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HOUSE OF REPRESENTATIVES
REPORT
106–191

CONSTITUTIONAL AMENDMENT AUTHORIZING CONGRESS TO PROHIBIT THE PHYSICAL DESECRATION OF THE FLAG OF THE UNITED STATES

JUNE 18, 1999.—Referred to the House Calendar and ordered to be printed

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Mr. HYDE, from the Committee on the Judiciary, submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.J. Res. 33]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the joint resolution (H.J. Res. 33) proposing an amendment to the Constitution of the United States authorizing the Congress to prohibit the physical desecration of the flag of the United States, having considered the same, reports favorably thereon without amendment and recommends that the joint resolution do pass.

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PURPOSE AND SUMMARY

H.J. Res. 33 proposes to amend the Constitution to allow Congress to prohibit the physical desecration of the flag of the United States.

The proposed amendment reads simply: "The Congress shall have the power to prohibit the physical desecration of the flag of the United States." The amendment itself does not prohibit flag desecration. It merely empowers Congress to enact legislation to prohibit the physical desecration of the flag and establishes boundaries within which it may legislate. Prior to the Supreme Court decision in *Texas* v. *Johnson*, 109 S.Ct. 2533 (1989), forty-eight states and the Federal Government had laws on the books prohibiting desecration of the flag. The purpose of the proposed constitutional amendment is to restore the power to protect the flag to the Congress.

BACKGROUND AND NEED FOR THE LEGISLATION

In June, 1989, the United States Supreme Court in *Texas* v. *Johnson*, 109 S.Ct. 2533, held that the burning of an American flag as part of a political demonstration was expressive conduct protected by the First Amendment to the U.S. Constitution. After publicly burning a stolen American Flag in a protest outside of the 1984 Republican National Convention in Dallas, Texas, Gregory Johnson was convicted of desecrating a flag in violation of Texas law. The Texas law prohibited the intentional desecration of a national flag in a manner in which "the actor knows will seriously offend one or more persons likely to observe or discover his action."[1]

His conviction was upheld by the Court of Appeals for the Fifth District of Texas at Dallas, but reversed by the Texas Court of Criminal Appeals. The 5–4 U.S. Supreme Court opinion affirmed the decision of the Court of Criminal Appeals: Johnson's conviction was inconsistent with the First Amendment because his actions constituted "symbolic free expression."

Justice Rehnquist filed a dissenting opinion in which Justices O'Connor and White joined.[2]

Justice Rehnquist noted the unique history of the American Flag:

> The American Flag, then, throughout more than 200 years of our history, has come to be the visible symbol embodying our Nation. It does not represent the views of any

[1] Tex. Penal Code Ann. Section 42.09(a)(3), Desecration of a Venerated Object, provides as follows: "(a) A person commits an offense if he intentionally or knowingly desecrates:

"(1) a public monument;
"(2) a place of worship or burial; or
"(3) a state or national flag.
"(b) For purposes of this section, 'desecrate' means deface, damage, or otherwise physically mistreat in a way that the actor knows will seriously offend one or more persons likely to observe or discover his action.
"(c) An offense under this section is a Class A misdemeanor."

[2] Justice Stevens filed a separate dissenting opinion.

> particular political party, and it does not represent any particular political philosophy. The flag is not simply another "idea" or "point of view" competing for recognition in the marketplace of ideas. Millions and millions of Americans regard it with an almost mystical reverence regardless of what sort of social, political, or philosophical beliefs they may have. I cannot agree that the First Amendment invalidates the Act of Congress, and the laws of 48 of the 50 States, which make criminal the public burning of the flag. *Texas* v. *Johnson*, 109 S.Ct. at 2552.

Justice Rehnquist also pointed out that former Chief Justice Earl Warren, and former Justices Black and Fortas all expressed the view that the States and the Federal Government had the power to protect the American Flag from desecration and disgrace.

