

STATEMENT OF
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THE AMERICAN LEGION
TO THE
COMMITTEE ON THE JUDICIARY
U. S. SENATE
ON
SENATE JOINT RESOLUTION 4

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Mr. Chairman and members of the Committee, it is an honor to submit testimony to this committee regarding S.J. Res. 4, a proposed constitutional amendment to prohibit the physical desecration of the American flag. The amendment reads: *The Congress shall have power to prohibit the physical desecration of the Flag of the United States.*

The Citizens Flag Alliance (CFA) is a national coalition of 145 grassroots organizations, which have come together to persuade Congress to pass a proposed constitutional amendment to protect "Old Glory." CFA represents more than 20 million concerned American citizens from all walks of life.

The movement to protect the American flag from physical desecration is about values. It is about right and wrong. More importantly, it is about the democratic process and about "We the People" having a say in how we want to be governed.

In 1989, the United States Supreme Court's 5-4 decision meant that the only way to protect the American flag is through a constitutional amendment. Texas v. Johnson invalidated flag desecration laws in 48 States and the District of Columbia. New York was one of those 48 States. The citizens of New York recognized a need for that law and lived under that law for many years without feeling that anyone's First Amendment rights were being curtailed. Even Congress voiced "profound disappointment" and "concern" over the Supreme Court's decision. In fact, Congress tried to correct the Court's ruling by passing a federal statute, the Flag Protection Act of 1989 (Public Law 101-131). Less than a year following its enactment, the Court ruled the new law unconstitutional.

The Flag of the United States of America is a national treasure that deserves to be protected. It is the one unifying symbol for a nation of immigrants. This issue is truly a grassroots issue. Gallup surveys indicate 78 percent of Americans favor flag protection and 82 percent say the people should have the right to decide the question of flag protection through the ratification process.

Last Congress, a similar measure, H.J. Res. 36, passed in the House of Representatives by a vote of 298 - 125. Unfortunately, the effort failed in the Senate because the measure was not brought to the Senate floor prior to adjournment. But this is an issue that will not go away, because it is not a fleeting passion and flag desecration is not behavior that people will learn to tolerate. This issue cuts deep into the fundamental principles of honor, respect, faith and loyalty. Our Founding Fathers knew that the Constitution was not a perfect document and that changes would need to be made.

Last June, H.J. Res. 4 passed in the House by a vote of 300 - 125 in response to 50 state legislatures, representing 100 percent of the population, who have passed Memorial Resolutions petitioning Congress to send an amendment to the states for ratification. On March 29, 1994, the New York State Assembly passed a memorial resolution calling on Congress to let the people decide. The measure passed the legislature with overwhelming support.

Freedom of speech is not absolute. The list of exceptions is rather lengthy and clearly demonstrates that a distinct difference can and has been made in various kinds of speech. Disturbing the peace, yelling "FIRE" in a crowded theater, libel, slander and conveying a threat are all limitations placed on speech because each crosses the line of acceptable, reasonable, tolerable conduct. Once that line is crossed, it becomes illegal conduct; willful, wanton misconduct, therefore, has boundaries upheld by the Supreme Court. This amendment would include the American flag within those boundaries already clearly established by the Court. The physical desecration of an American flag crosses that line in the minds, hearts and souls of the vast majority of American citizens.

The men and women of the 10th Mountain Division have participated in nearly every major military operation since Desert Storm. Regretfully, too many have returned to the United States in flag-draped caskets. In turn, Old Glory is presented to their loved ones on behalf of a grateful nation. That alone is reason enough to protect the flag of the United States from acts of physical desecration. The American flag plays a critical role in the military culture. In fact, several American heroes were awarded the Medal of Honor for their actions as the color bearer in combat. Unarmed men responsible for carrying the Star Spangle Banner into combat. To read their citations leaves one asking the same question we ask today – where do we continue get such men and women?

We have never had a generation of service members raised when the American flag was not protected by Federal statute against acts of physical desecration. Organizations, like The American Legion, continue to conduct flag education classes in schools across the country. Yet, we continue to see legal acts of physical desecration more frequently. The Super Bowl's recent half-time show performance by Kid Rock comes to mind. The opening ceremony was so moving that it brought many to tears – especially the honor paid to the memories of the Space Shuttle crew and service members that paid the ultimate sacrifice for their country. I am still trying to figure out the message Kid Rock was trying to transmit by wearing the American flag as a poncho, then piling the flag on the stage floor next to the drummer. He had a microphone, yet he sang a song that had absolutely nothing to do with the American flag. Senators, is that really the freedom of speech that warrants protection?

The young man who chose to defecate on the American flag in Appleton, Wisconsin, was protected by the Court's decision. The young man in Oklahoma that used the American flag as a rag to wipe off the motor oil on his dipstick is protected by the Court's 5-4 decision. Then there was the young man in Michigan that felt the need to put the American flag down the front of his pants, pull it through his crotch, and out the back of his jeans to exercise his freedom of speech. I got their message – utter contempt for America and everything it stands for – including the First Amendment.

There are Members of this Committee that have voted against this proposed constitutional amendment. I respect their right to disagree with me on this issue. I simply ask that they re-evaluate the remarks of Chief Justice Warren, Justice Black, and Justice Fortas in *Street vs. New York* (1969). I do not believe any of you would challenge their reputations as constitutional scholars, especially concerning the First Amendment. Their views on the right of the states and the Federal government to prohibit the physical desecration of the flag of the United States were crystal clear.

During a debate on this issue, I heard a lawmaker state that totalitarian nations have flag desecration laws, why would anyone want the United States Constitution to look like a dictatorship? That is exactly the point of this campaign. In a totalitarian society, only a few determine the laws without the consent of the governed. The U.S. Constitution, particularly the First Amendment, allows the governed to a redress of grievances. Article V provides a vehicle for the governed to voice its concern with the decision of elected or appointed officials.

Mr. Chairman, with your leadership and the support of this Committee, it is my hope the Senate will now prove to the American people their voice has been heard loud and clear. The American flag is more than just a piece of cloth; it is the fabric of this nation.