

Testimony of

# Gary May

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TESTIMONY OF GARY E. MAY  
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on the  
Proposed Constitutional Amendment  
to Ban Flag Desecration

before the  
Senate Judiciary Committee

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Good morning. I am extremely flattered and humbled by your invitation and interest in listening to my thoughts and those of other veterans about the proposed amendment to the Constitution. I gladly accepted the invitation as yet another opportunity for me to be of service to my country.

As a Vietnam veteran who lives daily with the consequences of my service to my country, and as the son of a WWII combat veteran, and the grandson of a WWI combat veteran, I can attest to the fact that not all veterans wish to exchange fought-for freedoms for protecting a tangible symbol of these freedoms. I oppose this amendment because it does not support the freedom of expression and the right to dissent.

This is among the core principles under our Constitution that my family and I served to support and defend. It would be the ultimate irony for us to have placed ourselves in harm's way and for my family to sacrifice to gain other nations' freedoms and not to protect our freedom here at home.

My late father in law, Robert E. Speer, endured horrible, prolonged combat as a member of Merrill's Marauders. My older brother, Edward C. May, saw duty with the Army in Korea during the Vietnam era.

I barely knew my grandfather who died when I was young. I do know that he saw combat while serving in the Army during WWI. His service included his being gassed. He never received any government benefits. My father didn't know all of the details of his father's service, but he has no recall of grandpa referring to the flag as a reason for his service and sacrifice. After the war, he returned to his Winslow, Indiana home and worked to provide for his family.

My Father, Charles W. May, who died nearly two year ago, was a WWII Army combat veteran who served in the European Theater of Operations from 1944 to 1946. He saw combat with Battery "B" 500th Armored Field Artillery Battalion, 14th Armored Division. The flag or its protection was not a powerful motivating force for himself or any of his fellow combatants. It was the fight for freedom that really mattered.

I joined the U.S. Marine Corps while still in high school in 1967. This was a time of broadening public dissent and demonstration against our involvement in Vietnam. I joined the Marines, these protests notwithstanding because I felt that it was my duty to do so. I felt duty-bound to answer President Kennedy's challenge to "ask not what your country can do for you; ask what you can do for your country". My country was asking me to serve in Vietnam, ostensibly because people there were being arbitrarily denied the freedoms we enjoy as Americans.

During my service with K Company, 3rd Battalion, 27 Marines following the Tet Offensive of 1968 in Vietnam, I

sustained bilateral above the knee amputations as a result of a landmine explosion on April 12, 1968. My military awards include the Bronze Star, with combat "V", Purple Heart, with star, Vietnam Campaign, Vietnam Service, and National Defense medals.

Upon my return from Vietnam, I enrolled at the University of Evansville where there were occasional student protests of the war. I felt a strong identity with these protesters, because I too, felt that the war was wrong and that that feeling demanded expression--after all, this is what I had served to protect.

I graduated with a Bachelor of Arts in Sociology. I earned my Master of Science in Social Work degree from the University of Tennessee in 1974. I am married to the former Peggy Speer of Haubstadt, Indiana. We have two children, Andrea, a middle school teacher in Indianapolis, and Alex, a supermarket manager.

Over the last 36 years, I have faced the vexing challenge of reconciling myself with the reality of my military history and the lessons I have learned from it and the popular portrayal of veterans as one dimensional patriots, whose patriotism MUST take the form of intolerance, narrow-mindedness, euphemisms, and reductionism--where death in combat is referred to as "making the ultimate sacrifice" and the motivation for service and the definition of true patriotism is reduced to dedication to a piece of cloth.

I ask members of the committee to think about why they love our country, to find the source of their own patriotism. Has that patriotism been forced upon you? Have you been coerced to love America? Are your convictions not your own?

A few years back, I mentioned the anniversary of my wounding to a colleague and asked her what she was doing in 1968. Somewhat reluctantly, she said "I was protesting the war in Vietnam." I was not offended. After all, our nation was born out of political dissent. Preservation of the freedom to dissent, even if it means using revered icons of this democracy, is what helps me understand losing my legs.

The American flag stands for a long history of love and loss, of war and peace, of harmony and unrest. But it also stands for the history of a nation unsatisfied with the status quo, of a nation always in search of a greater truth, a more perfect union. Surely it does not stand for a nation where we jail those who peacefully disagree with us, regardless of the abhorrent nature of their disagreement.

The strength of our nation is found in its diversity. This strength was achieved through the exercise of our First Amendment right to freedom of expression--no matter how repugnant or offensive the expression might be. Achieving that strength has not been easy--it's been a struggle, a struggle lived by some very important men in my life and me.

