

EDWARD M. KENNEDY
MASSACHUSETTS

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United States Senate

WASHINGTON D.C. 20510
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CAMBRIDGE MA.
October 12, 1989

Mr. Joseph E. Connarton
City Clerk
City of Cambridge
City Hall
Cambridge, Massachusetts 02139

Dear Mr. Connarton:

Thank you for writing regarding flag desecration and the recent decision by the Supreme Court in the Johnson case. As you may know, since that decision several measures have been introduced in the Congress dealing with this issue.

My commitment to protecting the constitutional freedoms symbolized by our hallowed flag requires me to oppose the measures now before the Senate. If the First Amendment stands for anything, it stands for the principle that the Government may not prohibit the expression of an idea simply because the majority disagrees with that idea. The Constitution does not just protect those whose views we share; it also protects those whose views we detest. We have all heard people shouting extremist views with which we disagree. When we do, we shake our heads and say, "It's a free country." It is a free country--because the Constitution makes it one.

An amendment to the Constitution poses a serious danger to the fundamental freedoms protected by it. If we set the precedent of putting an asterisk on the First Amendment to protect the sensibilities of those of us who are offended by flag burning, what will we say the next time the public is offended by some other minority view, or by some other person's exercise of the freedom the Constitution is supposed to protect? Once we abandon the broad tolerance that the Constitution requires, even for offensive views, there is no fair way to draw the line.

More specifically, the Amendment now before the Senate is vague and overly broad. It would remove all constitutional protection relating to the flag, and thus make it possible for legislatures to pass laws that discriminate against those who hold minority views. Furthermore, by carving out an exception to appease the sensibilities of those offended by flag burning, such an amendment would reduce the tolerance the public has for the exercise of other constitutional rights. The 200 year-old tradition of not tampering with the Bill of Rights should not be abandoned.

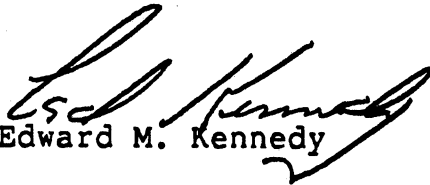
The proposed statute would also create problems by criminalizing harmless activity, such as disposing of a picture of a flag. Such a law could become a tool for selective prosecution of those expressing unpopular views, and would be clearly unconstitutional.

The American flag will always be revered because of the nation it symbolizes, and because of the extraordinary sacrifices made by brave men and women to preserve the freedoms for which it stands. We do not need to amend the Constitution or pass a law to honor the flag. Desecrating the Constitution is not the way to prevent desecration of the flag.

Again, I appreciate your views on this difficult issue. It is fitting that freedom of expression, the real issue in this case, is the very freedom which makes it possible for us to express our views, even though they may differ.

With best regards,

Sincerely,


Edward M. Kennedy

EMK/ar1

2. S-732

Comm. received from Senator Kennedy in
acknowledgement to communications
received by his office from the City
Council regarding flag desecration.

In City Council,

October 30, 1989

Placed on file