

Approved 5-2-91
Date

MINUTES OF THE House COMMITTEE ON Judiciary

The meeting was called to order by Representative John M. Solbach at
Chairperson

12:30 ~~am~~ p.m. on April 4,, 1991 in room 313-S of the Capitol.
(On First Adjournment of the House)

All members were present except:

Representatives, Lawrence, O'Neal and Hamilton who were excused

Committee staff present:

Jill Wolters, Office of Revisor of Statutes

Gloria Leonhard, Secretary to the Committee

Conferees appearing before the committee:

Charles M. Yunker, State Adjutant, The Kansas American Legion
U.S. "Udie" Grant, National Executive Committeeman, The American Legion
John F. Wilhm, Sr., Past Commander, Topeka Chapter, The Military Order of the World Wars
Lee Stolfus, Past Commander, Kansas American Legion
Richard E. Levy, Professor of Law, University of Kansas
Nancy Lindberg, representing the Office of the Attorney General
Kenneth Huff, private citizen, Winfield, Kansas

The Chairman called for action on SB 373, access to records by developmental disabilities protection and advocacy agency.

The Chairman distributed to committee members an information sheet regarding effect of SB 373 on federal funds available to the State of Kansas. (See Attachment # 0).

Representative Heinemann made a motion that SB 373 be passed. Representative Everhart seconded the motion. The motion carried.

The Chairman called for action on SB 81, assignment of rents as security for loans.

Representative Everhart made a motion that SB 81 be passed. Representative Allen seconded the motion.

Committee discussion followed.

Representative Macy made a substitute conceptual motion to amend SB 81 on Page 1, Line 38, after "instrument" by inserting "or an affidavit of assignment of rents signed by the borrower." Representative Rock seconded the motion.

Representative Everhart made a motion that SB 81 be passed as amended. Representative Allen seconded the motion. The motion carried.

The Chairman called for hearing on SCR 1612, urging Congress to propose a Constitutional Amendment prohibiting desecration of the flag.

Charles M. Yunker, State Adjutant, The Kansas American Legion, appeared in support of SCR 1612. (See Attachment # 1).

Committee questions followed.

U. S. "Udie" Grant, National Executive Committeeman, The American Legion, appearing in support of SCR 1612. (See Attachment # 2).

Committee questions followed.

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Judiciary,
room 313-S, Statehouse, at 12:30 ~~a.m.~~/p.m. on April 4,, 1991

John F. Wilhm, Sr., Past Commander, Topeka Chapter, The Military Order of the World Wars, was present in support of SCR 1612. Mr. Wilhm submitted his written testimony in lieu of a verbal presentation in the interest of time. (See Attachment # 3).

Lee Stolfus, Past Commander, Kansas American Legion, submitted written testimony in support of SCR 1612. (See Attachment # 4).

Nancy Lindberg, representing the Office of the Attorney General, appeared and submitted written testimony in support of SCR 1612. (See Attachment # 5).

Richard E. Levy, Professor of Law, University of Kansas, appeared to comment regarding SCR 1612 and to point out the need to protect First Amendment principles. (See Attachment #6).

Committee questions followed.

Kenneth Huff, private citizen, Winfield, Kansas, appeared in opposition to SCR 1612. (See Attachment # 7).

The American Civil Liberties Union of Kansas (ACLU) submitted written testimony in opposition to SCR 1612. (See Attachment # 8).

Mr. Huff read excerpts of the ACLU written testimony and then presented his own.

There were no committee questions.

The Chairman invited John F. Wilhm to make comments as the meeting was within its time frame. Mr. Wilhm offered to take committee questions. There were no questions from the committee.

There being no further conferees, the hearing on SCR 1612 was closed.

The meeting adjourned at 1:15 P.M. The next meeting is scheduled for April 11, 1991, at 3:30 P.M. in room 313-S.

Kansas Advocacy & Protective Services, Inc.



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(913) 776-1541

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Jack Shriver
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Raymond L. Spring
Topeka

Rep. George Teagarden
LaCygne

W.H. Weber
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Liaison to the Governor

Becky Matin

Executive Director

Joan Strickler

TO: Representative John Solbach

FROM: Joan Strickler

RE: S.B. 373

DATE: April 4, 1991

S.B. 373 is intended to bring Kansas law into compliance with Federal law.

If Kansas is found out of compliance, we could lose close to \$1 million for services for developmentally disabled and mentally ill persons.

These funds have been available to the state for many years and require no state match.

- The Developmental Disabilities Council	\$550,000.00
- Protection and Advocacy for DD	200,000.00
- Protection and Advocacy for MI	<u>180,000.00</u>
Approximate Total	\$930,000.00

HJUP
Attachment # 0
4-4-91

STATEMENT IN SUPPORT OF
SENATE CONCURRENT RESOLUTION 1612
presented to the
HOUSE JUDICIARY COMMITTEE
by CHARLES M. YUNKER, STATE ADJUTANT
THE KANSAS AMERICAN LEGION
APRIL 4, 1991

Thank you for allowing me the opportunity to appear before you today in support of Senate Concurrent Resolution 1612 which calls upon Congress to propose an Amendment to the United States Constitution, for ratification by the states, to empower Congress and the States the authority to prohibit the physical desecration of the Flag of the United States.

On June 21, 1989 the U.S. Supreme Court decided the Texas vs. Johnson case by stating that desecration of the Flag was protected under the Freedom of Speech provision of the First Amendment. On June 23, 1989, Kansas Attorney General Bob Stephan joined with The American Legion in a call for a Constitutional Amendment to protect the Flag. That action resulted in over 35,000 Kansans signing petitions, which along with over 1 million other petition signatures from across America, being presented to Senators Bob Dole (KS) and John Warner (VA), and Congressmen Jerry Solomon (NY) and Chuck Douglas (NH) on August 31, 1989.

