

HJR

27

SFIN

FILE

SENATE FINANCE COMMITTEE REPORT

DATE: 4/14/93

FURTHER:

DATE TURNED INTO OFFICE: 5-4-93

The Finance Committee considered **HOUSE JOINT RESOLUTION NO. 27**

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

and recommends:

- replace with _____ CS _____ (FINANCE)
 - adopt previous _____ CS _____ (_____)
 - attaches amendment(s)
- same title
 - new title
 - technical title change (HB only)

adopts _____ Letter of Intent

further referral to the _____

do pass

do not pass

no recommendation

individual recommendations

NEW FISCAL NOTES

Department	Date	Zero	Fiscal

PREVIOUS FISCAL NOTES

Department	Date	Zero	Fiscal
H (Jud)	4-5-93	0	

Appropriation No Fiscal Note

DO PASS:

Bob Sharp
George Stokes
Tim Kelley
J. Katz

OTHER RECOMMENDATIONS:

Steve King - No Rec

1. *Don't do pass*
 Co-Chair: Signature/Recommendation

2. *True Lance - No Rec*
 Co-Chair: Signature/Recommendation

FISCAL NOTE

No. 1
 Bill Version: HJR 27
 (H) Publish Date: 4/7/93

**STATE OF ALASKA
 1993 LEGISLATIVE SESSION**

Revision Date: ---- Dept. Affected: None
 Title: Relating to an amendment to the U.S. Constitution prohibiting desecration of the U.S. Flag BRU: _____
 Sponsor: House Spec. Comm. for Milt. & Vets Component: _____
 Requestor: House Judiciary Committee COMPONENT SERIAL NO. _____

Expenditures/Revenues:

(Thousands of Dollars)

OPERATING	FY94	FY95	FY96	FY97	FY98	FY99
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE FUND SOURCE:	0	0	0	0	0	0

FUNDING:

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY93) impact: \$ -0-

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact anticipated.

Prepared by: Gavle A. Horetski, Committee Aide
 Division: House Judiciary Committee
 Approved by Commissioner: Brian D. Porter
 Agency: Chairman, House Judiciary Committee

Phone: 465-6841
 Date: April 5, 1993
 Date: 4-5-93

COMMITTEE COPY TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE

For further distribution information call the Governor's Legislative Office



Alaska State Legislature

Please enter into the record my testimony to the Senate Finance
 committee name
 committee on HIR 27 , dated 4/23/93
 bill/subject

Signed: _____
 Testifier
The American Legion
 Representing (Optional)
P.O. Box 13, Sitka, 99835
 Address
747-8629
 Phone No.

SERVICE TO OUR COMMUNITY
SERVICE TO OUR BUDDIES

SITKA POST



NUMBER 13

The American Legion

P.O. Box 13
Sitka, Alaska 99838

4/23/93

SENATOR DRUE PIERCE
CO-CHAIRMAN
SENATE FINANCE COMMITTEE
STATE OF ALASKA

DEAR SENATOR PIERCE:

IN REGARDS TO HJR-27, THE AMERICAN FLAG RESOLUTION BILL, WE OF SITKA AMERICAN LEGION POST #13 URGE YOU AND YOUR FELLOW SENATORS TO ADDRESS THIS MOST IMPORTANT MATTER BE ADJOURNMENT OF THE 1993 LEGISLATIVE SESSION.

WE SEND THIS TO YOU AS CO-CHAIRMAN OF THE SENATE FINANCE COMMITTEE WE NEED YOUR HELP FOR ALASKA'S VETERAN'S.

RESPECTFULLY,

JOHN J. DETEMPLE
ACTING POST ADJUTANT
PAST POST COMMANDER

POST #13
COMMANDER,

Lawrence G. Widmark
LAWRENCE WIDMARK

*Patrick B. May
2nd Vice Commander Sitka District
Harold Patton Service Officer
D.C. Perkins, Finance Officer
Richard D. Stein, Adjt.
Charles Danich, 1st Vice Comm.
and several others*

Frank deKort, Member

cc: Senator Taylor

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2. **American Legion Statement**
3. **American Legion Fact Sheets/Chronology**
4. **Veterans Of Foreign Wars Statement**
5. **Alaska Civil Liberties Union Statement**

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- Community and Regional Affairs
- Military and Veteran's Affairs

BUDGET SUBCOMMITTEES:

- Department of Education
- Department of Military and Veterans Affairs

CO-CHAIRMAN:

