

HON. RON PAUL OF TEXAS BEFORE THE US HOUSE OF REPRESENTATIVES June 22, 2005

Statement on the Flag Burning Amendment

Mr. Speaker, I rise in strong opposition to this resolution. The process may well be legal, but it is unwise. The problem is minimal. This is more like a solution in search of a problem. We just do not need to amend the Constitution for such a tiny problem. It was stated earlier that this is the only recourse we have since the Supreme Court ruled the Texas law unconstitutional. That is not true. There are other alternatives. One merely would be to use State law. There are a lot of State laws, such as laws against arson, disturbing the peace, theft, inciting riots, trespassing. We could deal with all of the flag desecration with these laws. But there is another solution that our side has used and pretends to want to use on numerous occasions, and that is to eliminate the jurisdiction of the federal courts. We did it on the marriage issue; we can do it right here.

So to say this is the only solution is incorrect. It is incorrect. And besides, a solution like that would go quickly, pass the House by a majority vote, pass the Senate by a majority vote, and be sent to the President. The Schiavo legislation was expedited and passed quickly. Why not do it with the flag? It is a solution, and we should pay attention to it.

Desecration is reserved for religious symbols. To me, why this is scary is because the flag is a symbol today of the State. Why is it, our side never seems to answer this question when we bring it up, why is it that we have the Red Chinese, Cuba, North Korea, and Saddam Hussein who support the position that you severely punished those who burn a flag? No, they just gloss over this. They gloss over it. Is it not rather ironic today that we have troops dying in Iraq, "spreading freedom" and, yet, we are here trying to pass laws similar to what Saddam Hussein had with regard to the flag? I just do not see where that makes a lot of sense. Mr. Speaker, a question I would like to ask the proponents of this legislation is this: What if some military officials arrived at a home to report to the family that their son had just been killed in Iraq, and the mother is totally overwhelmed by grief which quickly turns to anger. She grabs a flag and she burns it? What is the proper punishment for this woman who is grieved, who acts out in this manner? We say, well, these are special circumstances, we will excuse her for that; or no, she has to be punished, she burned a flag because she was making a political statement. That is the question that has to be answered. What is the proper punishment for a woman like that? I would say it is very difficult to mete out any punishment whatsoever.

We do not need a new amendment to the Constitution to take care of a problem that does not exist.

Another point: The real problem that exists routinely on the House floor is the daily trashing of the Constitution by totally ignoring Act I Sec. 8. We should spend a lot more time following the rule of law, as defined by our oath of office, and a lot less on unnecessary constitutional amendments that expand the role of the federal government while undermining the States.

Mr. Speaker, let me summarize my views on this proposed amendment. I have myself served 5 years in the military, and I have great respect for the symbol of our freedom. I salute the flag, and I pledge to the flag. I also support overriding the Supreme Court case that overturned state laws prohibiting flag burning. Under the constitutional principle of federalism, questions such as whether or not Texas should prohibit flag burning are strictly up to the people of Texas, not the United States Supreme Court. Thus, if this amendment simply restored the states' authority to ban flag burning, I would enthusiastically support it.

However, I cannot support an amendment to give Congress new power to prohibit flag burning. I served my country to protect our freedoms and to protect our Constitution. I believe very sincerely that today we are undermining to some degree that freedom that we have had all these many years. Mr. Speaker, we have some misfits who on occasion burn the flag. We all despise this behavior, but the offensive conduct of a few does not justify making an exception to the First Amendment protections of political speech the majority finds offensive. According to the pro-flag amendment Citizens Flag Alliance, there were only three incidents of flag desecration in 2004 and there have only been two acts of desecration thus far in 2005, and the majority of those cases involved vandalism or some other activity that is already punishable by local law enforcement! Let me emphasize how the First Amendment is written, "Congress shall make no law." That was the spirit of our nation at that time: "Congress shall make no laws."

Unfortunately, Congress has long since disregarded the original intent of the Founders and has written a lot of laws regulating private property and private conduct. But I would ask my colleagues to remember that every time we write a law to control private behavior, we imply that somebody has to arrive with a gun, because if you desecrate the flag, you have to punish that person. So how do you do that? You send an agent of the government, perhaps an employee of the Bureau of Alcohol, Tobacco, and Flags, to arrest him. This is in many ways patriotism with a gun--if your actions do not fit the official definition of a "patriot," we will send somebody to arrest you.

Congress has models of flag desecration laws. For example, Saddam Hussein made desecration of the Iraq flag a criminal offense punishable by up to 10 years in prison. It is assumed that many in the military support this amendment, but in fact there are veterans who have been great heroes in war on both sides of this issue. I would like to quote a past national commander of the American Legion, Keith Kreul. He said:

"Our Nation was not founded on devotion to symbolic idols, but on principles, beliefs and ideals expressed in the Constitution and its Bill of Rights. American veterans who have protected our banner in battle have not done so to protect a golden calf. Instead, they carried the banner forward with reverence for what it represents, our beliefs and freedom for all. Therein lies the beauty of our flag. A patriot cannot be created by legislation."

Former Secretary of State, former Chairman of the Joint Chiefs, and two-time winner of the Presidential Medal of Freedom Colin Powell also has expressed opposition to amending the Constitution in this manner: "I would not amend that great shield of democracy to hammer out a few miscreants. The flag will be flying proudly long after they have slunk away."

Mr. Speaker, this amendment will not even reach the majority of cases of flag burning. When we see flag burning on television, it is usually not American citizens, but foreigners who have strong objections to what we do overseas. This is what I see on television and it is the conduct that most angers me.

One of the very first laws that Red China passed upon assuming control of Hong Kong was to make flag burning illegal. Since that time, they have prosecuted some individuals for flag burning. Our State Department keeps records of how often the Red Chinese prosecute people for burning the Chinese flag, as it considers those prosecutions an example of how the Red Chinese violate human rights. Those violations are used against Red China in the argument that they should not have most-favored-nation status. There is just a bit of hypocrisy among those Members who claim this amendment does not interfere with fundamental liberties, yet are critical of Red China for punishing those who burn the Chinese flag. Mr. Speaker, this is ultimately an attack on private property. Freedom of speech and freedom of expression depend on property. We do not have freedom of expression of our religion in other people's churches; it is honored and respected because we respect the ownership of the property. The property conveys the right of free expression, as a newspaper would or a radio station. Once Congress limits property rights, for any cause, no matter how noble, it limits freedom. Some claim that this is not an issue of private property rights because the flag belongs to the country. The flag belongs to everybody. But if you say that, you are a collectivist. That means you believe everybody owns everything. So why do American citizens have to spend money to obtain, and maintain, a flag if the flag is communally owned? If your neighbor, or the federal government, owns a flag, even without this amendment you do not have the right to go and burn that flag. If you are causing civil disturbances, you are liable for your conduct under state and local laws. But this whole idea that there could be a collective ownership of the flag is erroneous.

Finally, Mr. Speaker, I wish to point out that by using the word "desecration," which is traditionally reserved for religious symbols, the authors of this amendment are placing the symbol of the state on the same plane as symbols of the church. The practical effect of this is to either lower religious symbols to the level of the secular state, or raise the state symbol to the status of a holy icon. Perhaps this amendment harkens back to the time when the state was seen as interchangeable with the church. In any case, those who believe we have "no king but Christ" should be troubled by this amendment. We must be interested in the spirit of our Constitution. We must be interested in the principles of liberty. I therefore urge my colleagues to

oppose this amendment. Instead, my colleagues should work to restore the rights of the individual states to ban flag burning, free from unconstitutional interference by the Supreme Court.