

**STATEMENT OF
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DEPARTMENT OF DELAWARE
THE AMERICAN LEGION
PRESENTED TO THE
COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE
ON
SENATE JOINT RESOLUTION 4**

MARCH 10, 2004

Mr. Chairman and Members of the Committee, as the National Executive Committeeman for The American Legion's Department of Delaware, thank you for holding this hearing on S.J. Res. 4, a proposed constitutional amendment to prohibit the physical desecration of the flag of the United States.

The CFA represents over 20 million Americans and 145 diverse, community-based organizations, such as the Elks, The American Legion and the Grange just to mention a few. Their common goal is to have Congress pass a proposed constitutional amendment to protect "Old Glory." Unlike other proposed constitutional amendments recently debated in Congress, S.J. Res. 4 was truly initiated through a national grassroots effort. For this reason, I hope you pass this measure and let the people decide.

The movement to protect the American flag from physical desecration is about responsibility and respect. More importantly, it is about the democratic process and about "We the People" having a say in how we want to be governed. America's Founding Fathers created a form of government that placed the ultimate power of this nation in the hearts, hands and minds of common, everyday people. Passing this amendment will be a true exercise of the democratic process.

Last Congress, a similar measure, H.J. Res. 36 passed the House of Representatives by a vote of 298-125. Unfortunately, its counterpart, S.J. Res. 7, was not even considered by the full Senate. This movement will not go away. In June of last year, the House of Representatives again responded to the American people and passed H. J. Res. 4 by a vote of 300-125. A constitutional amendment to protect the flag from physical desecration is the only way to address the Supreme Court's 1989 decision in *Texas v. Johnson*. The American people have no other recourse.

When the Supreme Court made their controversial decision to protect flag desecration as an expression of free speech, the American people took exception to the ruling. As a result, 50 state legislatures passed memorial resolutions tasking Congress to send a flag amendment to the States for ratification. The State of Delaware is one of those states.

Furthermore, the people of Delaware know the difference between free speech and unacceptable behavior. Physical desecration of the flag is unacceptable behavior no matter how often it occurs. Pirating on the seas and treason are still punishable crimes, despite the fact neither offense has happened in years.

I have heard all of the arguments against the flag amendment and I respect their opinions, but I cannot accept them at face value. I have seen the American flag on too many caskets of fine men and women who served their country with honor and dignity. I have seen too many widows and widowers, sons and daughters, accept that neatly folded flag in memory of their deceased loved one's service to a grateful nation. I have seen children beam with pride after learning to say the Pledge of Allegiance. I have seen young men and women march into battle knowing some of them would returned wrapped in that banner.

There's an old saying, "He who does not stand for something, will fall for anything." For some people, accepting the Supreme Court's ruling is easy, but for the vast majority of Americans, they know in their hearts the ruling is wrong. These citizens are taking a stand to say loud and clear, a change must be made to restore the laws that prohibit blatant, willful, and wanton acts of misconduct. The sad part of this Court's ruling is the infringement on the rights of the vast majority who view such conduct as deplorable and have no legal power to stop it, except Article V of the U.S. Constitution. Thirty-six Senators, in a nation of 280,000,000 people, are thwarting the will of the vast majority by not sending this amendment to the states for ratification.

Polls taken in nationwide reveal at least 75 percent of those surveyed favor flag protection; and 80 percent say the people should have the right to decide the question of flag protection. For over 100 years, state laws prohibited flag desecration. The U.S. Supreme Court's 1989 decision in *Texas v. Johnson* invalidated flag laws in 48 states and the District of Columbia. Even Congress took exception to the Supreme Court's ruling and responded by passing the Flag Protection Act of 1989. Unfortunately, the Supreme Court also declared this measure unconstitutional in 1990.

Members of this Committee, the Senate has a responsibility to pass S.J. Res. 4 and allow the American people to have a say in how they want to be governed. Make a trip to Delaware and ask a farmer, a Native American, a veteran, a schoolteacher, a businessman or a minister if the physical desecration of the

American flag is freedom of speech or misconduct. I believe the answer will be unanimous. Let the people decide.

Thank you for allowing me to participate in this hearing and taking a stand for the national symbol of strength, unity and justice. I request that this statement be included in the official record of this hearing.