Anchorage Caucus



DURING SESSION:
STATE CAPITOL BUILDING
JUNEAU, ALASKA 99801-1182
(907) 465-2199

HOME:
17121 FOOTHILL AVENUE
EAGLE RIVER, ALASKA 99577

REPRESENTATIVE ED WILLIS

DISTRICT 25

Birchwood • Chugiak • Eagle River • Fire Lake • Peters Creek

TO: Senator Pearce, Co-Chair
Senator Frank, Co-Chair
Senate Finance Committee

FROM: Rep. Ed Willis *Ed Willis*

DATE: April 23, 1993

RE: HJR 27 - Prohibiting Flag Desecration

The House Special Committee on Military and Veterans Affairs introduced HJR 27 at the request of veterans organization throughout the state. HJR 27 is identical to SJR 9, which Senator Zharoff has introduced, and as I have been told, has introduced during past sessions as well.

HJR 27 would ask Congress to pass a Constitutional Amendment prohibiting flag desecration. It also invites other states to join Alaska in this request. If the Congress adopted a Constitutional Amendment, which requires a two-thirds vote, the Alaska Legislature would then have an opportunity to ratify it. Three-fourths of the states would have to ratify the Amendment for it to be enacted. As you can see, our action today is only a very small, but important step toward this goal.



THE AMERICAN LEGION

Warren Colver
Dept. Service Officer

Leon Bertram
Service Officer

(907) 276-8211 Service Office
(907) 258-0756 FAX
(907) 257-4802 FTS Line

DEPARTMENT OF ALASKA
SERVICE OFFICE
2925 DEBARR ROAD, SUITE 3100
ANCHORAGE, ALASKA 99508



Bill Frederick
Service Officer
(907) 456-4238 Fairbanks

Bill Hogan
Service Officer
(907) 486-8507 Kodiak

FAX TRANSMITTAL COVER SHEET

DATE 3/19/93

TO: Rep Ed Willis
Fax# 465-3445
FROM: Warren C. Colver, Legislative Rep. American Legion

REGARDING HJR-27

WE HAVE TRANSMITTED _____ PAGES OF DOCUMENTS, IF YOU DID

NOT RECEIVE ALL THE PAGES, PLEASE NOTIFY OUR OFFICE AT THE TELEPHONE OR FAX NUMBER LISTED ABOVE. THANK YOU.

COMMENTS - AMERICAN LEGION, DEPT OF ALASKA, SUPPORTS HJR 27
MEMORIALIZING CONGRESS FOR PASSAGE OF CONSTITUTIONAL AMENDMENT
PROHIBITING BURNING AND DECERATION OF AMERICAN FLAG. PASSAGE
BY CONGRESS WOULD PRESEVE AND PROTECT SYMBOLIC AND PATRIOTIC CHARACTER
OF FLAG BY PROHIBITING DISPUTABLE ACTS WITHOUT ABRIDGEMENT OF
FREE SPEECH IN ANY WAY.

William R. Weber
WILLIAM R. WEBER
DEPT. COMMANDER

PROTECTING THE U.S. FLAG
The Constitutional Amendment Is Necessary

AS of
m, 1990

(Explaining our Position)

The American Legion remains convinced that the only sure way to protect the flag is through ratification of a constitutional amendment.

CURRENT STATUS AS of 10/20/89

Although a public law (P.L. 101-131) has been enacted, we remain convinced that it will eventually be ruled unconstitutional. We are continuing to push the U.S. House of Representatives to vote on a proposed constitutional amendment. We must also urge all state legislatures to get involved by adopting resolutions calling on Congress to approve a proposed amendment that can be sent to the states for ratification. In fact, several legislatures have already adopted such resolutions.

KEY POINTS

Supreme Court ruling on June 21, 1989 said public flag burning can be treated as an expression of political protest. It, therefore, is protected by the Constitution's first amendment (freedom of speech). The American Legion believes that the new federal law will be subsequently ruled unconstitutional, based upon the June 21 decision.

Some people say that we shouldn't "tamper" with the Constitution. The American Legion responds by saying that the Constitution has been amended 26 times to include the first 10 which combine to create the Bill of Rights. There are 4-5 proposed amendments now pending in Congress. Our Founding Fathers specifically set up an amendment procedure.

Opponents who use the "tampering" argument also say that Congress should not amend the Constitution. They have confused the issue. Congress only has the authority to approve a proposed amendment. Thirty-eight of the 50 states legislatures must also approve it before it can be officially ratified. The American Legion is simply saying that Congress should, at least, give state lawmakers the opportunity to decide the matter.

Some people have argued that an amendment would restrict every citizen's First Amendment rights. The American Legion points to an August 1989 Gallup Poll showing that 70 percent of all Americans believe that a flag amendment would not restrict their freedom of speech.

