

109TH CONGRESS
1ST SESSION

S. 1370

To provide for the protection of the flag of the United States, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 1, 2005

Mr. BENNETT (for himself, Mr. CONRAD, and Mr. BYRD) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To provide for the protection of the flag of the United States, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Flag Protection Act
5 of 2005”.

6 **SEC. 2. FINDINGS AND PURPOSE.**

7 (a) FINDINGS.—Congress finds that—

8 (1) the flag of the United States is a unique
9 symbol of national unity and represents the values
10 of liberty, justice, and equality that make this Na-

1 tion an example of freedom unmatched throughout
2 the world;

3 (2) the Bill of Rights is a guarantee of those
4 freedoms and should not be amended in a manner
5 that could be interpreted to restrict freedom, a
6 course that is regularly resorted to by authoritarian
7 governments which fear freedom and not by free and
8 democratic nations;

9 (3) abuse of the flag of the United States
10 causes more than pain and distress to the over-
11 whelming majority of the American people and may
12 amount to fighting words or a direct threat to the
13 physical and emotional well-being of individuals at
14 whom the threat is targeted; and

15 (4) destruction of the flag of the United States
16 can be intended to incite a violent response rather
17 than make a political statement and such conduct is
18 outside the protections afforded by the first amend-
19 ment to the Constitution.

20 (b) PURPOSE.—The purpose of this Act is to provide
21 the maximum protection against the use of the flag of the
22 United States to promote violence while respecting the lib-
23 erties that it symbolizes.

1 **SEC. 3. PROTECTION OF THE FLAG OF THE UNITED STATES**
2 **AGAINST USE FOR PROMOTING VIOLENCE.**

3 (a) IN GENERAL.—Section 700 of title 18, United
4 States Code, is amended to read as follows:

5 **“§ 700. Incitement; damage or destruction of property**
6 **involving the flag of the United States**

7 “(a) DEFINITION OF FLAG OF THE UNITED
8 STATES.—In this section, the term ‘flag of the United
9 States’ means any flag of the United States, or any part
10 thereof, made of any substance, in any size, in a form that
11 is commonly displayed as a flag and that would be taken
12 to be a flag by the reasonable observer.

13 “(b) ACTIONS PROMOTING VIOLENCE.—Any person
14 who destroys or damages a flag of the United States with
15 the primary purpose and intent to incite or produce immi-
16 nent violence or a breach of the peace, and under cir-
17 cumstances in which the person knows that it is reason-
18 ably likely to produce imminent violence or a breach of
19 the peace, shall be fined not more than \$100,000, impris-
20 oned not more than 1 year, or both.

21 “(c) DAMAGING A FLAG BELONGING TO THE UNITED
22 STATES.—Any person who steals or knowingly converts to
23 his or her use, or to the use of another, a flag of the
24 United States belonging to the United States, and who
25 intentionally destroys or damages that flag, shall be fined

1 not more than \$250,000, imprisoned not more than 2
2 years, or both.

3 “(d) DAMAGING A FLAG OF ANOTHER ON FEDERAL
4 LAND.—Any person who, within any lands reserved for
5 the use of the United States, or under the exclusive or
6 concurrent jurisdiction of the United States, steals or
7 knowingly converts to his or her use, or to the use of an-
8 other, a flag of the United States belonging to another
9 person, and who intentionally destroys or damages that
10 flag, shall be fined not more than \$250,000, imprisoned
11 not more than 2 years, or both.

12 “(e) CONSTRUCTION.—Nothing in this section shall
13 be construed to indicate an intent on the part of Congress
14 to deprive any State, territory, or possession of the United
15 States, or the Commonwealth of Puerto Rico of jurisdic-
16 tion over any offense over which it would have jurisdiction
17 in the absence of this section.”.

18 (b) TECHNICAL AND CONFORMING AMENDMENT.—
19 The chapter analysis for chapter 33 of title 18, United
20 States Code, is amended by striking the item relating to
21 section 700 and inserting the following:

“700. Incitement; damage or destruction of property involving the flag of the
United States.”.

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