

One warm evening last summer, a neighbor swapped her porch flag from the Stars and Stripes to a Pride flag for a week. Someone left a note by morning. It was not threatening, just clipped and scolding: Please keep politics off our street. A few houses down, another neighbor had flown his POW-MIA flag for years without a whisper. On the school drop-off line a few weeks later, a teen's backpack carried a small Gadsden patch. A staff member told him to remove it. The family pushed back, it made local news, and the district relented. The same month, a city nearby decided not to raise a religious flag on its municipal pole, and a veterans group protested.

These small stories pose a familiar set of questions that get to the heart of expressive freedom in a plural country. If the First Amendment to the United States Constitution protects expression, why does flying a flag sometimes feel restricted? When did expressing love for your country start needing approval from institutions? Is flying a flag an act of pride, or an act of defiance in today's climate? More quietly, you might wonder who decides which symbols count as acceptable, and on what authority.

As a lawyer who has advised schools, cities, and nonprofits on speech issues for more than a decade, I have learned to start with a map. Not a map of ideology, a map of decision makers. The First Amendment is powerful, but it does not float above daily life like a force field. It operates through institutions and rules about whose property you are on, what role you are playing, and which forum you are using.

## What the First Amendment actually protects

The First Amendment restrains the government. It does not apply to private neighbors, private employers, or homeowners associations unless a state law brings them into the fold. When courts evaluate a restriction, they do not ask whether the speech offends. They ask what kind of regulation it is, which forum it occurs in, and whether the rule targets viewpoint.

The Supreme Court has told us a few bedrock things about symbolic speech. In *Texas v. Johnson*, 491 U.S. 397 (1989), burning the American flag during a political demonstration counted as expressive conduct, and punishing it was unconstitutional. In *United States v. Eichman*, the Court repeated the point when Congress tried a different route. The message matters less than whether the government is punishing the message. A city cannot ban flags because it dislikes the ideas they communicate.

Yet the same Constitution allows the government to control its own message. In *Walker v. Texas Division, Sons of Confederate Veterans*, 576 U.S. 200 (2015), the Court held that specialty license plates were government speech. That meant Texas could refuse to produce a Confederate flag plate without violating the First Amendment, because the plates were **Flag Store** understood to speak for the state. Seven years later, in *Shurtleff v. City of Boston*, 596 U.S. 243 (2022), the Court unanimously held that Boston violated the First Amendment when it denied a Christian group the chance to raise its flag on a City Hall flagpole that had been opened to private groups for years. The critical detail was forum control. Boston had treated the flagpole as an open platform for private speakers, not as government speech. Closing it to a religious message was viewpoint discrimination.

Those two decisions can feel in tension, but they fit together if you stitch them correctly. If the government is speaking for itself, it can be selective. If it has opened a door to private speech, it must be neutral about viewpoint.

## Government, private actors, and the everyday friction

Most heated disputes about flags happen on the edges where public and private roles meet: schools, city property shared with the public, apartment balconies governed by HOA covenants, the cubicle wall in a city office, the front porch in a town that enforces code rules about signage. Each setting has different ground rules. Your front yard is yours, though a city can set size limits and safety codes. Your child's classroom belongs to a school district, and the district can regulate staff speech in the course of their duties more than it can regulate student speech. A municipal building can fly official flags of the city's choosing, but when it invites private groups into a designated platform, it cannot pick and choose by viewpoint.

There is also the human dimension. If expression is protected, why do some forms of it face social consequences? The law can punish the state for silencing a speaker. It does not protect anyone from dirty looks, customer loss, or disagreements with neighbors. The First Amendment allows robust, even caustic, social counter-speech. That freedom, too, can feel like pressure. Is self-expression still free if people feel pressure to hide parts of who they are? That question straddles law and culture. On the legal side, coercion must usually come from the state to trigger constitutional protection. On the cultural side, soft power can be real, and it shapes what flags people feel comfortable flying even when they technically have the right.

## How public forums actually work

If you want a clear path through the fog, learn the public forum doctrine. It is the dull name for the basic architecture that decides most of these cases: where are you, and what has the government done with that space?