Amendment opponents have argued that the ratification process is too lengthy. State legislatures are obligated to carry out that process -- the same bodies that would be required to enact new flagprotecting state laws to replace those that are now unconstitutional. The American Legion, therefore, believes that even if states decided to pattern new laws after the new federal law the process of putting these in place would be no shorter than the ratification process. Moreover, these new laws would be struck down in court.

Protecting the Flag of the United States
A Chronological Recap of Events

- June 21, 1989 Supreme Court of the United States issues ruling protecting the burning of the Flag in protest as "freedom of speech."
The American Legion issued a statement voicing its opposition and disappointment to the Court's decision.
- June 22, 1989 Senate introduces and passes S.Res 151 expressing a sense of Congress that they are disappointed in the Court's ruling. Both Houses of Congress introduce bills to protect the Flag by additional legislation or by Constitutional Amendment.
The American Legion announces plans for a "positive protest" of the Court's ruling and begins a campaign to petition for a Constitutional Amendment.
- July 24, 1989 House introduces HR 2978 - Flag Protection Act of 1989.
- July - August A Gallup Poll, requested by The American Legion, shows overwhelming (73%) dissatisfaction with the Court's ruling and (66%) favoring a Constitutional Amendment.
- August 31, 1989 The American Legion presents Congress with nearly one million signatures on petitions calling for a Constitutional Amendment.
- September 5, 1989 The American Legion passes, without one dissenting vote, a resolution at its National Convention calling for an amendment to protect the Flag from desecration.
- September 12, 1989 House passes HR 2978. Bill goes to Senate.
- October 5, 1989 Senate passes HR 2978 with several amendments.
- October 12, 1989 House accepts Senate amendments without change and passes HR 2978 as amended. Bill goes to President.
- October 19, 1989 Senate considers and votes on S.J.Res 180, which called for a Constitutional Amendment. While the majority prevailed 51 -48, the bill failed by not receiving the required two-thirds vote.
- October 28, 1989 HR 2978 becomes Public Law 101-131, without the President's signature.
- November-January Two new Flag burning cases are presented and argued in two Federal Courts, one in Seattle, WA, the other in Washington, D.C.
- February 21, 1990 Federal District Court Judge Rothstein, Seattle, WA, declares the Flag Protection Act of 1989 as unconstitutional based on the Supreme Court's June 21, 1989, ruling. Case is submitted to the Supreme Court.
- March 5, 1990 Federal District Court Judge Green does the same in Washington, D.C. case. Case is submitted to the Supreme Court.
- This Date Petition signatures now number 1,483,290 and continue to come into Legion Headquarters. The House has not held a vote on a Constitutional Amendment, as was promised by the House leadership last October.
- May 14, 1990 Supreme Court is expected to hear arguments in the Seattle, WA and Washington, D.C. cases. The Legion anticipates they will uphold the lower court decisions and the Flag will be left unprotected from desecration.

March 19, 1993

Representative Ed Willis
State Capitol
Juneau, AK 99801-1182

Dear Representative Willis,

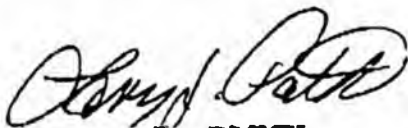
For several years, the veterans of the great state of Alaska have been trying to get legislation approved to protect our nations greatest symbol, her flag. We have been unsuccessful previously.

As Commander of our states 6,500 members of the Veterans of Foreign Wars, I endorse immediate passage and implication of HRS 27, a bill which carries the support of all of our veterans.

It is unfortunate that the flag of our nation requires protection. Many good friends and comrades have come home with our flag as their escort, which was then folded and presented to their survivors from "A grateful nation". The actions of a few radical individuals to desecrate this symbol is a outrageous injustice to those proud Americans who gave their all for our Nations cause.

I solicit your support in passing HRS 27 this session.

Sincerely Yours,



LARRY J. PATCH
Commander

ALASKA

CIVIL LIBERTIES UNION

P. O. Box 201844 Anchorage, AK 99520-1844

Phone: 907-258-0044 Fax: 907-258-0288

Messages Only: 907-276-2258

March 25, 1993

AkCLU
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Amalia McCarthy

Nome

H. Connor Thomas

Randall P. Burns
Executive Director

The Honorable Brian Porter
Chairman, Judiciary Committee
The House of Representatives
State Capitol, Juneau, AK 99801-1182

Dear Representative Porter:

I am writing to you today to speak against House Joint Resolution 27 (HJR 27), relating to a resolution of the Alaska State Legislature requesting the Congress to prepare an amendment to the U. S. Constitution prohibiting desecration of the flag of the United States.

