

an insult to all Americans, especially to those who fought to uphold the flag and maintain our freedom.

This constitutional amendment to give to Congress the power to prohibit the physical desecration of the flag in no way contradicts or weakens the first amendment's guarantee of freedom of speech. There has always been some limitations on the freedom of speech.

As mentioned earlier, prior to 1989, when States had flag protection statutes in effect, the American people did not complain that their freedom of speech was being unfairly restricted. In fact, in a recent poll, over 80 percent of Americans did not believe that the physical act of burning the flag was an appropriate expression of freedom of speech as guaranteed by the first amendment.

In addition, flag desecration, such as burning, trampling, spitting, and defecating on the flag is not actual free speech but is expressive conduct. Expressive conduct is understandably afforded a lower level of constitutional protection than actual speech.

This is an American issue, and the American people want the right to protect their flag. Forty-nine State legislatures, including my home State of Illinois, have passed memorializing resolutions asking Congress, asking us here in the U.S. House of Representatives, and the Senate, for the opportunity to ratify a constitutional amendment protecting the flag. Two hundred eighty Members of Congress, from both parties, from all regions of the United States, have listened to their constituents and have cosponsored this important resolution.

I urge all my colleagues to vote in favor of House Joint Resolution 54. We must seize this opportunity to restore the American flag to its rightful place of honor and give the American people the right to protect their greatest symbol, the American flag.

Mr. Speaker, I reserve the balance of my time.

Mr. CANADY of Florida. Mr. Speaker, I yield 1 minute to the gentleman from Alabama [Mr. ADERHOLT].

(Mr. ADERHOLT asked and was given permission to revise and extend his remarks.)

Mr. ADERHOLT. Mr. Speaker, I rise today in support of the resolution today offered by the gentleman from New York [Mr. SOLOMON], an amendment to the Constitution that will give back to the American people the right to protect the one symbol that represents our great country more than any other, the American flag.

America is truly the land of the free and the home of the brave, and many of our country's best and brightest fought hard and gave their lives to protect this Nation. Now we must fight to protect the symbol of all that this country stands for, the American flag, the sacred emblem of our country and our heritage of liberty that was purchased with blood and sorrow.

Each time the flag is desecrated in America today, it is a slap in the face to the men and women who gave their lives to honor this country. By placing the flag in front of our homes and our businesses, we show honor to our veterans, and by desecrating it we show them disrespect.

Mr. Speaker, I urge my colleagues to join with me today in pledging allegiance to our flag.

Mr. GILCHREST. Mr. Speaker, I yield myself such time as I may consume, and I rise to speak against the resolution.

Mr. Speaker, as we move closer to amend the Bill of Rights for the first time in our Nation's history, I am reminded of what the gentleman from Georgia [Mr. GINGRICH] said at the opening day of this session of Congress, and I quote, "On the altar of Almighty God, I have sworn eternal hostility to the forces that would bind the minds of men."

That statement is arguably the most moving statement to individual freedom I have ever heard. Though I am no Thomas Jefferson, I too swore an oath before this Chamber to defend the Constitution, and the Bill of Rights in particular. For that reason, I strongly oppose the measure before us.

Jefferson did not pledge to fight for the freedom of good men, of wise men, or of inoffensive men. Until God himself sits in judgment, these distinctions will always reside in the minds of those with power.

Jefferson realized that the only way to defend freedom of good men is to defend the freedom of all men. The test, in fact the only test of a government's commitment to free speech is how it deals with the most unpopular, the most offensive and the most ill-conceived of messages.

We all know what would happen to anyone who burned the flag in Cuba. We all know what would happen to anyone, and we have seen it, who would burn the flag in China at Tiananmen Square. What is remarkable to me, however, is hearing my colleagues suggest that we have something to learn from China or Cuba; that patriotism requires us to become a little bit more like the oppressive regimes that we most often daily criticize.

Throughout the cold war years, we continually reminded ourselves that freedom is not free. One cost of freedom is eternal vigilance against those foes from without and from within. Another is vigilance against the sort of creeping majoritarianism that values freedom from insult more highly than freedom of speech.

The unavoidable cost of freedom is the fact that people will use freedom in insulting and sometimes idiotic ways. The few malcontents who burn flags seek our outrage. They need it to draw attention to their causes. If we ignored their actions or maybe just throw a bucket of water on them, they would soon realize that they were wasting their time.