In response to the *Johnson* decision, in September of 1989, Congress passed the "Flag Protection Act of 1989" under Suspension of the Rules by a vote of a 380 to 38. The Act amended the Federal Flag Statute (18 U.S.C. 700) attempting to make it "content-neutral" so that it would pass constitutional muster. As stated in the House Judiciary Committee report, "the amended statute focuses exclusively on the conduct of the actor, irrespective of any expressive message he or she might be intending to convey."[3]

On June 11, 1990, in *United States* v. *Eichman*, 496 U.S. 311, the Supreme Court, in another 5–4 decision, struck down the newly-enacted "Flag Protection Act of 1989," ruling that it infringed on expressive conduct protected by the First Amendment. Although the Government conceded that flag burning constituted expressive conduct, it claimed that flag burning, like obscenity or "fighting words" was not fully protected by the First Amendment. The Government also argued the "Flag Protection Act" was constitutional because, unlike the Texas statute struck down in *Texas* v. *Johnson*, the Act was "content-neutral" and simply sought to protect the physical integrity of the flag rather than to suppress disagreeable communication.

Justice Brennan, writing for the majority, rejected the Government's argument, noting that:

> Although the Flag Protection Act "contains no explicit content-based limitation on the scope of prohibited conduct, it is nevertheless clear that the Government's asserted interest is 'related to the suppression of free expression,'" 491 U.S., at 410, 109 S.Ct., at 2543, and concerned with the content of such expression. [T]he Government's desire to preserve the flag as a symbol for certain national ideals is implicated "only when a person's treatment of the flag communicates [a] message" to others that is inconsistent with those ideals. *U.S.* v. *Eichman*, 110 S.Ct. 2404 (1990).

Justice Stevens wrote a dissenting opinion in which Chief Justice Rehnquist, Justice White and Justice O'Connor joined. He expressed unanimous agreement with the proposition expressed by the majority that "the Government may not prohibit the expression

[3] "Flag Protection Act of 1989", H. Rep. No. 101 231, 101st Cong., 1st Sess. 2 (1989). The Act became law without the President's signature on October 28, 1989 (Pub. L. 101 131).

of an idea simply because society finds the idea itself offensive or disagreeable." He went on, however, to note that methods of expression may be prohibited under a number of circumstances and set forth the following standard:

> If (a) the prohibition is supported by a legitimate societal interest that is unrelated to suppression of the ideas the speaker desires to express; (b) the prohibition does not entail any interference with the speaker's freedom to express those ideas by other means; and the interest in allowing the speaker complete freedom of choice among alternative methods of expression is less important than the societal interest supporting the prohibition. Eichman, 496 U.S., at 319.

Justice Stevens felt that the statute satisfied each of these concerns and thus should have withstood constitutional scrutiny.

Once the Supreme Court ruled a second time that flag burning was expressive speech protected by the First Amendment, it became apparent that no statute could adequately protect the U.S. Flag from desecration—a constitutional amendment was necessary. Since that time, forty-nine states have passed resolutions calling on Congress to pass an amendment to protect the flag of the United States from physical desecration and send it back to the States for ratification. Additionally, the House of Representatives has twice passed constitutional amendments aimed at protecting the U.S. flag from desecration. In 1995, the House adopted, by a vote of 312–120, a constitutional amendment granting both Congress and the states the power to pass laws prohibiting the physical desecration of the flag. However, the Senate vote in 1995 failed, by three votes, to reach the two-thirds vote threshold that is required by the Constitution. In 1997, the House passed, by a vote of 310–114, a constitutional amendment, H.J. Res. 54, granting Congress the power to prohibit the physical desecration of the flag. The amendment was not considered on the Senate floor during the 105th Congress. H.J. Res. 33 is identical to H.J. Res. 54.

Opponents of the amendment have argued that H.J. Res. 33 limits free speech as guaranteed by the first amendment to the U.S. Constitution. The first amendment states, "Congress shall make no law . . . abridging freedom of speech . . ." H.J. Res. 33 gives Congress the power to prohibit the physical desecration of the flag of the United States. It does not prevent anyone from making any statement or saying anything—regardless of how objectionable it may be. Until the Supreme Court's decisions in *Texas* v. *Johnson* in 1989 and *U.S.* v. *Eichman* in 1990, punishing the physical desecration of the flag was considered entirely in keeping with the protections of the first amendment. Forty-eight states and the Federal Government had laws banning flag desecration.

