

MINUTES OF THE HOUSE COMMITTEE ON FEDERAL AND STATE AFFAIRS.

The meeting was called to order by Chairperson Clyde Graeber at 1:30 p.m. on February 2, 1993 in Room 526-S of the Capitol.

All members were present except:

Committee staff present: Mary Galligan, Legislative Research Department
Lynne Holt, Legislative Research Department
Mary Ann Torrence, Revisor of Statutes
June Evans, Committee Secretary

Conferees appearing before the committee: Representative Marvin Smith
Nancy J. Lindberg, Assistant Attorney General
Chuck Yunker, Department Adjutant, The American Legion Department Headquarters
Darrell Bencken, Veterans of Foreign Wars
Mary Hatke, Marine Corps League
Paul Lenherr, Knights of Columbus
Tom Dobelbower, Boy Scouts of America
CSgt Major Warren Smith
Craig A. Miller, Washburn University Young Republicans
David Orr, American Civil Liberties Union

The Chairman stated he had just received a request for introduction of a committee bill that would authorize Kansas to issue special license plates for service people that have been awarded the Purple Heart.

Representative Gilbert moved and Representative Smith seconded the motion to accept the proposal as a committee bill. The motion carried.

The Chairman opened the hearings on HCR 5006, a resolution memorializing Congress to propose, for ratification by the states, a U.S. constitutional amendment which would authorize Congress and the individual states to prohibit desecration of the United States Flag.

Representative Marvin Smith, prime sponsor of the bill, testified in support of HCR 5006 stating that 28 states to date have passed a resolution on flag desecration. (See Attachment #1)

Nancy J. Lindberg, Assistant Attorney General, testified in support of HCR 5006 stating the rights of the people of our nation must be protected but do not feel it is necessary to exercise that freedom by destroying and desecrating the American flag. No one should have the right to desecrate the American flag. (See Attachment #2)

Charles M. Yunker, Department Adjutant, The American Legion Department Headquarters, stated the American Legion wholeheartedly support HCR 5006 which encourages Congress to offer for ratification, a Constitutional Amendment which would allow Congress and the states the power to prohibit the physical desecration of the flag of the United States. (See Attachment #3)

Darrell Bencken, Veterans of Foreign Wars, testified in support of HCR 5006, stating the Veterans of Foreign Wars urge support of this proposal.

Mary Hatke, Marine Corps League, stated she was in the first class of the Women Marine Corps in World War II and feels very strongly about protecting the U. S. Flag.

Helen Satzler, representing the Daughters of the American Revolution, stated the organization supports HCR 5006.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON FEDERAL AND STATE AFFAIRS, Room 526-S
Statehouse, at 1:30 p.m. on February 2, 1993.

Paul Lenherr, Public Relations Chairman for the Kansas State Council of the Knights of Columbus, testified in support of HCR 5006. (See Attachment #4)

Tom Dobelbower, representing the Boy Scouts of America, testified in support of HCR 5006, stating the American flag is the baton of our nation and the tradition of respecting our flag is a meaningful part of the moral fiber of this country. (See Attachment #5)

Command Sergeant Major Warren J. Smith, Kansas Army National Guard, testified in support of HCR 5006. (See Attachment #6)

Craig A. Miller, Washburn University Young Republicans, testified in support of HCR 5006. (See Attachment #7)

David Orr, gave testimony prepared by Gordon Risk, American Civil Liberties Union of Kansas, opposing HCR 5006, stating this resolution would make the symbol more important than the principle for which it stands. To the extent that freedom is enhanced or preserved, the flag that symbolizes it is thereby enhanced or preserved.

Desecration of the flag does not diminish the principles for which it stands. (See Attachment #8).

The Chairman closed the hearing on HCR 5006.

After discussion Representative Wilk moved and Representative Cornfield seconded to move HCR 5006 out of committee favorably

Representative Kline moved and Representative Rock seconded a substitute motion to amend HCR 5006 on lines 8 & 9 of Page 2 and add "physical" before desecration on line 8 and delete "as defined in Kansas law, K.S.A. 21-4114, on line 9.

Representative Plummer urged the committee members to consider declining the substitute motion to amend HCR 5006 and move the original bill as drafted out of committee.

The Chairman asked if there was any further comment or discussion on the substitute motion. The Yeas prevailed and the substitute motion passed. The committee then voted to pass the bill out as amended favorably. All in favor signify by saying "Aye". The motion carried.

