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Negative Position
Government & English 12
Jones & Stoll
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Statement:

**Amending the US Constitution to Prohibit the Desecration of the US Flag would
Limit Free Speech**

Sample 1st Argument (6 minutes)

Hello - My name is Russell Stoll and I will be arguing in negation of the idea that Amending the US Constitution to Prohibit the Desecration of the US Flag would Limit Free Speech. The Flag Desecration Amendment, as proposed and nearly passed by both houses of Congress in 1995, does not include any language in and of itself that would limit the free speech of citizens of the United States of America. The amendment would, however, give Congress the power to begin the work of defining and legislating physical flag desecration if and when the Congress feels that such a law is necessary. As an act which empowers Congress and does not limit the free speech of United States citizens, we should amend the US Constitution to prohibit for flag desecration.

There are some things you just can't say; words that the general public agrees should not be uttered because of how it might make someone feel. We are a majority of minorities, and I would imagine that every single one of us knows what it feels like to be disrespected by words that somebody has used out of ignorance or out of malice.

On the other hand, if somebody wanted to make us mad, if somebody wanted to start a fight, that person knows exactly what words to use. We all know these words. A word that could be used to disrespect an African American, or to offend a gay man or a lesbian woman; terms to insult a person of hispanic descent or to demean a female. And even in times where strong words must be used, times where we must make our voices heard in protest or in dissent, we recognize as a society that there are words that should never be used because not only do they offend the target's dignity, but they make civil discourse impossible.

There are times when freedom of speech and freedom of expression must be limited for the safety and benefit of others. In an opinion ruling in favor of the restriction of the freedom of speech in *Schenck v. United States*, Supreme Court Justice Oliver Wendell Holmes once stated that, "the most stringent protection of free speech would not protect a man falsely shouting fire in a theater and causing panic." In this now infamous legal metaphor, Justice Holmes is making the point that freedom of speech does not allow you to cry "Fire!" in the middle of a crowded theater, because you would then be putting the audience in harms way. People would be scared for their lives, they would be acting irrationally in an attempt to get out of that theater; people could be trampled or injured by other patrons in the mad rush to get out of the theater.

When people desecrate or burn the American flag, they are in essence doing the same thing as using hate speech or shouting "Fire!". The American flag is uniquely symbolic of the ideals held important by our country: democracy, liberty, and freedom. As stated by US Senate Majority Leader Bill Frist, "The flag is not only the physical symbol of our nation, our pride and our history, but also of our values: freedom,

justice, independence, equality and, ultimately, we the people. Protecting the flag won't stop Americans from exercising their First Amendment right to free speech."

Desecrating the flag is like attacking those ideas, is like attacking the American people, is like attacking the men and women who fight in our military to defend our country or attacking our fore fathers that fought for this country in the first place.

Now, does it sound somewhat backward to say that we must restrict some freedoms to protect other freedoms? Yes and no. There has always been precedent exemptions that restrict free speech for the good of society; sometimes, you must restrict free speech to protect the public's well-being - to protect our rights to life, liberty, and property. In *Schenck v. United States*, the court ruled that freedom of expression was not an absolute right - that it is not a right without limitations.

The passage of the Flag Desecration amendment with its current language would not immediately curb the rights of any United States citizen. Rather, it would enable Congress to create specific language regarding what is and is not considered flag desecration. The exact language of H.J. Res. 10, proposed by the 109th Congress, is simple, and is this: "The Congress shall have the power to prohibit the physical desecration of the flag of the United States." There is nothing in this language that limits any rights of any citizen. All it does is to empower Congress to carefully and mindfully create new laws that may set reasonable boundaries in protecting this important symbol.

The idea of protecting the flag from desecration has come up in nine different resolutions in the two houses of Congress over the past 19 years. The Flag Desecration bill has received bipartisan support in the past, receiving votes from both Republicans

and Democrats alike. The idea of protecting the flag as a sacred symbol is something that rises above partisan loyalties.

And the act of setting these reasonable boundaries does not impend upon any citizen's speech at all. As stated by CA Senator Diane Feinstein, a well-respected liberal: "Protecting the flag will not prevent people from expressing their points of view. I believe a Constitutional Amendment returning to our flag the protected status it has had through most of this nation's history, and that it deserves, is consistent with free speech." Feinstein's argument is that protecting the flag does not infringe on rights of free speech, and that passing this amendment would in fact be returning to traditional values.

To again quote Republican Senator Bill Frist: "I believe that the Constitution should allow states and the federal government to protect our flag... In my view, desecrating the flag is not speech, but an act of physical assault..." The idea of protecting the flag from being used a symbol for ignorant means of intimidation is an idea shared by legislators on both sides of the political aisle.

To conclude my argument, I will quote Harvard Law School professor Richard Parker, and he states, "The truth is that the proposed amendment would not alter 'the First Amendment' in the slightest. The First Amendment does not itself forbid protection of the flag. Indeed, for almost two centuries, it was understood to permit flag protection." The idea of protecting the flag from desecration, protecting it from being abused in tactics of intimidation, is merely returning to beliefs held true up until very recent history. The passage of the Flag Desecration amendment does not, in and of itself, abridge any rights of any American citizen, and in fact preserves the

usage of the flag of the United States of America as a symbol of democracy, of independence, and of equality.