As pointed out by Justice Rehnquist in *Texas* v. *Johnson*, Chief Justice Earl Warren, and Justices Black and Fortas all expressed the view that the States and the Federal Government had the power to protect the Flag from desecration and disgrace. Former Chief Justice Earl Warren in *Street* v. *New York*, 394 U.S. 576, 605 (1969) stated, "I believe that States and the Federal Government do have power to protect the flag from acts of desecration and dis-

grace." In the same case, Justice Hugo Black, a zealous proponent of freedom of speech wrote, "It passes my belief that anything in the Federal Constitution bars . . . making the deliberate burning of the American flag an offense." Id. at 610. Again in *Street*, Justice Abe Fortas stated, "The flag is a special kind of personality. Its use is traditionally and universally subject to special rules and regulations. . . . The States and the Federal Government have the power to protect the flag from acts of desecration." Id. at 615–617.

In addition, opponents argue that H.J. Res. 33 proposes an unprecedented limitation on the content of speech. This assertion is both historically and legally inaccurate. Until 1989, forty-eight states and the federal government had laws criminalizing the physical desecration of the flag and there was no perceived conflict with freedom of speech. In addition, on numerous occasions, the Supreme Court has upheld government regulation of pure speech. For example, speech that is likely to incite an immediate, violent response, *Chaplinsky* v. *New Hampshire*, 315 U.S. 568 (1942); obscenity, *Miller* v. *California*, 413 U.S. 15 (1973); and libel, *New York Times* v. *Sullivan*, 367 U.S. 254 (1970) are not protected under the first amendment.

In conclusion, H.J. Res. 33 furthers the legitimate interest of the federal government in protecting the American flag and it does not interfere with a speaker's freedom to express his or her ideas by other means. It is the only remaining avenue by which the Congress can pass legislation to protect the flag of the United States from physical desecration.

HEARINGS

The Committee's Subcommittee on the Constitution held a hearing on H.J. Res. 33 on March 23, 1999. Testimony was received from 13 witnesses: Representative Randy "Duke" Cunningham; Representative Steve Buyer; Representative John Lewis; Representative John Sweeney; Representative Wayne Gilchrest; Mr. Stephan Ross, concentration camp survivor and senior staff psychologist for the City of Boston Community Schools and Centers; Stephen Presser, Raoul Berger Professor of Legal History, Northwestern University School of Law; Major General Patrick Brady (USA-Ret), Chairman of the Citizen Flag Alliance's Board of Directors; Bishop Carlton Pearson, presiding Bishop over the Azusa Interdenominational Fellowship, Shawntel Smith, former Miss America from Oklahoma; Captain Joseph E. Rogers, (U.S.N.R.-Ret.), corporate counsel, Alcatel USA; David Skaggs, former United States Representative and current Executive Director of the Democracy and Citizenship Program at the Aspen Institute; Douglas C. Clifton, executive editor of the Miami Herald.

COMMITTEE CONSIDERATION

On April 14, 1999, the Subcommittee on the Constitution met in open session and ordered favorably reported the resolution, H.J. Res. 33, by a vote of 7 to 4, a quorum being present. On May 26, 1999, the Committee met in open session and ordered favorably reported the resolution, H.J.Res. 33, without amendment, by voice vote, a reporting quorum being present..

VOTE OF THE COMMITTEE

Mr. Watt offered an amendment to strike "the" on page 3, line 9 of the resolution and insert, "Not inconsistent with the first article of amendment to this Constitution, the". Thus, the proposed amendment would read, "The Congress shall have the power to prohibit, not inconsistent with the first article of amendment to this Constitution, the physical desecration of the flag of the United States." The Watt amendment was defeated by a roll call vote of 7–17.

ROLLCALL NO. 1

	Ayes	Nays	Present
Mr. Sensenbrenner			
Mr. McCollum			
Mr. Gekas		X	
Mr. Coble			
Mr. Smith (TX)		X	
Mr. Gallegly		X	
Mr. Canady		X	
Mr. Goodlatte		X	
Mr. Bryant		X	
Mr. Chabot		X	
Mr. Barr		X	
Mr. Jenkins		X	
Mr. Hutchinson		X	
Mr. Pease			
Mr. Cannon		X	
Mr. Rogan		X	
Mr. Graham			
Ms. Bono		X	
Mr. Bachus		X	
Mr. Scarborough		X	
Mr. Conyers			
Mr. Frank			
Mr. Berman			
Mr. Boucher			
Mr. Nadler	X		
Mr. Scott	X		
Mr. Watt	X		
Ms. Lofgren	X		
Ms. Jackson Lee	X		
Ms. Waters			
Mr. Meehan			
Mr. Delahunt			
Mr. Wexler			
Mr. Rothman		X	
Ms. Baldwin	X		
Mr. Weiner	X		
Mr. Hyde, Chairman		X	
Total	7	17	

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of Rule XIII of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of Rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

COMMITTEE ON GOVERNMENT REFORM FINDINGS

No findings or recommendations of the Committee on Government Reform were received as referred to in clause 3(c)(4) of Rule XIII of the Rules of the House of Representatives.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 3(c)(2) of House Rule XIII is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 3(c)(3) of Rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to the resolution, H.J. Res.33, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, May 27, 1999.

