

**ALASKA STATE LEGISLATURE
HOUSE STATE AFFAIRS STANDING COMMITTEE**

January 22, 2002

8:03 a.m.

MEMBERS PRESENT

Representative John Coghill, Chair
Representative Jeannette James
Representative Hugh Fate
Representative Gary Stevens
Representative Peggy Wilson
Representative Joe Hayes

MEMBERS ABSENT

Representative Harry Crawford

COMMITTEE CALENDAR

HOUSE JOINT RESOLUTION NO. 30

Relating to an amendment to the Constitution of the United States prohibiting desecration of the Flag of the United States.

- MOVED HJR 30 OUT OF COMMITTEE

PREVIOUS ACTION

BILL: HJR 30

SHORT TITLE: DESECRATION OF U.S. FLAG

SPONSOR(S): REPRESENTATIVE(S) KOTT

Jrn-Date	Jrn-Page		Action
01/14/02	1947	(H)	READ THE FIRST TIME - REFERRALS
01/14/02	1947	(H)	STA, JUD
01/22/02	2025	(H)	STA RPT 5DP 1NR
01/22/02	2025	(H)	DP: WILSON, STEVENS, JAMES, FATE,
01/22/02	2025	(H)	COGHILL; NR: HAYES
01/22/02	2026	(H)	FN1: ZERO(H.STA/LAA)
01/22/02	2026	(H)	REFERRED TO JUDICIARY
01/22/02	2034	(H)	COSPONSOR(S): COGHILL
01/22/02		(H)	STA AT 8:00 AM CAPITOL 102

WITNESS REGISTER

LINDA SYLVESTER, Staff
to Representative Pete Kott
Alaska State Legislature
Capitol Building, Room 204
Juneau, Alaska 99801

POSITION STATEMENT: Testified on behalf of the sponsor of HJR
30.

ACTION NARRATIVE

TAPE 02-2, SIDE A
Number 0001

CHAIR JOHN COGHILL called the House State Affairs Standing Committee meeting to order at 8:03 a.m. Representatives Fate, Stevens, Hayes, and Coghill were present at the call to order. Representatives James and Wilson arrived as the meeting was in progress.

HJR 30-DESECRATION OF U.S. FLAG

Number 0055

CHAIR COGHILL announced that the first order of business was HOUSE JOINT RESOLUTION NO. 30, Relating to an amendment to the Constitution of the United States prohibiting desecration of the Flag of the United States.

Number 0134

LINDA SYLVESTER, Staff to Representative Pete Kott, Alaska State Legislature, read her testimony on behalf of the sponsor as follows:

The core of this resolution is found on page 3, lines 3-8:

"Be it resolved by the Alaska State Legislature that the Congress of the United States is [requested] to pass House Joint Resolution 36 or Senate Joint Resolution 7, or comparable legislation, and present to the legislatures of the several states an amendment to the Constitution of the United States that would specifically provide [the] Congress power to prohibit the physical desecration of the Flag of the United States; ..."

The American flag has long been enshrined as a symbol of what is right with America and is a most worthy emblem of our nation. In fact, until being overturned by a 1989 decision by the U.S. Supreme Court, on a 5-to-4 vote, the American flag was consistently afforded protections under state law in 48 out of 50 states. These laws survived five various challenges in the Supreme Court until finally failing in a case called Texas v. Johnson. And I'll tell you a little bit about that case, because it's quite interesting:

Number 0271

After publicly burning an American flag as a means of political protest, Gregory Johnson was convicted for desecrating the American flag in violation of Texas law. While at the Republican National Convention in Dallas, 1984, Mr. Johnson participated in a political demonstration dubbed ... the "Republican War Chest Tour." The purpose of the event was to protest the policies of the Reagan Administration and of certain Dallas-based corporations. The demonstrators marched through Dallas streets, chanting political slogans and stopping at several corporations to stage "die-ins." And what they were trying to do was ... protest the consequences of nuclear war. On several occasions they spray-painted walls of buildings and overturned potted plants. Johnson himself did not take part in these activities. He did, however, accept an American flag that was handed to him by a fellow protestor who'd taken it from the flagpole outside one of the targeted buildings.

