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## **Constitutional Q&A: The Right to Display First Amendment Messages on Private Property (Signs, Flags, Religious Symbols and Other Expressive Displays)**

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*This Q&A is provided for informational purposes only and is not to be taken as legal advice or relied on for guidance as to any proposed action. As laws can change over time and enforcement of laws can be unpredictable, the current law should be checked for any changes and a local attorney licensed in the state should be consulted for guidance.*

The First Amendment protects far more than spoken or written words. Signs, flags, crosses, banners, artwork, holiday displays and other symbols can all communicate religious, political, philosophical or cultural ideas. When displayed by private citizens on their own property, such expression generally occupies a place of strong constitutional protection.

Yet property owners, businesses, churches and community organizations regularly encounter government restrictions on what they may display. Sometimes these disputes arise from legitimate concerns about structural safety or traffic visibility. But in other instances, officials attempt to prohibit messages they regard as controversial, religious, unpopular or politically incorrect while allowing favored signs, flags or symbols to remain.

For more than four decades, The Rutherford Institute has defended individuals and organizations across the ideological and religious spectrum whose expressive rights have been threatened by zoning ordinances, sign codes, permitting rules and other government restrictions.

The following Q&A provides general guidance on the constitutional right to display First Amendment messages on private property.

### **Q: Does the First Amendment protect signs and symbols displayed on private property?**

**A:** Generally, yes. The First Amendment protects not only spoken and written words but also symbolic expression. Flags, crosses, banners, artwork and other displays may communicate ideas just as clearly as a speech or written statement.

The fact that the expression occurs on private property strengthens the owner's interest in deciding what message the property will convey. The First Amendment restrains government action only—so, it does not ordinarily prevent private landlords, homeowners' associations or other nongovernmental entities from enforcing private agreements, although state law may provide additional protections.

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<sup>1</sup> The Rutherford Institute, a nonprofit civil liberties organization, is committed to protecting the constitutional freedoms of every American and the human rights of all people through its legal and educational programs. The Institute provides legal services at no charge to those whose constitutional and human rights have been threatened or violated. The Institute's mission is twofold: to provide legal services in the defense of civil liberties and to educate the public on important issues affecting their constitutional freedoms.

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#### **Q: Can a city regulate signs or structures on private property?**

**A:** Yes, within constitutional limits. Local governments may generally impose reasonable, content-neutral regulations addressing legitimate concerns such as:

- structural stability;
- height and size;
- setbacks and placement;
- lighting;
- traffic visibility;
- electrical and building safety; and
- maintenance.

A city may require a permit, engineering plans or inspections for a large freestanding structure. The critical question is whether those requirements are applied neutrally and are genuinely related to safety or land-use concerns rather than hostility toward the message being expressed.

#### **Q: What is a content-based restriction?**

**A:** A content-based restriction treats a display differently because of what it says or represents. For example, an ordinance may raise constitutional concerns if it permits:

- governmental flags but prohibits political flags;
- commercial banners but prohibits religious banners;
- holiday displays but excludes other religious displays;
- civic messages but bars controversial social or political messages; or
- certain symbols based on whether officials approve of their meaning.

Government generally may not decide which ideas are acceptable and which are not.

#### **Q: What is viewpoint discrimination?**

**A:** Viewpoint discrimination occurs when government permits discussion of a subject but favors one side of the debate.

A city could not, for example, allow signs supporting a government policy while banning signs opposing it. Nor could it permit religious messages expressing one belief while excluding other religious or nonreligious views.

Viewpoint discrimination is among the most serious violations of the First Amendment.

#### **Q: May the government prohibit a display because neighbors find it offensive?**

**A:** Ordinarily, no.

The First Amendment protects controversial and unpopular expression precisely because popular ideas rarely need constitutional protection.

Government may address actual threats, unlawful conduct or genuine safety problems. It generally may not suppress lawful expression merely because some people find the message offensive, upsetting or disagreeable.

#### **Q: Are religious displays entitled to less protection than secular displays?**

**A:** No. Private religious expression is protected by both the Free Speech and Free Exercise Clauses of the First Amendment. Government may not presume that religious speech is less protected, more dangerous or constitutionally suspect merely because it is religious.

