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September 20, 2004

U.S. Senate  
Washington, DC 20510

**VIA FACSIMILE**

Dear Senator:

On behalf of the American Bar Association I urge you to oppose S. J. Res. 4, a joint resolution proposing an amendment to the Constitution of the United States authorizing Congress to prohibit the physical desecration of the flag of the United States.

This proposed constitutional amendment seeks to reverse the Supreme Court's 1989 decision in Texas v. Johnson, 491 U.S. 397, and authorize Congress to criminalize peaceful acts of political expression. The Senate has considered and rejected similar proposals on several occasions over the past 14 years. We urge you again to resist the emotional appeals of those who argue that protecting the flag from desecration through adoption of a constitutional amendment is the only patriotic course of action. S. J. Res. 4 would curtail the protection of individual liberties afforded by the Bill of Rights (a document that has not been changed in its 213 years of existence) and should be rejected as bad constitutional policy and bad law. At best, the proposal is a diversion from the real issues facing the country; at worst, it marks a profound and unwelcome change in our society by conveying the message that we fear, rather than cherish, our freedom of speech.

Our flag is a symbol of our democratic values, not a value unto itself. Respect for our flag resides in the hearts and minds of the American public, as the outpouring of patriotism after the events of 9/11 so strongly affirms. The acts of a handful of demonstrators will never change the respect our flag is given at home and throughout the world as a symbol of our Nation's adherence to the constitutional promises of freedom and democracy. If anything, the protection our government affords the offensive actions of a demonstrator underscores that we serve and live in a nation whose greatness is derived from its adherence to democratic principles

The ABA unequivocally agrees that the flag is a revered symbol that evokes our most personal feelings about our nation's greatness. But America is not so weak that it must demand patriotism from its citizens by amending the Constitution to prohibit flag desecration. Neither our institutions nor the flag can be destroyed by

the peaceful exercise of First Amendment freedoms. The American flag will survive the rare eruptions of flag burning, but it will not survive if the very freedoms it protects are eroded through passage of a misguided constitutional amendment.

We urge the Senate once again to defend and preserve our First Amendment rights by resoundingly rejecting the proposed flag desecration amendment.

Sincerely,

A handwritten signature in cursive script that reads "Robert D. Evans". The signature is written in black ink and is positioned below the word "Sincerely,".

Robert D. Evans