

# HOUSE BILL REPORT

## HJM 4000

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### As Reported By House Committee On:

Government Operations

**Brief Description:** Asking Congress to propose a constitutional amendment to prohibit the physical desecration of the flag.

**Sponsors:** Representatives Reams, Dyer, Talcott, L. Thomas, Schoesler, Brumsickle, Carlson, Casada, Chandler, B. Thomas, Cooke, Van Luven, Sehlin, Horn, Foreman, Cairnes, Buck, D. Schmidt, Scott, Skinner, Johnson, Thompson, Goldsmith, Backlund, Conway, Chappell, Basich, Smith, Honeyford, Hankins, Mulliken, McMorris, Fuhrman, Campbell, Sheldon, Huff, Silver, McMahan and Stevens.

### Brief History:

#### Committee Activity:

Government Operations: 1/10/95, 1/17/95 [DP].

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## HOUSE COMMITTEE ON GOVERNMENT OPERATIONS

**Majority Report:** Do pass. Signed by 13 members: Representatives Reams, Chair; Goldsmith, Vice Chair; L. Thomas, Vice Chair; Scott, Assistant Ranking Minority Member; Chopp; Hargrove; Honeyford; Hymes; Mulliken; D. Schmidt; Sommers; Van Luven and Wolfe.

**Minority Report:** Do not pass. Signed by 2 members: Representatives Rust, Ranking Minority Member; and R. Fisher.

**Staff:** Bonnie Austin (786-7135).

**Background:** In 1989, the United States Supreme Court in Texas v. Johnson struck down the conviction of a protester for burning a flag in violation of a Texas statute. The court held that the application of the Texas statute violated the free speech guarantees of the First Amendment to the United States Constitution.

Congress responded by passing the Flag Protection Act of 1989, which made it a crime for anyone to knowingly mutilate, deface, physically defile, burn, maintain upon the floor or ground, or trample upon a United States flag. In 1990, the United States Supreme Court held in United States v. Eichman that the application of the flag burning prohibition of the Flag Protection Act of 1989 was unconstitutional, again on free speech grounds.

Article V of the United States Constitution provides that Congress may, by a two-thirds vote of both houses, propose amendments to the United States Constitution. The proposed amendment becomes valid when ratified by three-fourths of the states.

**Summary of Bill:** Congress is requested to propose an amendment to the United States Constitution for ratification by the states specifying that Congress and the states have the power to prohibit the physical desecration of the flag of the United States.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Testimony For:** Forty-four other states have sent resolutions to Congress asking that Congress propose a constitutional amendment on flag desecration. Prior to the Supreme Court's ruling in the Texas case, 48 states had laws prohibiting flag desecration. A Gallup Poll indicates that 90.7 percent of Americans support laws against flag desecration. A majority of Americans would support this amendment.

The flag that is given to families to commemorate soldiers lost in the line of duty is precious to those families, and symbolizes their lost loved one. Watching someone burn a flag is extremely painful to these families, as it is to prisoners of war who watched comrades die protecting the flag.

The veterans who honor the flag fought and died for, among other things, the right to free expression. Prisoners of war know firsthand what it is like to lose their right to free expression. The Supreme Court does allow limits on free expression in other contexts.

**Testimony Against:** None.

**Testified:** Representative Tom Campbell; Henry Lamb; Mary Peterson; Beth Walters; Robert Sauter; Doris Gross; Beau Bergerm; Harol Page; Frank Kilgore; Joe Gates; Gordon Clark; Keith Stowe; Robert Lauver; Roy Bernd; and Dennis Primoli.