



## DEFENDING CONSTITUTIONAL LIBERTIES

### TALKING POINTS: Flag Desecration Amendment

The **Flag Desecration Amendment** passed the House of Representatives on June 22, 2005. The Senate version is expected to be voted on in June 2006.

#### Why Congress should not pass this amendment:

- ***The amendment would impact core first amendment protections***
  - The non-verbal, peaceful use of the flag to make a political statement (flying, saluting, burning, etc.) is fully protected under the First Amendment's guarantee of free expression (Sup. Ct., 1931).
  - The First Amendment is designed precisely to protect unpopular forms of peaceful expression and political dissent such as flag burning. Supreme Court: "the Government may not prohibit the expression of an idea simply because society finds the idea itself offensive and disagreeable."
- ***The amendment is unnecessary***
  - Most desecration acts, including burning or soiling a flag, are already punishable under public burning, public health, theft or destruction of public property statutes. Any offensive expression performed for the purpose of inciting violence or breach of peace is also punishable, consistent with the 1<sup>st</sup> Amendment.
  - Flag burning is exceedingly rare in our country and the voluntary love of flag and country is simply not in jeopardy. The Congressional Research Service found, on average, less than eight flag desecration incidents per year from 1990 to 1994. Public repudiation of flag desecration is widespread and clear.
- ***The amendment codifies censorship into the U.S. Constitution***
  - The Amendment's broad, vague terms could have unintended consequences, including censorship of images of the flag in works of art or in commerce or advertising that contains physical representations of the flag. The amendment could be read to permit prosecutions not only of protesters, but of individuals who do not intend disrespect for the flag.
  - By allowing exemptions to constitutional freedoms, we might very well become a country where it is illegal to speak out against the government, where political protest is outlawed, and where discussions of media bias would no longer take place, as no reporter would truly be able to share his or her opinion.
- ***Congress and the American people have already rejected the need for this amendment***
  - A significant majority of Americans oppose this amendment, the first in our nation's history to restrict our First Amendment freedoms of speech and expression (*Freedom Forum* polls). Even after the attacks on September 11, 2001, 59% of Americans opposed such an amendment in 2002.
  - Congress has already debated and *rejected* a constitutional amendment on the flag three separate times: in 1990, 1995, and 2000.
- ***The amendment is decidedly un-American***
  - Gary May, a former Marine who lost both of his legs during combat in Vietnam, serves as the Chairman of Veterans Defending the Bill of Rights: "The pride and honor veterans like me feel is not in the flag itself, but in the principles the flag stands for and in the people who have defended them" (1999).
  - General Colin Powell, fmr. United States Secretary of State: "The 1st Amendment exists to insure that freedom of speech and expression applies not just to that with which we agree or disagree, but also that which we find outrageous. I would not amend that great shield of democracy to hammer a few miscreants. The flag will be flying proudly long after they have slunk away" (1999).
  - Unlike countries such as the People's Republic of China, the former Soviet Union, and Iran, we do not need to fear or punish political dissenters – we do not need to coerce patriotism in America. We should not let a handful of offensive individuals cause us to voluntarily surrender the very freedoms that make us a beacon of liberty for the rest of the world.

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