That October, the Flag Protection Act of 1989 was passed by Congress and it was subsequently overturned by the Supreme Court in 1990 thus leaving the majority of Americans, those who felt the Flag should be protected from desecration, with no choice but to work for an amendment to the Constitution. Indeed, The American Legion feels such action was invited by Justices Kennedy and Brennan, both of whom voted with the majority in the Texas vs Johnson case. Justice Kennedy wrote:
"Sometimes we must make decisions we do not like. We make them because

HJUD
Attachment # 1
4/4/91

they are right, right in the sense that the law and Constitution compel the decision." Further Justice Brennan wrote: "There is moreover, no indication either in the text of the Constitution or in our cases interpreting it, that a separate juridical category exists for the American Flag."

However the Leadership in Congress has indicated Congress would not act upon this issue again unless the overwhelming majority of states request that Congress do so. Almost every American Legion state organization submitted a resolution in support of a Constitutional Amendment during our 1990 National Convention in August. With that in mind, the National organization of The American Legion declared a Constitutional Amendment to protect the Flag as the Legion's number one priority.

In October 1990 the Legion brought leaders from every state together at our National Headquarters to form grass roots "Flag Action Teams" whose task it is to seek memorializing resolutions from their respective legislative bodies. Thus our purpose for appearing before you today.

The American Legion is not alone in our quest for a Constitutional Amendment; as far back as 1989, the National Jaycees organization endorsed the idea of a Constitutional Amendment to protect the Flag. The Knights of Columbus passed a similar resolution during their 1990 National Convention and the Daughters of the American Revolution have indicated their support. Likewise every candidate appearing during our Gubernatorial Candidate Forum in Wichita last May, including Governor Mike Hayden and now Governor Joan Finney, spoke out in favor of a Constitutional Amendment to protect the flag. Since her election

Governor Finney has expressed her support of SCR 1612 to me on at least two separate occasions.

Every poll taken regarding this issue has shown overwhelming support for a Constitutional Amendment. Those same polls have indicated the majority of Americans do not feel such an amendment would infringe on their First Amendment Rights. We do not seek to change the First Amendment; we merely seek to add the 27th Amendment to the Constitution. When writing the Constitution its authors, knowing full well that they could not address every test to be put to the Constitution, allowed for changes. That is why we have the Bill of Rights today; the first ten amendments. The Constitution has been amended twenty-six times to reflect society's wishes; what it feels is right and what it feels is wrong. The Eighteenth and Twentieth Amendments are but two examples of society's desire for change to mirror what the majority of Americans felt was right or wrong. Prior to June 21, 1989 forty eight states including Kansas and the Federal government had passed flag desecration statues.

Attached to this testimony is a list of 450 organizations and bodies of government in Kansas who support an amendment to protect the Flag from desecration. Each has forwarded a resolution to our office urging your support with more arriving each week. I have those resolutions with me today for your inspection if you wish to do so.

Also attached to this testimony is a copy of the Gallup Poll taken in May 1990. It shows that 72% of those polled feel that burning the flag should not be protected by the First Amendment. Further that 71% would favor a narrowly written Constitutional Amendment to protect the flag should the 1989 Flag Protection Act be declared unconstitutional and of course you know the Supreme Court overturned Congress' 1989 flag law;

and that 73% of Americans do not feel a Constitutional Amendment outlawing flag burning would place their freedom of speech in jeopardy.

Again thank you for allowing me to appear before you today in support of SCR 1612; I urge your expedient vote in favor of SCR 1612 so the full House has the opportunity to vote on this issue before this Legislative session adjourns.

Respectfully submitted by,



Charles M. Yunker
State Adjutant
The American Legion

**RESOLUTIONS FOR A CONSTITUTIONAL AMENDMENT
TO PROTECT THE AMERICAN FLAG FROM DESECRATION**

ABILENE:

American Legion Auxiliary Unit 39

AGENDA:

City of Agenda

AGRA:

American Legion Auxiliary Unit 357
American Legion Post 357
City of Agra

ALDEN:

American Legion Auxiliary Unit

ALMENA:

American Legion Auxiliary Unit 266

ALTON:

American Legion Post 87

ANDOVER:

American Legion Auxiliary Unit 406
American Legion Post 406

ARMA:

American Legion Post 182

ATCHISON:

American Legion Unit 6

ATWOOD:

American Legion Post 46

AUGUSTA:

American Legion Auxiliary Unit 189
American Legion Post 189

AXTELL:

American Legion Post 214

BARTON COUNTY BOARD OF COMMISSIONERS

BAXTER SPRINGS:

American Legion Auxiliary Unit 206
American Legion Post 206
American National Bank
Baxter Springs State Bank
Chamber of Commerce
City of Baxter Springs
DAV Chapter 40
Fellowship Baptist Church
Kiwanis
Lions Club
McCartney Mfg. Co.
McDonalds
Midwest Nursing Home
National Guard Armory
Ozark Salad Company
R. Black Inc.
VFW Post 408
Wiseda Ltd.

BAZINE:

American Legion Post 392
City of Bazine

BEATTIE:

American Legion Auxiliary 244
American Legion Post 244
City of Beattie
Lions Club

BELLEVILLE:

American Legion Auxiliary Unit 133
American Legion Post 133

BREWSTER:

Lions Club

BUCKLIN:

American Legion Post 269
City of Bucklin
Jaycees
Lions Club

BURDETT:

American Legion Post 280

BURR OAK:

American Legion Auxiliary Unit 263

BUTLER COUNTY COMMISSIONERS

CANEY:

American Legion Auxiliary Unit 138
American Legion Post 138
City of Caney
Golf Club
Masonic Lodge 324
VFW 9768

CANTON:

Canton American Legion Post 192
City of Canton

CENTRALIA

American Legion Post 216
City of Centralia

CHASE-LYON AMERICAN LEGION COUNTY COUNCIL

CHEROKEE:

