

**TESTIMONY OF  
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TO THE  
COMMITTEE ON THE JUDICIARY  
UNITED STATES SENATE  
ON  
SENATE JOINT RESOLUTION 4**

**MARCH 10, 2004**

Chairman Hatch and Members of the Committee on the Judiciary, I am honored to submit this testimony in regard to S.J. Res. 4, a constitutional amendment to protect the flag from physical desecration. Thank you for holding these hearings and providing this opportunity.

As the Illinois State National Executive Committeeman of The American Legion, I can attest to the tenor of the people of the state of Illinois as it regards the effort to pass a constitutional amendment to protect the flag. Without question, the vast majority of the people in Illinois favor this action.

I have heard lawmakers say “nobody’s burning American flags.” That’s not exactly right. Since physical desecration of Old Glory is legal, flag burning incidents aren’t considered newsworthy. Unfortunately, flags have been physically desecrated in Berwyn, Evanston, Chicago Heights, Galesburg, Oak Lawn, Chicago, Aurora and Springfield. The statement of one of the boys caught in Aurora when he indicated it was his right to protest can sum up the reason for these tragedies. In Appleton, Wisconsin, a teenager took great pride in physically desecrating flags, especially when he chose to defecate on an American flag and left it on the steps of the clubhouse at a local golf course. During the Super Bowl half-time show, an

entertainer wore the American flag as a prop and then, disrespectfully, dropped it on the stage floor in front of millions of spectators.

The boys in Aurora were simply burning a flag in the middle of a parking lot. What were they protesting? In Appleton, nobody was at the golf course. What was his message? Kid Rock had a microphone, center stage, and the spotlight. What was his message? America can ill afford to continue to condone such reprehensible and wanton misconduct in the name of freedom of speech.

The real victims of flag desecration are our children, the next generation of citizens. The greatest tragedy in flag mutilation is the disrespect it teaches our children – disrespect for the values it embodies, disrespect for those who have sacrificed for those values, and disrespect for the judicial process. Disrespect is the genesis of hate, it provokes the dissolution of national unity – a unity that has only one symbol – the flag.

The physical desecration of the flag of the United States is not speech, but rather conduct. Prior to the 1989 Supreme Court 5-4 decision (Texas vs. Johnson), anyone could desecrate Old Glory with your words, written or oral; however, physical desecration was prohibited. When challenged, previous Courts saw no conflict between freedom of speech and the right of states or the Federal government to prohibit the physical desecration of the American flag. Immediately after the 1989 ruling, the Senate voted 99-0 that the Court had erred.

The brightest minds in Congress crafted a Federal statute to prohibit the physical desecration of the flag. Although it passed with overwhelming support, the Supreme Court ruled the Flag Protection Act of 1989 unconstitutional by the same 5-4 margin. This sent a loud and clear message to lawmakers; if you want to protect the flag against acts of physical desecration, clarify the United States Constitution.

The flag became the national symbol of America because of actions taken by Congress and the President, upheld by the Supreme Court. Congress and the President, upheld by the Supreme Court, codified the Flag Code. Now, the vast majority, are asking Congress to help restore its power to prohibit the physical desecration of Old Glory. Clearly the Flag Protection Act of 1989 did not accomplish that goal. Only ratification of this proposed constitutional amendment would reverse *Texas v. Johnson*.

Mr. Chairman, 50 state legislatures stand ready to address this issue through the ratification process. Nothing is guaranteed except one thing – the American people would make the final decision concerning protection of the American flag from acts of physical desecration. Thank you for this opportunity to testify.