The meeting adjourned at 3:10 PM.

The next meeting is scheduled for February 3, 1993.

Date: 2/2

FEDERAL and STATE AFFAIRS COMMITTEE

NAME	ORGANIZATION	ADDRESS
COM WARREN J. SMITH	HQ KEARNEY	Topeka, KS 2400 SW Topeka Ave
Mary C. Lathrop	Marine Corps League	36 Pippin Lane, 66611
Helen Satler	Daughters of the Revolution	4730 SE Dupont, Benton 66409
Wm. A. Young	The American Legion	1819 Kellogg Dr
Tom Nobelbower	Scoutmaster Boy Scouts of America	Topeka, Ks 66604
Ralph Snyder	American Legion	1314 Topeka Blvd. Topeka, Ks. 66612
Jim Gravenstein	American Legion	640 Emmett Topeka, Ks 66616
Marion Jordan	American Legion	289 E 125th Rd. Baldwin City, Ks 66006
David Orr	ACLU	5991 SW 22nd Park
Charles M. Yunker	American Legion	1314 Topeka Ave Topeka, Ks 66612
Wm. A. Schenck	VETERANS OF FOREIGN WARS	1315 SE 29TH Topeka 66605
Paul L. Luchow	Knights of Columbus	309 W. Palmer ST. MARYS KS 66536

MARVIN E. SMITH
 REPRESENTATIVE, FIFTIETH DISTRICT
 JACKSON AND SHAWNEE COUNTIES
 123 N.E. 82ND STREET
 TOPEKA, KANSAS 66617-2209
 (913) 484-3417
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TOPEKA

HOUSE OF
 REPRESENTATIVES

COMMITTEE ASSIGNMENTS
 CHAIRMAN: GOVERNMENTAL ORGANIZATION
 & ELECTIONS
 MEMBER: EDUCATION
 TRANSPORTATION
 JOINT COMMITTEE ON ADMINISTRATIVE
 RULES & REGULATIONS

HOUSE COMMITTEE on
 FEDERAL AND STATE AFFAIRS

February 2, 1993

HOUSE CURRENT RESOLUTION 5006

Mr. Chairman and members of the committee:

Thank you for holding a hearing today on HCR 5006

1. Twenty-eight (28) states to date have passed a resolution on flag desecration.
2. If Kansas gets with supporting the U.S. Flag, we could be 29th or 30th.
3. Now the requirement for states is thirty-eight (38) for constitutional amendment.
4. Over 500 Kansas organizations, including cities and counties, are on record as supporting a Flag Desecration Resolution.
5. Every poll since the Texas vs. Johnson case, including the Harris and Gallup Poll, has never dipped below 65% supporting an amendment to the U.S. Constitution concerning physical desecration of our U.S. Flag.
6. Ninety-one percent (91%) of U.S. citizens disagree with the U.S. Supreme Court decision in 1990. 71% of the 91% want a constitutional amendment.
7. The "Star Spangled Banner", revered by a soloist or duet before commencing many functions, reminds us the flag represents the Land of the FREE and the Home of the BRAVE.

As a young student in elementary school, I fondly remember we proudly stood, the first event every day, and joined in unison the Pledge of Allegiance to our flag!!

I would urge favorable consideration and passage of HCR 5006.

FLSA
 2-2-93
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STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612-1597

ROBERT T. STEPHAN
ATTORNEY GENERAL

MAIN PHONE: (913) 296-2215
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TESTIMONY OF
NANCY J. LINDBERG
ASSISTANT TO THE ATTORNEY GENERAL
BEFORE THE HOUSE FEDERAL AND STATE AFFAIRS COMMITTEE
RE: HOUSE CONCURRENT RESOLUTION 5006
FEBRUARY 2, 1993

Dear Mr. Chairman and Members of the Committee:

On behalf of Attorney General Bob Stephan, I ask for your support of House Concurrent Resolution 5006.

Many people have been concerned about the U.S. Supreme Court decision that allows desecration of the flag of the United States of America. I know you agree with Attorney General Stephan that we must protect the rights of the people of our nation, although we believe it is not necessary in the exercise of our freedom to destroy property. No one should have the right to desecrate the American flag.

Millions of men and women of the Armed Forces of the United States have fought valiantly and died to protect, for future generations, this sacred symbol of nationhood. Protecting the flag will not cut down on anyone's right of expression or anyone's right to participate in the governmental process.