American Legion Post 35
City of Cherokee

CHEROKEE COUNTY

CLAY CENTER:

American Legion Post 101

CLIFTON:

American Legion Post 227
American Legion Auxiliary Unit 227
Chamber of Commerce
City of Clifton
Sons of The American Legion Squadron 227

CLYDE:

VFW Post 7515

COFFEY COUNTY BOARD OF COMMISSIONERS

COFFEYVILLE:

American Legion Post 20
City of Coffeyville
Rotary Club

COLBY:

American Legion Post 363
City of Colby
Knights of Columbus

COLUMBUS:

American Legion Post
Saddle Club

CONCORDIA:

American Legion Auxiliary Unit 76
American Legion Post 76

COPELAND:

American Legion Post 369

COUNCIL GROVE:

American Legion Post 121

CRAWFORD COUNTY COMMISSIONERS

CUBA:

American Legion Post 345
Jr. Eagles Lodge 362
Veterans Wives Club

CUNNINGHAM:

American Legion Post 114
City of Cunningham

DERBY:

American Legion Auxiliary Unit 408
American Legion Post 408

DIGHTON:

American Legion Auxiliary Unit 190
American Legion Post 190
City of Dighton
Rotary Club

DODGE CITY:

American Legion Post 47
VFW Post 1714

DORRANCE:

American Legion Post 334
Sons of The American Legion Squadron 334

DOUGLASS:

American Legion Post 202
City of Douglass

DOWNS:

American Legion Auxiliary Unit 11

DRESDEN:

American Legion Auxiliary Unit

DWIGHT:

City of Dwight

EL DORADO:

American Legion Auxiliary Unit 81
American Legion Post 81
City of El Dorado

ELLINWOOD:

American Legion Auxiliary 320
American Legion Post 320
Lions Club
Lodge 217 AFM
VFW 5657

ELLIS:

American Legion Post 151
City of Ellis
County of Ellis Commission

ELLSWORTH:

American Legion Auxiliary Unit 174
American Legion Post 174
Lodge #146 AF & AM
Sons of The American Legion Squadron 174

EMPORIA:

American Legion Auxiliary Unit 5
American Legion Post 5
Kiwanis Club
La Sertomo
VFW Post 1980

ESBON:

American Legion Auxliary Unit 368

EUREKA:

American Legion Auxiliary Unit 50
American Legion Post 50

FINNEY COUNTY COMMISSIONERS

FORMOSA:

Athena Jr. Women's Club
Mystic Circle Club

FORT DODGE:

American Legion Post 107

FRANKFORT:

City of Frankfort
Rotary Club

FRONTENAC:

American Legion Post 43
City of Frontenac
Fraternal Order of Eagles Auxiliary
Knights of Columbus 10032
Rotary Club

GALVA:

City of Galva

GARDEN CITY:

American Legion Auxiliary Unit 9
American Legion Post 9
Knights of Colubus 2795
Optimist Club

GARDNER:

American Legion Post 19

GARFIELD:

American Legion Auxiliary Unit 300
American Legion Post 300

GARNETT:

American Legion Post 48
Delphian #44

GOODLAND:

American Legion Auxiliary Unit 117
American Legion Post 117
City Commission
Coop
Kiwanis
Unified Schools District 352

GRAINFIELD:

American Legion Auxiliary Unit 301

GREAT BEND:

American Legion Post 180
Sons of The American Legion Squadron 180

GREENSBURG:

American Legion Post 103
Kiowa Lodge 293

GREENWOOD:

Business Women
County of Greenwood
County Commissioners
VFW

GRIDLEY:

American Legion Auxiliary 296
American Legion Post 296
First Christian Church
Order of Eastern Heart Chapter 297
Ron Birk Insurance Agency

HALSTEAD:

American Legion Post 231

HANOVER:

American Legion Post 306

HAYS:

40 et 8 Voiture 1543
American Legion Auxiliary Unit 173
American Legion Post 173
City of Hays
DAV 18
Family Support Network
Kiwanis
Knights of Columbus
Marine Corps League
Rotary Club
Toastmasters
Sons of The American Legion Squadron 173
VFW Auxiliary 9076
VFW 9076

HERNDON:

VFW 1368

HILLSBORO:

American Legion Post 366
City of Hillsboro

HOISINGTON:

American Legion Post 286
Phi Beta Psi Sorority
Serendipity Camping Club
Voiture 324

HOLTON:

American Legion Post 44
City of Holton

HOLYROOD:

Holyrood American Legion Auxiliary Unit 200
American Legion Post 200

HUTCHINSON:

American Legion Unit 68
American Legion Post 68
City of Hutchinson
City of South Hutchinson
DAV #10
Vietnam Veterans of American #521

INDEPENDENCE:

American Legion Auxiliary Unit 139

JACKSON COUNTY COMMISSIONERS

JOHNSON COUNTY AMERICAN LEGION COUNTY COUNCIL

JUNCTION CITY:

American Legion Auxiliary 45
American Legion Post 45
La Societe de 40 et 8 Voiture 1029

KANOPOLIS:

Kanopolis American Legion Auxiliary 329
American Legion Post 329

KAKA CITY:

American Legion Post 83
American Legion Post 188
American Legion Post 199
American Legion Post 346
La Societe de 40 et 8 Voiture 762

KENSINGTON:

American Legion Auxiliary Unit 166
American Legion Post 166
Sons of The American Legion Squadron 166

KINSLEY:

American Legion Post 113
Farm Bureau
Kinsley Office Supply

KIRWIN:

American Legion Auxiliary Unit 277

LACROSSE:

American Legion Post 33

LAKIN:

American Legion Post 208

LAWRENCE:

American Legion Auxiliary Unit 14
American Legion Post 14
Sons of The American Legion Squadron 14

LEAVENWORTH:

American Legion Auxiliary Unit 23
American Legion Post 23

LEBO:

American Legion Auxiliary Unit 323
American Legion Post 323

LENEXA:

