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Attorney William Kunstler and activist Adrian Cronauer debate the proposed constitutional amendment banning flag burning and how it might affect other free speech rights.

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"Should Flag Burning Be Outlawed by a Constitutional Amendment?" Jack Ford, correspondent. NBC

APA

CHICAGO MANUAL OF STYLE

Transcript
Should Flag Burning Be Outlawed by a Constitutional Amendment?

JACK FORD, co-host:
Memorial Day is the time to honor one of the nation's most sacred symbols, the U.S. flag. But in Washington this year, the flag is being more than just honored. It's taking center stage in a hot debate over flag-burning. Lawmakers opened hearings Wednesday into a constitutional amendment that would allow states to prohibit flag-burning and other forms of desecration. Polls show that over 80 percent of Americans favor the amendment, but others feel that it's a violation of our very important First Amendment rights. Joining us this morning is attorney William Kunstler, who won two Supreme Court cases based on this same issue, and Adrian Cronauer, a former U.S. Air Force sergeant who is currently serving on the board of directors for the Citizens Flag Alliance.

Gentlemen, good morning. Thanks for spending some time with us. Mr. Cronauer, let me start with you if I might. We've gone through 200-some years of constitutional history now with very few amendments attached on to that Constitution. Why should we be changing it now to include a flag-burning prohibition?

Mr. ADRIAN CRONAUER (Citizens Flag Alliance): Well in 1989, the Supreme Court said that burning the flag or desecrating the flag in any way was protected speech under the First Amendment. Until then, there had been a lot of laws that prohibited that sort of activity, and it worked pretty well. But now the American people, by an outstanding margin--83 percent according to the polls, and when I'm gone around the country talking to people, it's 10 out of 10 that I've talked to--are in favor of this amendment. They want another--and there are a lot of exceptions carved out to the First Amendment, of course, yelling fire in a theater, for example. The American people want this exception put into the Constitution because that's the only way we can do it now that the Supreme Court has spoken.

FORD: Now the information I've seen suggests that there are only maybe four or five incidents of flag burning a year--perhaps as many as 45 total reported incidents in our total history. Why, if it happens so infrequently, should we be so concerned that we say, 'Let's change the Constitution'?

Mr. CRONAUER: Well, first of all, 'because the American people want it' is the ultimate answer. But
also, just because it is infrequent is not a reason why it should not be prohibited. For example, let's say in Lake Woebegone they haven't had any murders or armed robberies in the past couple of years, we still don't repeal the statutes against murder and armed robbery. There are things that the American people feel are so important they should be codified into law.

FORD: Mr. Kuntsler, is the fact that a large majority of the American people appear to want this constitutional amendment enough to justify it?

Mr. WILLIAM KUNSTLER (Attorney): Jack, it's not the American people, it's the panderers in Congress who want to go home and say, `I'm over patriotic.' It's pure jingoism. We've had very few flag-burnings in our history, and this would be the first amendment to ever carve something out of the First Amendment, which is the one about free speech and so on. And I think it's a horrible thing, because the next thing will be something else. It makes the flag into a sacred object. The colonists in Boston used to burn the British flag, which was their flag, as a protest against taxation without representation.

FORD: But the people that are supporting this say, `Look, we're not taking away anybody's right to freely express their thoughts.' They can have every opportunity to stand on the steps of the Capitol and say, `I think this country is terrible. Let me tell you why I think it's terrible. And I'm so offended by it I'd burn a flag if I was allowed to.' Why isn't that enough?

Mr. KUNSTLER: It isn't enough, because flag-burning is very acrimonious to a lot of people. It's the highest form of protest in inciting controversy. No question about it. Many people feel--and I was a major in World War II, and I have a little feeling when the flag is burnt. But it also tells me this is a heavy protest, I ought to listen to what this is--what's being said here. Maybe someone has a real grievance against the United States and is expressing it by burning their own flag. And to take five or six burnings they've had since the flag-burning cases, I argued both of them. And the Supreme Court said, 5-to-4, it's a form of protected speech. And you had four or five since then. Why is such a--furor about it now? It's pure pandering, gets votes--there's no question about that. `I'm very patriotic. I'm fighting for flag burning.' I haven't heard the American people get excited. There's been no letters to the editor that I've seen in any of the papers I read over the last three or four years after the initial flurry in 1989.

FORD: Mr. Cronauer, a lot of people are concerned, saying, `Well, if—if we start banning flag-burnings right now, that's going to start us on this slippery slope where the next thing you know, we're going to be banning all sorts of things.' Isn't there some value to that argument?

Mr. CRONAUER: No, I don't think so. Mr. Kunstler used the phrase `sacred.' And in a secular sense, I think many people do hold the flag as being particularly sacred, and they've proposed amendments for all sorts of things over the years, and very few of them ever get anywhere because the Founding Fathers have rightly made it very difficult to pass an amendment, and only very important issues get through. And the American people believe that this is a very important issue. Forty-nine states have already passed resolutions urging Congress to do this. And as I said, when I--when this thing first started--oh, five or six years ago, I was very much against it. But I travel around the country a lot talking to colleges and universities and business and veterans groups, and I am astounded as to the amount of--of interest the American people have on this.

FORD: Mr. Cronauer, thank you for taking your time. William Kuntsler, thank you also. Obviously,
difficult issues. We're going to hear a great deal more about them in the very near future.