FUSA
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In 1989, Attorney General Stephan proudly joined with the Kansas American Legion Commander Jack Chiapetti in initiating a statewide petition drive to encourage our Congressional delegation to support a constitutional amendment which would protect the integrity and dignity of the flag of the United States of America. More than 35,000 signatures were gathered. Kansans showed their support for such an amendment!

On behalf of Attorney General Stephan, I ask for your support of House Concurrent Resolution 5006 which urges Congress to propose for ratification by the states a U.S. constitutional amendment to prohibit desecration of the United States flag.

Thank you for your consideration.

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HOUSE CONCURRENT RESOLUTION 5006
TESTIMONY BY CHARLES M. YUNKER, DEPARTMENT ADJUTANT
THE AMERICAN LEGION DEPARTMENT HEADQUARTERS
FEBRUARY 2, 1993

On behalf of the more than 60,000 members of The Kansas American Legion thank you for providing me the opportunity to address you today in support of House Concurrent Resolution 5006.

The American Legion wholeheartedly supports House Concurrent Resolution 5006 which encourages Congress to offer for ratification, a Constitutional Amendment which would allow Congress and the states the power to prohibit the physical desecration of the Flag of the United States. As you know, state legislatures across the country routinely communicate with Congress through memorializing resolutions, and that is all we are asking of the Kansas legislature.

HCR 5006 would simply express the Kansas Legislature's opinion that the constitutional amendment process should be initiated. HCR 5006 calls for a procedure that would allow the American people, through their state legislatures, to decide whether they want a change in the United States Constitution to protect the Flag. HCR 5006 does not call for a Constitutional Convention which would allow for sweeping changes in our basic governmental document; in fact The American Legion officially opposes such a convention. This amendment would make a very specific change, similar to the other twenty-seven (27) amendments already added to the Constitution during the past 200 years.

Freedom of speech is not absolute, nor has it ever been. That's why there are laws against libel and slander. That is why we have obscenity laws, public decency laws and perjury laws.

Our freedom of political expression is also limited. For instance, no one can deface this building or the Washington Monument regardless how much they wish to protest a particular government policy or law.

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The right to petition government for the redress of grievances is also guaranteed by the First Amendment. Those who oppose government policies may use any number of reasonable methods to take advantage of the "redress" option. One such method was used by Martin Luther King in the 1960s with the Freedom marches in Washington and elsewhere. Those of us who support an amendment to protect the Flag are now using another method of redress.

The First Amendment guarantees wide-ranging rights to individual citizens, and that is as it should be. But legislative and judicial history has shown there are limits to those rights. That is also as it should be. In our opinion and in the opinion of the mass majority of citizens, flag desecration exceeds those limits.

Our principle purpose today is simply to ask your support of a legislative measure which would encourage Congress to move forward with the Amendment process. We are not asking you to express an official position on such an amendment. You will have that opportunity when Congress approves an amendment and submits it to the states for ratification.

In June 1989 and in June, 1990, the United States Supreme Court ruled on the Constitutionality of two flag-burning statutes. On both occasions, those rulings were sustained by one vote margins. In June 1990 a majority of Congress voted in favor of a constitutional amendment, however that level of support fell eight (8) percent short of the required two thirds majority. In contrast, public opinion in favor of an amendment has always been overwhelming.

Therefore we believe Congress should reconsider this issue. We believe the American people -- through their elected representatives -- should be allowed to express their views on protecting the American Flag.

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We also believe that Congress should deal with the issue again, because in our opinion, members of the Senate and House were inconsistent in their treatment of the free speech issue when they dealt with this matter in 1989 and 1990. In June, 1990, most flag amendment opponents stated their opposition was based upon their concerns over infringement of free speech. Yet, eight months earlier the overwhelming majority of those same amendment opponents voted for a flag desecration bill which was more restrictive than the amendment would have been. The flag desecration bill, which became public law and was later overturned by the United States Supreme Court, was supported in Congress by a 9 to 1 ratio.

In an effort to summarize this entire issue, we have a situation in which 48 state laws on flag desecration, including K.S.A. 21-4114 were in effect prior to June, 1989, and some of those laws had been on the books for several decades. We have two U.S. Supreme Court rulings -- sustained by the narrowest of margins possible -- which struck down those laws, thus as HCR 5006 states "leaving the only course of action to be a Constitutional Amendment."