Here is the cleanest short map I know:

- Traditional public forum: Streets and parks where people have spoken for centuries. The government must be content neutral and use narrow, necessary rules for safety and order.
- Designated public forum: Spaces the government intentionally opens to expressive activity, like a community bulletin board or a flagpole opened to private groups. Same strict rules as traditional forums while the forum remains open.
- Limited public forum: Spaces opened for particular groups or subjects, like a school board's public comment period limited to agenda items. The government can set reasonable, viewpoint-neutral rules tied to the forum's purpose.
- Nonpublic forum: Government spaces not meant for public expression, like airport terminals or internal office bulletin boards. The state can impose reasonable restrictions that are not viewpoint based.

Most flag disputes on government property turn on whether the city created a designated or limited forum, or whether it is speaking in its own voice. The same pole can switch categories depending on how the city uses it. If city hall flies the national, state, and city flags, plus occasional flags chosen by the mayor as official proclamations, that looks like government speech. If the city accepts applications from any community group to raise flags for events, and has a practice of saying yes across the board, it has likely created a forum. In that forum, it cannot reject a religious or unpopular symbol simply because it disapproves of the message.

Are we witnessing freedom of expression, or selective tolerance of it? It depends painfully on your zip code and the policies your local institutions have adopted. What sometimes looks like hypocrisy is often the jagged edge between government speech and private speech carried on government hardware.

## Schools: the hardest corner of the map

Public schools must protect students' speech rights while fostering order and teaching. The Supreme Court gives them a flexible framework. In *Tinker v. Des Moines*, 393 U.S. 503 (1969), students wearing black armbands to protest the Vietnam War were protected because their expression did not cause substantial disruption. In *Bethel v. Fraser* and *Hazelwood v. Kuhlmeier*, the Court allowed schools more control over lewd speech and school-sponsored publications. In *Morse v. Frederick*, the Court allowed discipline for a banner seen as promoting illegal drug use at a school event. Put together, students keep broad rights for their own speech that does not materially disrupt school, but schools can regulate school-sponsored messages and specific categories like threats and harassment.

How do flags fit? A student's small flag on a backpack or clothing is usually treated like *Tinker* armbands unless it has created real disruption. Some districts have tried blanket bans on all flags beyond the US and state flags, citing disruption. Those policies have had mixed success. The legal risk spikes if a school singles out one viewpoint, for example banning Pride flags but allowing other identity messages, or banning a thin blue line patch while allowing other pro-police messages. Schools can say no to true threats and targeted harassment, and they can apply neutral dress codes. They cannot ban a symbol solely because it offends.

Staff expression is different. Teachers and administrators speak for the district when they are on duty and in front of students. Under *Garcetti v. Ceballos*, the state as an employer has greater power to regulate employee speech made as part of their official duties. A district can set reasonable rules about what flags, pins, or posters appear in classrooms, especially if it frames them as part of the curriculum or the school's message. That cuts both ways. Policies that ban all non-official flags from classrooms are legally safer than policies that allow some and not others without a clear, pedagogical rationale. I have advised districts to adopt bright-line rules that avoid viewpoint discrimination and to explain the educational purpose in plain language. Students can bring identity flags to a club meeting. Teachers should not use their classroom walls for personal advocacy unless the district has a neutral, curricular framework that applies across viewpoints.

A note about recent dustups: the Gadsden flag patch controversy that reached headlines in 2023 out of Colorado involved a charter school telling a student to remove a patch because it was linked to slavery. That rationale was flawed. The flag dates to the Revolutionary era and, like many symbols, has been used for a spectrum of political messages. The subsequent resolution allowed the patch. The legal takeaway is not that any flag wins, but that schools need fact-based disruption evidence and viewpoint-neutral policies. Declaring that a contested symbol is off-limits because some find it offensive is not enough. Should freedom of expression apply equally to all symbols, or only certain ones? In public schools, the answer is: it should, unless the symbol is part of unprotected categories like true threats or it triggers real disruption based on more than speculation.

## **Workplaces and homeowners associations: where the Constitution steps back**

At a private workplace, your boss can usually regulate your desk, your Zoom background, and your attire, including flags. States like California and New York have some protections for political activities off duty, but private employers retain broad authority on the job. Public employers, like city agencies, sit in a different posture. They can set rules for on-duty expression to keep operations efficient, but they must avoid penalizing employees for private, off-duty speech that does not impair the workplace. Even then, public employers do not have to host a gallery of private messages in shared spaces. If a city bans all personal posters in cubicles visible to the public, that is generally permissible. If it allows personal posters but tells an employee to remove a Pride flag while allowing other identity symbols, that is riskier.