American Legion Post 407
Central Church of the Nazarene
First Assembly of God

LIBERAL:

American Legion Post 80

LINDSBORG:

American Legion Post 140
City of Lindsborg

LOUISBURG

American Legion Post 250

LYON COUNTY REPUBLICAN WOMENS CLUB

LYONS:

American Legion Auxiliary Unit 129
American Legion Post 129
DAV Chapter 36
DAV Unit 36
Lions Club
Rice County Amateur Radio Club
St. Marks Episcopal Church

MA...ON:

American Legion Auxiliary Unit 124

MANHATTAN:

American Legion Auxiliary Unit 17
American Legion Post 17
Harmony Extension Unit 16
Harmony Rebekah Lodge 685
Lodge 17

MAPLE HILL:

American Legion Auxiliary Unit 130
American Legion Post 130

MARION:

City of Marion

MARQUETTE:

American Legion Auxiliary Unit 253
American Legion Post 253

MARSHALL COUNTY COMMISSIONERS

MARYSVILLE:

American Legion Post 163
American Legion Unit 163
VFW Post 2699
VFW Auxiliary 2699

McPHERSON:

American Legion Post 24
City of McPherson
McPherson County Council

MINNEOLA:

American Legion Post 222
District Hospital
E.M.S.
Jeri C. Halverson
Lions Club
Mineola Clinic

MONTGOMERY COUNTY COMMISSION

MOUNDRIDGE:

American Legion Post 340
City of Moundridge

MULBERRY:

American Legion Auxiliary Unit 176
American Legion Post 176

NEMAHA COUNTY COMMISSIONERS

NESS CITY:

American Legion Auxiliary Unit 152
American Legion Post 152
Board of Ness County Commissioners
City of Ness City

NEWTON:

American Legion Unit 2
American Legion Post 2
City of Newton
IOOF No. 100
Lions Club
Masonic Bodies

NORTON:

American Legion Auxiliary Unit 63
American Legion Post 63
Lions Club

NORTON COUNTY OF REPUBLICAN WOMEN

OAKLEY:

American Legion Post 339

OBERLIN:

American Legion Auxiliary Unit 70
American Legion Post 70
Sons of The American Legion Squadron 70

OLATHE:

American Legion Post 153
U.A.W. Local 1021
U.A.W. Retirees Chapter Local 1021
VFW 2993
VFW Auxiliary 2993

OLPE:

American Legion Post 342

OSBORNE COUNTY BOARD OF COMMISSIONERS

OTTAWA:

American Legion Post 60
City of Ottawa

OVERLAND PARK:

American Legion Post 370

OZAWKIE:

American Legion Auxiliary Unit 225
American Legion Post 225

PARSONS:

American Legion Post 56
American Legion Post 120
Police Department

PEABODY:

American Legion Post 95
Chamber of Commerce
City of Peabody
Sons of The American Legion

PITTSBURG:

American Legion Auxiliary Unit 64
American Legion Post 64
American Legion Post 394
City of Pittsburg
VFW 1158
VFW Auxiliary 1158

PR :
American Legion Auxiliary Unit 86
American Legion Post 86
City of Pratt
County of Pratt
Sons of The American Legion Squadron 86
VFW 1362

PRESTON:
American Legion Post 375

RENO COUNTY COMMISSIONERS

RICHLAND:
American Legion Post 391

RILEY COUNTY BOARD OF COMMISSIONERS

RIVERTON:
Spring River A/G Church

ROBINSON:
American Legion Auxiliary Unit 148

RUSH COUNTY:
VFW

RUSSELL:
American Legion Auxiliary Unit 99
American Legion Post 99
Elks Lodge 1715
Past Presidents of the American Legion Auxiliary Parley
Sons of The American Legion Squadron 99
Town & Country E.H.U.

SABETHA:
American Legion Post 126
City of Sabetha
Knights of Columbus
Lions Club

SHERMAN COUNTY BOARD OF COMMISSIONERS

ST. JOHN
E.L.C.W. Lutheran

SALINA:
AMVETS Post 89
American Legion Auxiliary Unit 62
American Legion Post 62
Country Cousin Home Extension Unit
Marine Corps League
POW/MIA Awareness Group
Sons of The American Legion Squadron 62
La Societe Voiture 1190

SATANTA:
American Legion Unit 276
American Legion Post 276

SCANDIA:
American Legion Post 193

SCOTT CITY:

American Legion Auxiliary Unit 183
American Legion Post 183
Chamber of Commerce
City of Scott City
Cooperative Assn.
Jaycess
Kiwanis
VFW Auxiliary 7773
VFW Post 7773

SCOTT COUNTY COMMISSIONERS

SEDGWICK:

American Legion Post 268
American Legion Sedgwick County Council

SELDEN:

American Legion Post 321

SHAWNEE:

Shawnee American Legion Auxiliary Unit 327
Shawnee American Legion Post 327

SMITH CENTER:

American Legion Post 220
Chamber of Commerce
City Council
Lions Club
Marine Corps League
Vesta Lodge 153

SMITH COUNTY COMMISSIONERS

ST. JOHN

Ioof

ST. GEORGE:

American Legion Auxiliary Unit 260
American Legion Post 260
City of St. George
E.W.U.