We have 58 percent of Congress voting for a flag amendment and 90 percent of Congress voting for a flag desecration law (which was overturned by the U.S. Supreme Court). Again leaving the only course of action being a Constitutional Amendment. And we have more than 80 percent of the American public expressing support for a constitutional amendment to protect the flag.

We believe these facts present a compelling case in support of moving forward on the amendment process. We are simply asking you to support that initiative by voting favorably on House Concurrent Resolution 5006.

Again, thank you for allowing me the opportunity to address you today.

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K. S. A. 21-4114
Desecration of the flags.

(a) As used in this section, unless the context otherwise requires, the term "flag" shall have the following meaning: Flag includes every flag, standard, color, or ensign authorized by the laws of the United States or of this state, and every picture or representation thereof, of any size, made of any substance, or represented on any substance evidently purporting to be such flag, standard, color or ensign of the United States or of this state, and every picture or representation which shows the design thereof.

(b) Desecration of flags is: (1) In any manner for exhibition or display, placing or causing to appear any word, figure, mark, picture, design, drawing, or any advertisement of any nature upon any flag of the United States or this State.

(2) Exposing to public view any such flag upon which is printed, painted, or placed or to which is attached, appended, affixed, or annexed any word, figure, mark, picture, design, drawing, or any advertisement of any nature.

(3) Exposing to public view, manufacturing, selling, exposing for sale, giving away or having in possession for sale or to give away or for use for any purpose any article or substance being an article of merchandise or receptacle of merchandise upon which is printed, painted, attached, or placed a representation of any such flag, standard, color, or ensign to advertise, call attention to, decorate, mark or distinguish the article or substance on which so placed.

(4) Publicly mutilating, defacing, defiling, or trampling any such flag.

(c) Desecration of flags is a class A misdemeanor.

History: L.1970, ch. 307, & 1; July 1.

Source or prior law:

73-709

Cross References to Related Sections:

Flags and patriotic emblems, see 73-701 et seq.

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2-2-84
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STATES THAT HAVE PASSED FLAG RESOLUTION

1. Alabama
2. Arkansas
3. California
4. Colorado
5. Delaware
6. Florida
7. Georgia
8. Illinois
9. Indiana
10. Louisiana
11. Maine
12. Mississippi
13. Missouri
14. Montana
15. Nevada
16. New Hampshire
17. North Dakota
18. Ohio
19. Pennsylvania
20. Rhode Island
21. South Carolina
22. South Dakota
23. Tennessee
24. Texas
25. Utah
26. Virginia
27. Wisconsin
28. Wyoming

FISA
2-2-73
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My name is Paul Lenherr from St. Marys, Kansas, and I am the Public Relations Chairman for the Kansas State Council of the Knights of Columbus. Throughout the State we have 224 local councils in communities large and small with a statewide membership of just over 30,000. Orderwide, our membership exceeds 1.5 million members. One of the founding principles of our organization is Patriotism. I am here today to speak on behalf of the Kansas Knights of Columbus in support of House Concurrent Resolution #5006 being proposed by the Kansas American Legion. I want to thank you for affording me this opportunity.

Patriotism or Love of Country was instilled in each of us in our childhood upbringing. We were taught to respect the flag of our country. The flag adorned every classroom whether public or private. Each school day began with the Pledge of Allegiance to this flag and as children we learned to cherish our flag and what it stood for. No one questioned if our rights as an American citizen were being infringed upon. However, somewhere along the line someone, or group, took issue to this practice and slowly we started seeing our flag disappear from the classroom. No longer is the Pledge of Allegiance required to be memorized.

The result of this action has been a gradual deterioration in patriotism. Today in the United States we can witness more and more frequently citizens of this country who have taken the offensive against Love of Country. Under the guise of free speech, the burning and/or desecration of our flag has become the paramount action of protest for these people. Even more disheartening is the fact that these atrocious acts are being done legally.

Some two hundred years ago the United States Congress passed what came to be known as the Bill of Rights. Article three of that document guaranteed our freedom of speech, along with freedom of religion, press, assembly and petition. At that time in our history I doubt that unpatriotic behavior would have been

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condoned, nor viewed as an acceptable expression of free speech. However, in 1990 Congress passed the Flag Protection Act only to see it struck down by the Supreme Court as unconstitutional on the basis that it abridged the freedom of speech. Their decision was contrary to the belief of the vast majority of the people of Kansas and of this nation.