The Alaska Civil Liberties Union (AkCLU), an affiliate of the American Civil Liberties Union (ACLU), strongly disagrees with any legislation which would limit an individual's right to freedom of expression, and most particularly when it relates to symbolic speech.

The language of HJR 27 repeatedly recognizes that the flag is, indeed, a fine symbol of the many important events and achievements in the history of this country. As a result, some have come to believe that the U. S. flag is somehow more than a mere symbol of our nation; instead, it has become an international symbol for freedom, justice, tolerance, and equality. However, when one considers this fact, one must also remember that one of the most important freedoms that the flag symbolizes for Americans

Page Two - Representative Porter - March 25, 1993

and foreigners alike is our Constitutional (First Amendment) right of free speech.

Surely the freedom that the people of this world's oppressed nations most desire is the freedom to express an opinion or idea without fear of reprisal: to be themselves, wholly. Do we not define the nature of governments first and foremost by the controls which they place on individual liberties, including the freedom of speech?

HJR 27, by attempting to create criminal punishments for desecrating the symbol (our flag) of an idea (freedom), infringes on the very individual liberties our flag represents, while doing great harm to the Constitution itself. The flag is a symbol, a way of communicating an idea to others without the use of words. As such, its destruction is also merely symbolic: a way of communicating feelings and ideas to others.

The First Amendment also guarantees that the sharing of a particular idea, even if that idea may be offensive to a majority of the public, is not to be denied based merely on the *content* of that idea. Although a proposed amendment banning desecration of the flag might not contain explicit content-based limitations on the symbolic uses of the flag, as U. S. Supreme Court Justice Brennan noted in the majority opinion in U.S. v. Eichman (which upheld the constitutionality of flag desecration), such a Constitutional amendment would suffer from the flaw of suppressing expression "out of concern for its *likely* communicative impact" (emphasis added).

The thirteen colonial legislatures, when debating whether to accept the Constitution as the basis for this country's governmental structure, refused to ratify it without written guarantee that certain basic rights would not be infringed. These rights were codified and attached to the Constitution as the first ten amendments, also known as the Bill of Rights. There has been no change to these amendments in the past 200 years. An amendment banning flag desecration would restrict one of these freedoms.

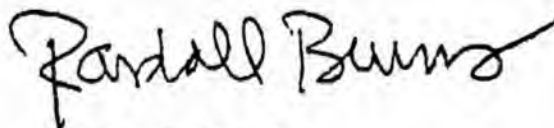
Once a justification for making one change has been made and accepted, it would be just that much harder to resist further changes to the Bill of Rights, should they be proposed. Today, we have an amendment prohibiting flag desecration. What would it be tomorrow? An amendment prohibiting a march by Neo-Nazi sympathizers, or laws banning black armbands worn to protest a governmental action? Potentially, the amendments could reach even more outrageous proportions.

Finally, the idea that an amendment should be made to the Constitution to prohibit one particular form of expression, so long as enough people protest that particular form of expression, is outrageous. The First Amendment was enacted to protect political expression offensive to prevailing opinion and sentiment, to protect that speech which may in fact disturb or anger the majority; to protect individuals from the tyranny of the majority.

Any proposed amendment, although it might appear simple, would conceal a variety of complex issues. Would such an amendment supersede the rest of the Constitution? If so, states could seize evidence of flag desecration in violation of the Fourth Amendment and deny due process in criminal trials. Would the proposed Amendment supersede only the First Amendment? If so, a state could prohibit all flag burning but that in protest, for example, of the Vietnam War. Would that be intended? If not, just how much and what part of the First Amendment would be superseded by the proposed Amendment?

The flag symbolizes different things to different people. As Justice Brennan noted in Texas v. Johnson, mistreatment of the flag should not be an exception to the principle of free speech: "We do not consecrate the flag by punishing its desecration, for in doing so we dilute the very freedom that this cherished emblem represents."

Sincerely,



Randall Burns
Executive Director

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REPRESENTATIVE ED WILLIS

DISTRICT 25

Birchwood • Chugiak • Eagle River • Fire Lake • Peters Creek

TO: Senator Pearce, Co-Chair
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FROM: Rep. Ed Willis *Ed Willis*

DATE: April 23, 1993

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Dept. Service Officer

Leon Bertram
Service Officer

(907) 276-8211 Service Office
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DEPARTMENT OF ALASKA
SERVICE OFFICE
2925 DEBARR ROAD, SUITE 3100
ANCHORAGE, ALASKA 99508



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for 
WILLIAM R. WEBER
DEPT. COMMANDER

PROTECTING THE U.S. FLAG
The Constitutional Amendment Is Necessary

As of
May, 1990

(Explaining our Position)

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Juneau, AK 99801-1182

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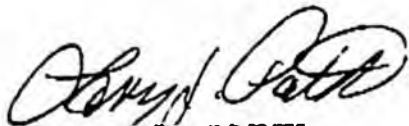
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I solicit your support in passing HRS 27 this session.

