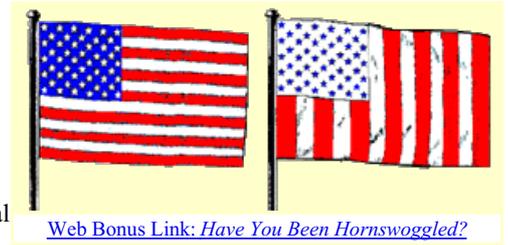


## Flame and glory

**How our First Amendment rights may be torched by the Flag Burning Amendment**  
by Karl Lembke

With the Fourth of July fresh in their minds, legislators undertake what seems to be one of their favorite hobbies: passing the latest incarnation of the Flag Burning Law. Having failed time and again to prevent the "desecration" of the U.S. flag, lawmakers now propose a Flag Burning Amendment.

If Congress has its way, it will be possible for states, cities and other localities to pass laws making it a crime to burn or otherwise desecrate the U.S. flag. These laws, which have previously been ruled unconstitutional, would be specifically declared constitutional on account of the proposed amendment.



[Web Bonus Link: Have You Been Hornswoggled?](#)

I see problems with a law forbidding the burning of a flag. Firstly, there's the problem of deciding just what conduct is supposed to be illegal. I watched someone burn a flag once when I was at summer camp. The flag was old and tattered, and with great respect, it was laid upon the campfire for final disposal. For those who remember the codes governing how the flag is to be treated, this is how the U.S. flag is disposed of.

Obviously, respectfully burning an old flag in order to dispose of it wouldn't be covered under any flag burning law, but the fact that police would have to make this distinction turns flag burning into a thought crime. Whether an action is criminal or not depends on what the mental state of the person performing it may be. Worse, it depends on someone else's guess about the mental state of whoever burns the flag.

Secondly, just how often do people burn flags in the town square? A Constitutional amendment is a pretty big thing. It has to pass both houses of Congress, be signed by the President, and then be approved by a supermajority of the States. Is the flag being burned often enough to justify all that effort to make it a crime?

Finally, despite what the proponents of this amendment say, burning a flag is a form of expression. Proponents say that it's not expression, but merely an action. Well, so is speech. And haven't we all heard that "actions speak louder than words"? It is precisely because of what the action of burning a flag says that people are trying to outlaw it.

Now to be sure, the First Amendment doesn't protect every person's right to express himself in any way he likes. But the First Amendment is intended to protect political speech, especially unpopular political speech. And in today's legislative climate, burning the U.S. Flag is about as unpopular as it comes.

One of the sayings from the Talmud is that "one can be disgusting with the full consent of the law". This means that a person can engage in disgusting, distressing and distasteful behavior without ever violating any of the laws handed down at Sinai. Furthermore, it's futile to even attempt to outlaw distressing behavior, simply because people are so good at finding ways to distress others.

Germany has laws barring any group from using the swastika as a symbol. This has had only minimal impact on any of the neo-Nazi groups that compete for public attention in Germany; all they do is use symbols that are *suggestive* of swastikas. If we pass laws against desecrating the U.S. Flag, what's to stop someone from desecrating a near-Flag? If it's illegal to burn a flag with thirteen stripes and fifty stars, how about one with eleven stripes and sixty stars? How about a banner with the words "United States Flag" spray-painted on it in green ink? I submit that burning any or all of the above can be just as offensive as burning the actual flag. All the people doing the burning have to do is let everyone know they're burning a stand-in for the actual Flag.

Frankly, people who want to spit on the United States will find a way, no matter what we outlaw. I say let the loudmouths burn as many flags as they like. It says far more about them than it does about my country, or its flag.

## June meeting notes

by Christopher Schmidt

The June meeting at Hobee's ran long. We heard numerous reports on activity since the May meeting, conducted a bit of party business, and made plans for upcoming mailings. Highlights are summarized below.

Steve and J.R. suggested that California libertarians might be interested in learning about the work of the [Pacific Research Institute](#), which Steve likened to a California version of the [Cato Institute](#).

Steve reported on his contact with Republican leadership about the jockeying of candidates for various races and circulating Prop. 10 repeal petitions.

It was noted that the photo in last month's newsletter should have been credited to photographer Jack Hickey.

A problem with our handling of inquiry data was identified. After the meeting we contacted Joe Dehn and he was able to help us resolve the problem and recover lost data.

Steve mentioned that Quentin Kopp advised him to run for town council rather than the assembly.

Lacy was elected by unanimous consent to fill the vacant seat on the LPSM judicial committee.

The bylaws of the LPC and the state election code interact in peculiar ways regarding the subject of central committee membership. Responding to Mike Moloney's departure, Steve announced that he would appoint Lacy, J.R., Jack, and me (i.e. those present and willing to serve) to the central committee list recognized by the county. For LPC purposes, central committee members are certification-signing dues-payers not registered in another party (i.e. most people receiving this newsletter).

Steve reported that he and Barbara had circulated some Prop. 10 repeal initiatives and some car tax initiatives at [Cigarettes Cheaper](#) and at the DMV and related some of their experiences. He is asking campaign volunteers to try their hands at circulating these petitions.

J.R. presented a draft copy of a membership recruitment letter.

We discussed combining mailings, but in the end we voted 41 to send the abovementioned initiative petitions to registered libertarians now and to defer J.R.'s recruitment letter. [Footnote: Subsequent to the meeting, two of us reconsidered our support of the "car tax" initiative and concluded that it doesn't deserve our personal endorsement (because some provisions modifying the state constitution are problematic). As always, we know libertarians will make up their minds independently, and circulate only the petitions they agree are meritorious.] Frank will head-up preparation of the mailing and host the mailing party. E-mail him at [adamcpa@flash.net](mailto:adamcpa@flash.net) if you can help out.

We voted to authorize the sale of subscriptions to this newsletter for \$10/yr. Anticipated subscribers are LPC members in other regions and local friends not ready for a \$25 membership commitment.

## **Next meeting of the LP of San Mateo County:**

Wednesday, July 21

Hobee's Restaurant ([Directions to Hobee's](#))

1111 Shoreway Road, Belmont; just off Ralston, on the bay side of Highway 101

Dinner and informal discussion (optional): 6:00--7:30pm in the reserved dining room

Business meeting: 7:30--8:45pm in the dining room alcove.