

But what counts as desecration of the flag? What if someone desecrated something made up to look like a flag with some flaw, like the wrong number of stars or stripes? Does that count? What if a flag is used in art that some people consider rude or unpatriotic? Does that count as desecration?

The arguments could rage on and on, enriching lawyers and diminishing the nation. A ban on flag burning would set a dangerous precedent.

The proposed amendment is a reaction to 1989 and 1990 Supreme Court rulings that invalidated federal and state laws banning flag desecration. The court ruled that peaceful flag desecration is symbolic speech, protected by the First Amendment freedom of speech clause.

Supporters of a ban on flag burning argue that burning a flag is not symbolic speech at all but hateful action. But if today's cause is to ban flag burning because it is hateful action, tomorrow's cause may be to ban the display of the Confederate flag because many people consider it to be hateful action. Or to ban the use of racial or sexist comments because they amount to hateful actions. And on and on until we have given up our freedoms because we are intolerant.

The right to protest is central to democracy.

A democracy must protect the right to protest against authority, or it is hardly a democracy. It is plainly undemocratic to take away from dissenters the freedom to protest against authority by peacefully burning or otherwise desecrating a flag as the symbol of that authority.

If the protesters turn violent or if they steal a flag to burn, existing laws can be used to punish them.

Flag burners are not worth a constitutional amendment.

A good rule of thumb about amending the U.S. Constitution is: Think twice, then think twice again. Flag burning is not an issue that merits changing the two-centuries-old blueprint for our democracy.

This nation's founding fathers understood the value of dissent and, moreover, the value of the liberty to dissent. So should we.

[From the La Crosse Tribune, June 7, 1995]

EDITORIAL

The U.S. Supreme Court ruled in a Texas case in 1989 that flag burning is protected by the First Amendment as a form of speech. The court's decision didn't go over very well with friends of Old Glory then, and six years later that ruling still sticks in the craw of many patriots—so much so that constitutional amendments protecting the flag against desecration have picked up 276 co-sponsors in the U.S. House of Representatives and 54 in the Senate.

The House Judiciary Committee takes up the amendment today, with a floor vote expected on June 28. The Senate Judiciary Committee tackled a similar amendment on Tuesday.

For two centuries soldiers have given their lives to keep the American flag flying. It is a symbol of freedom and hope for millions. That is what infuses the stars and strips with meaning and inspires the vast majority of Americans to treat it with respect. But to take away the choice in the matter, to make respect for the flag compulsory, diminishes the very freedom represented by the flag.

Do we follow a constitutional amendment banning flag desecration with an amendment requiring everyone to actually sing along when the national anthem is played at sports events? An amendment making attendance at Memorial Day parades compulsory?

Sen. Howell Heflin, D-Ala., argues that the flag unites us and therefore should be pro-

tected. But Heflin and like minded amendment supporters are confusing cause and effect. The flag is a symbol of our unity, not the source of it.

Banning flag burning is simply the flip side of the same coin that makes other shows of patriotism compulsory. What are the names of the countries that makes shows of patriotism compulsory? Try China, Iraq. The old Soviet Union.

Coerced respect for the flag isn't respect at all, and an amendment protecting the American flag would actually denigrate that flag.

Allegiance that is voluntary is something beyond price. But allegiance extracted by statute—or, worse yet, but constitutional fiat—wouldn't be worth the paper the amendment was drafted on. It is the very fact that the flag is voluntarily honored that makes it a great and powerful symbol.

The possibility of the Balkanization of the American people into bickering special interest groups based on ethnicity or gender or age or class frightens all of us, and it's tempting to try to impose some sort of artificial unity. But can the flag unit us? No. We can be united under the flag, but we can't expect the flag to do the job of uniting us.

We oppose flag burning—or any other show of disrespect for the American flag. There are better ways to communicate dissent than trashing a symbol Americans treasure. But making respect for the flag compulsory would, in the long run, decrease real respect for the flag.

The 104th Congress should put the flag burning issue behind it and move on to the nuts-and-bolts goal it was elected to pursue: a smaller, less intrusive, fiscally responsible federal government. A constitutional amendment protecting the flag runs precisely counter to that goal.

[From the Oshkosh Northwestern, May 28, 1995]

BEWARE TRIVIALIZING OUR CONSTITUTION

It is difficult to come out against anything so sacrosanct as the American flag amendment—difficult but not impossible.

An amendment to protect the flag from desecration is before Congress and has all the lobbying in its favor.

The trouble is, it is an attempt to solve, through the Constitutional amendment process, a problem that really is not a problem.

Flag burning is not rampant. It occurs occasionally; it brings, usually, society's scorn upon the arsonist, and does no one any harm, except the sensitivities of some.

These sensitivities give rise to the effort to abridge the freedom of expression guaranteed by the First Amendment, which has been held by the courts to include expressions of exasperation with government by burning its banner.

