

FLAG BURNING BAN

QUESTIONS AND ANSWERS

What would this amendment do?

It would give Congress the power to ban or restrict flag desecration. The term desecration has not been defined but most commentators expect that it will include burning, shredding, destroying or marring a flag with the intent to mock or deride the U.S. Burning a flag accidentally or as a means to dispose of it are not likely to be covered by a ban.

Why should we put up with flag burning, when Americans find it so offensive?

Freedom of speech, the first freedom protected under our Bill of Rights, is a cornerstone principle of American freedom. But ordinary speech *needs* no special protection – it is only when the speech becomes offensive, either to the officers of government or to the general populace, that "freedom of speech" has meaning. It is from its application in such instances that "freedom of speech" has become such a hallowed principle for thoughtful patriots, and a badge of national honor respected throughout the world.

Citizens living in tyrannical states live in terror of their words being overheard or their beliefs becoming known. In a democracy like ours, Freedom of Speech protects our right to disagree with the government, to hold our own opinions and to express them. Free speech is such a hallowed principle in our federal system, because freedom of speech means freedom of thought.

One of the most enduring strengths of our country is that unity and patriotism are fully compatible with the freedom to protest against authority, and even to defile the preeminent symbol of that authority. While such an act is offensive to most of us, the fact that we are able to tolerate it both gives us strength and proves our strength.

How can flag burning be "speech"?

The Supreme Court of the United States determined that actions that convey meanings, including gestures, marches and flag burning, are "speech" as the term is defined in the Constitution. Political "speech" often takes the form of images and actions rather than words. Indeed our own history began with such an event – the Boston Tea Party was a clear political protest. What captures the struggle for freedom more effectively than a student standing stock still before tanks in Tiananmen Square? Or an African-American woman refusing to give up her seat on a bus? Or, more recently, citizens of Iraq destroying statues and other images of their defeated oppressor? Images and actions can convey a powerful message without requiring a single word.

Is destroying the flag in political protest always protected as “free speech?”?

No. While actions and gestures intended to convey meaning are protected as speech, persons who engage in protest that involves theft, destruction of public property, vandalism, assault or breach of the peace are subject to arrest and prosecution under other laws. Furthermore, speech intended to incite violence is not protected under the “Free Speech” clause of the Constitution. The classic example is from the writings of Supreme Court Justice Oliver Wendell Holmes: shouting fire in a crowded movie theater is not protected as free speech. Actions intended to cause a riot would not be protected and perpetrators may be subject to arrest and prosecution.

Why is this one proposed amendment to the Constitution so dangerous?

Amending the Constitution should be reserved for “great and extraordinary occasions,” according to our founding fathers. If this amendment was adopted and ratified, we would for the first time in our history be using the Constitution to limit freedom rather than to expand it – except for one ill-conceived attempt we now know as Prohibition. And for what? Because a few people burn a *symbol* of our freedom? No symbol, regardless of its value, should ever be held in higher regard than the principle it represents. Eroding our freedom of speech would fundamentally undermine the foundation upon which our society rests.

Are there international implications?

The U.S. Constitution is used by many emerging democracies as an example of a successful legal system for preserving freedom and supporting a just society. Because of this, the American flag commands respect around the world. Limiting our most basic freedom would be a sign of national weakness to all tyrants around the world who fear the power this unique freedom gives to a country's citizens, and a terrible disillusionment to those who have seen America as a beacon to follow.

Is opposition to the flag amendment an anti-military position?

Hardly. Former Secretary of State and Chairman of the Joint Chiefs of Staff General Colin Powell has said, "The First Amendment exists to insure that freedom of speech and expression applies not just to that with which we agree or disagree, but also that which we find outrageous. I would not amend that great shield of democracy to hammer a few miscreants. The flag will be flying proudly long after they have slunk away."

And General Powell is not alone. Veterans from World War II to Korea to Vietnam to the Gulf War have written and spoken out against the amendment. Some of their testimony is collected at <http://www.veteransdefending.org/vetspeakout.php>.

There are laws we change in times of war. Why wouldn't this be one of them?

In the wake of the attacks of Sept. 11, we as Americans have been taking stock of the protections and freedoms we enjoy at home and which serve as examples to the world. This is not only a war of arms; it is a war of ideas.

Prominent among these is the right to free speech, including the fact that our government may neither prescribe how citizens are to express political opinions nor curtail disfavored non-violent forms of dissent.

This sets our system apart from non-democratic governments. Dissent is not tolerated in tyrannies; but it is an essential element of our democracy.