



[Records on U.S. Flag Desecration Amendment](#)

FOIA Number: 2006-0265-F

Scope and Content Note:

The materials in FOIA 2006-0265-F are a selective, not necessarily all inclusive, body of documents responsive to the topic of the FOIA. Researchers should consult the archivist about related materials. FOIA 2006-0265-F contains materials relating to the efforts undertaken by the Bush administration to 2006-0265-F 1 support and pass an amendment to the U.S. Constitution which would protect the U.S. flag from desecration as a result of the decision of the U.S. Supreme Court in "Texas v. Johnson" in which the court struck down the Texas statute which protected the flag against such desecration. The genesis of the case was the arrest of Gregory Lee Johnson in Dallas, Texas during the 1984 Republican National Convention (Johnson burnt a U.S. Flag while he and supporters chanted, "Red, white, and blue, we spit on you"). In its decision, a 5-4 majority of the court found that such actions were protected as free speech by the First Amendment to the U.S. Constitution. Justice Brennan delivered the opinion of the court in which he was joined by Justices Marshall, Blackmun, Scalia, and Kennedy. Justice Rehnquist delivered a dissenting opinion, joined by Justices White and O'Connor. Justice Stevens also filed a dissenting opinion. The request consists entirely of Staff and Office Files which contain photocopies of U.S. Supreme Court decisions regarding desecration of the U.S. flag such as 'Texas v. Johnson,' 'U.S. v. Cary,' 'U.S. v. Haggerty,' and 'U.S. v. Eichman' and memoranda in which the president's advisors (primarily Brent O. Hatch and C. Boyden Gray) discuss the best manner in which to protect the flag in light of the court's decision(s), whether a statute would pass constitutional muster or whether an amendment to the Constitution would be necessary (the advisors' and president's ultimate decisions were for the latter). Much of the material pertains to discussions of the various amendments offered by members of Congress and the language thereof (whether it is ambiguous or effective), such as the Dole-Nixon bill in the Senate and the Michel-Montgomery bill in the House. (Copies of various State resolutions calling for flag protection are also included.) Other materials include letters from citizens and interest groups (such as the American Legion, "Save Our Flag!", the Veterans of Foreign Wars, Friends of the U.S. Flag, etc.) regarding their disapproval of the Supreme Court's findings and their support for an amendment to the U.S. Constitution which would protect the flag, as well as replies from President Bush and his staff regarding the administration's position. There are also numerous copies of testimony made before the congressional hearings on the subject from Judge Robert H. Bork, Asst. Attorney General William P. Barr (including drafts of his proposed testimony), Professor Charles Fried, Laurence H. Tribe, and J. Michael Luttig. Numerous copies of the legislation introduced as well as the Congressional Record are present, as well. Meeting agendas with pro-flag interest groups as well as talking points and speech remarks for the president and administration officials in favor of the flag protection amendment are among the records, as well as numerous transcripts of press briefings, press conferences, and press releases related to the issue. Also among the open materials in the request are memoranda and reports regarding members of Congress and their (probable) votes regarding the proposed flag amendment(s) and those whom the administration must reach in order to convince them to support the amendment so as to obtain a 2/3 majority vote (thus sending the amendment to the states). Photocopies of newspaper articles, editorials, and cartoons pertaining to the subject are also in the request.

Processed by: Staff Archivists, January 2006. Previously restricted materials are added as they are released.