STAFFORD:

American Legion Auxiliary Unit 131
American Legion Post 131

STRONG CITY:

American Legion Post 123
Clarks Farm Store

SUBLETTE:

American Legion Post 205

SYLVAN GROVE:

American Legion Auxiliary Unit 359

THOMAS COUNTY COMMISSIONERS

TIPTON:

American Legion Auxiliary Unit 278
American Legion Post 278
Knights of Columbus

TC A:
American Legion Auxiliary Unit 400
American Legion Post 1
American Legion Post 400
Columbian Securities Corp.
Moose Lodge 555
Shawnee County Past Commanders Club
Sons of The American Legion Squadron 1
Topeka Building Construction Trades Council
Topeka Federation of Labor

TURON:
American Legion Post 264
Senior Citizens Club

ULYSSES:
American Legion Post 79

WAKEENEY:
American Legion Post 199
City of Wakeeney

WALNUT:
American Legion Post 292
Puritan Club

WATHENA:
American Legion Unit 161

WAVERLY:
American Legion Auxiliary Unit 119
American Legion Post 119

WELLINGTON:
J.C. Society
Mile Square Club

WESTMORELAND:
American Legion Post 186
Burkman Auto Service
Connie Lou's Cafe
High School
Jammers Coop Assn.
Lodge 257
Park Board
Pottawatomie County Commission
Pottawatomie County Extension Office
Pottawatomie County Health Dept.
Westy Care Home
Westy Community Care Home Resident Board
Housing Authority, Inc.

WEST MINERAL:
American Legion Post 349

WETMORE:
American Legion Post 202
Lions Club

WHITEWATER:
American Legion Auxiliary Unit 65
American Legion Post 65

WH **CITY:**
American Legion Auxilairy Unit 299
Chirstmas Club
City of White City
E.H.U. of White City

WICHITA:
American Legion Auxiliary Unit 273
American Leigon Auxiliary Unit 401
American Legion Post 108
American Legion Post 256
American Legion Post 273
American Legion Post 401
City Council/Mayor of Wichita
DAV Chapter 4
Military Order of the Purple Heart

WILSON:
American Legion Post 262

WINDOM:
City of Windom

WINFIELD:
American Legion Post 10
Sons of The American Legion Squadron 10

FOR RELEASE MONDAY, MAY 14, 1990

GALLUP POLL RESULTS ON
AMERICANS' OPINIONS ON THE
FLAG-BURNING ISSUE

Statistics just released to The American Legion by The Gallup Organization, Inc. show that a significant majority of Americans support a constitutional amendment to protect the United States Flag. The poll, which was conducted from April 11 through May 2, and has a "maximum standard-error rate of 2.7% at the 95% level of confidence," reported that 71% favor a narrowly drawn constitutional amendment; 73% do not believe such an amendment would jeopardize their freedom of speech; and 57% would vote for or against an elected official because of his position on this issue.

The questions asked and the responses, by percentage, follow.

1. Do you agree that burning the American flag should be protected under the free speech guarantee of the First Amendment, or do you disagree that burning the flag should be protected under the free speech guarantee of the First Amendment?

Agree	25%
Disagree	72%
No Opinion	2%

2. On May 14th the Supreme Court is going to hear final arguments on the Flag Protection Act of 1989, the law which was written to make flag burning a crime. If the Supreme Court finds the Act to be unconstitutional would you favor or oppose a narrow constitutional amendment that would allow federal and state governments to make flag burning illegal?

Favor	71%
Oppose	26%
No Opinion	3%

3. Do you believe that a constitutional amendment outlawing flag burning would place your freedom of speech in jeopardy?

Yes	25%
No	73%
Don't Know	2%

4. How strong is your opinion on the flag burning issue? On a 1 to 5 scale where 5 means you completely made up your mind on your position on the issue and 1 means you're unsure of your position on the issue, where would you rate yourself regarding the flag burning issue?

1	Unsure of position	3%
2		3%
3		9%
4		16%
5	Completely made up mind	68%

5. Please tell me yes or no if you would be likely to participate in the following activities as a result of your position on the flag burning issue. Would you be likely to:

A. Donate to a group that supported your position?

Yes	53%
No	44%
Don't Know	3%

B. Sign a petition that supported your position?

Yes	86%
No	13%

C. Vote for or against an elected official because of his position on the issue?

Yes	57%
No	40%
Don't Know	3%

D. Do volunteer work for a group that supported your position?

Yes	44%
No	54%
Don't Know	2%

E. Write a letter to an elected official stating your position on the issue?

Yes	65%
No	34%

For more information, please contact The American Legion, Public Relations Division. Lew Wood - 317-635-8411 or John Hanson - 202-861-2700.

STATEMENT IN SUPPORT OF
SENATE CONCURRENT RESOLUTION 1612
presented to the
HOUSE JUDICIARY COMMITTEE
by U.S. "UDIE" GRANT
NATIONAL EXECUTIVE COMMITTEEMAN
THE AMERICAN LEGION

I am U. S. "Udie" Grant National Executive Committeeman for Kansas. Thank you, for the opportunity to appear this morning in support of Senate Concurrent Resolution No. 1612.

The American Legion is an organization of War Time Veterans. The Legion has a membership of over 3 million, a 42 year high, an Auxiliary of over 1 million members for a total of more than 4 million members with over 16,000 Posts.

The flag desecration bill is the number one priority of the National Organization of The American Legion. We believe the people at the grass roots level should be heard on this issue.

This amendment to the Constitution, which would be the 27th, would not infringe on any rights granted under the 1st Amendment.

There are laws now that prohibit the desecration of mail boxes, the money in your pocket or to defame any of our National Historical Buildings.

When we recite the Pledge of Allegiance to the Flag, what do we say? "I pledge allegiance to the flag of the United States of America, and to the Republic for which it stands."

My granddaughter 7 years old was at our house the other evening and she found a flag I had. She came marching through the house waving the flag. I asked her what does the flag mean to you.

HJUD
Attachment # 2
4-4-91

Immediately she said America! Again I asked her what does America mean. Freedom! was her reply.

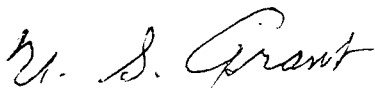
The flag is the symbol of this country and it needs to be protected by Constitutional Amendment. The American Legion is the leader in supporting the flag desecration bill. We are willing to spend our time, our talents and our money to accomplish our objective.

Kansas has to opportunity in this session of the legislature to be a leader. To be among the first to endorse this resolution. With your support and wisdom the Kansas Legislature will be a leader among all the state legislatures.

