

Statement of Steve Chabot
Subcommittee Chairman on the Constitution
on H.R. 5037, the “Respect for America’s Fallen Heroes Act”
Committee on Veterans’ Affairs
April 6, 2006

Mr. Chairman and Members of the Committee, I am very pleased to be an original cosponsor of H.R. 5037, the Respect for America’s Fallen Heroes Act, and to have helped author the bill along with Chairman Buyer, Chairman Miller, and Representative Rogers. As the Chairman of the House Subcommittee on the Constitution, my testimony today will focus on how the bill is fully consistent with the Constitution while fully protecting the respect and dignity of funerals held on and near national cemeteries.

We are all painfully aware of the recent trend of demonstrations and protests occurring near military funerals on national cemeteries. Such demonstrations are not compatible with the respect due to our Nation’s fallen heroes, and they should not be consistent with our

Nation's laws. That is why I am here today.

The first provision of H.R. 5037 prohibits demonstrations on national cemetery grounds, unless such demonstrations are approved by the cemetery director. This provision is clearly constitutional under judicial precedents, most recently *Griffin v. Secretary of Veterans Affairs*. In that case, the Federal Circuit Court of Appeals, just a few years ago, upheld as constitutional an existing federal regulation providing that “any service, ceremony, or demonstration, except as authorized by the head of the facility or designee, is prohibited” on Veterans Affairs property. The first provision of H.R. 5037 simply codifies that principle in statute.

The second provision of H.R. 5037 prohibits any demonstration within 500 feet of national cemeteries, within 60 minutes before and after a memorial service is held there, if the demonstration includes – quote – “any individual willfully making or assisting in the making of

any noise or diversion that disturbs or tends to disturb the peace or good order of the funeral or memorial service or ceremony.” This exact language has been upheld as constitutional by the Supreme Court in the case of *Grayned v. City of Rockford*.

The Supreme Court, upholding this language in the *Grayned* case, specifically cited and relied on Webster’s definition of “diversion,” which is – quote – “the act or an instance of diverting (as the mind or attention) from some activity ...” Consequently, under this language, any demonstration that includes anyone whose conduct so much as tends to turn the heads of those participating in a funeral ceremony can be prohibited.

At the same time, this language does not unconstitutionally draw distinctions regarding what demonstrations are allowed, and are not allowed, based on the content of the speech. The Supreme Court, again in the *Grayned* case, upheld this precise language as constitutional

because the language – quote – “contains no broad invitation to subjective or discriminatory enforcement ...” Also, as the court stated in the *Griffin* case, “Because the judgments necessary to ensure that cemeteries remain sacred to the honor and memory of those interred or memorialized there may defy objective description and may vary with individual circumstances, ... the discretion vested in VA administrators ... is reasonable in light of the characteristic nature and function of national cemeteries.”

Judicial precedents also make clear that H.R. 5037 is constitutional because it is a reasonable “time, place, and manner” restriction. As the Supreme Court in the *Grayned* case stated – quote – “reasonable time, place and manner regulations may be necessary to further significant governmental interests, and are permitted.” The 500-foot, 60 minutes-before-and-after prohibition of any “diversionary” protest in H.R. 5037 is clearly a reasonable time, place, and manner regulation that furthers the significant governmental interest of protecting the sanctity of

national cemeteries. The significance of this governmental interest is clear in existing federal law: Congress, by express statutory command, has long provided that national cemeteries – quote – “shall be considered national shrines as a tribute to our gallant dead.”

Section 2(b) of the bill defines the term “demonstration” to include picketing, speeches, the use of sound amplification equipment, the display of placards, the distribution of leaflets, and similar conduct, unless they are an official part of the funeral ceremony. This definition is sufficiently clear and will not be struck down on the grounds that it is unconstitutionally vague. Indeed, the Supreme Court has upheld laws using terms like “demonstration” standing alone, without any definition whatsoever.

In conclusion, let me say that all supporters of H.R. 5037 are asking is that the families and friends of our Nation's fallen heroes be given a few hours of peace within which to honor their loved ones’

greatest sacrifice. Two hours to pay respect to a selfless life devoted to protecting others. That is not unconstitutional. That is not even an imposition. That is the least we can do for those who fight to uphold the Constitution.

That is the least we can do for those who stand between us and our enemies. That is the least we can do for those who volunteer and serve and sacrifice, and take the risk of losing everything in this world so we don't have to.

I urge all my colleagues to join me in supporting this bill, which will give the families of those who died for us the comfort of knowing they will be able to pray in peace and thank the fallen on and near the sacred ground where they will rest forever so we can live free today.

Thank you.