Since 1999, the year I last testified before this committee on this issue, over 2,400 veterans have written and joined my little group called Veteran's Defending the Bill of Rights. Unlike most of the groups that support this amendment, we are solely organized in opposition to this amendment. Many of us are even members of the organizations that are listed as supporting the amendment. We are here to make sure that it is clear that veterans do not all speak with one voice on this issue. A number of these combat veterans would have been more than willing to testify against this amendment today. I do not have time or space to include them all, but I have included excerpts from some of their letters below and ask that members take the opportunity to listen to their voices.

Frances W. Lovett of Waverly, OH writes:

"I am a veteran of WWII serving from September 1942 to December 1945. I secured the three letters of recommendation necessary for enlistment in the Tenth Mountain Division and remained with the Division throughout my length of service. I fought through the campaign in Italy, received the Bronze Star medal with two oak leaf clusters and was given an honorable discharge, with a service-connected disability. I believe that I served my country then, rather than serving government officials, as seems to be the case today.

While flag burning is rare, it is nonetheless a form of free speech, the right to dissent and to voice that dissent, however offensive the exercise of that right may seem. The voice of dissent is a voice we need to hear--not stifle. Those who favor the proposed amendment say they do so in honor of the flag, but in proposing to unravel the First Amendment, they desecrate what the flag represents and what so many of my comrades died to defend."

W.C. Ragsdale, a retired Navy veteran and father of two Vietnam veterans from Titusville, Florida asked that I share his thoughts with you today. Here is what he had to say:

"A law to ban flag burning would be feel-good legislation, but counter productive to the rights and freedoms of all Americans. I am a retired Navy veteran of WWII and Korea. I have two sons who were in the service during Viet Nam, one of whom was over there for 18 months. Our flag flies from the front of our house day and night (lighted).

The burning of our flag thoroughly disgusts me. But a law banning the burning of the flag plays right into the hands of the weirdoes who are doing the burning.... By banning the burning of the flag, we are empowering them by giving significance to their stupid act. Let them burn the flag and let us ignore them. Then their act carries no significance.

Many of our young men and women have given their lives defending our liberties and freedoms. Freedom of expression is one of the rights our ancestors fought and died for. So, let the malcontents express themselves, as long as they do no physical harm to others. And let us (including the media) ignore them."

Bob Cordes from Mason, Texas also cares deeply about this issue. Here are his thoughts:

"... I am a veteran and member of the group called Veterans Defending the Bill of Rights to urge you to oppose S.J. Res. 4, the flag desecration constitutional amendment. I know you hear from many veterans who support this amendment, but you should also know that there are many veterans that have faithfully served our nation who strongly believe that amending the Constitution to ban flag desecration is the antithesis of what they fought to preserve.

I served in the Air Force for 22 years from 1956 to 1978 while stationed in Europe, Africa, Vietnam, Thailand, as well as the United States. As a fighter pilot, I was shot down in Vietnam and hospitalized for a year. I received a Bronze Star, a Purple Heart, 21 Air Medals, and several Foreign Awards. When I regained flight status in 1972 I served a second tour of combat duty in Thailand. Today I live on my ranch in Mason, Texas."

Steven F. Sanderson of Hastings, MI offers this view:

"...I urge you to oppose the constitutional amendment to ban physical desecration of the flag. This legislation would undermine the very principles for which the American flag stands.

Thirty years ago I was a U.S. Military Police Sentry Dog-Handler stationed in the Republic of Korea. Back then Korea was an oppressive police state under President Park Chung Hee, a democracy in name only. A lot has happened in the past thirty years. Korea and the United States have both changed. Today Korea is a thriving democracy and the Korean people enjoy American-style civil liberties. While freedom has flourished in Korea, it is under assault here in the United States and our civil liberties are in grave danger."

James E. Lubbock of St. Louis, Missouri wrote in a letter to this very committee:

"Service to our country, not flag waving, is the best way to demonstrate patriotism:

From the Revolutionary War, through Vietnam, members of my family have volunteered for service in every conflict on the United States except for the Korean War. Stephen Hopkins, my direct ancestor and a member of the Continental Congress signed the Declaration of Independence. His grandson-in-law, Creighton Winans, enlisted in Washington's forces as a private during the Revolution and emerged a captain. We had relatives who hosted the Marquis de Lafayette during the War of 1812. Our ancestors in Texas participated in the Mexican War and our ancestors--including a Union General and several distinguished Confederates--fought on both sides of the Civil War. My great-uncle was in the Spanish American War. My father enlisted in WWI and served in France. I enlisted in WWII and served in the Philippines. Our younger son enlisted in the Vietnamese War on the day after his graduation from high school. My oldest son volunteered his draft, served in Vietnam and was awarded the Bronze Star and the Army Commendation medal.

