

MINUTES

MONTANA SENATE  
51st LEGISLATURE - SPECIAL SESSION  
COMMITTEE ON STATE ADMINISTRATION

Call to Order: By Vice Chairman Sam Hofman, on July 7, 1989,  
at 10:00 a.m., Room 331, Capitol

ROLL CALL

Members Present: Senator Hubert Abrams, Senator Esther  
Bengtson, Senator Ethel Harding, Senator Sam Hofman,  
Senator Paul Rapp-Svrcek, Senator Eleanor Vaughn

Members Excused: Senator John Anderson, Senator William  
Farrell, Senator Tom Rasmussen

Members Absent: None

Staff Present: None

HEARING ON HJR 2

Presentation and Opening Statement by Sponsor:

Representative John Phillips indicated that the resolution is just about what the title says, that the Montana Legislature supports something being done in Congress through, maybe, an amendment to the Constitution, if necessary, to keep people from desecrating the flag, mainly flag burning. He stated that it is kind of sad that they have to even go through this type stuff that, to him, it is inconceivable, somebody burning the flag, noting that he guesses we have all kinds of people. He then reported that he has had the occasion to present a folded flag to a grieving widow or mother, with the little speech that goes with it expressing gratitude from a grateful nation and, to him, burning that flag is a slap in the face to someone like that, particularly. He indicated some people say it is just a symbol, and he supposes it is just a symbol, but it is a symbol of our nation and what holds us together, and all of the thousands of people who have died under that flag. He stated that, again, he just can not imagine somebody wanting to burn it.

Representative Phillips pointed out that the argument was made that it is freedom of speech, and indicated that, to him, that is completely hogwash, that it is not speech, it is an action

to burn something. He further indicated that freedom of speech does not give him the right to holler "fire" in a theater, or to run down Last Chance Gulch stark naked, that there are certain things which are offensive to people.

He then indicated that he will not take a lot of the committee's time, that he thinks they understand, but pointed out that they are not asking for a Constitutional Convention in any shape or form. He noted that someone said they should not open the Constitution, making amendments, but that amendments have been made, that he does not know, but they are up to 25 or 26 amendments to the Constitution now and, if that is what it takes, he thinks they should do it.

List of Testifying Proponents and What Group they Represent:

John Denherder, Legislative Director, Department of Montana Disabled American Veterans

Testimony:

Mr. Denherder indicated that it looks like he is representing 106,000 veterans because the American Legions are in convention in Havre, and Rich Brown from Veterans Affairs, Bob Durkee from the VFW and George Poston from the Veterans Council will not be here.

Mr. Denherder stated that he would rise in support of any bill, act, law and, lastly, amendment which would support stopping desecration of the American Flag. He indicated that each time this occurs, it is like taking a knife right into the heart of those people who fought for this nation and with the memories that linger with these people are the people who gave the supreme sacrifice. He stated that he strongly feels the First Amendment is fine, in regards to demonstrating, but that he thinks, when it comes to a lack of respect, this is another issue, and he thinks there should be laws and enforcement severe enough to stop this. He added that he, again, in any way, supports the fact that they let Congress know their feelings.

List of Testifying Opponents and What Group They Represent:

Joseph Moore, representing himself

Testimony:

Mr. Moore indicated that he knows this is a very emotional issue, that the committee has heard these gentlemen point out that it is a very emotional issue and, because it is, he would like to talk about his own personal relationship to the flag.

Mr. Moore reported that his grandfather was a professional soldier, that his father was a professional soldier, and that he spent six and one-half years in the military. He further reported that he grew up on military installations on which the American flag, and honoring the American flag, were an integral part of growing up and being an American. He indicated that he can clearly remember, in the evening time, when it came time to lower the colors, they stopped dead, that all traffic stopped, and he can remember his father getting out of the vehicle and saluting, and he, as a young boy, getting out and standing beside him with his hand over his heart. He added that was, and still is, a very important part of his own life, that he deeply respects the American flag, and would never have any part in burning that flag, or paying any disrespect to that flag. He added that, as a matter of fact, again, he spent six and one-half years in the military, sixteen months of which were in Vietnam. He added that, subsequent to his service in Vietnam, he did spend some time in demonstrations opposing the war in Vietnam, and indicated that it was his personal opinion, that, as an American and a free citizen, he had the right to do so, but that he never condoned anybody desecrating that American flag and that he was, in several instances, involved in shoving and shouting matches with people who felt that was appropriate.