Today, we not only give what they are doing the outrage that they seek but we enshrine it in the highest document in the lands. We are wrapping this gift in some pretty expensive paper. That expensive paper is the Constitution, whose liberties were bought with the blood of our forefathers. Is this the right thing to do?

In the play, "A Man for All Seasons," Sir Thomas Moore is questioned about whether the law should be used to protect bad men. He is even asked if it is wise to cut through the law to get at the devil. This is his response, and I quote:

And when the devil turned round on you, do you really think you could stand the winds that blow against you and blow against them? All the laws being flat, I would give the devil protection of the law for my own safety's sake.

Today we are asked a question much like the one asked Thomas Moore. Today we are asked to cut through the Bill of Rights to get at a particular devil: people who burn the flags. But the constitutional limitations which protect them are the same as the constitutional rights which protect us from oppressive governments.

Mr. Speaker, I believe that, no matter what anyone says, the House seems to value the work of Betsy Ross above the work of Madison and Jefferson. In my opinion, the practical effect will be to weaken both and to increase the pressure to restrict other kinds of speech. Thus, we will find ourselves cutting through the first of several swaths to the Constitution to get at various devils. May God help us should the devil turn round on us.

Our Nation's flag deserves our respect and protection. The best way to show respect for that symbol of freedom is good works, to be loving parents, competent teachers, and responsible legislators. We honor those who have given the ultimate sacrifice for their country by living those ideals.

Mr. Speaker, I yield the balance of my time to the gentleman from Texas [Mr. PAUL].

(Mr. PAUL asked and was given permission to revise and extend his remarks.)

Mr. PAUL. Mr. Speaker, much has been said about this issue being a freedom of expression issue, and it certainly is. Obviously, the American Legion that burns the flag does it differently than the hoodlum on the street, so it does involve an expression of some ideas; that we are limiting that ability for any individual to make this expression.

I am convinced that this is historic. This is the first time that we have worked hard in undermining the Bill of Rights. Some have said that the first amendment cannot be absolute, but in some ways it can be. What we say and do in our homes and churches should be absolute, and we should be able to say and do things.

The restrictions on speech is when we get involved in lying and slandering

and doing harm that way. Yes, then there is a limitation. But that is different. When we are in our churches, we should have absolute right of freedom of speech.

But there is more to this than freedom of expression. This is a property rights issue. That is why I am so disappointed with some of my colleagues that have pushed this as an amendment, because this is an attack on property rights. The question seems to be asked very rarely but should be asked: Who owns the flag?

If somebody burned the flag, who owns the flag? They are saying everybody owns it? How does that happen? Can we not buy a flag anymore? Do we believe in collectivism now; that everybody owns the flag and everybody is responsible for it, and we will all do exactly as we are told? That is not part of our system.

We guarantee the right of free speech through property rights, through the reverence that we give to our churches or our radio stations or our newspapers. Nobody has the right to march into our church and preach any religion to us or march into a newspaper or march into a radio station. So in this case we are dealing with a piece of property that should be respected as property. And I think we are attacking that just as much as anything else.

Also, it is disappointing to see that this amendment is actually worse than the last amendment that came to this House floor, because at least the last amendment recognized that maybe the States could write regulations. Under the original Constitution, in the original intent of the Constitution, it would have been permissible for States to write regulations of this sort. It was our courts that have come in and started to overregulate freedom of speech and freedom of expression.

For instance, I am quite comfortable in agreeing with the Istook amendment. Because of the courts, again, we have lost the concept of property in our public schools. In a private school we know what we are allowed to do. But in a public school everything becomes fuzzy. So the courts come in and say, all of a sudden, we cannot even have a voluntary prayer.

So the Istook amendment approaches completely opposite of what we are doing here, because this is restriction of expression, it is a restriction on the private property ownership, and it really attacks the 9th and 10th amendments. Because before, even where the States had been permitted to write laws, they are not permitted under this legislation. Only the Congress shall make the laws.

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I thought we were supposed to make the Federal Government smaller as conservatives, not bigger. Here we are adding a new role for the BATF. We have the Bureau of Alcohol, Tobacco and Firearms; and we are going to have a BATFF in order for those individuals

to go out and regulate the flag use. And this is Federal.

