HAVE A NATIONAL HOLIDAY HONORING THE CONSTITUTION, OR THE PRESIDENTIAL SEAL, OR ANY OTHER NATIONAL SYMBOL? NO, WE DO NOT.

THE "STAR SPANGLED BANNER" -- OUR NATIONAL ANTHEM -- HONORS THE RESILIENCY OF GLORY. BUT DOES OUR NATIONAL ANTHEM HONOR THE CONSTITUTION, OR THE PRESIDENTIAL SEAL, OR ANY OTHER NATIONAL SYMBOL? NO, IT DOES NOT.

(more)



FORTY-EIGHT STATES AND THE UNITED STATES HAVE ENACTED STATUTES PROHIBITING THE DESECRATION OF THE FLAG. HAVE THE STATES AND CONGRESS PASSED LAWS PROHIBITING THE DESECRATION OF THE CONSTITUTION, OR THE PRESIDENTIAL SEAL, OR ANY OTHER NATIONAL SYMBOL? NO, THEY HAVE NOT.

SO -- YOU CAN SEE -- THE FLAG STANDS ALONE -- IT STANDS ALONE AS THE UNIQUE SYMBOL OF OUR IDEALS, OUR HOPES, OUR ASPIRATIONS AS A NATION.

#### THE NEED FOR A CONSTITUTIONAL AMENDMENT

YOU KNOW, AFTER STUDYING THE FLAG'S ENORMOUSLY RICH HISTORY, I COULDN'T UNDERSTAND WHY SOME IN CONGRESS ARE SO DEFENSIVE -- SO RELUCTANT -- ABOUT A CONSTITUTIONAL AMENDMENT TO PROTECT THE FLAG. I COULDN'T UNDERSTAND WHY CONGRESS WAS IN SUCH A MAD RUSH TO CONFORM TO A SUPREME COURT DECISION ABOUT WHICH 97 SENATORS -- 97 SENATORS -- EXPRESSED "PROFOUND DISAPPOINTMENT." AND I COULDN'T UNDERSTAND WHY CONGRESS WAS SO EAGER TO PASS A BILL THAT IS PATENTLY OVERBROAD AND MOST PROBABLY UNCONSTITUTIONAL.

I'LL MAKE NO BONES ABOUT IT: I WANT A FEDERAL FLAG DESECRATION STATUTE THAT PUNISHES WHAT IT IS SUPPOSED TO PUNISH -- FLAG DESECRATION. I WANT A STATUTE THAT PROTECTS THE CHERISHED VALUES THAT THE FLAG SYMBOLIZES, NOT A STATUTE THAT VIEWS THE FLAG NEUTRALLY -- AS IF IT WERE SOME LIFELESS ROCK. AND I WANT A STATUTE THAT PUNISHES PEOPLE WHO "PUBLICLY CAST CONTEMPT" UPON THE FLAG, NOT A STATUTE THAT LUMPS THE INNOCENT WITH THE LIKES OF GREGORY JOHNSON.

NOW, I'LL BE THE FIRST TO ADMIT THAT THE CURRENT FEDERAL FLAG DESECRATION STATUTE IS NOW UNCONSTITUTIONAL AS A RESULT OF THE JOHNSON DECISION. BUT THE WAY TO PRESERVE THAT STATUTE WAS NOT TO NEUTER IT -- AS THE SENATE DID LAST WEEK. THE WAY TO PROTECT THE FEDERAL STATUTE -- AND THE 48 STATE FLAG DESECRATION STATUTES -- IS THROUGH AN AFFIRMATIVE STEP, THROUGH A CONSTITUTIONAL AMENDMENT. PURE AND SIMPLE.

#### CLARIFYING THE RECORD

THIS PAST MONDAY, THE DISTINGUISHED SENATOR FROM DELAWARE, THE CHAIRMAN OF THE JUDICIARY COMMITTEE, GAVE A VERY IMPASSIONED -- AND INDEED A VERY LONG -- SPEECH ON THIS FLOOR OPPOSING THE CONSTITUTIONAL AMENDMENT. HIS REMARKS WERE CERTAINLY ENTERTAINING. BUT I MUST SAY THAT I WILL NEVER INVITE THE SENATOR TO BE AN "AFTER DINNER" SPEAKER, UNLESS WE'RE PLANNING ON BREAKFAST, TOO.

BUT SERIOUSLY, THE SENATOR FROM DELAWARE SAID A NUMBER OF THINGS ON MONDAY THAT DESERVE A RESPONSE.