Despite all of our problems, the United States of America remains the envy of, and the model for all other nations today. Our flag is recognized throughout the world as a symbol of hope. As American citizens our blood tends to thicken when we see our flag burned or desecrated by dissidents in other countries. What will our reaction be if such action is frequently displayed by the dissidents in this country? I doubt that the majority will idly stand by for any length of time. To date there doesn't appear to be a problem, but why wait until there is? Why not take the necessary steps now to insure against such a possibility. As Americans we do not hesitate to ask the men and women serving in the military to fight in defense of our flag. Why then, is it too much to ask of the American citizens to give their unswerving loyalty to that very same flag? Why should there be a law to protect the actions of a few, when their behavior is viewed by the majority as wrong and unacceptable?

The only avenue open to correct this situation and regain for our flag the respect that it deserves is to amend our Constitution. House Concurrent Resolution #5006 is an attempt to do just that. I can think of no reason why we in Kansas should not support this resolution. I feel the vast majority of your constituents are patriotic individuals and would appreciate and support your effort on this matter. Personally, and on behalf of 30,000 other Knights of Columbus members in Kansas, I ask your utmost consideration in passing House Concurrent Resolution #5006 as proposed by the Kansas American Legion.

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Again, I thank you for the opportunity to address you on this matter.

A handwritten signature in cursive script, reading "Paul L. Lenherr", written over a horizontal line.

Paul L. Lenherr
PUBLIC RELATIONS CHAIRMAN
Kansas State Council
Knights of Columbus

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My name is Tom Dobelbower, a resident of Topeka, Kansas and for the past twenty years, I have served as scoutmaster for Troop 172 here in Topeka.

I am not here representing the Boy Scouts of America, but I do support the ideals of responsible citizenship that the Boy Scouts of America have emphasized and encouraged since the Congress of the United States approved its charter in 1910.

Before you today is a resolution requesting you, the Legislature of Kansas, to memorialize the Congress of the United States to propose an amendment to the United States Constitution to protect our flag from physical desecration.

I really don't know why I'm here today, asking you to support this resolution. I can't imagine anyone not in favor of protecting our flag. Too many Americans have fought for it, too many have given their lives defending it to ever let anyone dishonor it. The Stars and Stripes represent the heritage of our democracy. It is a sacred symbol of our freedom and should be treated with the respect it so richly deserves.

The American flag is the baton of our nation . . . it is passed on from generation to generation. Let not this generation allow it to fall into disrespect.

The tradition of respecting our flag is a meaningful part of the moral fiber of this country. With your support we can uphold the proud tradition that our flag represents.

Thank You

For SA
2-2-93
Atch #5

PRESENTATION
TO
Federal and State Affairs Committee

February 2, 1993

Chairperson Clyde Graeber and Committee Members:

I am Command Sergeant Major Warren J. Smith, The State Command Sergeant Major for the Kansas Army National Guard. I come here to testify in support of House Concurrent Resolution 5006 and on behalf of Major General James F. Rueger The Adjutant General of Kansas and the men and women of the Kansas Army National Guard.

The Story of the origin of our National flag parallels the story of the origin of our country. As our country received its birthright from peoples of many lands who gathered on these shores to found a new nation, so did the pattern of the Stars and Stripes rise from several origins back in the mists of antiquity to become emblazoned on the standards of our infant Republic.

General Washington , when the Star Spangled Banner was first flown by the Continental Army, is reputed to have described its symbolism as follows: "We take the stars from heaven, the red from our mother country, separating it by white stripes, thus showing that we have separated from her, and the white stripes, shall go down to posterity representing liberty."

The brilliant Henry Ward Beecher said: "A thoughtful mind when it sees a nations flag, sees not the flag, but the nation itself. And whatever may its symbols, its insignia, he reads chiefly in the flag, the government, the principles, truths, the history that belongs to the nation that sets it forth. The American flag has been a symbol of Liberty and men rejoiced in it.

In a 1917 Flag Day message, President Wilson said: "This flag, which we honor and under which we serve, is the emblem of our unity, our power, our thought and purpose as a nation. It has no other character than that which we give it from generation to generation. The choices are ours. It floats in majestic silence above the hosts that execute those choices, whether in peace or in war. And yet, though silent, it speaks to us, speaks to us of the past, of the men and women who went before us, and of the records they wrote upon it.