The approval of this resolution by the Kansas Legislature memorializing the Congress of the United States to propose an amendment of the United States Constitution, for ratification by the states, would give the people "your constituents" the right to vote on this important issue. That is what the American Legion is asking, "Give the people the opportunity to vote."

Thank you for your continued support.

Respectfully submitted by



U. S. "Udie" Grant
National Executive Committeeman
Kansas American Legion

**SENATE HEARING ON
SENATE CONCURRENT RESOLUTION NO. 1612
BY JOHN F. WILHM, SR., PAST COMMANDER
TOPEKA CHAPTER THE MILITARY ORDER OF THE WORLD WARS
APRIL 4, 1991**

I am John Wilhm, Past Commander for two terms of the Topeka Chapter The Military Order of the World Wars. I was inducted into the United States Army as an infantry private in July, 1941. I retired in 1972 as a Colonel at Fort Riley, Kansas, after almost 31 years of active duty.

Following retirement, I was employed for ten years as manager of the Hays, Kansas Chamber of Commerce. Please note that the enclosure from Adjutant Chuck Yunker's testimony lists 14 organizations from Hays, America in support of a resolution for a Constitutional Amendment to prohibit desecration to the American Flag.

Respect for our flag was a fact of life in the Argentine District of Kansas City, Kansas where I was born and raised. To desecrate the Flag was unthinkable.

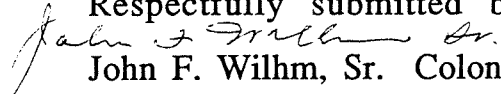
To see disrespect for our Flag, let alone desecration, appears to me to disregard the service of our fallen comrades in arms who have been buried under the Flag. Our Flag is synonymous with our Country. Desecration of our Flag is no less than disrespect for our Country.

Note the respect paid to our Flag by our Allies in the recent Desert Storm operation. Our troops fighting under that Flag carried the message to our enemies.

On the other hand, a recent National news magazine carried the following story, "During the Gulf War, the sensitivity-prone University of Maryland briefly ruled that students would not be permitted to hang American Flags from dorm windows because they might offend antiwar people. Though our Flag is always burnable, it is not always waveable." (Underlining mine.)

Thank you for your attention, I wholeheartedly support SCR 1612 and urge your favorable consideration thereof.

Respectfully submitted by:


John F. Wilhm, Sr. Colonel, USA Retired

HJUD
Attachment #3
4-4-91

HOUSE JUDICIARY COMMITTEE HEARING ON
SENATE CONCURRENT RESOLUTION NO. 1612
by LEE STOLFUS, PAST COMMANDER
KANSAS AMERICAN LEGION
APRIL 4, 1991

I am Lee Stolfus from Emporia and a past State Commander of The American Legion. Thank you for allowing me the privilege to address you today in support of the Senate Concurrent Resolution No. 1612.

I would like to add to the American Legion's testimony already submitted. Our freedoms and our liberties in this country have never been absolute. We have always had to weigh our right to do things based upon the effects our actions have on others. There are limits in regard to indecent exposure, obscenity, words which constitute "fighting words," words which constitute libel, slander, threats and so on.

What was really expressed by the burning of the flag in the case of Texas vs Johnson? In our view really nothing was expressed. They were allowed to say and do anything, whatever they wanted to before they burned the flag. The only reason why they burned our flag was to bring attention to themselves. Had they, instead of burning the flag, indecently exposed themselves they would have been immediately arrested and we suggest that conviction would have stood. Why? Because it was offensive to the people and our society has decided through its laws, that they are not going to put up with that sort of conduct. We suggest that the value of any expression in burning our flag is greatly outweighed by the offense it creates and the slap in the face that it give to the hundreds of thousands of American Service Personnel, veterans and those who gave their

HJUD
Attachment #4
4-4-91

lives while serving this great nation. The law needs to be changed and it needs to be changed by a Constitutional Amendment.

We corresponded with approximately 3,000 of our soldiers who served in Saudi Arabia and many have expressed their support for a ban on flag burning.

From the Revolutionary War to Desert Storm, our flag has been the world's symbol of freedom. We ask that our flag be kept free from desecration.

Thank you.

Respectfully submitted by,

Lee Stolfus

Lee Stolfus, Past State Commander
Kansas American Legion



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612-1597

ROBERT T. STEPHAN
ATTORNEY GENERAL

April 4, 1991

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Representative John Solbach
Chairperson, Judiciary Committee
State Capitol, Room 115-S
Topeka, Kansas 66612

RE: Senate Concurrent Resolution 1612

Dear Representative Solbach:

Many people have been concerned about the U.S. Supreme Court decision that allows desecration of the flag of the United States of America. I know you agree with me that we must protect the rights of the people of our nation, but I do not believe it is necessary in the exercise of our freedom to destroy property. I do not believe anyone should have the right to desecrate the American flag.

Millions of men and women of the Armed Forces of the United States have fought valiantly and died to protect, for future generations, this sacred symbol of nationhood. Protecting the flag will not cut down on anyone's right of expression or anyone's right to participate in the governmental process.

In 1989 I proudly joined with the Kansas American Legion Commander Jack Chiappetti in initiating a statewide petition drive to encourage our Congressional delegation to support a constitutional amendment which would protect the integrity and dignity of the flag of the United States of America.

Today, I ask you and the Kansas House Judiciary Committee to pass Senate Concurrent Resolution 1612 which also urges Congress to propose a U.S. Constitutional amendment authorizing Congress and the states to prohibit desecration of the United States Flag.

Thank you for your consideration.

