

STATEMENT OF
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1987-88
THE AMERICAN LEGION
TO THE
COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE
ON
SENATE JOINT RESOLUTION 4

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Mr. Chairman and distinguished Members of the Committee, once again the grassroots of America brings to your attention an issue that continues to disturb the vast majority of people who still believe the 1989 United States Supreme Court 5-4 decision in *Texas v. Johnson* was wrong.

The Citizens Flag Alliance (CFA) is a diverse, national coalition of 145 grassroots organizations, with a membership of over 20 million Americans, which came together seeking a constitutional amendment to protect the American flag. The CFA's 50 State Chairmen, who volunteer countless hours of time, energy and effort, will not allow this issue to just "fade away." Massachusetts is just one of the 50 state legislatures to pass a memorial resolution asking Congress to send to them such a constitutional amendment for ratification. The amendment simply reads: *The Congress shall have power to prohibit the physical desecration of the Flag of the United States.*

I honestly believe most Americans see this issue as not so much about rights, but about values. Most Americans cherish the flag and what it represents. It is on behalf of these Americans the effort continues. Make no mistake about it; this is truly a grassroots movement. The average American is outraged by this Court ruling and wants it fixed. National polls consistently reflect that 75 percent of the American people surveyed (this percent holds true in a state poll in Massachusetts) favor a constitutional amendment to protect the flag.

America is a government of *We the people*. It is not a government of its branches. Congress, the President and the Supreme Court serve only as trusted agents. Historically, this triad has worked well, but not perfectly. These trusted agents are responsible for their actions. The system of checks and balances was designed to ensure that no one branch of government is beyond reproach. Clearly, *Texas v. Johnson* warrants a redress of grievances by *We the people* and the attention of lawmakers.

The Court's job is to interpret the United States Constitution. It is the job of *We the people* to correct the Court when its interpretation is so dramatically inconsistent with the belief of the citizenry. The Founding Fathers knew the document was not perfect and crafted Article V to make necessary adjustments. The same amendment process that allowed the American people to give African Americans, women, and 18-year olds the right to vote.

Amending this Nation's most precious document is a very serious matter. By design, Article V is, justifiably, a laborious process. In the 104th Congress, a proposed constitutional amendment in the House of Representatives passed with a super majority (312-120). When the proposed amendment moved to the Senate, the late Senator Paul Simon of Illinois stood on the Capitol grounds at a press conference held by the American Bar Association and warned his colleagues that if they passed the pending flag amendment and sent it to the States, it would be the fastest ratified amendment in American history. Senator Simon and 35 of his colleagues were successful in defeating that constitutional amendment proposal. The deafening voice of the American people was temporarily silenced by just 3 votes.

Here we are in the 108th Congress faced with a very similar situation; however, there are many new faces in the Senate. Twenty-one of your colleagues have never voted in this Chamber on this amendment. Since that vote, many things have happened – some good – some not so good. But grassroots support for this amendment has not waned. Many Americans believe the horrible events surrounding 9-11 and the subsequent War on Terrorism have increased individual awareness of the need for this amendment.

Nowhere does the Constitution grant absolute freedom of speech. Each person is held accountable for actions that violate the personal freedoms

of others. Slander and libel are clearly punishable. Plagiarism is illegal. The Federal Communications Commission has the power to assess fines for violations of the public airways. The United States Capitol and the United States Supreme Court have punishable offenses for unauthorized assembly and demonstrations on its grounds, even if the act is an exercise of free speech.

When the Citizens Flag Alliance held a rally in Washington, DC, on the Capitol grounds several years ago, it had to obtain a permit for a parade and a permit for a press conference. Yet, when a group chose to physically desecrate flags on the steps of that Capitol to challenge the Flag Protection Act of 1989, a federal statute passed by Congress in an attempt to correct *Texas v. Johnson*, the law was ruled unconstitutional. In 1996, a teenager in Wisconsin lowered an American flag from the flagpole at a public golf course, defecated on the flag, and then placed the flag on the steps of the clubhouse. This conduct is clearly an act of delinquency rather than freedom of speech, but the state's flag desecration law was ruled unconstitutional and he was exonerated of that particular charge.

Massachusetts has witnessed its share of flag desecration cases in recent years. On May 5, 2001, in Lawrence, a desecrated American flag was found lying on the front steps of City Hall. It is believed that vandals removed the flag from its pole across from City Hall and wrote anti-capitalist and racist slogans and an expletive on it. There were also burn marks on the flag.

Five months later, on October 18, Amherst College students were stunned moments after a pro-America rally involving more than 100 people ended when several protesters emerged from the crowd to set fire to a US flag. Ten demonstrators doused two flags with lighter fluid and set them on fire. Then, five members of the group spread a larger flag on the ground and stood on it while chanting anti-American slogans.

Seven months later, on Memorial Day 2002, in Braintree, Jose Santos awoke to find his US flag crumpled and burned on his front porch. Mr. Santos called police to report what he described as a "sad and very unpatriotic act" on a day when Americans are supposed to be remembering the sacrifices made for their freedom.

The actions of these individuals can hardly be called an expression of speech; it is behavior of the ugliest kind and should not be tolerated. A person cannot physical desecrate Old Glory with their tongue. Letting the American people have the final say on this issue seems so logical and democratic. Clearly, a flag constitutional amendment has the support of the vast majority of Americans. If former Senator Simon's prognosis is accurate, that it would be the fastest ratified amendment in our history, why should the American people be denied an opportunity to decide the ultimate fate of this issue? If this is truly a government *of the people, by the people and for the people*, the amendment process surely demonstrates democracy-in-action.

In the First Session of the 108th Congress, the House of Representatives continued their support of an amendment by a super-majority vote of 300 - 125 in passing House Joint Resolution 4. I encourage this Committee to echo the voice of the House, as well as the voices American people, and forward S.J. Res. 4 to the Senate with your positive recommendation.

Mr. Chairman, I realize that any 5-4 decision by the U.S. Supreme Court is wide open for honest and robust debate. I believe that the final arbitrator of this issue should be We the people – the governed. I would ask the Senators -- including my own -- that have voted against this narrowly crafted proposed constitutional amendment, to reconsider their votes and allow its to go to the states for ratification.

I request that my written testimony be added to the official record of this hearing.