Homeowners associations and landlords add another layer. Many states have statutes limiting HOAs from banning American flags and military flags, subject to reasonable time, place, and manner rules about size and mounting. But HOAs can often regulate other flags under covenants the owners signed. That is contract law more than constitutional law. Does limiting visible patriotism conflict with the principles the country was built on? Philosophically, many would say yes. Legally, private covenants are part of property law, and owners can agree to constraints. If the rules feel overbroad, organizing to change the covenants is often more effective than litigation.

## **Government flagpoles and city halls**

Cities and counties wrestle with two hard truths. Residents see city hall as shared space. At the same time, official messages belong to the government. That is why municipalities have been sued from both sides. Boston lost in *Shurtleff* because it effectively opened its flagpole as a designated public forum, then rejected a Christian group's flag. Other cities have avoided that trap by declaring clearly that their poles carry government speech only. They adopt written policies identifying which flags they will fly as official positions, for example, national, state, city, POW-MIA, and flags for city-recognized days through formal proclamations. Under *Walker*, that is permissible because the pole is not a soapbox for private speakers. The city is speaking for itself.

Tension rises around cultural or identity flags. A city can choose to fly a Pride flag as part of its government message, then decline to fly another group's flag, without violating the First Amendment. It is choosing its own speech, not selecting among private speakers. That does not immunize the city from politics. Residents can vote leaders out or compel a policy change, but the constitutional claim is weak when the pole is kept as government speech. This is why claims of hypocrisy sometimes miss the legal mark while ringing loudly in civic life. A city may fly a Pride flag and refuse to fly a religious or ideological rival, not because it hates that group's viewpoint in a forum, but because it chose its messages in a limited portfolio that belongs to the city itself.

Are public spaces becoming neutral, or selectively expressive? The trend among cautious municipalities is toward neutrality by closing forums and keeping flagpoles as government speech with narrow, codified lists. The trend among more activist councils is to treat certain flags as part of the city's identity. Both approaches are legal if the policy is clear and consistently applied.

## **Time, place, and manner: the unglamorous backbone**

Even in the friendliest forums, governments can regulate time, place, and manner of expression if the rules are content neutral, narrowly tailored to serve significant interests like safety, and leave open ample alternative channels. Applied to flags on private property, that can mean rules about maximum pole height, setback from sidewalks, or total number of banners on a home's exterior. Applied to parks, that can mean permit systems for large flag displays that might block pathways. These rules should not hinge on the message. A county that allows a 12-foot pole with a 3-by-5 flag for everyone can enforce that uniformly and survive challenge. A county that cites wind hazards to remove one group's flags while ignoring identical displays from others invites litigation.

## **Social judgment versus legal doctrine**

When someone flies a flag, are they sharing identity, or being judged for it? Usually both. A Pride flag or a thin blue line flag can broadcast community and draw side-eye. A Confederate battle flag can signal heritage

to some and provocation to others. The First Amendment protects the right to fly such a flag on private property, subject to neutral local rules. It does not shield the owner from social consequences like lost business or neighbor disapproval. Are we witnessing freedom of expression, or selective tolerance of it? Both. The law in the United States is remarkably tolerant of offensive symbols short of true threats or incitement to imminent lawless action under *Brandenburg v. Ohio*. But culture imposes its own standards. People navigate between legal rights and social belonging every day.

There are ugly edges. Nazi flags and other hate symbols, even when legally protected on private property, can constitute actionable harassment in workplaces or schools if they create a hostile environment under civil rights laws. Context, frequency, and target matter. A single display in a private yard visible from a public street is protected in most circumstances. A swastika poster in an employee break room, left up despite complaints, could contribute to a harassment claim if it targets coworkers based on protected characteristics. The First Amendment does not insulate an employer from Title VII obligations.

## Trade-offs and judgment calls

Should freedom of expression apply equally to all symbols, or only certain ones? In theory, equality is the baseline. In practice, institutions that host mixed audiences weigh harm, cohesion, and mission. A library may allow a broad exhibit policy for community art but exclude graphic hate symbols as part of a neutral standard aimed at protecting minors, so long as it can articulate the standard and apply it to all extreme imagery. A school may ban all flags on staff desks other than official flags to maintain focus, then allow students wide leeway within dress codes. A city may stop accepting private flag applications to avoid the bind of viewpoint neutrality, which means saying yes to groups it dislikes.