Very truly yours,

Robert T. Stephan
Attorney General

cc: House Judiciary Committee Members

HJUD
Attachment #5
4-4-91

Testimony on Senate Concurrent Resolution No. 1612
Before The House Judiciary Committee

by
Richard E. Levy
Professor of Law, University of Kansas

April 4, 1991

It is my pleasure to address you today on the subject of Senate Concurrent Resolution No. 1612, which would urge the United States Congress to propose a constitutional amendment authorizing the federal, state, and local governments to prohibit the physical desecration of the United States flag as well as the Cross and other religious symbols. Let me state at the outset that I do not support flag burning or the desecration of religious symbols. These are acts that I find personally offensive. As patriotic Americans, when we see or hear of flag desecration, our first impulse is to protect the flag. We all agree that the flag is an important symbol of the principles of freedom and democracy that this nation represents, and that this symbol is worthy of protection.

The question is not whether we wish to protect the flag, but how best to do so. In my view, a flag burning amendment would be a misguided and unnecessary means of protecting the flag. The amendment would sacrifice central First Amendment principles. It would weaken the fabric of our constitutional rights and the governmental institutions that protect them. And it would do so even though the flag and religious symbols are neither so seriously threatened nor the law so irrevocably fixed that such a drastic measure is necessary.

1. First Amendment Principles: It is convenient to speak of Texas v. Johnson, 109 S. Ct. 2533 (1989) and United States v. Eichman, 110 S. Ct. 2404 (1990) as "the flag burning cases," because the Supreme Court struck down legislation prohibiting the burning or other desecration of the flag. This convenient characterization, however, tends to obscure the important First Amendment principles upon which the decisions rest. Before adopting an amendment to overturn the decisions, we should carefully consider the First Amendment principles that would be rejected in the process.

If there is one "central meaning" of the First Amendment upon which judges, lawyers, and scholars generally agree, it is that (absent extreme circumstances) the government may not prohibit political speech simply because of the message that it conveys or compel anyone to espouse a particular political view. In a long line of cases the Supreme Court has reinforced this principle.

See, e.g., Stromberg v. California, 283 U.S. 359 (1931) (state may not prohibit the use of red flag to symbolize opposition to organized government); West Virginia State Board of Education v. Barnette, 319 U.S. 624 (1943) (state may not require public school students to salute the flag). Denying people the right to speak in opposition to the government violates the central command of the First Amendment.

Yet that is what a flag desecration statute does. State and federal governments do not prohibit flag burning generally; in fact it is a prescribed method for respectfully disposing of flags. Under flag desecration statutes, the flag's symbolic value can be used by almost anyone seeking to convey a message. Democrats and Republicans alike use the flag in their political campaigns, associating their parties and themselves with the principles it represents. It is commonly used in the business world to engender good will with customers, through similar kinds of associations. All these symbolic uses, and many more, are permitted. It is one and only one message that cannot be conveyed under flag desecration statutes, and that is the message of opposition to the United States. It is irrelevant that conduct, such as burning, is involved. While conduct intended to communicate can be prohibited if the government has independent reasons to regulate the conduct, see, e.g., United States v. O'Brien, 391 U.S. 367 (1968) (federal government may prosecute draft card burners), the only reason why desecration is prohibited is because of the message it conveys.

How would Americans react if Chinese dissidents were prosecuted for burning the Chinese flag, Lithuanian separatists were jailed for burning the Soviet flag, or Iraqi rebels were imprisoned for burning the Iraqi flag? We would condemn this as political oppression. Should we not be very hesitant, then, to endorse a constitutional amendment that would enable us to take similar measures?

2. Implications of a Flag Burning Amendment: Even if we disagree with Texas v. Johnson and United States v. Eichman, we should be very careful about amending the Constitution, particularly the Bill of Rights, to "correct" the result. Such an amendment would, in my view, have very damaging implications for both the structure of our government and for the Bill of Rights itself.

The Supreme Court's position as ultimate guarantor of constitutional liberties has long been an established and essential feature of our system of government. The framers were concerned about the dangers that popular majorities might pose to unpopular minorities, and established fundamental rights and judicial review as a means of protecting them. This mechanism worked in these cases -- a very small minority was protected in their right to voice a very unpopular opinion in the most forceful way they knew. If we react by amending the Bill of Rights to remove that protection, then the system envisioned by the framers has been

seriously undermined. Given a large majority and a small and unpopular minority, more amendments are sure to follow. This action would set a dangerous precedent that would erode the very fabric of our constitutional system.

It is particularly ironic that shortly after the bicentennial of the Bill of Rights and at a time when peoples throughout the world are looking to the United States as an model of political liberties, sentiment in some quarters would favor amending the Bill of Rights for the first time in order to reduce those liberties. Such an erosion of our basic liberties is inconsistent with the principles that the flag symbolizes and that American soldiers have fought and died for throughout the world.

3. An Amendment is Not Needed: Given the importance of the First Amendment issues at stake and the broader implications of an amendment authorizing the prohibition of flag burning, such action should be taken only if the flag is in pressing need of protection. Yet there is no evidence that flag burning is a widespread problem. Indeed, the universal reaction in support of the flag following Texas v. Johnson suggests that there are few in our society that would make use of their right to burn the flag. Moreover, the symbolic value of the flag is not diminished when one flag is burned; its value as a symbol of freedom lives on, if anything enhanced by the tolerance of dissent.

Nor do Texas v. Johnson and United States v. Eichman completely foreclose any limits on acts of desecration. Many people, myself included, are deeply offended by the desecration of the flag or religious symbols. If the offense is severe enough, particularly when religious symbols or racial hatred is involved, the state may be permitted to regulate "speech which by its very utterance inflicts injury." See Chaplinski v. New Hampshire, 315 U.S. 568 (1942); Beauharnais v. State of Illinois, 343 U.S. 250 (1952). In a similar vein, if speech is likely to provoke an immediate hostile audience reaction, then the state may be able to curtail it under disturbing the peace or disorderly conduct statutes. See Feiner v. New York, 340 U.S. 315 (1951).