Sincerely Yours,



LARRY J. PATCH
Commander

ALASKA CIVIL LIBERTIES UNION

P. O. Box 201844 Anchorage, AK 99520-1844
Phone: 907-258-0044 Fax: 907-258-0288
Messages Only: 907-276-2258

March 25, 1993

AkCLU
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President
Nancy Groszek,
Vice-President

The Honorable Brian Porter
Chairman, Judiciary Committee
The House of Representatives
State Capitol, Juneau, AK 99801-1182

Don Clocksin,
Secretary

Dear Representative Porter:

Gail Gatton,
Treasurer

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Anchorage

Jay Brause
Nancy Gordon
Michael Irwin
Jon Rubini

Fairbanks

Dr. Clarice Dukeminier
Mark Tumeo

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Juneau

Jennifer Bell
Shirley Dean
Liz Dodd
Amalia McCarthy

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Nome

H. Connor Thomas

Randall P. Burns
Executive Director

Page Two - Representative Porter - March 25, 1993

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Surely the freedom that the people of this world's oppressed nations most desire is the freedom to express an opinion or idea without fear of reprisal: to be themselves, wholly. Do we not define the nature of governments first and foremost by the controls which they place on individual liberties, including the freedom of speech?

HJR 27, by attempting to create criminal punishments for desecrating the symbol (our flag) of an idea (freedom), infringes on the very individual liberties our flag represents, while doing great harm to the Constitution itself. The flag is a symbol, a way of communicating an idea to others without the use of words. As such, its destruction is also merely symbolic: a way of communicating feelings and ideas to others.

The First Amendment also guarantees that the sharing of a particular idea, even if that idea may be offensive to a majority of the public, is not to be denied based merely on the *content* of that idea. Although a proposed amendment banning desecration of the flag might not contain explicit content-based limitations on the symbolic uses of the flag, as U. S. Supreme Court Justice Brennan noted in the majority opinion in U.S. v. Eichman (which upheld the constitutionality of flag desecration), such a Constitutional amendment would suffer from the flaw of suppressing expression "out of concern for its *likely* communicative impact" (emphasis added).

The thirteen colonial legislatures, when debating whether to accept the Constitution as the basis for this country's governmental structure, refused to ratify it without written guarantee that certain basic rights would not be infringed. These rights were codified and attached to the Constitution as the first ten amendments, also known as the Bill of Rights. There has been no change to these amendments in the past 200 years. An amendment banning flag desecration would restrict one of these freedoms.

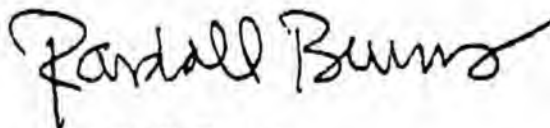
Once a justification for making one change has been made and accepted, it would be just that much harder to resist further changes to the Bill of Rights, should they be proposed. Today, we have an amendment prohibiting flag desecration. What would it be tomorrow? An amendment prohibiting a march by Neo-Nazi sympathizers, or laws banning black armbands worn to protest a governmental action? Potentially, the amendments could reach even more outrageous proportions.

Finally, the idea that an amendment should be made to the Constitution to prohibit one particular form of expression, so long as enough people protest that particular form of expression, is outrageous. The First Amendment was enacted to protect political expression offensive to prevailing opinion and sentiment, to protect that speech which may in fact disturb or anger the majority: to protect individuals from the tyranny of the majority.

Any proposed amendment, although it might appear simple, would conceal a variety of complex issues. Would such an amendment supersede the rest of the Constitution? If so, states could seize evidence of flag desecration in violation of the Fourth Amendment and deny due process in criminal trials. Would the proposed Amendment supersede only the First Amendment? If so, a state could prohibit all flag burning but that in protest, for example, of the Vietnam War. Would that be intended? If not, just how much and what part of the First Amendment would be superseded by the proposed Amendment?

The flag symbolizes different things to different people. As Justice Brennan noted in Texas v. Johnson, mistreatment of the flag should not be an exception to the principle of free speech: "We do not consecrate the flag by punishing its desecration, for in doing so we dilute the very freedom that this cherished emblem represents."

Sincerely,

A handwritten signature in cursive script that reads "Randall Burns". The signature is written in dark ink and is positioned above the typed name.

Randall Burns
Executive Director