

Major General Patrick H. Brady
Testimony before the Constitution Subcommittee
May 7, 2003

My name is Pat Brady. I am the Chairman of the Board of the Citizens Flag Alliance. We are a coalition of some 140 organizations representing every element of our culture, some 20 million souls. We are non partisan and have one mission and one mission only: to return to the people the right to protect their flag.

In 1989, in response to a flag burning by a communist, the Supreme court amended the Constitution by inserting flag burning in the Bill of Rights. That decision took away a fundamental right of the American people, a right we possessed since our birth as a nation, a right affirmed by the Author of the Bill of Rights, James Madison, a right defended by Thomas Jefferson, a right reaffirmed by justices on every court and every Chief Justice of the United States that addressed the flag in the last century.

We do not believe that the freedom to burn the American flag is a legacy of the freedoms bestowed upon us by Madison and Jefferson and Washington and the other architects of our

Constitution. And to distort the work of these great men unable to defend themselves, to put flag burning side by side with pornography as protected speech is outrageous.

President Lincoln said: "If the policy of the government ... is to be irrevocably fixed by decisions of the Supreme court ... the people will have ceased to be their own rulers". He also warned: "Don't interfere with anything in the Constitution. That must be maintained, for it is the only safeguard of our liberties."

Many of us have raised our right hand and swore to protect and defend the Constitution. We believe that Americans who place their right hand over their heart and recited the pledge of allegiance, take that same oath. Both the pledge and the oath are taken in the presence of Old Glory to emphasize that our flag is the symbol of our Constitution.

U.S. Representative Bill Pascrell said: "The Supreme court made a mistake, is not absolute and we should never kow-tow to any other branch of government regardless of their decision". He was right. The Court has interfered with our Constitution by calling flag burning speech and we the people must fulfill our oath and pledge, and our right to rule, by insuring that the Court's decision is not irrevocable fixed.

Justice Hugo Black, a First Amendment absolutist, spoke for our cause and every Supreme Court save one in the last century, when he said: "It passes my belief that anything in the Federal Constitution bars ...making the deliberate burning of the American flag an offense".

So the necessity and legitimacy of our cause is beyond doubt, and so is the support. The legislatures of all 50 states support this cause as do three of four Americans and some 70% of this great body.

But it is important to note that flag burners are not our primary concern. We will always have flag burners as we will always have Americans who hate America. Rather, the problem is those who call flag burning speech. That is a distortion of our sacred Constitution and must not be allowed.

Burning the American flag is not speech.

Speech is the persuading power that moves people to the ballot box, and those elected to the will of the people. Flag burning is the persuading power of the mobs. One should not be allowed to substitute hateful, violent acts, for rational, reasonable speech, to be heard.

That is the last resort of those who cannot properly articulate their cause but seek power at any cost. It is certainly cowardice, and terrorism, to take ones venom out on helpless individuals or objects who cannot defend themselves. And it is moral cowardice to ignore such acts.

Listen to Americans on this.

Tommy Lasorda spoke for the uncommon common American when he said, "speech is when you talk".

General Norman Schwarzkopf spoke for our warriors when he said: "I regard the legal protection of our flag as an absolute necessity and a matter of critical importance to our nation".

We have heard from opponents of the flag that our troops fight for the rights of flag burners. Who among them would stand before these men and women and tell them they are fighting in the sand storms of Iraq so that their flag can be burned on the streets of America?

Walter Berns, "The First Amendment protects freedom of speech, not expression, and, whereas all speech may be expression of a sort, not all expression is speech, and there is a good reason why the framers of the First Amendment protected one and not the other."

US Rep John Murtha said: "Burning and destruction of the flag is not speech. It is an act. An act that inflicts insult - insult that strikes at the very core of who we are as Americans and why so many of us fought, and many died, for this country."

Paul Greensburg, Pulitzer Prize winning journalists said: " ... setting a flag afire is no more speech than vandalizing a cemetery, or scrawling slogans on a church or synagogue, or spray painting a national monument -- all of which are acts properly forbidden by the laws of a civilized country."

We have been diligent in addressing the concerns of those who support flag burning as speech.

When they say the flag amendment would amend the Bill of Rights, we ask, if the Supreme court in 1989 had voted to protect the flag, would they then have amended the Bill of Rights?

To those who say the flag can be protected by statute, we agree but only after an amendment.

The Supreme Court has made it clear that no statute alone will work.

To those who have difficulty defining the American flag and express concern over prosecuting people who burn bikinis embroidered with the flag or toilet paper marked with the flag, we ask if they would put toilet paper or a bikini on the coffin of a veteran, or their own coffin.

To those who say the flag is precious to them we ask if they have anything that they love or is precious to them that they would not protect. Of all the precious symbols in America, only the flag, the most precious of all is not protected.

If they fear a tyranny of the majority, that the majority may exercise their will on a more virtuous minority, we ask if the minority on the Court, who would have protected the flag was more virtuous than the majority who would not. Or if the minority that would have elected their opponent was more virtuous than the majority that elected them.

But legalized flag burning goes beyond desecration of our constitution, it also desecrates our values as a nation. Burning the flag is wrong but what it teaches is worse, it teaches that the outrageous conduct of a minority is more important than the will of the majority; it teaches that our laws need not reflect our values; and it teaches disrespect, disrespect for the values embedded in our Constitution as embodied by our flag.

We are convinced that our laws should reflect our values. Where in the Constitution does it say that toleration for conduct that the majority sees as evil is necessary for our freedom? Toleration for evil will fill our society with evil. Even those who oppose a flag amendment profess to be offended by flag desecration. Why tolerate it? What possible connection does toleration of evil have to the Constitution and our freedom?

We are amazed that so many in the Congress who support flag burning expressed outrage over the decision on the pledge. Why is saying under God in the pledge an establishment of religion and flag burning speech? Both are wrong. The courts distortions of the First Amendment have given us pornography, would deny our children the right to pray, to say the pledge, make it legal to burn the flag but illegal to burn your draft card, or your money or your mail box, or a tag on your mattress box. Who can make sense out of it? Only the people.

The court has also said cross burning is protected speech unless done to intimidate. I wonder if there was ever an example of cross burning not done to intimidate? Only one justice got it right, he said cross burning has nothing to do with the First Amendment. Burning a cross is unlike burning any other symbol in our society and not intended to communicate anything other than fear and hatred. The same is true of flag burning, which is also unlike any other symbol in our society, it is the physical embodiment of the values embedded in our Constitution.

The Constitution is too important to be left to the Courts and so is the flag. They both belong to the people and it is time for this body to let the people decide.

There are great and gifted Americans on both sides of this issue. And learned opinions, but only one fact - the American people want their right to protect the flag returned. Whatever concerns

some may have, I pray they will muster the courage to believe that this once they may be wrong, and the American public may be right. I hope they will have the compassion to defer to those great blood donors to our freedom many whose final earthly embrace was in the folds of Old Glory.