We celebrate the day of its birth; and from its birth until now it has witnessed a great history, has floated on high the symbol of great events, of a great plan of life worked out by a great people.

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"Woe be to the man or group of men that seeks to stand in our way in this day of high resolution when every principle we hold dearest is to be vindicated and made secure for the salvation of the nation. We are ready to plead at the bar of history, and our flag shall wear a new luster. Once more we shall make good with our lives and fortunes the great faith to which we were born, and new glory shall shine in the face of our people."

Thus the Stars and Stripes came into being; born amid the strife of battle, it became the standard around which a free people struggled to found a great Nation. Its spirit is fervently expressed in the words of Thomas Jefferson:

"I swear, before the alter of God, eternal hostility to every form of tyranny over the mind of man."

Traditionally a symbol of liberty, the American flag has carried the message of freedom to many parts of the world. Sometimes the identical flag that was flying at a crucial moment in our history has flown again in another place to symbolize continuity in our struggles in the cause of liberty.

Over the years the history and tradition of our Flag has not been past on in the same vigor as that of our fore fathers thus we see the younger generations desecrating our Flag due to ignorance of its meaning and what it represents. To correct this problem we all must strive to educate our younger generation on our Flag and its traditions. In the mean time it is imperative that we preserve our Flag through the passing of House Concurrent Resolution 5006.

Many Men and Women of Kansas fought and gave their lives for our country, they did so to preserve the very things our flag represents. The American flag goes into battle to keep reminding our soldiers of what it represents to them and our families at home.

In closing let me express my appreciation for your past legislative support. Our men and women serving in your Kansas Army national Guard are dedicated to serving their State and Nation. We ask for your favorable consideration of this House Concurrent Resolution.

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HOUSE CONCURRENT RESOLUTION 5006

A CONCURRENT RESOLUTION memorializing Congress to propose, for ratification by the states, a U.S. constitutional amendment authorizing Congress and the states to prohibit desecration of the United States Flag.

WHEREAS the Flag of the United States is the most recognized and cherished symbol of a grateful nation and no other American symbol has been as universally honored as the American Flag; and

WHEREAS the United States remains the destination for millions of immigrants attracted by the freedoms of liberty, equality and expression; and

WHEREAS while the right of expression is a principle freedom provided by the United States Constitution, very carefully drawn limits of expression in specific instances have long been recognized as legitimate means in maintaining public safety and decency, as well as providing order and value to public debate; and

WHEREAS certain actions, while related to an individuals' right to free expression, nevertheless raises issues concerning public decency, peace, rights of expression and the values of others; and

WHEREAS The Supreme Court struck down the 1990 Flag Protection Act passed by the Congress in lieu of a Constitutional Amendment, thus leaving the only course of action to be a Constitutional Amendment; and

WHEREAS Kansans find desecration of the American Flag to be highly offensive and are appalled by the Supreme Court's decision allowing this type of repugnant behavior; and

WHEREAS More than 500 Kansas veteran, fraternal and civic organizations have joined many city and county bodies of Government in signing resolutions calling upon the Kansas Legislature to approve a resolution memorializing the Congress of the United States to propose a Constitutional Amendment to allow states the authority to pass laws prohibiting the physical desecration of the Flag of the United States; and

WHEREAS Kansans believe the right to express displeasure with government is a cherished right protected by the First Amendment, however, Kansans also believe that the desecration of the American Flag, as defined in Kansas Law K.S.A. 21-4114, is an atrocious act which should be prohibited: Now, therefore,

Be it resolved by the House of Representatives of the State of Kansas, the Senate concurring therein: That the Legislature memorialize the Congress of the United States to propose an amendment to the United States Constitution, for ratification by the states, specifying that Congress and the states shall have the power to prohibit the physical desecration of the Flag of the United States; and

Be it further resolved: That the Secretary of State be directed to send enrolled copies of this resolution to the Speaker of the United States House of Representatives, the President of the United States Senate and all members of the congressional delegation from the State of Kansas.

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2-2-93
6-3

Desecration of the flags. (a) As used in this section, unless the context otherwise requires, the term "flag" shall have the following meaning: Flag includes every flag, standard, color, or ensign authorized by the laws of the United States or of this state, and every picture or representation thereof, of any size, made of any substance, or represented on any substance evidently purporting to be such flag, standard, color or ensign of the United States or of this state, and every picture or representation which shows the design thereof.