#### THE PHRASE "PHYSICAL DESECRATION"

FIRST, I AM A LITTLE TIRED OF HEARING THAT THE PHRASE "PHYSICAL DESECRATION" IS SOMEHOW TOO VAGUE, TOO OPEN TO INTERPRETATION.

I'LL START WITH WEBSTER'S DICTIONARY. ACCORDING TO WEBSTER'S, TO "DESECRATE" MEANS "TO TREAT AN OBJECT OF VENERATION IRREVERENTLY OR CONTEMPTUOUSLY."

JUSTICE BRENNAN USES THE WORD "DESECRATE" AT LEAST TEN TIMES IN THE JOHNSON DECISION. AND I HAVEN'T HEARD ANYONE QUESTION WHAT THE DISTINGUISHED JUSTICE MEANT WHEN HE USED THE WORD IN HIS OPINION.

THE PREAMBLE TO THE AMENDMENT ITSELF DEFINES THE PHRASE "PHYSICAL DESECRATION" IN THE FOLLOWING WAY: "PHYSICAL DESECRATION MAY INCLUDE, BUT IS NOT LIMITED TO, SUCH ACTS AS BURNING, MUTILATING, DEFACING, DEFILING, OR TRAMPLING ON THE FLAG, OR DISPLAYING THE FLAG IN A CONTEMPTUOUS MANNER."

AND THE STATUTE THAT CONGRESS SENT TO THE PRESIDENT LAST WEEK CONTAINS THE WORDS "DEFILES," "DEFACES," AND "MUTILATES." CERTAINLY, THESE WORDS ARE NEITHER LESS VAGUE NOR MORE VAGUE THAN THE WORD "DESECRATE."

LET'S LOOK AT THE BILL OF RIGHTS. "FREE SPEECH," "SPEEDY TRIAL," "UNREASONABLE SEARCH AND SEIZURE," "DUE PROCESS OF LAW." THESE PHRASES -- ALL PART OF THE FIRST TEN AMENDMENTS TO THE CONSTITUTION -- ARE CHERISHED BY AMERICANS -- AND RIGHTLY SO. THEY ARE EMBEDDED IN OUR NATIONAL CONSCIOUSNESS. BUT ARE THESE PHRASES TOO VAGUE? ARE THEY TOO OPEN TO INTERPRETATION? ARE THEY ANY DIFFERENT FROM THE PHRASE "PHYSICAL DESECRATION?" I DO NOT THINK SO.

I AM JUST THANKFUL THAT THE SENATOR FROM DELAWARE WAS NOT AROUND WHEN THE BILL OF RIGHTS WAS DRAFTED. APPARENTLY, HE WOULD PREFER A BILL OF RIGHTS THAT IS THREE HUNDRED PAGES LONG, THAT IS CLUTTERED WITH THOUSANDS OF FOOTNOTES, THAT SOUNDS MORE LIKE A TEXTBOOK THAN A CONSTITUTION, AND THAT IS COMPLETELY INACCESSIBLE TO THE VAST MAJORITY OF AMERICANS -- ALL FOR THE SAKE OF "CLARITY."

(more)



SO, LET'S TALK ABOUT THE REAL ISSUES HERE -- AND LET'S NOT JUST MAKE UP ISSUES SO WE CAN TAKE UP TIME ON THE SENATE FLOOR.

"AMENDING THE BILL OF RIGHTS"

THE SENATOR FROM DELAWARE -- AND OTHER SENATORS, FOR THAT MATTER -- ALSO COMPLAIN THAT WE ARE SOMEHOW WIELDING AN AXE TO THE FIRST AMENDMENT. I DISAGREE.

I DISAGREE BECAUSE I BELIEVE THAT FLAG-BURNING IS CONDUCT -- MALICIOUS CONDUCT -- NOT SPEECH -- AND IF, FOR SOME REASON, WE ARE TO TREAT THE ACT OF FLAG-BURNING AS SPEECH, THEN WE OUGHT TO VIEW IT IN THE SAME WAY AS WE VIEW OBSCENITY OR "FIGHTING WORDS."

I DISAGREE BECAUSE I THINK IT IS ABSURD THAT WE CAN PASS LAWS MAKING IT ILLEGAL TO DESTROY U.S. CURRENCY, MAKING IT ILLEGAL TO DEFACE YOUR OWN MAILBOX, EVEN MAKING IT ILLEGAL TO RIP THE WARRANTY LABEL OFF YOUR OWN BEDROOM MATTRESS -- BUT WE CANNOT PASS A LAW PROHIBITING OUR NATION'S SYMBOL FROM BEING BURNED, MUTILATED, DEFACED.

