

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

### CROSS EXAM QUESTIONS:

#### (START WITH CLARIFYING QUESTIONS)

- The Report of the 108th Congress, in proposing this amendment, stated:  
"...desecrate' means deface, damage, or otherwise physically mistreat in a way that the actor knows will seriously offend one or more persons likely to observe or discover his action...  
Would you agree with this definition of desecration?

(Would you count as desecration...

... burning a flag?

... urinating on it?

... defacing it with hate speech?

... trampling it?

... spitting on it?)

- So what you are saying is that you are okay with somebody disrespecting the flag by writing hateful words on it? By burning it? By trampling it?

- Is it not a legal precedent that free of speech may be restricted in situations that would incite imminent violence?

- So if I used my freedom of speech to purposefully start a riot, that would be grounds for arrest, correct?

- So if I went to the Federal Building in West Los Angeles on Wilshire Blvd with a crowd of angry people, lit an American flag on fire, and charged the building with those people, would that not get me arrested?

- Does this not sound like an attack focused on the American government?

- And the desecration of the flag would be an important in this attack, would it not?

- Does the abuse of the flag in that scenario not make that attack appear like an attack on the nation?

- So if the use of the flag as a symbol makes this attack seem like an attack of the government, shouldn't the use of this symbol make for a harder kind of punishment?

- Is the american flag a symbol of our country? (Would you consider it?)

- Is the flag a symbol that should be respected?

- Is it considered as a symbol of our rights?

- Is it considered as a symbol of our freedom?

- It is a powerful symbol then, is it not?

- More powerful than, say, the Liberty Bell?

- More powerful than the White House?

- More powerful than the Statue of Liberty?

- Then, if the flag is such a powerful symbol, should we not provide it with the utmost respect?

- So if somebody uses this symbol in an act of intimidation or an act of violence, does it not make that those acts more heinous?
- Would it not be tempting to abuse such a powerful symbol to make acts of violence more impactful?
- Would the abuse of this (powerful) symbol not then make an attempt to incite violence even worse?

( - If the Flag Desecration amendment passed, it would give Congress a new power, is that correct?

- And with that new power, they could set certain restrictions for physically desecrating the flag, is that correct?
- And so, Congress could set restrictions that only made flag desecration illegal if it incited imminent violence, is that correct?
- But it would be in the power of Congress to then make consequences even stronger for the use of the American flag to incite violence, is that correct?)

FINAL:

- Is the phrase “free speech” used anywhere in the language of the Flag Desecration Amendment?
- Is the phrase “First Amendment” mentioned anywhere in the Flag Desecration amendment?
- Is there any language, any specific word, in the Flag Desecration amendment that directly limits any right of any American citizen?
- So, by passing the amendment alone, Congress would not be infringing upon the right to free speech of any American, is that correct?

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## ARGUMENT:

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.

## DEFENSES:

### Other Exclusions of Free Speech:

- "Can't yell fire in a crowded theater."
- "Clear and Present Danger"
- "Inciting immediate violence"

### Round-Abouts

- Hate Speech
- "Can't deface money" (Public Property)

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Congress has tried to pass this amendment in every session

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Historically, it was understood that the US Flag was protected from desecration

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The Report of the 108th Congress, in proposing this amendment, stated:

"...'desecrate' means deface, damage, or otherwise physically mistreat in a way that the actor knows will seriously offend one or more persons likely to observe or discover his action..."

This seems to suggest that the amendment will apply only to acts where the actor intends offense.

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"Hate speech (as defined by the Council of Europe) covers all forms of expression which spread, incite, promote or justify racial hatred, xenophobia, anti-Semitism or other forms of hatred based on intolerance, including: intolerance expressed by aggressive nationalism and ethnocentrism, discrimination and hostility against minorities, migrants and people of immigrant origin." No Hate Speech Movement

The ACLU also noted that the need for protections against hate crimes is growing. Under the Hate Crime Statistics Act, the FBI annually collects and reports statistics on the number of bias-related crimes reported by local and state law enforcement officials. In 2003, the FBI reported 7,489 incidents covered by the act. Of those, 3,844 were related to race and 1,239 were related to sexual orientation. Gender identity is not a category monitored by the act.

"This law would punish acts of discrimination, but not bigoted beliefs," Anders said. "Congress should act to punish persons for violent acts when victims were selected only because of who they are."