At worst, this flag protection is an opening wedge in trimming away at the basic rights of all Americans to criticize its leaders. That right was so highly esteemed by the Founding Fathers that they made free speech virtually absolute.

At best, the flag protection amendment trivializes the Constitution.

That is no small consideration. The Constitution was trivialized once before. The prohibition amendment had no business being made a constitutional chapter. It was not of constitutional stature. It could not have been done by statute alone. Its repeal showed that it was a transitory matter rather than being one of transcendent, eternal concern.

The flag protection amendment is trivial in that flag burning is not always and everywhere a problem. If the amendment succeeds, what else is out there to further trivialize the document?

Must the bald eagle be put under constitutional protection if it is no longer an endangered bird?

This is a "feel good" campaign. People feel they accomplish something good by protecting the flag from burning. (Isn't the approved method of disposing of tattered flags to burn them, by the way?)

But it offers about the same protection to flags that the 18th offered to teetotaling.

If someone has a political statement to make and feels strongly enough, he'll do the burning and accept the consequences. The consequences surely will not be draconian enough that flag burning would rank next best thing to a capital offense.

Congress has more pressing thing to do than put time into this amendment.●

Mr. DOLE. Mr. President, was leaders' time reserved?

The PRESIDING OFFICER. The Senator is correct.

DEATH OF HARRY KAUFMAN

Mr. DOLE. Mr. President, last month, two thugs squirted a bottle of flammable liquid into a subway token booth in Brooklyn's Bedford-Stuyvesant neighborhood. They then lit a match, igniting an explosion that blew the token booth apart.

Engulfed in flames, the booth's operator, 50-year-old Harry Kaufman, suffered second- and third-degree burns over nearly 80 percent of his body as well as severe lung injuries. Mr. Kaufman was subsequently taken to the New York Hospital-Cornell Medical Center. The two men who committed this vicious crime continue to remain at large.

The Brooklyn attack closely resembled two scenes depicted in the new movie "The Money Train," a Columbia Pictures production starring Woody Harrelson and Wesley Snipes. Since the movie's November 22 debut, there have been a total of seven separate copycat fire attacks on New York City subway token booths.

Yesterday, after a 14-day fight for his life, Harry Kaufman passed away.

I take this opportunity to publicly express my deepest condolences to Stella Kaufman, Harry Kaufman's wife, to their 17-year-old son Adrian, and to the rest of the Kaufman family.

A NEW PARTNERSHIP

Mr. DOLE. Mr. President, when Americans changed the party in control of Congress last November, they also changed the relationship between Capitol Hill and our 50 State capitols.

The Washington, DC-knows-best attitude that was the hallmark of the Democrat Congress has been replaced by a return to the 10th amendment. Paternalism has been replaced by a new partnership between Congress and America's Governors.

One of the most talented of those Governors is William Weld of Massachusetts, who has provided innovative solutions in the areas of health care reform and welfare reform—reducing government spending, and cutting taxes while he was at it.

Governor Weld is now helping to lead the fight in the Republican effort to return power to the States, and I wanted to call my colleagues' attention to an outstanding column he wrote for today's Wall Street Journal.

Entitled "Release Us From Federal Nonsense," Governor Weld makes the point that President Clinton and his liberal allies simply do not understand that State governments are better able than Washington, DC in providing solutions that work.

As Governor Weld wrote:

All across the country, creative Governors are aggressively dealing with problems Washington is just beginning to wake up to. So if the question is whether State governments are responsible enough to dispense welfare and Medicaid funds in our own way—we're more than ready.

I know I speak for the Republican majority here on Capitol Hill in saying to Governor Weld that we are more than ready to continue our mission of returning power to the States and to the people.

I congratulate Governor Weld on an outstanding article, and I look forward to working with him in the future—whether that be in Boston or in Washington, DC.

TRIBUTE TO JULIAN GRAYSON

Mr. DOLE. Mr. President, one of the true pleasures of serving as a U.S. Senator is the opportunity to cross paths with the dedicated public servants employed by the Senate.

No doubt about it, one of the most dedicated I have known during my years in the Senate is Julian Grayson.

Grayson, as everyone called him, retired last Friday after serving the Senate in four different decades.

From 1950 to 1964, Grayson moonlighted from his job as a Methodist minister by waiting tables here in the Capitol. In 1964, Grayson left the Capitol to work full time in the pulpit.

But when he retired from the ministry in 1983, he returned to the Hill, and he remained here until last Friday.

On this last day of service, Grayson spoke with pride about waiting on seven Presidents of the United States, and he said that the Senate was "almost a second home to me."

The high regard in which Grayson is held by all Senators could be seen when our entire Republican caucus gave him a standing ovation at our policy lunch several weeks ago.