AND I DISAGREE BECAUSE THIS AMENDMENT WILL NOT PREVENT PEOPLE LIKE GREGORY JOHNSON FROM CONTINUING TO SPEAK OUT -- IN COUNTLESS WAYS -- AGAINST THEIR COUNTRY, AGAINST THEIR GOVERNMENT, AND AGAINST THEIR FLAG.

FOUR JUSTICES OF THE SUPREME COURT SHARE THIS OPINION. SO TO SAY THAT THE ACT OF "FLAG-BURNING" IS SOMEHOW DEEPLY ENSHRINED IN THE FIRST AMENDMENT IS PREPOSTEROUS. YOU'RE RIGHT -- FIVE JUSTICES SAID THAT THIS WAS SO LAST JUNE -- BUT THEY WERE DEAD WRONG. CONGRESS HAS ALREADY DECIDED THAT. NOW, WE HAVE TO DECIDE HOW TO CORRECT THE SUPREME COURT'S BLUNDER. AND A CONSTITUTIONAL AMENDMENT IS THE ONLY HONEST WAY TO ACCOMPLISH THIS TASK.

LET'S LOOK AGAIN AT THE FLAG STATUTE RECENTLY PASSED BY THE SENATE. IT COVERS CONTEMPTUOUS AND UNCONTEMPTUOUS CONDUCT. IT COVERS INTENTIONAL AND UNINTENTIONAL CONDUCT. IT COVERS PUBLIC AND PRIVATE CONDUCT. IN OTHER WORDS, THE STATUTE -- BY TRYING TO BE "ALL THINGS TO ALL PEOPLE" -- PROHIBITS MORE CONDUCT -- MORE "SPEECH" -- THAN THIS CONSTITUTIONAL AMENDMENT. SO WHO SHOULD BE COMPLAINING HERE ABOUT THE FIRST AMENDMENT? WHO SHOULD BE COMPLAINING ABOUT OUR FREE SPEECH RIGHTS?

#### THE STATE FLAG DESECRATION STATUTES

FINALLY, THE SENATOR FROM DELAWARE COMPLAINS THAT THE CONSTITUTIONAL AMENDMENT WOULD LEAD TO A PATCHWORK OF 50 STATE FLAG DESECRATION LAWS -- AS IF HAVING 50 STATE LAWS WERE SOMEHOW A TERRIBLE INJUSTICE.

THIS COMPLAINT IGNORES REALITY. IT IGNORES THE FACT THAT MOST STATES WILL SIMPLY DO NOTHING ONCE THE CONSTITUTIONAL AMENDMENT IS RATIFIED. THEY WILL SIMPLY MAINTAIN THE FLAG DESECRATION STATUTES THAT ARE ALREADY ON THE BOOKS. AND THESE STATUTES HAVE WORKED WELL -- AND FAIRLY -- FOR DECADES. PRIOR TO THE JOHNSON DECISION, CONGRESS WAS NOT DELUGED WITH CONSTITUENT MAIL COMPLAINING ABOUT THE GREAT INJUSTICES WREAKED UPON THE AMERICAN PUBLIC BY THESE STATUTES.

BUT BEWARE. THE REAL PROBLEM WILL ARISE IF WE DO NOT PASS THIS CONSTITUTIONAL AMENDMENT. THEN -- AND ONLY THEN -- WILL THE STATES BEGIN TINKERING WITH THEIR OWN FLAG DESECRATION STATUTES IN A MAD RUSH TO ACHIEVE SOMETHING CALLED "CONTENT NEUTRALITY." THEN -- AND ONLY THEN -- WILL WE HAVE THE PATCHWORK OF LAWS THAT THE SENATOR FROM DELAWARE SEEMS TO FEAR SO MUCH.

AND WHAT DOES THE DISTINGUISHED SENATOR THINK ABOUT THE 50 DIFFERENT STATE PRODUCT LIABILITY LAWS, THE 50 DIFFERENT STATE INSURANCE LAWS, THE 50 DIFFERENT STATE SECURITIES' LAWS? DOES HE THINK THAT WE OUGHT TO DO AWAY WITH THE 50 STATE CORPORATE LAWS -- DO AWAY WITH THE DELAWARE CORPORATION STATUTE -- AND HAVE ONE NATIONAL CORPORATE LAW? I CAN ASSURE YOU THAT THE TAXPAYERS OF DELAWARE WOULD NOT BE TOO FOND OF THIS IDEA.