Hon. HENRY J. HYDE, *Chairman,*
Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.J. Res. 33, proposing an amendment to the Constitution of the United States authorizing Congress to prohibit the physical desecration of the flag of the United States.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Susanne S. Mehlman (for federal costs), who can be reached at 226–2860, and Lisa Cash Driskill (for the state and local impact), who can be reached at 225–3220.

Sincerely,

DAN L. CRIPPEN, *Director.*

H.J. Res. 33—Proposing an amendment to the Constitution of the United States authorizing Congress to prohibit the physical desecration of the flag of the United States.

H.J. Res. 33 would propose amending the Constitution to allow the Congress to enact legislation that would prohibit physical desecration of the U.S. flag. The legislatures of three-fourths of the states would be required to ratify the proposed amendment within seven years for the amendment to become effective. By itself, this resolution would have no impact on the federal budget. If the proposed amendment to the Constitution is approved by the states, then any future legislation prohibiting flag desecration could impose additional costs on U.S. law enforcement agencies and the court system to the extent that cases involving desecration of the flag are pursued and prosecuted. However, CBO does not expect any resulting costs to be significant. Because enactment of H.J. Res. 33 would not affect direct spending or receipts, pay-as-you-go procedures would not apply.

H.J. Res. 33 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments. In order for the amendment to become part of the Constitution, three-fourths of the state legislatures would have to ratify the resolution within seven years of its submission to the states by the Congress. However, no state is required to take action on the resolution, either to reject it or to approve it.

On April 30, 1999, CBO transmitted a cost estimate for S. J. Res. 14, as reported by the Senate Committee on the Judiciary on April 29, 1999. S. J. Res. 14 and H.J. Res. 33 are identical, as are the two estimates.

The CBO staff contacts for this estimate are Susanne S. Mehlman (for federal costs), who can be reached at 226–2860, and Lisa Cash Driskill (for the state and local impact), who can be reached at 225–3220. This estimate was approved by Robert A. Sunshine, Deputy Assistant Director for Budget Analysis.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of Rule XIII of the Rules of the House of Representatives, the Committee finds the authority for this legislation in Article V of the Constitution, which provides that the Congress has the authority to propose amendments to the Constitution.

SECTION-BY-SECTION ANALYSIS AND DISCUSSION

H.J. Res. 33 simply states "[t]he Congress shall have power to prohibit the physical desecration of the flag of the United States." Congress clearly possessed this power prior to the decisions of the United States Supreme Court in *Texas* v. *Johnson* and *U.S.* v. *Eichman.* Those decisions held that the act of physically desecrating the flag by burning was expressive conduct protected by the First Amendment. The First Amendment to the U.S. Constitution, which states, "Congress shall make no law . . . abridging freedom of speech . . ." limits the power of Congress. H.J. Res. 33 makes clear that Congress does have the power to pass legislation to prohibit the physical desecration of the flag of the United States.

This proposed constitutional amendment sets the parameters for future action by the Congress on this issue. After the amendment is ratified, the elected representatives of the people will once again have the power and can decide whether to enact legislation to prohibit the physical desecration of the flag.

There are two key issues that will need to be resolved in enacting legislation to protect the flag from physical desecration.

First, Congress may want to flesh out the meaning of "physical desecration." The amendment itself requires physical contact with the flag. Congress could not punish mere words or gestures directed at the flag, regardless of how offensive they were. Webster's Ninth New Collegiate Dictionary defines "desecrate" as follows: "1: to violate the sanctity of: PROFANE 2: to treat irreverently or contemptuously often in a way that provokes outrage on the part of others." "Desecrate" is defined in Black's Law Dictionary as "to violate sanctity of, to profane, or to put to unworthy use." Congress could clearly prohibit burning, shredding and similar defilement of

the flag. In addition, the term "desecrate" clearly implies that the physical act must demonstrate contempt for the flag.