Mr. Moore then pointed out a courageous act of one of our Presidents, Harry Truman, when he fired one of the great American military heros, General Douglas McArthur. He indicated that, when he was young, he can remember watching that famous speech he made on TV, which said old soldiers never die, they just fade away, noting that he is sure everyone here can remember that, themselves. He reported that he was moved to tears, that he looked over and watched his father, who was looking at the TV set and brooding, that his mouth was turned down and he was angry, and asked what was the matter. He indicated his father said "General McArthur was acting in an insubordinate way, the President of the United States is Commander in Chief of this country, he deserved what he got." Mr. Moore indicated he learned a lesson, there, that the President made a decision which the vast majority of the American people found unpopular. He further indicated that, if the committee members remember how Truman was, the buck

stops here, this is the Constitution, that this is his role as Commander in Chief of the Armed Forces, and this man, he does not care how big a hero he is, deserves to be fired, and that is what he got.

Mr. Moore stated that he knows emotions are running high, that there is not a person in this room who probably does not feel angry when the flag under which we serve and which we live is desecrated, but indicated that he thinks the committee should be very cautious in supporting anything which will tamper with the Constitution of the United States, specifically the freedoms under the First Amendment. He noted that it may not be a big thing, right now, but that it is chipping away at it and it may, in the future, provide a precedent for further erosions on the First Amendment freedoms.

He thanked the committee for allowing him to speak to them, and indicated that he hopes they do not allow these emotions around the flag to interfere with their relationship, further on, in other things they are working on together in this legislature.

Questions From Committee Members:

- Q. Senator Bengtson indicated she missed Mr. Moore's closing remarks, that she did not hear his summary statement as to why he opposes this bill.
- A. Mr. Moore responded that he opposes the bill because he thinks that, in the emotion of the moment, noting that this is going on in Congress as well as the vast majority of Americans, they might do something by a constitutional amendment which will infringe and chip away at their rights under the First Amendment, which is of free speech. He added that he realizes and understands it is a debatable issue, that one thing is speech but this is a physical action which is an insult to the American people, but that he would, nevertheless, say they should be very cautious about amending the Constitution, number one, and also about, however seemingly small incremental bit, chipping away at any of their freedoms under the Bill of Rights.
- Q. Senator Hofman asked Mr. Denherder to comment on some of the things Mr. Moore touched on.
- A. Mr. Denherder responded that he respects Mr. Moore's views regarding the possibility of chipping away at the

First Amendment, that this concerns him, also but, however, he thinks the First Amendment is one issue, and desecration of the flag is another issue. He indicated that, if it need be that an amendment be placed on the Constitution to take care of the desecration of the flag, he does not see how it should have to affect that First Amendment. He further indicated that he wishes there were other ways, such as laws with severe enough penalties, which could take care of the issue and he feels that, certainly, this should be a consideration of Congress, but that, apparently, this has been brought up, to amend the Constitution and, if this is the only method to stop desecration of the flag, he thinks they had better go with it.

Closing by Sponsor:

Representative Phillips indicated that he does not think that, even in their wildest dreams, the framers of the Constitution ever had in mind that freedom of speech, or whatever you want to call it, would go as far as to allow desecration of the flag. He noted that, if they look back through history, the flag was always in front when they went to battle and, if somebody who was carrying it fell, somebody picked it up. He indicated that the argument, to him, is pretty doggone weak that says they are messing with somebody's rights to freedom of speech, that this, to him, just does not play.

Representative Phillips referred, again, to the thousands of young Americans laying under rows of neat white crosses, and so forth, and the flag flying, noting that maybe he does get a little emotional about it, that, for thirty-one years, he was kind of under that flag, and then referred to Mr. Moore's report that, every day, they stopped the car when the flag went down.

He indicated that he thinks the committee understands the issue, and would hope they would support this resolution. He thanked the committee for taking the time to hear it.

DISPOSITION OF HJR 2

Discussion:

Senator Bengtson indicated that, in response to the opponent who spoke about reacting to the emotionalism of the moment,

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she thinks it is emotion, and that the Supreme Court, in its decision, showed they were really out of step with what the American people really feel. She further indicated that she thinks they have to sometimes react to something in a hurry, that they can let things slide, but it does not become as important, as time passes. She noted that the judicial branch, the Supreme Court, is just another branch of the government, and indicated that she thinks the people need to speak, too. She acknowledged that it is a sharp reaction, but indicated she does not think the Supreme Court even anticipated the reaction of the American people, that it is good that they respond like this and, if every state in the nation responds in like manner, it sends a message that the buck stops here, that you don't go any farther, that there are certain things which just do not fall under that freedom of expression and freedom of speech, adding that there are certain things this country does stand for.