(b) Desecration of flags is: (1) In any manner for exhibition or display, placing or causing to appear any word, figure, mark, picture, design, drawing, or any advertisement of any nature upon any flag of the United States or this State.

(2) Exposing to public view any such flag upon which is printed, painted, or placed or to which is attached, appended, affixed, or annexed any word, figure, mark, picture, design, drawing, or any advertisement of any nature.

(3) Exposing to public view, manufacturing, selling, exposing for sale, giving away or having in possession for sale or to give away or for use for any purpose any article or substance being an article of merchandise or receptacle of merchandise upon which is printed, painted, attached, or placed a representation of any such flag, standard, color, or ensign to advertise, call attention to, decorate, mark or distinguish the article or substance on which so placed.

(4) Publicly mutilating, defacing, defiling, or trampling any such flag.

(c) Desecration of flags is a class A misdemeanor.

History: L.1970, ch. 307, & 1; July 1.

Source or prior law:

73-709

Cross References to Related Sections:

Flags and patriotic emblems, see 73-701 et seq.

FISA
2-2-83
6-4

Washburn
Student
Association
Washburn University
1700 College
Topeka, Kansas 66621
(913) 232-4297

Offices Located
in Memorial Union



"Students
Working For
Students"

2/02/1993

To the Honorary Members of the Federal and State Affairs Committee:

It's with distinct pleasure that I have the forum to address this committee today. I am a Senior at Washburn University pursuing a BBA with an emphasis in economics and finance. I rise today in support of House Concurrent Resolution #5006. My remarks are a culmination of thoughts and opinions shared with me by students from Washburn, and from other peers I've talked to across the state.

It's amazing to me, being the 21 year old male that I am, that it be necessary to address the issue of flag desecration with a constitutional amendment. Since an early age I've been instilled with values through education and have learned of the importance and significance that America plays in the lives of all citizens. We pause as youngsters to recite the Pledge of Allegiance, we pause at nearly all publicly held sporting events to hear the National Anthem and we drape the coffins of the dead, who may have given their lives to uphold the freedom that we as Americans consider to be so important.

I feel as though the First Amendment has been abused, and that the founding fathers would be in agreement with me. Never would an action as banning such a grand symbol of the U.S. be allowed to occur. I encourage an open and frank discussion on the meaning of freedom of speech, and the examination of the "permissible" speech.

House Concurrent Resolution #5006 provides that step necessary to facilitate discussion on what should be considered "acceptable" freedom of speech.

Thank you for your time and consideration!

Sincerely,

A handwritten signature in cursive script that reads "Craig A. Miller". The signature is written in dark ink and is positioned above the printed name.

Craig A. Miller
Senator

FLSA
2-2-93

Atch #7

To: Representative Clyde Graeber, Chairman,
House Federal and State Committee
From: Gordon Risk, American Civil Liberties Union
of Kansas
Date: February 2, 1993
Subject: HCR #5006

As a consequence of the U.S. Supreme Court's decision in Texas v. Johnson¹, the U.S. flag has continued to stand for an unabridged First Amendment, as it was conceived by the Founding Fathers: "Congress shall make no law bridging the freedom of speech, or of the press." In reaching its decision the court relied upon the bedrock principle underlying the First Amendment, that "the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable."² No exception is to be made, even for the flag. "If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what should be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein."³ Just as waving the flag is expressive conduct, so is burning it, and both are protected under the First Amendment.

This resolution would make the symbol more important than the principle for which it stands. To the extent that freedom is abridged, the flag that symbolizes it is thereby diminished. To the extent that freedom is enhanced or preserved, the flag that symbolizes it is thereby enhanced or preserved. Desecration of the flag does not diminish the principles for which it stands. Limiting freedom in the service of protecting the flag does do violence to the underlying principles. The ACLU of Kansas hopes that your concern would be with real freedom, not with its symbol.

Johnson apparently burned the flag in 1984 because of his sentiments about nuclear war. The few people who desecrate flags do so to convey a message. This legislature might have a beneficial effect on flag desecration by attempting to remedy those injustices that cause some citizens to hate this country. That, not limitation of freedom of expression, would be the appropriate response.

1 Texas V. Johnson, 109 S. Ct. 2533 (1989)

2 Id., at 2545

3 West Virginia Board of Education v. Barnett,
319 U.S., at 642 (1943)

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