There are countless others who would have joined in that standing ovation had they been there, including a number of Senate food service employees who have returned to college classes because of Grayson's urging and encouragement.

Mr. President, I know I speak for all Senators in extending our thanks to Julian Grayson, and in wishing him a happy and healthy retirement.

I yield the floor.

Mr. CHAFEE addressed the Chair.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. CHAFEE. Mr. President, I would like to join the majority leader in that tribute to Julian Grayson. It was my privilege to know him, as it was true of all the rest of the Senators here, Democrats and Republicans who have had the tremendous help of Julian Grayson, no matter whether we were at our caucus lunches or at the dining room downstairs. We are going to miss him. He certainly served this Senate and everybody in this Senate with great efficiency and respect and obvious enjoyment.

FLAG DESECRATION CONSTITUTIONAL AMENDMENT

The Senate continued with the consideration of the joint resolution.

Mr. CHAFEE. Mr. President, the underlying matter before us is a proposed constitutional amendment. I see the principal sponsor of that amendment on the floor, the senior Senator from Utah, and I have some questions I would like to ask the Senator, if he would be good enough to respond to them.

My first question is, as I understand the amendment that he has now finally come up with after some changes, but I understand the amendment presently before us provides that a Federal statute can pass forbidding the desecration of the flag. Am I correct in that, I would like to ask the Senator from Utah?

Mr. HATCH. If the Senator would please state that again. I am sorry.

Mr. CHAFEE. It is my understanding that the amendment that the Senator presently has—there have been some changes in it, as I understand—but the amendment that he hopes for us to vote on tomorrow will be one that will permit the enactment of a statute forbidding the desecration of the flag? Is that correct?

Mr. HATCH. That is correct. All the amendment will say, should it be enacted tomorrow, is: "The Congress shall have power to prohibit the physical desecration of the flag of the United States," which would leave it up to Congress to enact a statute later, if Congress so chooses to do.

Mr. CHAFEE. I wonder if the Senator would be good enough to help me. What would be an example of desecration of the flag?

Mr. HATCH. Whatever Congress calls it. Whatever Congress would decide to do. I suspect that Congress would pass a fairly narrow statute.

Mr. CHAFEE. Such as burning the flag?

Mr. HATCH. I presume that Congress would delineate very carefully what type of burning of the flag would be prohibited under the statute. I suspect Congress would also try to narrowly define what really brings contempt upon the American flag. But, in any event, Congress will be able to make that determination.

I suspect it would be very narrow. I suspect that there would not be any

concern about using representations of the flag as emblems for clothing or articles of clothing, sportswear and so forth, just actions that would bring the flag into contempt.

Mr. CHAFEE. Would the Senator help me? Do we have a very serious problem here? What brings this statute to the floor, this need for a constitutional amendment?

Mr. HATCH. We know, from the Congressional Research Service, of at least 45 flags that have been desecrated between 1990 and 1994, and in this year alone there have been over 20 additional desecrations.

Now, those numbers represent only part of the problem. Because, as the Senator from Rhode Island knows, millions of people see reports on television and in other news media of every flag that is burned or desecrated. So each flag burning or desecration affects millions and millions of people across this country.

Mr. CHAFEE. In 1993, as I see it, from the Senator's own statistics, there were three examples of a burning of the flag.

Mr. HATCH. There may have been many more, but three that the Congressional Research Service knows about. Millions of people, we believe, were informed of those three flags that were burned, and millions of people were offended by it.

Mr. CHAFEE. Now, this burning of the flag, I assume that that is looked on as a very troublesome procedure.

Mr. HATCH. Only where the flag is brought into contempt, where people deliberately, or contemptuously treat it in a destructive manner.

Mr. CHAFEE. Now, let me—

Mr. HATCH. Excuse me. We certainly would make exceptions for soiled or damaged flags that do need to be destroyed.

Mr. CHAFEE. Let me take a look at the Boy Scout handbook here.

Mr. HATCH. Sure.

Mr. CHAFEE. In the Boy Scout handbook, of which there has been 35 million, it says regarding the flag: "If it is torn or worn beyond repair, destroy it in a dignified way, preferably by burning." We have a pretty serious problem here, I suspect, if these Boy Scouts are burning the flag. What would we do? Would we send them to jail?

Mr. HATCH. First of all, I think my good friend listened to me earlier, when I talked about actions that bring the flag into contempt, contemptuous conduct with regard to the flag. Of course, I think any statute in this area would make it very clear that the respectful disposal of a soiled or worn out flag, including by burning, would certainly be acceptable.

Mr. CHAFEE. Let us take the situation, we have got two flag burnings taking place outside of a convention hall. One we have a bearded, untidy protester that is burning a flag. The other we have a Boy Scout in uniform, and he is burning the flag, shall we say, in accordance with the handbook. He is