We respect the flag, but every tin-pot dictatorship in history has had a flag; only the United States has had a peerless Bill of Rights that has guided us through the changes - culturally, politically, economically, and militarily - for more than 200 years. It doesn't make sense to damage the Bill of Rights by opening it to change when we have not

touched it since it was written. Why start now?

Let's not alter the Bill of Rights to save the flag. We should respect the flag, but we should all cherish the Bill of Rights much, much more."

The Reverend Edgar Lockwood of Massachusetts adds his perspective:

"I am distressed to hear that the Congress is closer than ever to passing an amendment to the constitution which would prohibit the physical desecration of the United States flag.

I served in the US Naval Reserve on active duty from July, 1942 until January 1946. I served on a destroyer of the Pacific Fleet, as the communications officer and as the Executive Officer of the USS Cony (DD508). We were engaged in more than ten combat campaigns. I was awarded a commendation from Admiral Barbey, Commandant of the Seventh Fleet for excellence in my communication work. I saw eight of my shipmates killed in battle and sixteen wounded in one engagement off the Treasury Islands. I have defended my country in war and in waging peace.

I understand very well the pride we have in our flag as a symbol of our nation and in our tradition of free speech and the ability to speak openly in public no matter whether our words are considered unpatriotic or not. I do not think that burning our flag is a good thing to do. Nevertheless to undertake to carve out an area of free speech and say that this or that is unpatriotic because it is offensive is a movement that will unravel our liberties and do grave damage to our nation's freedom. The ability to say by speech or dramatic acts what we feel or think is to be cherished not demeaned as unpatriotic...

I hope you will hear my plea. Please do not tinker with the First Amendment".

Many other veterans, such as WWII veterans Barbara Schnuer and her husband Sy Schnuer, of Lunenburg, MA and Janet Walsh, an Army Nurse Corps Vietnam veteran from Medford, NJ, express similar opinions. We should not ignore the judgment and the voices of ALL who have risked paying the ultimate price to protect the freedoms and liberties that the flag so effectively symbolizes. Are our voices and our beliefs any less valuable?

In addition to my own military combat experience, I have been involved in veteran's affairs as a clinical social worker, program manager, board member, and advocate since 1974. I have yet to hear a veteran I have lived or worked with say that his/her service and sacrifice was in pursuit of protecting the flag. When confronted with the horrific demands of combat, most of us who are honest say we fought to stay alive. Combatants do not return home awestruck by the flag. Putting the pretty face of protecting the flag on the unforgettable, unspeakable, abominations of combat seems to trivialize what my fellow veterans and I experienced. This depiction is particularly problematic in light of the current events.

As offensive and painful as flag burning is to me, I still believe that those dissenting voices need to be heard. This country is unique and special because the minority, the unpopular, the dissenters and the downtrodden, also have a voice and are allowed to be heard in whatever way they choose to express themselves that does not harm others. The freedom of expression, even when it hurts, is the truest test of our dedication to the belief that we have that right.

Free expression, especially the right to dissent with the policies of the government, is one important element, if not the cornerstone of our form of government that has greatly enhanced its stability, prosperity, and strength of our country. This freedom of expression is under serious attack today. The smothering, oppressive responses to publicly expressed misgivings about our incursion into Iraq and ad hominem attacks against those who dare to express them are alarming. "Supporting our troops" does not mean suspending critical analysis and muffling public debate and discourse.

Freedom is what makes the United States of America strong and great, and freedom, including the right to dissent, is what has kept our democracy going for more than 200 years. And it is freedom that will continue to keep it strong for my children and the children of all the people like my father, late father in law, grandfather, brother, me, and others like us who served honorably and proudly for freedom.

The pride and honor we feel is not in the flag per se. It is in the principles for which it stands and the people who have defended them. My pride and admiration is in our country, its people and its fundamental principles. I am grateful for the many heroes of our country--and especially those in my family. All the sacrifices of those who went before me

would be for naught, if an amendment were added to the Constitution that cut back on our First Amendment rights for the first time in the history of our great nation.

I love this country, its people and what it stands for. The last thing I want to give the future generations are fewer rights than I was privileged to have. My family and I served and fought for others to have such freedoms and I am opposed to any actions that would restrict my children and their children from having the same freedoms I enjoy.

