

No Law Against Flag-Burning

Article

PART 1

WASHINGTON, D.C. (Achieve3000, June 29, 2006). A proposed constitutional amendment to ban flag-burning was rejected in the Senate a few weeks ago. The amendment failed to receive the number of votes it needed to be sent to the states for ratification.

The proposed amendment, sponsored by Republican Senator Orrin Hatch of Utah, read, "The Congress shall have power to prohibit the physical desecration of the flag of the United States." It would have given lawmakers the right to make a law against burning or otherwise harming the flag. To become an amendment, the measure needed support from two-thirds of the House of Representatives and two-thirds of the Senate. If it had received both of those, it would have needed the support of three-fourths of the states.

The flag amendment did not make it past the Senate, however. Sixty-six out of 100 senators voted in favor of the amendment, just one vote fewer than the two-thirds required. Last year, the House of Representatives easily passed the amendment to the Senate with a 286 to 130 vote. When the Senate last considered a flag-burning amendment in 2000, it fell four votes short. This time, the vote was narrower.

The Senate's close vote reflected longstanding controversy over flag-burning. Those who supported the amendment said that the flag is a national monument that represents the sacrifice of U.S. troops. Therefore, they argued, it is wrong for its desecration to be permitted.

"Countless men and women have died defending that flag," said Republican Senator Bill Frist. "It is but a small humble act for us to defend it."

Those who opposed the amendment argued that flag-burning is a form of free speech. In the past, a few Americans have burned the U.S. flag to protest a government action that they disagreed with. This, amendment opponents said, is an important part of American freedom.

"Our country's unique because our dissidents have a voice," said Democratic Senator Daniel Inouye, a World War II veteran who lost an arm in the war and was decorated with the Medal of Honor. "While I take offense at disrespect to the flag, I nonetheless believe it is my continued duty . . . to defend the constitutional right of protesters to use the flag in nonviolent speech."



AP Photo/Greg Campbell, file
Senator Bill Frist speaks after voting for an amendment that would have allowed lawmakers to ban flag-burning.

The Senate also rejected an alternative measure, which Democratic Senator Dick Durbin had proposed. The measure would have made it illegal to damage a flag on federal land or with the intent of disturbing the peace. It also would have prohibited unapproved protests at military funerals.

The Senate does not consider constitutional amendments every day, and when it does, they are not easily passed. In fact, the Constitution has not been amended since 1992.

The Associated Press contributed to this story.

PART 2

Dig Deeper

In "No Law Against Flag-Burning," you read about the 2006 rejection of a proposed amendment that would have given Congress the power to ban flag-burning in the United States. U.S. Constitutional amendments are significant, and not only because they spell out the rights of all Americans. Courts, including the U.S. Supreme Court, consult the amendments (in addition to the Constitution itself) to determine whether contested laws should be upheld or rejected.

Given the importance of Constitutional amendments, it is difficult to pass new ones. The process goes like this: A proposed amendment must first pass both houses of Congress by a two-thirds majority. It must then be ratified by three-fourths of the states. Only then can it become an official amendment to the Constitution. In the last 230 years or so, the United States has passed only 27 amendments. The first 10 of them were the Bill of Rights.

Here is the history of two amendments that were proposed in recent years:

Flag-Burning Amendment

Many proposed amendments have failed, including the 2006 flag-burning proposal. As you read in "No Law Against Flag-Burning," this amendment passed in the House but not in the Senate. When considering their vote for this amendment, lawmakers may have looked at what the Supreme Court has said about the issue. In recent times, there have been two related cases. One is the 1989 case *Texas v. Johnson*. In that case, the court ruled 5-4 that Texas resident Gregory Lee Johnson had the right to burn a flag during a protest. (Johnson had violated a Texas law against flag-burning.) The Supreme Court cited freedom of expression under the First Amendment. The court said the government "may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable." The U.S. Congress responded to this decision by passing the Federal Flag Protection Act of 1989. This national law banned flag-burning. In a 1990 case, the Supreme Court ruled that this law was unconstitutional, using an argument similar to that of its 1989 decision.

These court decisions did not stop efforts to make flag-burning illegal. One argument in favor of a flag-burning amendment has been that the First Amendment protects free *speech*, rather than freedom of *expression*, such as actions. However, the Supreme Court invalidated this claim in the 1989 and 1990 cases. Therefore, some people believe, an additional amendment is necessary that would treat flag-burning as an exception to the First Amendment.

Equal Rights Amendment

In 1923, three years after the ratification of the 19th amendment, which guaranteed American women the right to vote, activist Alice Paul proposed the Equal Rights Amendment (ERA), to guarantee equal rights for all Americans, regardless of gender. In 1972, after several rounds of voting, both houses of Congress passed the ERA. It sent the amendment to the states, attaching a seven-year deadline for ratification. (This deadline was later extended to 1982.) However, the ERA did not pass. It was not ratified by three-fourths of the states within the allotted time.

Although the ERA failed in the 1980s, some lawmakers have championed it in Congress. The proposal was reintroduced in 2007. Supporters of the proposed amendment say it would remove discrimination against women in all areas of society, thereby guaranteeing equal opportunities, equal pay, and more. Opponents argue that in making gender bias unconstitutional, it would remove some protections for women, such as child support from ex-spouses and the exemption of women from military drafts.

If the ERA becomes part of the Constitution, it will be used to help decide the constitutionality of all laws involving gender.

Dictionary

desecration (*noun*) the treatment of something in a way that changes it from holy to commonplace

dissident (*noun*) a person who publicly disagrees with a policy

ratification (*noun*) the act of giving formal approval to something, usually an agreement

ratify (*verb*) to give formal approval to something