

Approved: May 1, 1996
Date

MINUTES OF THE HOUSE COMMITTEE ON FEDERAL AND STATE AFFAIRS.

The meeting was called to order by Chairperson Garry Boston at 8:30 a.m. on April 29, 1996 in Room 313-S of the Capitol

All members were present except: Representative David Adkins, Excused
Representative Candy Ruff, Excused

Committee staff present: Mary Galligan, Legislative Research Department
Mary Ann Torrence, Revisor of Statutes
June Evans, Committee Secretary

Conferees appearing before the committee: Representative Tony Powell

Others attending: See attached list

HCR 5032 - A concurrent resolution urging Congress to propose for ratification by the states, an amendment to the Constitution authorizing the states to prohibit the desecration of the United States Flag.

The Chairperson stated when the Committee adjourned at the last meeting, there a motion to move out favorably **HCR 5032** and at this point will open the discussion on the motion to pass out favorably and asked if there was any discussion.

Representative Tony Powell testified in support of **HCR 5032**, stating acts of desecration against our flag is deeply offensive to millions of Americans, especially those who fought and died for our nation and the flag which represents it. (See Attachment #1)

The Chairperson stated that the motion was to pass **HCR 5032** out of committee, but extended the latitude as the author to take questions and this is unusual since the motion before the committee was to pass the bill out. After discussion Representative Nichols moved and Representative Ballou seconded a substitute motion to amend **HCR 5032** to include in the legislation the same as before the U.S. Senate calling for the creation of the national study on the expansion of the gaming industry nation-wide which is being done in Kansas.

Representative Graeber questioned if a resolution could deal with two topics; (1) flag desecration and (2) expansion of gaming.

Staff stated U. S. Congress is dealing with the same thing.

Representative Ballou stated he was considering what Representative Nichols was doing along with another "be it resolved" and asked if that passes would amendments be in order or would we be done?

Representative Aldritt asked if Representative Nichols intent was to offer a substitute motion and only incorporate gaming expansion into **HCR 5032**. Is it correct if this motion passes another motion to amend would be in order, correct?

The Chairperson stated, that is correct.

Representative Ballou withdrew his second to the motion.

Representative Samuelson seconded Representative Nichols motion.

A division was called -- Yeas - 10 - Opposed - 9. The motion carried.

Representative Lloyd moved and Representative Ballou seconded a substitute motion that desecration of the American flag should be a criminal action, but don't feel it is something that is protected under the Constitution and Freedom of Speech Doctrine. A show of hands vote was called for: Yeas - 9 - Nays 10. The motion failed.

The Chairperson stated were back on moving **HCR 5032** out favorably. A division was called: Yeas - 10 and Nays - 9. The motion carried.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE FEDERAL AND STATE AFFAIRS, Room 313-S
Statehouse, at 8:30 a.m. on April 29, 1996.

Sub. SB 754 - Act Concerning Lotteries, providing for operation of certain state-owned and operated lottery games at certain racetrack facilities.

The Chairperson opened the hearing on **Sub. SB 754.**

Staff gave a briefing on **Sub. SB 754.**

Discussion followed.

Chairperson Boston moved and Representative Aldritt seconded to accept bill introduction concerning parimutuel racing; relating to disposition of certain revenues. The motion carried.

The Chairperson stated the meeting would have to adjourn at 9:55 a.m. to enable being back on the House Floor at 10:00 a.m. The hearing would continue on adjournment and the time and place would be announced on the House Floor.

The meeting adjourned at 9:55 a.m. The next meeting is scheduled on the next adjournment for April 29, 1996.

COMMITTEE GUEST LIST

8:30am
1st session

DATE: April 29, 1996

| NAME | REPRESENTING |
|-------------------|---|
| Don O'Leary | American Legion |
| Chelsh Snyder | American Legion |
| Tamon Christensen | American Legion |
| Charles M Yunker | American Legion |
| Tom Fun | SW Bingo |
| STAN CHILTON | CHILTON VENDING & BILLIARDS |
| Lester Lamsar | Lottery Retailer |
| Jim Edwards | KCCF |
| RK Teuchgraber | Eureka Downs |
| Karen Tally | KQHRA |
| Allan Hyslop | " " " |
| Jeff Rutland | " " |
| Shel Pugh | KSCPA, KQHRA & KANSAS LIVESTOCK ASSN |
| COWAN MILLER, JR | KANSAS BOWLING PROPRIETORS |
| Robert Johannes | Kansas Bowling Proprietors |
| Tom [unclear] | Wichita Greyhound Charities |
| Roy Berger | Wichita Greyhound Park |
| Stevellontgomery | Ks. Greyhound Kennel Owners Assoc |
| Tom Bruno | Allend Assoc. |
| Kathy Return | Sunflower Racing |
| John Peterson | Ks Bowling Proprietor Assn |
| Frank DeSocio | TOMM Bowling Co. KS Bowling Proprietor Assn |
| RICK SCHROER | Rose Bowl E WICHITA |
| Dale Frazier | Wichita Derby Seneca Bowl - Derby Bowl |
| REX HANEY | KSRPA GAGE BOWLS |
| Charles V. Hamm | self |
| Thel Cain Jr | CC K FJ |
| John [unclear] | Kansas for jobs |
| Jennifer Shephard | Kansas for jobs |

