

Statement of

The Honorable Russ Feingold

United States Senator
Wisconsin
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At the Senate Judiciary Hearing on the Constitutional Amendment Authorizing Congress to Prohibit Physical
Desecration of the Flag of the United States

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Thank you Mr. Chairman. I want to welcome our witnesses today. This is our second hearing in two weeks on a constitutional amendment. The amendment we discussed last week would for the first time write discrimination into our Constitution. This week we are discussing an amendment that would, for the first time, amend the Bill of Rights. Make no mistake, we are talking here today about amending the Constitution of the United States to permit the government to criminalize conduct that, however misguided, is clearly expressive, and is often undertaken as a form of political protest. Adopting this amendment would be a grave mistake.

It seems almost silly to say this, but given some of the written testimony of the witnesses today, I must say it anyway. Not a single Senator who opposes the proposed constitutional amendment, as I do, supports burning or otherwise showing disrespect to the flag. Not a single one. None of us think it's "OK" to burn the flag. None of us view the flag as "just a piece of cloth." On those rare occasions when some malcontent defiles or burns our flag, I join everyone on this dias, and in this room, and in this country, who condemns that action.

At the same time, whatever the political cost, I will defend the right of Americans to express their views about their government, however hateful or spiteful or disrespectful, without fear of their government putting them in jail for those views. America is not a nation of symbols, it is a nation of principles. And the most important principle of all, the principle that has made this country the beacon of hope and inspiration for oppressed peoples throughout the world, is the right of free expression. This amendment, well-intentioned as it may be, threatens that right, and I must oppose it.

I respectfully disagree with the supporters of the amendment about the effect that this issue has on our children. We can send no better, no stronger, no more meaningful message to our children about the principles and the values of this country than if we explain to them that the beauty and the strength of this country is in its freedoms, not in its symbols. When we uphold First Amendment freedoms despite the efforts of misguided and despicable people who want to provoke our wrath, we explain what America is really about. Our country and our people are far too strong to be threatened by those who burn the flag. That is a lesson worth teaching our children.

Amending the First Amendment so we can bring the full wrath of the criminal law and the power of the state down on political dissenters will only encourage more people who want to grandstand their dissent and imagine themselves "martyrs for the cause." We all know what will happen the minute this amendment goes into force - more flag burnings and other despicable acts of disrespect to the flag, not fewer. Will the new law deter these acts? Of course not. Will the amendment make these acts any more despicable than they are today? Certainly not. Will it make us love the flag any more than we do today? Absolutely not.

It was just under four years ago, in 2000, another Presidential election year, that the Senate rejected this constitutional amendment. I would like to hear from our witnesses what has changed in the last four years. Have we seen an alarming increase in incidents of flag burning? Has there been a marked decrease in patriotism or the proud

display of the flag on national holidays? Have the armed forces seen a huge drop in enlistment or have soldiers faced disrespectful protests of the sacrifices they and their families make? Of course not.

I venture to say, Mr. President, that outward displays of patriotism are on the rise since we last considered this amendment. We all know why that is. Our country was attacked on September 11th. And America responded. We didn't need a constitutional amendment to teach our citizens how to love their country. They showed us how to do it by hurling themselves into burning buildings to save their fellow citizens who were in danger, by standing in line for hours to give blood, by driving hundreds of miles to search through the rubble for survivors and help in cleanup efforts, by praying in their houses of worship for the victims of the attacks and their families. September 11th inspired our citizens to perform some of the most selfless acts of bravery and patriotism we have seen in our entire history. No constitutional amendment could ever match those acts as a demonstration of patriotism, or create them in the future.

In 1999, the late Senator John Chafee, one of this country's greatest war heroes at Gaudalcanal and in the Korean War, testified against this amendment. He said: "[W]e cannot mandate respect and pride in the flag. In fact, taking steps to require citizens to respect the flag, sullies its significance and symbolism." Senator Chafee's words still bring to us a brisk, cool wind of caution. What kind of symbol of freedom and liberty will our flag be if it has to be protected from protesters by a constitutional amendment? Mr. Chairman, I will proudly defend our Constitution against this ill-advised effort to amend it. Thank you.

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