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When government allows comparable secular signs, flags, symbols or displays, it ordinarily may not exclude religious expression because of its content.

#### **Q: Does allowing a private religious display violate the separation of church and state?**

**A:** Not if it is merely because the display is religious.

A private citizen's religious display is private expression, not government endorsement. The Establishment Clause limits official government promotion of a particular religion; it does not require government to censor private religious speech.

Confusing private expression with government speech often results in the unnecessary suppression of constitutionally protected religious activity.

#### **Q: May government require a religious object to be classified as a “sign”?**

**A:** A government may use neutral administrative classifications, but those classifications cannot be used to diminish constitutional protections or impose unnecessary burdens.

A cross, flag, sculpture or other object may function both as a physical structure and as protected expression. Calling it a “sign” for regulatory purposes does not erase its religious or expressive nature.

When different terminology would allow officials to conduct the same legitimate safety review without forcing a property owner to accept a characterization that conflicts with sincere religious beliefs, reasonable accommodation should be considered.

#### **Q: Can a city require insurance, indemnification or a hold-harmless agreement as a requirement for receiving a permit to build a structure or display a sign?**

**A:** In some circumstances, but the requirement should be lawful, authorized and appropriately limited. The government may have a legitimate interest in ensuring that a property owner or contractor bears responsibility for injuries or damage caused by negligent construction. However, an unusually broad financial or liability requirement might be unlawful if it burdens constitutional expression, particularly when it is imposed selectively or gives officials excessive discretion.

#### **Q: Are religious land uses protected by additional federal or state laws?**

**A:** They may be. In addition to the First Amendment, the federal Religious Land Use and Institutionalized Persons Act protects certain forms of religious exercise against substantial burdens imposed through land-use regulations. State religious-freedom laws may provide additional protections. These laws will not likely exempt religious organizations from legitimate safety rules, but they can require the government to justify burdens on religious exercise and consider less restrictive alternatives.

#### **Q: What if an ordinance contains exemptions for certain signs or flags?**

**A:** Exemptions must be examined carefully.

An ordinance that broadly prohibits signs or flags but exempts favored subjects—such as governmental, civic, commercial or holiday messages—may be regulating expression according to content.

That was the issue when The Rutherford Institute intervened on behalf of a Harrisonburg, Virginia church threatened with prosecution over pro-life signs, and when it defended Florida

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business owners ordered to remove a Gadsden flag while government flags were allowed. In both matters, the Institute argued that government could not pick and choose permissible expression based on its message.

#### **Q: Does the First Amendment protect minority or unconventional religious beliefs?**

**A:** Yes. The government may not decide that one faith is legitimate while another is not. Constitutional protections extend to traditional, minority, interfaith and unconventional religious beliefs.

The Rutherford Institute relied on that principle in challenging the denial of permission for an interfaith spiritual retreat center on private land in Grayson County, Virginia. County officials later approved the center.

#### **Q: What should a property owner do after receiving a violation notice?**

**A:** The owner should:

1. Request the precise ordinance or regulation allegedly violated if not indicated on the notice.
2. Ask officials to explain the specific safety or land-use concern and what would be required for compliance if not clear.
3. Determine whether comparable signs or displays are permitted.
4. Review all exemptions contained in the ordinance.
5. Preserve letters, photographs, permit applications and communications.
6. Avoid ignoring deadlines or accumulating fines.
7. Request a reasonable accommodation or narrower requirement when appropriate.
8. Consult local legal counsel before signing a broad waiver or indemnification agreement.

#### **Q: What principles should government officials follow?**

**A:** Officials should begin with neutrality, proportionality and accommodation.

They should ask:

- Is the restriction genuinely related to safety or land use?
- Would the same rule apply regardless of the display's message?
- Does the ordinance favor certain subjects or viewpoints?
- Is there a less restrictive way to achieve the government's objective?
- Can terminology or paperwork be adjusted without compromising safety?
- Is the dispute capable of resolution without citations, fines or litigation?

A constitutional government should seek to protect both public safety and individual liberty rather than treating them as mutually exclusive.

#### **Q: Where can individuals seek assistance?**

**A:** Individuals whose constitutional rights have been threatened or violated may contact The Rutherford Institute's Legal Department at [legal@rutherford.org](mailto:legal@rutherford.org).

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