COMMITTEE GUEST LIST

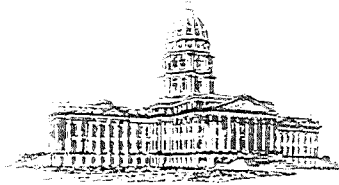
DATE: 7/29/96 *125 session*

| NAME | REPRESENTING |
|--------------------|--------------------------------|
| Bryan Smith | Kansans for jobs |
| Brad Reichenker | Kansans for Jobs |
| Steve Collier | Kansans for Jobs |
| Stacy Allen | Kansans For Jobs |
| Leonard Turanc | Kansans for Jobs |
| EDWARDS LYNCH | KANSAS STY FOR JOBS |
| Daisy Armstrong | Kansans For Jobs |
| Jocetta Shaw | Kansans for Jobs |
| Lawrence Morgan | K. C. Kans. |
| Rose E. Bateson | Kansans for jobs. |
| Bill Walker | Kansans for jobs |
| Denise Bassett | Kansans for jobs |
| Derrick Reichenker | The Woodlands |
| Meredith Beck | Kansans for jobs |
| Helen Stout | Ks. Greyhound Assoc. |
| Jim Allen | Camp Town |
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STATE OF KANSAS
HOUSE OF REPRESENTATIVES

COMMITTEE ASSIGNMENTS

TONY POWELL
REPRESENTATIVE, 95TH DISTRICT
SEDGWICK COUNTY
1313 WINTERBERRY
WICHITA, KANSAS 67226
316) 634-0114



TOPEKA

STATE CAPITOL, ROOM 1501 W
TOPEKA, KANSAS 66612-1504
913) 296-7694

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JOINT COMMITTEE ON
SPECIAL CLAIMS
AGAINST THE STATE

TESTIMONY IN SUPPORT OF HCR 5032

BEFORE THE HOUSE FEDERAL AND STATE AFFAIRS COMMITTEE

April 29, 1996

Mr. Chairman and members of the Committee,

It is a pleasure to appear before you today in support of HCR 5032, a concurrent resolution urging Congress to propose for ratification by the states, an amendment to the Constitution authorizing the states to prohibit the desecration of the United States Flag.

As the members of this committee are aware, in 1990, the United States Supreme Court in the case of *Texas v. Johnson* overturned state laws prohibiting the desecration of the Flag. Millions of Americans have strongly disagreed with the Court's decision, and attempts have been undertaken to reverse its decision. By passing this resolution, the State of Kansas will be on record as supporting the protection of one of liberty's greatest symbols, "Old Glory."

Many of the critics of this resolution have stated that we must protect free speech and not tinker with the First Amendment. Let me say at the outset that I respectfully disagree with the Court's contention that desecrating the flag is speech. It is criminal conduct! Few would argue that the act of a person coming into this Capitol and attempting to deface it would constitute "speech," even if a political message was intended. Even with the passage of a constitutional amendment, I do not believe that free speech would be impaired as citizens would still be given a wide range of avenues to express themselves--except for just one thing, burning the Flag. When the Supreme Court errs, it is our constitutional duty to correct it. Just as *Dred Scott* was ultimately corrected by the 13th Amendment, so can *Texas v. Johnson* be corrected with a Flag Burning Amendment.

With regard to the argument that we should not tinker with the First Amendment, the Constitution allows such "tinkering!" Our Constitution allows for amendment because our Founding Fathers knew they would not be able to foresee every issue that would require a change in the Constitution. This is one of those times. The Constitution provides that when the public and Congress disagree with the Supreme Court's decision, it may be amended to

Fed & State
4-29-96
Atch #1
1st Session

correct the Court's mistake. All the amendments added to our Constitution are testimony that it can be amended without jeopardizing the freedoms we hold dear. Amending the Constitution is as American as apple pie.

Finally, let me say that even if desecrating the Flag is truly speech--and I still argue it isn't--then in my humble view, it should have been prohibited under the "Fighting Words" Doctrine. "Fighting Words" are those words which "by their very utterance inflict injury or tend to incite an immediate breach of the peace." *Chaplinsky v. New Hampshire*, 315 U.S. 568, 572 (1942). Just as some courts have ruled cross burning to be "Fighting Words", see *State v. T.B.D.*, 656 So. 2d 479 (Fla. 1995), so should flag burning be considered "Fighting Words".

Acts of desecration against our Flag is deeply offensive to millions of Americans, especially those who fought and died for our Nation and the Flag which represents it. Let us honor their memories by passing this resolution.

Thank you for your kind attention. I will be happy to stand for questions.