

Roxanne Maher

From: Daniel Pealer <danieljpealer@gmail.com>
Sent: Monday, February 10, 2025 10:20 PM
To: Roxanne Maher
Subject: Regarding the Flag Ordinance

Dear Members of the Town Council,

I am writing to express my concerns regarding the proposed flag policy and to urge the council not to adopt it. While I understand that supporters of this policy believe it to be commendable, I fear their support is based more on hopeful objectives than on a careful consideration of potential consequences. I believe that implementing such a policy could lead to significant legal and social challenges. As the economist Friedrich Hayek once said, "We must judge the law by its results, not by its intentions." Due to having more familiarity with history and the law that is what I shall focus on.

Firstly, it is important to consider the legal implications of adopting an affinity flag policy. In the recent Supreme Court case, *Shurtleff v. City of Boston (2022)*, the Court addressed the issue of government endorsement of private speech. The City of Boston had a policy that allowed private groups to raise their flags on a city flagpole. However, when a religious group requested to raise their flag, the city denied the request, citing concerns about violating the Establishment Clause. The Supreme Court ruled in favor of the religious group, stating that the city's policy amounted to viewpoint discrimination and violated the First Amendment.

Similarly, in *Ste v. Biggers (2025)*, the Fifth Circuit Court of Appeals found that a presiding officer had engaged in viewpoint discrimination by silencing speech during public meetings. The court emphasized that government officials must remain neutral and not suppress speech based on its content or viewpoint.

Additionally, the Supreme Court case *Good News Club v. Milford Central School (2001)* further highlights the importance of viewpoint neutrality. The Court ruled that a public school violated the First Amendment by denying a religious club access to school facilities while allowing other groups to use the same facilities. The Court held that the school had engaged in viewpoint discrimination by excluding the religious club based on its religious viewpoint.

The final case I wish to bring up is *National Socialist Party of America v. Village of Skokie (1977)*. In this case, the Supreme Court ruled that the National Socialist Party of America had the right to hold a demonstration in Skokie, Illinois, despite the offensive nature of their message. The Court emphasized that the government cannot suppress speech simply because it is controversial or offensive, reinforcing the principle of viewpoint neutrality.

By adopting the proposed flag policy, the town could face similar legal challenges. If the town allows certain affinity groups to raise their flags while denying others, it could be seen as endorsing or favoring particular viewpoints thus violating the critical principle of viewpoint neutrality. This could open the town to litigation and potential liability for violating the First Amendment rights of individuals and groups. The current policy of only flying the American Flag and the State Flag maintains viewpoint neutrality and avoids all of these issues

In conclusion, while I am sure the intent behind the affinity flag policy is commendable, the potential legal issues and divisive impact on the community make it an unwise choice. I respectfully request that the council reconsider this policy. If the town council still wants to fly a new flag in the town I would recommend that a contest be held to design a new flag to represent the entire town, I am sure that we'd get plenty of fantastic proposals.

Thank you for your time and consideration.

Sincerely,

Daniel Pealer.