Second, Congress will have to decide what representations of the flag of the United States are to be protected. Of course, the resolution in no way changes the fact that the authority to determine "what constitutes the flag of the United States" is defined by the United States Congress at 4 U.S.C. 1. In enacting a statute, Congress will need to decide which representations of the flag are to be protected from physical desecration. They may define the flag of the United States as only a cloth, or other material readily capable of being waved or flown, with the characteristics of the official flag of the United States as described in 4 U.S.C. 1 or a "flag" could be anything that a reasonable person would perceive to be a flag of the United States even if it were not precisely identical to the flag as defined by statute. This would allow states and the Congress to prevent a situation whereby a representation of a United States flag with forty-nine stars or twelve red and white stripes was burned in order to circumvent the statutory prohibition.

DISSENTING VIEWS

Because we honor the American flag for the tangible ideals of freedom and democracy that gave rise to it as well as for its richness as a symbol, we take issue with proponents of H.J. Res. 33, a measure that will purchase its protections of the American flag with the currency of the First Amendment.

As a general matter, we take the view that the amendment process is a remedy of last resort afforded to Congress and that its powerful and rarely used force must be used with great care. Over more than 200 years, our Constitution has been amended only 27 times. If ratified, H.J. Res. 33 would—for the first time in our Nation's history—modify the Bill of Rights to limit freedom of expression. In this instance, the majority is reacting to a pair of Supreme Court decisions, *Texas* v. *Johnson,* 491 U.S. 397 (1989) and *United States* v. *Eichman,* 496 U.S. 310 (1990), which held that state and federal government efforts to protect the flag against physical destruction by statute were content-based political speech restrictions and imposed unconstitutional limitations on that speech.

Before we take the drastic action proposed here, there are three major questions we should be asking ourselves. First, is the problem of flag desecration [1] so pervasive and so incapable of regulation as to require a constitutional amendment? We answer this question in the negative. Second, even if a single instance of flag desecration poses some harm to our national interests, does that possible consequence justify censoring our citizens out of symbolic expressions of disagreement with their government? We answer this question in the negative, as we would warn against joining the ranks of tyrannical nations. Finally, does the precise language of this measure achieve its stated goals of fostering national unity and keeping our political discourse civil? We again answer in the negative and point out that past efforts to protect the flag by force of criminal penalty have actually instigated flag burning.[2]

There is no disputing the fact that the instances of flag burning have been rare in our nation's history, and therefore the problem of flag desecration cannot be considered pervasive. Studies indicate, for instance, that from 1777 until the 1989 Supreme Court decision in *Texas* v. *Johnson,* there were only 45 reported cases of flag burning.[3]

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[1] We use the term "desecration" here, even though we are not quite sure what it means. Presumably, this term includes flag burning. It also could apply to disposing of a flag postage stamp, sitting on a pair of jeans with a flag likeness on the seat or wearing a shirt with a likeness of the flag that also contains unflattering words about the flag.

[2] In his extensive survey of the history of American flag desecration law, Robert Goldstein writes that "[a]lthough the purpose of the [Flag Protection Act adopted by Congress in 1968] was to supposedly end flag burnings, its immediate impact was to spur perhaps the largest single wave of such incidents in American history." Robert J. Goldstein, SAVING 'OLD GLORY': THE HISTORY OF THE AMERICAN FLAG DESECRATION CONTROVERSY 215 (1995).

[3] Robert J. Goldstein, "Two Centuries of Flagburning in the United States, 163 Flag Bull. 65 (1995).

In addition to the relative infrequency of flag burning, proponents of the measure cast the current state of the law as though Congress is impotent to protect the flag. However, even witnesses who disagree with the Supreme Court rulings in *Johnson* and *Eichman* have stated that the impact of those cases was not so broad. In 1995, Bruce Fein stated as much in subcommittee hearings. "While I believe the *Johnson* and *Eichman* decisions were misguided, I do not believe a constitutional amendment would be a proper response, Flag desecrations when employed as 'fighting words' or when intended and likely to incite a violation of law remain criminally punishable under the Supreme Court precedents in *Chaplinsky* v. *New Hampshire* and *Brandenburg* v. *Ohio.*" [4]

Many well-meaning proponents of this measure fashion the harm caused by flag desecration as "qualitative." Thus, while they might concede that the instances are low in number, they insist that even one instance of flag desecration would work a substantial harm against our national interests. In subcommittee hearings on H.J. Res. 33, House Judiciary Committee Chairman Hyde even likened instances of flag desecration to "hate crimes," rather than free speech deserving of protection.[5] More generally, proponents of this legislation ask, "What sort of country permits its flag to be destroyed in protest by its own citizens?"