Finally, it should be noted that the Supreme Court's jurisprudence may change and that an amendment may prove unnecessary. Justice Brennan, the author of the decisions and a crucial vote in the five Justice majority that struck down the flag burning statutes in question, has retired. That leaves the Court divided four-four, with Justice Souter representing the decisive vote. If he sides with the dissenting Justices to form a new majority, Texas v. Johnson and United States v. Eichman could be overturned. Quick reversals of position are not unknown to the Supreme Court. Analogously, it is by no means clear that the Supreme Court would find statutes prohibiting the desecration of religious symbols, or other "hate speech" provisions to be unconstitutional. Some lower courts have struck down some

provisions, but other courts have upheld other provisions. It is premature to propose a constitutional amendment before the Supreme Court has determined what the Constitution means and without the benefit of its pronouncements on matters of constitutional principle.

Resolution of constitutional issues through the judicial, rather than political process, should be the preferred course. Judges are accorded life tenure and salary safeguards for a reason -- so that they can be independent of political pressure and true to legal principle. Even so, through the appointments process the framers provided a means whereby the Court's jurisprudence can gradually be realigned with prevailing societal views. If a change is needed, this process should be given a chance to work.

4. Conclusion: In sum, then, I urge you to weigh the matter carefully before you cast your vote for the proposed resolution. To deny political protesters the right to express their views in the most forceful way possible would be to erode core first amendment principles. An amendment would also have dangerous implications for our constitutional processes and set a dangerous precedent by cutting back on the protections afforded by the Bill of Rights. These are serious consequences, and they should be accepted only if an amendment is absolutely necessary. But it is not. We have no serious flag burning problem in this country; it does not compare with problems of the economy, education, or the federal deficit. There is simply no real need for the amendment.

As much as we detest flag burning, the most effective response is flag waving. Indeed, as a patriotic American, I have never been prouder of our system of government than I was when the Supreme Court decided Texas v. Johnson, because our dedication to the principles of liberty is never more clearly demonstrated than in the protection of those whose views we most abhor. To come back to the beginning, the question here today is not whether to protect the flag, but how best to do so. That may depend on what we mean when we say "the flag." Is it the pieces of red, white, and blue cloth sewn together in a particular pattern of stars and stripes, or is it the principles of liberty and democracy that it represents? In my view, we do not honor or protect the flag by abandoning those principles.

February 4, .

Mr. Chairman and members of this committee.

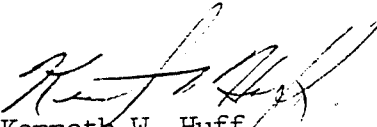
My name is Kenneth Huff. I am from Winfield Kansas. I am here today to oppose S1612 and H5015- The flag burning resolutions.

The first amendment guarantees the right of all to free speech, including those whose speech and actions are diverse to those of the majority. Our American flag represents us all and therefore also those whose positions are distasteful to many of us.

Induced Nationalism is what this amendment calls for. A Nationalism whose most grotesque forms are realized by Hitler's Nazi Germany. Japan's rising sun and even Saddam's Iraq. Their induced nationalism flowed not from the differing opinions which culminated into consensus, such as what came out of our federal legislature on the gulf war, but from forced consensus built on varying pseudo-nationalisms- fear and disgrace being their unifying character. Our flag with any restriction, no longer is our flag, but a flag controlled by government- induced nationalism. Our diversity as a nation is what has made us a great country and not governmental control.

As a two tour Vietnam Veteran, I have considered this issue and with some admitted difficulty, I believe these type of resolutions are more of an insult to what our flag represents, than what a flag burner could ever accomplish.

I thank this committee for its time.


Kenneth W. Huff
0106 Iowa St.
Winfield, Kansas
67156.

H500
Attachment #7
4-4-91

TESTIMONY BY THE AMERICAN CIVIL LIBERTIES UNION OF KANSAS
Before the House Judiciary Committee
Senate Concurrent Resolution 1612
April 4, 1991

These comments are made on behalf of the American Civil Liberties Union of Kansas, and address Senate Concurrent Resolution 1612. This Resolution requests the U.S. Congress to amend the U.S. Constitution to ban flag burning and burning of the cross and other religious symbols.

The American Civil Liberties Union opposes this Resolution, and any attempt to erode First Amendment protections in the Bill of Rights. The ACLU is opposed to any legislation which limits political expression. Although we understand the strong patriotic sentiments that inspire such legislation, we believe that flag desecration is a form of symbolic speech, an expression of political dissent.

In a democracy, free political discourse is vital. Without it we threaten the very democratic system which the flag supposedly represents. When one weighs desecration of a symbol with destruction of our right to free speech and political discourse, the answer seems clear. Inroads into the type of speech and expression allowed in our society is abhorrent to a democracy.

There have been many efforts to limit political speech in our country's history, including the McCarthy era atrocities, all done in the name of the protection of our country and a way of life. Certain associations and expression were not allowed. We must be ever vigilant to try and make sure that that kind of litmus test is not repeated. We must protect free expression and political speech, even if we find it repugnant and emotionally distressing.

Desecration of religious symbols is included in this Resolution. Prohibiting the desecration of religious symbols is a violation of the separation of church and state. Although we abhor and have worked against discrimination and racism, the ACLU believes that restricting free speech cannot be the answer to combat racism. We believe people have the right to participate and communicate their political and religious ideas, even if we do not agree with them. Discrimination may be combated through education, free communication and exchange of ideas and information.

HJUD
Attachment # 8
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Although we are vehemently against this Resolution, we hope that if it does pass that Congress will be cautioned to weigh carefully our First Amendment rights with any reasons given to restrict those rights. We hope they will be reminded of the grave and momentous step they are taking in the limitation of free speech and political expression in our democracy.

We hope the Committee will take into consideration that the year of the Bicentennial of the Bill of Rights is a year to work toward protection and appreciation of those rights--not a year to restrict them. Thank you for the opportunity to present our views to the Committee.