

HON. RON PAUL OF TEXAS IN THE HOUSE OF REPRESENTATIVES June 3, 2003

Mr. Speaker, I thank the gentleman for yielding me the time.

Mr. Speaker, I rise in support of the rule, although unenthusiastically. I am not too excited about this process, and certainly I am not very excited about this proposal to amend the Constitution. As for my viewpoint, I see the amendment as very unnecessary and very dangerous. I want to make a few points along those lines.

It has been inferred too often by those who promote this amendment that those who oppose it are less patriotic, and I think that is unfair. And an earlier statement was made by the gentleman from Florida that everybody here is patriotic and nobody's patriotism should be challenged.

It has also been said that if one does not support this amendment to the flag that they are disloyal to the military, and that cannot possibly be true. I have served 5 years in the military, and I do not feel less respectful of the military because I have a different interpretation on how we should handle the flag. But nevertheless, I think what we are doing here is very serious business because it deals with more than just the flag.

First off, I think what we are trying to achieve through an amendment to the Constitution is to impose values on people- that is, teach people patriotism with our definition of what patriotism is. But we cannot force values on people; we cannot say there will be a law that a person will do such and such because it is disrespectful if they do not, and therefore, we are going to make sure that people have these values that we want to teach. Values in a free society are accepted voluntarily, not through coercion, and certainly not by law, because the law implies that there are guns, and that means the federal government and others will have to enforce these laws.

Here we are, amending the Constitution for a noncrisis. How many cases of flag burning have we seen? I have seen it on television a few times in the last year, but it was done on foreign soil, by foreigners, who had become angry at us over our policies, but I do not see that many Americans in the streets burning up flags. There were probably a lot more in previous decades, but in recent years it averages out to about eight, about eight cases a year, and they are not all

that horrendous. It involves more vandalism, teenagers taking flags and desecrating the flag and maybe burning it, and there are local laws against that.

This is all so unnecessary. There are already laws against vandalism. There are state laws that say they cannot do it and they can be prosecuted. So this is overkill.

As a matter of fact, the Supreme Court has helped to create this. I know a lot of people depend on the Supreme Court to protect us, but in many ways, I think the Supreme Court has hurt us. So I agree with those who are promoting this amendment that the Supreme Court overreacted, because I think the States should have many more prerogatives than they do. Many states have these laws, and I believe that we should have a Supreme Court that would allow more solutions to occur at the state level. They would be imperfect, no doubt, it would not be perfect protection of liberty by state laws. But let me tell my colleagues, when we come here as politicians and superpatriots and we pass amendments to the Constitution, that will be less than perfect, then it will be just like the Supreme Court- a poor national solution.

It is a ruling for everyone, and if we make a mistake, it affects everybody in every state, and that is what I am afraid we are doing here.

The First Amendment has been brought up on several occasions, and I am sure it will be mentioned much more in general debate. This amendment does not directly violate the First Amendment, but what it does, it gives Congress the authority to write laws that will violate the First Amendment, and this is where the trouble is. Nothing but confusion and litigation can result. Mr. Speaker, I do not believe much good will come of it. A lot of good intentions are put into the effort, but I see no real benefit.

It was mentioned earlier that those who supported campaign finance laws were inconsistent. And others would say that we do not have to worry about the First amendment when we are dealing with the flag amendments. But I would suggest there is another position. Why can we not be for the First amendment when it comes to campaign finance reform and not ask the government to regulate the way we spend our money and advertise, while at the same time supporting the First amendment here?

It seems that consistency is absent in this debate.

It is said by the chairman of the committee that he does not want to hear much more about the First amendment. We have done it before, so therefore it must be okay. But we should not give up that easily.

He suggested that we have amended the Constitution before when the courts have ruled a certain way. And he is absolutely right, we can do that and we have done that. But to use the 16th amendment as a beautiful example of how the Congress solves problems, I would expect the same kind of dilemma coming out of this amendment as we have out of the 16th amendment which, by the way, has been questioned by some historians as not being correctly ratified.

I think one of our problems has been that we have drifted away from the rule of law, we have drifted away from saying that laws ought to be clear and precise and we ought to all have a little interpretation of the laws.

The gentleman earlier had said that there are laws against slander so therefore we do violate the First amendment. Believe me, I have never read or heard about a legislative body or a judge who argued that you can lie and commit fraud under the First amendment. But the First amendment does say "Congress shall write no laws." That is precise. So even the laws dealing with fraud and slander should be written by the States. This is not a justification for us to write an amendment that says Congress shall write laws restricting expression through the desecration of the flag. This amendment, as written so far, does not cause the conflict. It will be the laws that will be written and then we will have to decide what desecration is and many other things.

Earlier in the debate it was said that an individual may well be unpatriotic if he voted against a Defense appropriation bill. I have voted against the Defense appropriation bill because too much money in the Defense budget goes to militarism that does not really protect our country. I do not believe that is being unpatriotic.

Mr. Speaker, let me summarize why I oppose this Constitutional 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

state's 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 has been only 16 documented cases of flag burning in the last two years, 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.

Fortunately, 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."

Secretary of State, former Chairman of the Joint Chiefs, and two-time winner of the Presidential Medal of Freedom, Colin Powell has also 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, burning the flag. 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 persecute 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 community 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 the symbol 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.