The proposed amendment will apparently prohibit yet to be defined abuses of the flag which are deemed offensive. Who shall write the definition? Will destroying the flag in the interest of registering strong objection to a military excursion violate the law? What about reducing this revered icon to a lampshade? Would the inclusion of a flag in a wall hanging violate the law? What if used as a curtain? Who decides?

If one peruses the pages of the periodicals of the traditional veterans' organizations, many of which apparently support this amendment, one will observe many uses of this revered symbol. Do those who object to a flag motif in clothing have recourse under the proposed amendment? If the flag can be worn on the uniform shoulder by safety and law enforcement personnel, is it permissible for it to be worn on underclothing? Who will check?

The proposal seems unenforceable. It raises the specter of the "flag police," whose duties would include searching out violations and bringing offenders to the bar of justice. That this is defended in the name of freedom and in the memory of valiant sacrifices by millions of this country's veterans is duplicitous and cynical.

If we are truly serious about honoring the sacrifices of our military veterans, our efforts and attention would be better spent in understanding the full impact of military service and extending services to the survivors and their families. Our record of service to veterans of all wars is not exemplary. In May 1932, in the midst of the Great Depression, WWI veterans had to march on this Capitol to obtain their promised bonuses. WWII veterans were unknowingly exposed to radiation during atomic testing. Korean veterans, perhaps more than any living U.S. veterans, have been forgotten. Vietnam veterans are still battling to obtain needed treatment for their exposure to life-threatening herbicides and withheld support upon their return. In my area, businesses and churches were soliciting donations to support the families of U.S. troops in Iraq. The list goes on . . .

The spotty record in veteran's services is more shameful when one considers that the impact of military service on one's family has gone mostly unnoticed by policy makers. The dimensions of this impact and the responses of funded programs nationwide are chronicled in *The Legacy of Vietnam Veterans and Their Families, Survivors of War: Catalysts for Change* (1995. Rhoades, D.K., Leaveck, M.R. & Hudson, J.C., eds. Agent Orange Class Assistance Program. Government Printing Office). In this volume, Congressman Lane Evans opines that:

"Although the government's legal obligation extends primarily to veterans, I believe the government also has a strong moral obligation to provide services to those family members who are affected by the veteran's experiences. Services should be offered to children with congenital disorders whose conditions are related to their parent's military service. Counseling should be offered to the family members of veterans with psychological or substance abuse problems related to their military service. By providing appropriate services and benefits, through either government or community-based organizations, the government would admit its responsibility and offer the assistance that some veterans and their families desperately need." (p. ix)

The programs that were supported by the Agent Orange Class Assistance Program were later represented by Veterans Families of America, an organization whose member agencies demonstrated effectiveness in meeting veteran family needs, but whose continuation was ended due to lack of funding. I proudly served as a member of the board of Veterans Families of America.

Is our collective interest better served by amending the Constitution to protect a piece of cloth than by helping spouses understand and cope with the consequences of their loved ones' horrible and still very real combat experiences? Are we to turn our backs on the needs of children whose lives have been affected by their parent's military service? The Agent Orange Benefits Act of 1996 was a good start, but we shouldn't stop there. Veterans of Gulf War I are still left languishing, uncertain if their service exposed them to insidious health threatening contaminants. Does our obligation to our current combatants extend beyond labeling them heroes? Is our obligation to protect the flag greater, more righteous, more just, and more moral, than our obligation to help veterans and their families? I think not.

Over the years, proponents of this amendment have argued that they are not advocating for the passage of this amendment over providing adequate support and services for our veterans. They say we can do both. I am asking. When? When will we do both?

I respectfully submit that this assault on First Amendment freedoms in the name of protecting anything is incorrect and unjust. This amendment would create a chilling environment for political protest. The powerful anger that is elicited at the sight of flag burning is a measure of the love and respect most of us have for the flag.

Prohibiting this powerful symbolic discourse would stifle legitimate political dissent. If it is to be truly representative of our cherished freedoms, the flag itself must be available as a vehicle to express these freedoms.

This is among the freedoms for which I fought and gave part of my body. This is a part of the legacy I want to leave for my children. This is among the freedoms my grandfather was defending in WWI. It is among the freedoms my father and late father in law defended during their combat service during WWII. It is among the freedoms that the veterans whose voices you heard through me earlier in my testimony fought to preserve and extend.

I believe that it is time for congress to pay more attention to the voices of ordinary veterans who know first hand the implications of tyranny and denied freedoms. Our service is not honored by this onerous encroachment on constitutionally guaranteed freedoms.

Thank you.