

Statement of

The Honorable John Cornyn

United States Senator
Texas
March 10, 2004

STATEMENT OF U.S. SENATOR JOHN CORNYN (R-TX)

Committee on the Judiciary
United States Senate

Letting the People Decide: The Constitutional Amendment Authorizing Congress to Prohibit Physical Desecration of the Flag of the United States

Wednesday, March 10, 2004, 10:00 a.m., Dirksen Senate Office Building Room 106

Mr. Chairman, thank you for convening today's hearing to consider Senate Joint Resolution 4, a constitutional amendment to give Congress the ability to prohibit the physical desecration of the United States flag. I am pleased to be one of the bipartisan group of original co-sponsors of Senate Joint Resolution 4.

The United States Constitution must never be amended casually. At the same time, as members of Congress, we must never forget our role in the democratic process. In the vast majority of circumstances, we are able to discharge our duties through the introduction, consideration, and enactment of statutes. In certain circumstances, however, statutes are not enough. On certain occasions, a constitutional amendment may be the only mechanism available to the American people and their representatives in Congress to participate in self-government.

The constitutional amendment process fulfills the spirit of the Founders. Indeed, when our Founders drafted the Constitution, they purposefully included a built-in procedure for amendment in Article V. After all, our Founders firmly believed, to quote George Washington, the President of the Constitutional Convention, that "[t]he warmest friends and the best supporters the Constitution has do not contend that it is free from imperfections. . . . The People . . . can, as they will have the advantage of experience on their Side, decide with as much propriety on the alterations and amendment which are necessary."

Protection of the United States flag meets the standard for a constitutional amendment. Indeed, a constitutional amendment is the only means available to the American people for protecting the U.S. flag. In light of the U.S. Supreme Court decisions in *Texas v. Johnson* (1989) and *United States v. Eichman* (1990), the only way to ensure that the American people have the opportunity to protect the United States flag against physical desecration is a constitutional amendment. We have ratified numerous constitutional amendments as a democratic response to judicial decisions - including the 11th, 14th, 16th, 19th, 24th and 26th amendments.

The United States flag is different from other symbols of our nation. It is not merely an expression of patriotism. When a member of our armed services is killed in battle, the U.S. government solemnly provides the family with a U.S. flag. To thousands of military families, the U.S. flag uniquely represents the nation for which their loved ones have fought and died. As General Norman Schwarzkopf has written: "The flag remains the single, preeminent connection among all Americans. It represents our basic commitment to each other and to our country."

The American people have the right to determine whether to take steps to protect the United States flag against physical desecration. Approval of Senate Joint Resolution 4 would simply give the American people that right. Senate Joint Resolution 4 alone would not regulate conduct - it would simply give Congress the power to determine whether to prohibit desecration of the U.S. flag.

Some critics scoff at the notion that we might amend our Constitution in order to protect the American flag - just as some critics scoff at the notion that we might amend our Constitution in order to protect the traditional institution of marriage. Such detractors of democracy believe in government under the rule of judges. I believe in government of the people, by the people, and for the people. Senate Joint Resolution 4 returns the business of government to the people, by restoring to the democratic process the power to protect the most powerful symbol of our democracy, the United States flag.