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Federal Judge Rules Both Iowa Flag Statutes Unconstitutional

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ACLU of Iowa Convinces Court the Laws Are Too Vague

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Iowa has two different statutes punishing people for misusing or desecrating the American flag. This morning, a federal judge ruled that both of them are unenforceable.

“Today should mark the end of government misuse of these laws to intimidate and harass those who disagree with government policies,” said Ben Stone, Executive Director of the ACLU of Iowa, which argued the case. “From this day forward, people who choose to express their disapproval of government policy by flying their flag upside down can do so without fear of government repression,” he added.

The case involves two Iowa men who separately flew their flags upside down to protest government policies: an Ottumwa man protesting local police practices, and a Corydon man joining in a national protest against the lack of mental health care for returning Iraq War veterans. Both were men were arrested in separate incidents last summer before their cases were ultimately dismissed by the government.

Randall Wilson, Legal Director of the ACLU Foundation of Iowa, represented both men in their criminal cases, and brought a lawsuit in the federal court on their behalf seeking an end to the practice of police officers arresting people for flying their flags upside down.

“These challenged flag laws have been a nuisance to democracy,” said Wilson. “Both statutes prohibit everything from the flags on the side of coffee mugs to ‘Support our Troops’ magnets on vehicles. Yet these laws historically have only been used to suppress demonstrators and political dissidents,” he said. “Now that these laws have been stricken from the books, we can take pride in the fact that Iowans are living in a freer society where dissent and free speech are tolerated and the right to display the flag belongs to everyone,” he added.

The two Iowa statutes struck down today involve how the American flag should be treated. Iowa Code § 718A.1 (2006) lists in great detail all the things that people are forbidden from doing with and to the flag, including using it in advertisements and on clothing. The other statute, Iowa Code § 723.4 (2006) forbids any display of the flag that shows “disrespect” for it as a symbol of the United States, or which may “provoke” someone to commit a crime.

Federal District Court Judge Robert Pratt ruled that both statutes are so vague that they violate the Due Process Clause of the Fourteenth Amendment, which requires that laws be specific enough that people can figure out whether their conduct is legal or not. Judge Pratt assumes in his ruling that “Iowa prosecutorial authorities will give full credence to this decision that the present statutes are unconstitutionally vague on their face.”

These two upside down flag cases are not the first litigated by the ACLU Foundation of Iowa. In 2002, the Iowa civil liberties group began representing two Grinnell College students threatened with arrest for flying an American flag upside down in their dorm windows in protest of the impending invasion of Iraq. The federal case involving those students was ultimately settled in 2005 in favor of the students without the constitutionality of the statutes being determined.

The case involves plaintiffs Scott Wayne Roe of Ottumwa and Dale Klyn of rural Corydon in Wayne County. The defendants in the suit are: Ottumwa Police Officers Mark Milligan and Chris Logan, the Ottumwa Police Department, and Alan Monroe Wilson, Wayne County Attorney. The Southern District of Iowa decision can be found as: *Roe v. Milligan*, 4:06-cv-00300, filed 3/27/07.