Perhaps those proponents should also ask themselves the opposite question. "What sort of country limits the way in which its citizens engage in political protest?" An honest answer will reveal that the amendment, if ratified, will push our political speech rights closer to countries like China and Iran and the former regimes of the Soviet Union and South Africa.[6] However well-intentioned, H.J. Res. 33 would open the door to government suppression of political protest, an activity that is central to our democratic process.

We cannot legislate patriotism. The Supreme Court has already considered the consequences of doing so and has set forth a formidable argument against it. In *West Virginia Board of Education* v. *Barnette,* the Court said,

> [The] ultimate futility of . . . attempts to compel coherence is the lesson of every such effort from the Roman drive to stamp out Christianity as a disturber of its pagan unity, the Inquisition, as a means to religious and dynastic unity, the Siberian exiles as a means to Russian unity, down to the last failing efforts of our present totalitarian enemies. Those who begin coercive elimination of dissent soon find themselves exterminating dissenters. Compulsory unification of opinion achieves only the unanimity of the graveyard." [7]

Finally, we submit that, if ratified, H.J. Res. 33 would not decrease instances of flag desecration but would actually increase such unsavory events. Political speech, whether outlawed or not, is

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[4] Indeed, a less drastic but workable statutory effort that uses the doctrine of both the *Chaplinsky* and *Brandenburg* decisions has been introduced in the House this session. *See* H.R. 1081 (introduced March 11, 1999 before the 106th Congress, 1st Sess.).

[5] *See* Hearing on H.J. Res. 33, Proposing an Amendment to the Constitution of the United States Before the Subcomm. on the Constitution of the House Comm. on the Judiciary, 106th Cong., 1st Sess. (March 23, 1999).

[6] Roman Rollnick, "Flag Amendment would put U.S. with Iran, China," UPI (July 1, 1989).

[7] *Barnette,* 319 U.S. 624, 641 (1943).

by its nature urgent and incapable of repression. Those who would attempt to burn the flag today to protest their federal government will not be slowed much by the civil and criminal penalties imposed by the amendment. Political speech is not thwarted by criminal and civil consequence.

The wise founders of our nation knew that political discord is in the nature of a political society. Rather than treat differences of opinion as something to be feared, the Framers of our government sought to use dissent in positive ways.[8] When we limit the mode of dissent, we begin along a path of political speech restrictions that will inevitably lead to restrictions on the content of the dissent. We cannot endorse a proposal that protects the symbol of free speech—our flag—by diminishing free speech itself.

In our view, the question of amending the constitution to protect the flag boils down to an unnecessary choice between national pride and national discourse. These two important ends are not mutually exclusive. Indeed, our national discourse, which has sometimes been tense and angry, can be considered reflective of our national pride. In the end, we, like the majority, hope that our citizens treat the United States flag with the honor and respect we believe it deserves. We simply believe that such honor and respect is even more meaningful when our citizens have a right to express their discontent, disappointment and even disdain for our government but choose not to do so.

JOHN CONYERS, JR.
HOWARD L. BERMAN.
JERROLD NADLER.
MELVIN L. WATT.
SHEILA JACKSON LEE.
MARTIN T. MEEHAN.
TAMMY BALDWIN.
BARNEY FRANK.
RICK BAUCHER.
ROBERT C. SCOTT.
ZOE LOFGREN.
MAXINE WATERS.

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[8] Professor Greenwalt reminds us of the importance of free expression when he writes:

> [T]hose who are resentful because their interests are not accorded fair weight, and who may be doubly resentful because they have not even had a chance to present those interests, may seek to attain by radical changes in existing institutions what they have failed to get from the institutions themselves. Thus liberty of expression, though often productive of divisiveness, may contribute to social stability.

Greenwalt, Speech and Crime, A.B.F. Res. J. 645, 672–3 (1980).