The demonstration ended in front of Dallas City Hall, where Johnson unfurled the American flag, doused it with kerosene, and set it on fire. While the flag burned, the protesters chanted, "America, red, white, and blue, we spit on you!"

After the demonstrators dispersed, a witness to the flag-burning collected the flag's remains and buried them in his backyard. No one was physically injured or threatened with injury, though several witnesses testified that they were seriously offended by the flag-burning.

Number 0425

Of the approximately 100 demonstrators, Johnson alone was charged with a crime. The crime he was charged with was the desecration of a venerated object in violation of Texas penal code. Johnson was convicted of flag desecration - for burning the American flag, rather than for uttering any words. Of note, Texas's penal code required the intentional or knowing abuse - that is, the kind of mistreatment that is not innocent; it's intentionally designed to seriously offend other individuals.

Writing for the majority, Justice Brennan ruled that the states may not prevent flag-burning, as it was [a] protected expression under the First Amendment.

The law, as interpreted by the United States Supreme Court, we believe, no longer accords the nation's precious banner the reverence and respect befitting the symbol of our noble experiment called "America." This is what President Lincoln called "our last, best hope of mankind."

Number 0486

This resolution supports congressional HJR 36 and Senate [Joint] Resolution 7. Both resolutions ask Congress to send a constitutional amendment to the states for ratification. If agreed to by three-fourths of the states, the amendment would empower Congress to prohibit the physical desecration of the flag. No other issue on Capitol Hill has the endorsement of 80 percent of the American people [and] the majority of the U.S. House of Representatives and [the] Senate. And, as of August 2001, 100 percent of the state legislatures had, at one time or another, passed various resolutions similar to what we're asking you to approve.

Number 0550

We realize that there's strong opposition to this issue, and we respect those people [who] disagree. ... This is a critical facet of American free expression, and ... the exchange of ideas [is] the hallmark of our society.

U.S. Senator Ted Stevens issued a news release on a similar resolution [February 4, 1998]. He says: "Noting that Alaskans are strong in their belief that our flag should not be desecrated, the power to amend the Constitution demands a cautious respect. It is a considerable power - one that has helped to chart the course of our history. We should not jump into headlong ... amendments. But we should not be afraid to act on our beliefs, either." He continues: "The U.S. Supreme Court has given us a choice. We can accept ... that the First Amendment allows the desecration of [America's flag], or we can change the law to prevent it."

MS. SYLVESTER continued:

The citizens of the United States have set in motion a grassroots campaign of unprecedented success, and it is with great respect that we ask the members of the Alaska State Legislature to affirm the efforts to change the law to protect the monument that is our national flag.

Number 0646

Until 1989, 48 states, out of 50, had statutes prohibiting the burning of the flag. Most of these state statutes are patterned after the "Uniform Flag Act [of] 1917." Section 3 of that statute provides that "no person shall publicly mutilate, deface, defile, defy, trample upon, or by word or act cast contempt upon any such flag, standard, color, ensign or shield." Most of these laws were passed by the states at about the time of World War I.

The American flag, then, throughout history, has come to be the very symbol embodying our nation. It does not ... represent the views of any political party. It does not represent any [particular] ... political philosophy. In fact, the veterans of the Vietnam War, upon returning home to a rejecting nation, found singular comfort and solace in the symbol of the American flag, distinct and separate from the citizens and political leaders that had sent them to fight.

Number 0738

The flag is not another idea or "point of view" that filters to the top of pop culture. Millions and millions of Americans regard it with an almost mystical reverence, regardless of their divergent political and social beliefs. We maintain that the American flag is a national monument, a special kind of personality. Its use ... is traditionally and universally subject to special rules and regulations.

The dissenting opinion authored by Chief Justice Rehnquist argued that it was Johnson's use of this particular symbol, not the idea that he sought to convey, ... or any of his other expressions, for which he was punished. The fact is, Mr. Johnson was convicted for his use of the American ... flag, for its desecration. Similar to the desecration of the American soldiers who were dragged through the streets of Mogadishu, burning or trampling of the American flag carries an air of villainy, of treachery.