SO, AGAIN, LET'S TALK ABOUT THE REAL ISSUES HERE -- AND LET'S NOT JUST MAKE THEM UP AS WE GO ALONG.

#### TOO MANY LAWYERS IN THE SENATE

YOU KNOW, IF THIS DEBATE HAS TAUGHT ME ANYTHING, IT HAS TAUGHT ME THAT WE HAVE TOO MANY LAWYERS IN THE SENATE -- TOO MANY LAWYERS WHO STILL THINK THEY'RE ON THE HIGH SCHOOL DEBATE TEAM -- AND TOO MANY LAWYERS WHO WOULD PREFER TO LISTEN TO THEMSELVES THAN TO THE MILLIONS OF AMERICANS WHO BELIEVE THAT THE FLAG DESERVES PROTECTION -- CONSTITUTIONAL PROTECTION.

YOU DON'T BELIEVE ME? JUST ASK GARY FREEMAN OF HUTCHINSON, KANSAS, WHO COLLECTED MORE THAN 2,500 SIGNATURES IN DOWNTOWN HUTCHINSON -- ALL IN SUPPORT OF A CONSTITUTIONAL AMENDMENT.

(more)



HE WASN'T "IN IT" FOR POLITICAL PURPOSES, FOR PERSONAL GAIN, TO MAKE HIMSELF SOME SORT OF CELEBRITY. HE WORKED FOR THOSE PETITIONS FOR ONE SIMPLE REASON -- AND ONE REASON ONLY: HE LOVED HIS COUNTRY -- DEEPLY -- AND HE LOVED HIS COUNTRY'S CHERISHED SYMBOL -- OUR FLAG.

JUST ASK THE MORE THAN 1.3 MILLION HARD-WORKING AMERICANS WHO HAVE SIGNED A PETITION CIRCULATED BY THE AMERICAN LEGION. AND JUST ASK THE 120,000 AMERICANS WHO HAVE SIGNED THESE PETITIONS -- HERE IN THESE BOXES.

(PAUSE -- HOLD UP PETITIONS)

SO, WE CAN HAVE ALL THE LEGAL DEBATE. WE CAN HEAR ALL THE LEGAL ARGUMENTS. AND SENATORS CAN IMPRESS THEMSELVES WITH THEIR OWN UNCANNY KNOWLEDGE OF THE CONSTITUTION AND WITH THEIR SURPRISING ABILITY TO MAKE FINE LEGAL DISTINCTIONS.

BUT THE PURPOSE -- THE NEED -- FOR THIS AMENDMENT WILL NOT BE FOUND IN A TEXTBOOK OR IN A TREATISE ON CONSTITUTIONAL LAW. NO -- IT WILL BE FOUND IN THE EMOTIONS OF THE HEART -- EMOTIONS DEEPLY ROOTED IN THE REAL-LIFE EXPERIENCES OF MILLIONS OF AMERICANS -- AND EMOTIONS THAT ARE CRYING OUT -- TODAY -- TO GIVE THE FLAG REAL AND LASTING PROTECTION.

#### CONCLUSION

MR. PRESIDENT, I WOULD LIKE TO CONCLUDE HERE WITH A FEW WORDS FROM A PIECE ENTITLED "THE BANNER YET WAVES," WRITTEN BY THE EDITORS OF READER'S DIGEST. THESE WORDS ARE FAR MORE CONVINCING THAN ANY WORDS THAT I CAN OFFER YOU TODAY.

I QUOTE:

"WHILE AMERICANS KNOW THAT BEHIND THIS RECTANGLE OF CLOTH THERE IS BLOOD AND GREAT SACRIFICE, THERE IS ALSO BEHIND IT AN IDEA THAT REDEFINED ONCE AND FOREVER THE MEANING OF HOPE AND FREEDOM. LAWYERS AND JUSTICES MAY DEBATE THE ACT OF FLAG-BURNING AS FREEDOM OF EXPRESSION. BUT A LARGER POINT IS INARGUABLE: WHEN SOMEONE DISHONORS OR DESECRATES THE BANNER, IT DEEPLY OFFENDS, BECAUSE THE FLAG SAYS ALL THAT NEEDS TO BE SAID ABOUT THINGS WORTH PRESERVING, LOVING, DEFENDING, DYING FOR."

MR. PRESIDENT, THAT'S WHAT THE FLAG IS ALL ABOUT. THAT'S WHAT THIS DEBATE IS ALL ABOUT. AND THAT'S WHY I SUPPORT A CONSTITUTIONAL AMENDMENT.

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