

HOUSE JOINT RESOLUTION 1

By Reedy

A RESOLUTION to urge the United States Congress to prohibit desecration of the United States flag.

WHEREAS, the dispute in the courts over people burning the American flag, or committing other offensive acts against the flag, dates back to 1907. In the prior decade, states began passing laws that banned flag desecration, which included laws protecting the flag from physical and commercial abuse; and

WHEREAS, a 1931 case set the first precedent for the use of a flag in an act of symbolic speech under the First Amendment, when the Court struck down a California law that banned the flying of a red flag to protest against the government; and

WHEREAS, in 1968, Congress approved the Federal Flag Desecration Law after a Vietnam War protest. The law made it illegal to "knowingly" cast "contempt" upon "any flag of the United States by publicly mutilating, defacing, defiling, burning or trampling upon it."; and

WHEREAS, the Court moved toward its 1989 decision about flag burning in 1974, when it said in *Spence v. Washington* that a person couldn't be convicted for using tape to put a peace sign on an American flag. A majority of the Court saw the act as protected expression under the First Amendment; and

WHEREAS, during the next decade, states narrowed the focus on their flag desecration laws, but they still prohibited flag burning and other acts of mutilation. The issue was then decided, at least in the Supreme Court, in the decision of *Texas v. Johnson*; and

WHEREAS, in protest of President Ronald Reagan's administrative policies, Gregory Lee Johnson burned a flag outside the City Hall building in Dallas, Texas, in 1984. Texas arrested Johnson and convicted him of breaking a Texas state law that prohibited desecration of

the flag of the United States. Mr. Johnson was sentenced to one year in prison and ordered to pay a \$2,000 fine; and

WHEREAS, Mr. Johnson appealed his conviction, citing his First Amendment right to freedom of speech, and the Texas Court of Criminal Appeals stated that Johnson's speech was symbolic and ruled in his favor; and

WHEREAS, the Supreme Court took the case and in a 5-4 majority voted in favor of Mr. Johnson, stating that his actions were symbolic speech political in nature and could be expressed even at the affront of those who disagreed with him; and

WHEREAS, in reaction to the *Johnson* decision, which only applied to the state of Texas, Congress passed an anti-flag burning law called the Flag Protection Act of 1989. However in 1990, the Supreme Court struck down that law as unconstitutional. Congress has, as recently as 2006, attempted to amend the Constitution to prohibit flag desecration, with the effort failing by one vote in the Senate; now, therefore,

BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE ONE HUNDRED TWELFTH GENERAL ASSEMBLY OF THE STATE OF TENNESSEE, THE SENATE CONCURRING, that we strongly urge the United States Congress to enact legislation to prohibit the desecration of the United States flag.

BE IT FURTHER RESOLVED, that a certified copy of this resolution be transmitted to the Speaker and the Clerk of the United States House of Representatives, the President and the Secretary of the United States Senate, and each member of the Tennessee Congressional delegation.