Number 0798

With respect, the sponsor requests that the House State Affairs Committee pass HJR 30 and urge the Senate to act on [its] joint resolution and send [an] amendment to the states for their consideration and ratification. This resolution has no ... fiscal impacts, as it is a mere communication to the Congress.

Number 0820

CHAIR COGHILL said the resolution would be heard in other committees, and he would like the House State Affairs Standing Committee to focus mostly on the policy issues surrounding the resolution. In reference to a previous comment by Ms. Sylvester, he responded as follows: "You said it's a 'mere' request. I don't know that it's a 'mere' request; it's a significant request in my view."

Number 0895

REPRESENTATIVE HAYES asked Ms. Sylvester if she knew of any other nations with constitutional protection of their flags.

MS. SYLVESTER replied no; however, she told Representative Hayes she could find an answer to his question. She added that her

interest focused on how this issue had historically been treated in the United States.

Number 0935

REPRESENTATIVE STEVENS stated his belief that [HJR 30] was probably a good idea. He added that he thought the First Amendment was a good idea. Having served for three years in the United States Army, he said he felt very fond of the flag and was concerned about anyone burning or mutilating it. Representative Stevens asked how far the issue would truly go. For instance, he mentioned "kids" who wear the flag [design] as clothing, and he said he owned a cap with the flag of it. He questioned how "contempt" would be defined.

Number 0978

MS. SYLVESTER answered that many groups have codes regarding the flag: raising the flag; lowering the flag; when to take the flag off after it has become frayed; and wearing a [flag] patch "on the seat of your pants." She clarified that the "language of these statutes" addresses the intentional defacement, or defilement, of the American flag. She surmised that the focus of [the aforementioned perpetrator who burned the flag] was not to hurt the flag, but to offend others. It was an aggressive action addressing an audience, she said. She illustrated that wearing a "flag tie" is just a harmless act, whereas ripping or spitting on the flag in front of a group of veterans or firemen at "ground zero" would have a different intention, and that is the offense.

Number 1055

CHAIR COGHILL said, "I would think that there's a ... big difference between 'disrespect' and 'desecration.'"

Number 1068

REPRESENTATIVE JAMES said she thought [the United States] had lasted as long as it has because of the programs that were instituted by our forefathers in the beginning. She mentioned people hating [the United States] as an entity. Representative James said she struggles with allowing those who don't agree with the U.S. government and who profess extreme beliefs, such as communism, [to live in the United States]. She conceded: "We can't have 100 percent of us agreeing that our government currently works correctly, when not always does it do that."

Likewise, absolutely perfect rules that suit everyone cannot be made, she added.

REPRESENTATIVE JAMES characterized the flag as being the representation of who [Americans] are. She pondered what the U.S. Supreme Court's ruling, regarding wearing the flag as clothing, would be, if "we went this far on this issue." She added that she would not like the U.S. Supreme Court to decide that one person's wearing of the flag was negative, and therefore objectionable, whereas another person's wearing of the flag was positive, and therefore allowable. She expressed her support of HJR 30, but recommended that the committee find out what the results of its action would be. She posited that having a constitutional amendment from the federal level, put out to the states for ratification, is probably a necessary process.

Number 1350

REPRESENTATIVE JAMES said she was interested to hear what the House Judiciary Standing Committee would have to say regarding HJR 30. She suggested the sponsor of HJR 30 find out the opinions of people nationwide regarding the resolution. She said: "I think we need to broaden the discussion on this issue, because we don't want to do something that divides us; we want to do something that puts us ... more in agreement with one another." She added that it was difficult for her to believe that any person could live in this nation and not respect the flag.

Number 1385

REPRESENTATIVE FATE moved to report HJR 30 out of committee with individual recommendations and the accompanying zero fiscal note. There being no objection, HJR 30 was reported from the House State Affairs Standing Committee.

ADJOURNMENT

There being no further business before the committee, the House State Affairs Standing Committee meeting was adjourned at 8:22 a.m.