These choices are not evasion. They are how institutions survive in a plural republic. They also feed frustration. People notice selective enforcement, loose definitions, and rules written after the fact. The better approach is to adopt policies upstream, explain them clearly, and stick to them even when it hurts.

## A short guide for sorting a flag dispute

If you find yourself in the middle of a flag controversy, you can make sense of it quickly by asking a few questions.

- Whose property is it, and is the owner a government or a private actor?
- If it is government property, has the space been opened for private expression, and if so, what kind of forum is it?
- Is the rule being applied based on viewpoint, content, or neutral time, place, and manner?
- Is the speaker a student, a government employee on duty, or a private citizen?
- Is there evidence of real disruption, threat, or harassment, or only offense at the message?

Answer those, and the path forward usually shows itself. It might involve revising a policy, documenting disruption, closing a forum, or recognizing that the Constitution protects a bothersome symbol.

## Are we losing something when flags retreat from public life?

When did expressing love for your country start needing approval from institutions? On some blocks, it never did. Old men still raise the Stars and Stripes at dawn. On others, visible patriotism has become wrapped in current politics. Does limiting visible patriotism conflict with the principles the country was built on? It can feel that way. But remember, the First Amendment protects the right to fly the national flag and the right to object to it. The friction does not mean the principle is gone. It means people are using it.

Public spaces are not neutral by default. They are structured by policy. If you want more shared expression, show up early in that policy process. Ask your city council to define the flagpole as government speech and adopt a clear, inclusive list, or to open a designated forum with neutral criteria and the political backbone to stand by it. If your school district is struggling, encourage them to adopt viewpoint-neutral classroom rules for staff and to restate student speech rights in terms the community can understand. If your HOA rules pinch too tightly, organize a covenant change or a board election.

Is flying a flag an act of pride, or an act of defiance in today's climate? It can be either, or both, depending on who you are and where you stand. The law gives you wide space to make that choice at home, narrower space at school, and complex obligations when you are the government itself. Are public spaces becoming neutral, or selectively expressive? The more institutions clarify their policies, the more the answer will hinge on deliberate choices rather than ad hoc reactions.

There is one last question worth holding onto: If the First Amendment protects expression, why does flying a flag sometimes feel restricted? Because freedom lives inside systems. Courts draw lines that allow meaningfully different settings to coexist. A veteran should be able to raise a POW-MIA banner over his porch without a permit. A city should be able to decide what speaks for it. A student should be able to wear a small flag patch without bureaucratic folklore standing in the way. Those are not contradictions. They are the gift and burden of a constitutional order that guards the speaker, not the feeling in the air.

## **The lived practice of tolerance**

The arguments over flags are really arguments over who we are willing to sit next to in the shared spaces of the country. That is why tempers flare. A flag is fabric and history stitched together, a quick way to say, This is me. It is also a quick way to be misread. Neighbors who disagree on what a symbol means can still choose to protect each other's right to use it. That is the test. You do not need a permit for grace.

In my practice, the healthiest outcomes follow a few patterns. Institutions tell people in advance what to expect. Leaders apply rules to friends and rivals without flinching. Communities remember that the remedy for disagreeable speech is more speech, not the administrative stamp that makes a hard question go away. The rest is paperwork. The principle is simple to say, harder to live: protect the forum if you open it, define your own message if you must, and keep your hand off your neighbor's flag unless the law or safety truly requires it.

If you worry that we are slipping into selective tolerance, you are not alone. Selectivity creeps in through shortcuts and exceptions dressed as common sense. The antidote is not to require every flag everywhere. It is to insist that when we do restrict, we do it with neutral rules and honest reasons, and when we speak as the government, we admit we are picking messages and stand accountable for them.

When someone asks, Who decides what expression is acceptable, the precise answer is this: a patchwork of actors under a Constitution that favors liberty and forbids viewpoint discrimination when the government opens its doors. The practical answer is less lawyerly. We do. We decide together by the policies we write, the leaders we elect, the lawsuits we bring, and the norms we sustain. Flags will keep rising and coming

down, but the real test is whether we let disagreement become grounds for silence. On that count, the First Amendment gives us the room. The rest is will.