

Statement of

# The Honorable Orrin Hatch.

United States Senator  
Utah  
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Statement of Chairman Orrin G. Hatch

before the United States Senate Committee on the Judiciary

Hearing on

"Letting the People Decide:

The Constitutional Amendment Authorizing Congress to

Prohibit Physical Desecration of the Flag of the United States"

Good morning. I want to welcome everyone to today's important hearing on S.J. Res. 4, the bi-partisan proposed constitutional amendment to protect the American flag from acts of physical desecration. I have enjoyed working with all of my Senate colleagues on this issue and I look forward to hearing from today's witnesses.

In the past, this Committee has been fortunate to hear from a variety of witnesses who have ranged from war veterans, Senators (who were also war veterans), law professors, teachers and others from a variety of backgrounds. I can assure everyone that today's panel of witnesses will once again provide us with wisdom and insight that we in the Senate need when considering this very important issue.

The American flag serves as a symbol of our great Nation. The flag represents, in a way that nothing else can, the common bond shared by an otherwise diverse people. As a sponsor and long-time supporter of this proposed constitutional amendment, I am very pleased, but not surprised by the way Americans have been displaying the flag as a symbol of solidarity following the attacks of September 11. In fact, many stores that sell American flags reported that, following September 11th, they quickly sold out of flags and could not obtain replacements fast enough to replenish their stock.

From the dawn of our country's creation and continuing through this very moment, American soldiers have put their lives on the line to defend the flag and what it represents. I believe that we honor the sacrifices made by those who have defended this country by protecting the flag in the manner it once enjoyed. From the lyrics penned by Francis Scott Key which are sung in our National Anthem, to the unfurling of the flag at the Pentagon following September 11th (which now hangs in the Smithsonian), our people have turned to the American flag as a symbol of National unity and pride during times of crisis.

Whatever our differences of party, race, religion, or socio-economic status, the flag reminds us that we are very much one people, united in a shared destiny, bonded in a common faith in our nation. Because our flag transcends our fellow citizens' differences and our diversity as a nation, it symbolizes the love of liberty and love of country felt by the American people. This symbolism stands in sharp contrast to the flags of those oppressive and totalitarian regimes such as Cuba, Nazi Germany, or the Soviet Union which uniformly represent intolerance of free thought, oppression, and coerced loyalty.

In 1861, President Abraham Lincoln called our young men to put their lives on the line to preserve the Union. When Union troops were beaten and demoralized, General Ulysses Grant ordered a detachment of men to make an early

morning attack on Lookout Mountain in Tennessee. When the fog lifted from Lookout Mountain, the rest of the Union troops saw the American flag flying and cheered with a newfound courage. This courage eventually led to a nation of free men--not half-free and half-slave.

In 1941, President Franklin Roosevelt called on all Americans to fight the aggression of the Axis powers. After suffering numerous early defeats, the free world watched in awe as five Marines and one sailor raised the American flag on Iwo Jima after nearly 6000 American soldiers gave their life to achieve this victory. Their undaunted, courageous act, for which three of the six men died, inspired the Allied troops to attain victory over fascism.

In 1990, President Bush called on our young men and women to go to the Mideast for Operations Desert Shield and Desert Storm. After an unprovoked attack by the terrorist dictator Saddam Hussein on the Kingdom of Kuwait, American troops, wearing arm patches with the American flag on their shoulders, led the way to victory. General Norman Schwarzkopf thanked the American people for their support, stating:

"The prophets of doom, the naysayers, the protesters and the flag-burners all said that you wouldn't stick by us, but we knew better. We knew you'd never let us down. By golly, you didn't."

And, in 2001 the American flag was again called upon to inspire our men and women during time of war. For example, I am touched by the New York National Guard's dedication of an American flag to the memory of staff sergeant Jerome Dominguez. Sergeant Dominguez, also a full time New York City police officer, lost his life serving his fellow citizens in World Trade Center attacks. The American flag dedicated to Sergeant Dominguez traveled to Bahrain with a team of his fellow 105th Security Forces when they participated in the overthrow of the Taliban during Operation Enduring Freedom. Later, this very flag was tasked with the solemn duty of overlooking several fallen military members during their final flight home after giving the ultimate sacrifice for their country during Operation Iraqi Freedom. I will place into the record an article written by Staff Sergeant John Grassler documenting this wonderful commemoration.

We need to pass the Flag Amendment because in 1989, the Supreme Court abandoned the history and intent of the First Amendment to embrace a philosophy that made no distinction between oral and written speech about the flag, and extremist, disrespectful destruction of the flag. This striking contradiction was aptly described by Chief Justice Rehnquist who wrote: "[T]he government may conscript men into the Armed Forces where they must fight and perhaps die for the flag, but the government may not prohibit the public burning of the banner under which they fight." When Congress responded with a federal flag protection statute, the Supreme Court used its new and changed interpretation of the First Amendment to strike it down by another five-to-four vote.

It is now clear that a Constitutional Amendment is the only legal means to protect the flag. Thankfully, the Constitution provides a method for peaceful and law abiding citizens to amend the constitution, and it is time to let our fellow citizens speak on this issue.

Polls have shown that 80 percent of the American people want the opportunity to vote to protect their flag. All 50 state legislatures have passed resolutions asking Congress to pass the Amendment and send it to the states for consideration and ratification. Numerous organizations from the American Legion to the Women's War Veterans to the African-American Women's clergy all support the flag protection amendment. We should not deprive the American public the right to express their view on this subject any longer.

If the Senate passes the flag amendment this year, the nationwide debate over state ratification will be one of the greatest public discussions in American history. It will encourage a deeper study of our nation's history and values. It will inspire our young people to understand and appreciate the heroic selflessness displayed during this and previous generations. And it will cause many Americans to renew their faith in - and commitment to - the ideals and values of America that are greater than anyone's personal self interest.

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