Just think of how the RICO laws may apply to this. One individual in one group may do something wrong; everybody in that group can be held guilty for that. What if there happens to be someone in there that has done it deliberately in order to get at the group? Could this be entrapment? Has our FBI ever been known to do this?

I think it is a dangerous thing that we are doing. Why are we so fearful? It is implied at times that if we do not endorse this amendment we are less patriotic than the others. I think that is wrong to imply that we might be less patriotic. From my vantage point, from having been involved in politics for a few years, the real attack is not on our liberties. The real attack in this institution is the attack on the Constitution, and this does nothing to address it.

It is almost like window dressing. We are upset and feel guilty and in a mess and cannot do anything. All we need to do is pass a flag amendment and it is going to solve the problem of the attack on the Constitution, which is continuous and endless. We do not need more legislation like this. We do not need an amendment to the Constitution that will, for the first time, alter the Bill of Rights.

I really think those individuals who are pushing this have courage to get out front and say yes, for the first time, we will curtail the authority or the expressions and the rights of the Bill of Rights.

Mr. CONYERS. Mr. Speaker, I yield such time as he may consume to the gentleman from North Carolina [Mr. WATT], one of the finest legal minds on the Committee on the Judiciary, and I would ask him to yield to me briefly.

Mr. WATT of North Carolina. Mr. Speaker, I yield to the gentleman from Michigan.

Mr. CONYERS. Mr. Speaker, I would like to turn to my friend, the gentleman from Chicago, Ill [Mr. LIPINSKI], who made the point that it is expressive conduct, but not free speech, in defining the flag burning situation.

I would like to ask the gentleman from Illinois [Mr. LIPINSKI] if he has any cases or constitutional theory that would explain how he separated flag burning out of free speech but put it into expressive conduct, which I presume is not covered by the first amendment?

Mr. LIPINSKI. Mr. Speaker, will the gentleman yield?

Mr. WATT of North Carolina. I yield to the gentleman from Illinois.

Mr. LIPINSKI. Mr. Speaker, I appreciate the gentleman yielding to me. I say to the ranking member of the committee, I do not have any here right now, but I will be very happy to reach out and try to get them back here prior to the time we have a vote on this issue.

Mr. CONYERS. I thank the gentleman.

Mr. WATT of North Carolina. Mr. Speaker, I have been engaged in a long-standing debate with my colleagues on the Republican side of this House about the definition of what is conservative and what is liberal. And every time I come here, I try to start this way so that I put this debate in context for my friends.

I should start it, "Here we go again." That is one of their conservatives, Ronald Reagan, that was his "Here we go again." Because it has always been my philosophy that the most conservative position in America is to defend the most conservative document in America, and that is our Constitution.

So how my colleagues could start with a Contract With America that had two proposed constitutional amendments in it has always been kind of disconcerting to me, because they keep calling themselves conservatives and it seems to me that that is inconsistent.

How in the 2-year period of that revolution we had introduced in the U.S. House of Representatives a total of 118 proposed constitutional amendments, how they can continue to call themselves conservative, I do not understand.

How in that 2-year period of that conservative revolution we voted more times than on constitutional amendments than in any congressional term over the last 10 years, and my colleagues can still call themselves conservatives, I do not understand.

Things from the balanced budget amendment to the term limits amendment that is back again, to super majority requirement for tax increases, to voluntary school prayer, line-item veto, right to life, provide no person born in the United States on account of birth shall be a citizen here. I mean, a basic constitutional right.

Here we go again. Campaign finance reform in the Constitution, my conservative friends. Repeal the 22d amendment. Abolish the Federal income tax in the Constitution, my friends. Establish English as the only language, the official language of a nation that is a nation of immigrants, in the Constitution. And they are calling themselves conservatives.

These are the conservatives in this body calling themselves conservatives. And here we go again. Here we go again. These are not conservatives. These are radicals. It is a radical notion to amend the Constitution of the United States.

Now, having debunked this notion that those of us who are standing up for the Constitution are the radicals, as opposed to the people who have offered this amendment, now let me go to the notion that we are somehow unpatriotic because we are standing up for the Constitution.

Why do I love my country? Does it have anything to do with the color of the flag? It has to do with the principles that that flag stands for. That is all it has to do with. And every time