Senator Bengtson pointed out that the Supreme Court's decision just recently on pro-life and pro-choice is a very emotional issue, as well, and that every state will be reacting to that, noting that this is not as controversial, but it evokes a response in people. She stated that she is going to vote in favor of the bill, noting that she does not think a Constitutional Amendment is always the way to go, but it does say this is it. She added that they can put it in statute, and hassle with that in every state in the union as to what kind of statute are they going to draw up, that maybe it is okay in Missouri to do this, and in Montana they do not do this, but indicated she thinks, nationwide, they have to make a statement. She added that she agrees it is emotional to respond like this, but that she thinks it is okay, it is fine, and they can do that.

Senator Rapp-Svrcek indicated that, in all due respect to Senator Bengtson, it is not the job of the Supreme Court to respond how the people feel, that it is the job of the Supreme Court to interpret the Constitution, and he thinks we are fortunate in that. He pointed out that, if the Supreme Court responded to the emotion of the people of the country, as it stands at any one time, the Constitution would be thrown to the wind, that the Constitution is a document which stands the test of time and, as such, the Court is just saying what the Constitution does.

Senator Bengtson stated that she agrees, that it is not a political body which is supposed to respond. Senator Rapp-Svrcek pointed out that, if they are responding to the emotion of the people, they might as well be another legislative body.

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Senator Bengtson noted, which, indeed, they have become in many instances, that, in looking over the cases throughout the years, they do reflect the tenor of the times, even though they are not supposed to.

Senator Vaughn indicated she can understand Mr. Moore's concern about free speech, that she is not, at all, interested in opening up a Constitutional Convention, but that they have already added amendments, and she can not see where an amendment like this would erode free speech, that it would be taking care of the flag, itself, and would not be an amendment to change any of the rest of the First Amendment about free speech. She further indicated that, if this were to call for a Constitutional Convention, she would not support it but, to add an amendment to simply take care of the desecration of the flag, she can and will support it.

Senator Harding stated that she feels likewise, that, not being an attorney, she is sometimes in a quandary over exactly what all these things will do, and does not ever favor opening the Constitution. She indicated that, if this reads that the State of Montana supports an amendment to the Constitution of the United States which would prohibit desecration of the flag of the United States, she would like to know what it really means and, if it means opening the Constitution, she could not favor it, even though she does not want to see the U.S. flag desecrated. She added that, rather than taking executive action, she would like to have an attorney's opinion on this because she can not, in conscience, go for anything, regardless of how strongly she feels about this, if it is a move to open the Constitution of the United States of America. She noted that she can remember when they had HJR10, and indicated that she does not think this would do it, or all those people would be here now, so, if it does not do that, she favors the resolution but, if it would do that, she would have to oppose it.

Senator Abrams indicated that he does not feel it is calling for a Constitutional Convention, noting that he is not an attorney, that, as far as he is concerned, this is merely a letter to Congress saying that this is our wishes. He noted that, however, if the committee feels more comfortable with that, he will go along with it.

Representative Phillips assured the committee, noting he is not an attorney, either, that this just merely says they would support an amendment being put out to the states to ratify. He indicated this would have to be ratified, and that HJR10 was asking for a Constitutional Convention because they could

not get ratification. Senator Harding indicated that was her question and, so, she would support that.

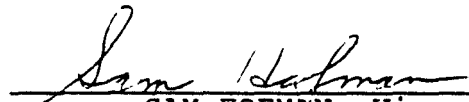
Senator Hofman reported that he got quite involved in the Constitutional Convention in 1987, and he is absolutely sure that this does not go anywhere near that far. He added that he would not have any problem supporting this just the way it is, that he supports the concept, as well.

Recommendation and Vote:

Senator Bengtson offered a motion that HJR2 be concurred in. Motion passed by the committee that HJR2 be concurred in.

ADJOURNMENT

Adjournment At: 10:35 a.m.

  
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SAM HOFMAN, Vice-Chairman

SH/mhu  
HJR2.077



ROLL CALL

STATE ADMINISTRATION COMMITTEE

51ST LEGISLATIVE SESSION

DATE: July 7, 1989

NAME	PRESENT	ABSENT	EXCUSED
HUBERT ABRAMS	✓		
JOHN ANDERSON, JR.			✓
ESTHER BENGTON	✓		
WILLIAM E. FARRELL			✓
ETHEL HARDING	✓		
SAM HOFMAN	✓		
PAUL RAPP-SVRCEK	✓		
TOM RASMUSSEN			✓
ELEANOR VAUGHN	✓		

VISITORS' REGISTER

STATE ADMINISTRATION COMMITTEE

DATE:

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NAME	REPRESENTING	BILL #	Support	Oppose
Joseph Moore	Self	HJ 2		X

**PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY**