

# New twist to flag law

Should citizens be allowed to use physical force to prevent the desecration of the flag? State Sen. William T. Barton thinks so. Barton is the sponsor of a bill that would permit private citizens to "use force, other than deadly force," to prevent public mutilation of the flag.

The bill would, in effect, deputize private citizens to enforce recent anti-flag desecration legislation by Congress. If somebody were to spot a flag-burner, explains Barton, he could enforce the anti-desecration statute "all on his own, without calling in the law."

There are many — including myself — who would consider it ethically defensible to use main force to prevent flag-burning. But what is ethically defensible should not always be legally permissible. Barton's bill is well-intentioned, but it completes the job started by the Supreme Court decision last July: it is bringing our political discourse ever closer to the level of an alley brawl.

Defenders of the court's decision invoke an indivisible "Freedom of expression" that is not compatible with the text or history of the First Amendment. There are specific forms of expression given explicit protection by the amendment, forms indispensable to a properly functioning republic.

An earlier draft of the First Amendment offered by Madison protected the public's "right to speak, to write, or to publish (its) sentiments." Freedom of speech and the press are specifically protected by the surviving version of the amendment. Other forms of expression may be granted protection, but there is nothing in the text of the Constitution that requires Congress to do so.

Defenders of the court's decision are generally the type of people who believe that we live near the bottom of the "slippery slope." Accordingly, they react to the argument cited above by exclaiming, "But if we ban flag-burning, what's to stop us from banning editorial cartoons, or even (gasp) newspaper columns?" Such slope-dwellers should rest their troubled brows. A self-governing nation should be entrusted with the



**Will  
Grigg**

**FOR THE  
SAKE OF  
ARGUMENT**

power to make such distinctions. It is, in some ways, a risky proposition; but the alternative is to surrender all such decisions to an unelected body — the Supreme Court.

The greatest damage done to the First Amendment is done by a Supreme Court determined to beat the sense out of words. This is a sobering threat to free speech, as language is the only medium in which we can either speak or think.

Describing the physical act of igniting a flag as "speech" is distinctly Orwellian. If the court can treat the text of the First Amendment like silly putty — stretching it to cover an overbroad definition of 'speech' — then what is the purpose of having a written constitution? Why not amend the amendment to read, "Speech is herein defined as any act deemed suitable by the Supreme Court"?

It is tempting to contrive a "free-speech" defense for Sen. Barton's bill. Some defenders of the Court's decision insist that flag-burning is defensible because it can convey sentiments that cannot be expressed in any other way. If this is so, is it not 'expressive' to prevent public desecration of the flag?

Imagine the festival of free expression that could result if Barton's bill became law. Flag-burners would find themselves "expressed" to within an inch of their lives by flag-guarding citizens.

Sen. Barton's bill is an understandable response to a disgraceful decision. But a better and more effective measure would be to urge the Congress to amend its recent flag-protection law to remove the matter from the appellate jurisdiction of the Supreme Court — and then leave enforcement of the law to the police.