



Members Brief

An informational brief prepared by the LSC staff for members and staff of the Ohio General Assembly

Author: Yosef Schiff, Attorney

Reviewer: Michael J. O'Neill, Division Chief

Volume 134 Issue 33

March 16, 2022

Sign and Flag Displays

During major elections, members of the General Assembly often receive calls from constituents who have been told by their homeowners or condominium associations, landlords, or manufactured home park operators to take down their political signs or flags. The members then ask the Legislative Service Commission whether prohibiting such displays is legal. In general, housing entities may prohibit residents from displaying signs and flags, subject to a few notable exceptions.

Under the First and Fourteenth amendments to the U.S. Constitution, a government may not abridge freedom of speech, including political speech.¹ However, the Constitution does not regulate behavior by private individuals or entities. In the absence of a particular law to the contrary, a homeowners association (HOA), unit owners (condominium) association (UOA), landlord, or manufactured home park operator (collectively “housing entity”) may prohibit a resident from displaying a sign or flag as part of its declaration, bylaws, rules, or rental agreement or through a deed restriction.

There are exceptions, however. Under Ohio law, a housing entity may *not* prohibit any of the following:

- The display of any U.S. or POW/MIA flag if displayed in accordance with any of the following:
 - The patriotic customs set forth in the U.S. Flag Code;²
 - The federal law governing display of the POW/MIA flag;³

¹ See, e.g., *Gitlow v. New York*, 268 U.S. 652 (1925) and *Stromberg v. California*, 283 U.S. 359 (1931). In these and other cases, the U.S. Supreme Court held that the Due Process Clause of the Fourteenth Amendment prohibits states from abridging freedom of speech. In other words, these cases incorporated the First Amendment, which by its express terms only restricts federal action, against the states. Similarly, Article I, Section 11 of the Ohio Constitution limits the ability of the state to pass laws that restrain or abridge freedom of speech.

² 4 United States Code (U.S.C.) 5 through 10.

³ 36 U.S.C. 902.

- The recommended flagpole standards set forth in [“Our Flag” \(PDF\)](#), a publication of Congress that describes the history of the U.S. flag and sets forth practices and observances appropriate to its display;⁴
- Any federal law, proclamation of the President or the Governor, Revised Code section, or local ordinance or resolution;
- In the case of an HOA, the consent of the property owner or any person having lawful control of the property.
- The display of the state flag if displayed in accordance with either of the following:
 - The consent of the property owner or any person having lawful control of the property;
 - Any state law, local ordinance or resolution, or proclamation by the Governor.
- The display of a service flag approved by the U.S. Secretary of Defense for display in a window of the residence of an immediate family member of a U.S. armed forces service member. A service flag includes a blue star banner, a gold star banner, and any other flag the Secretary of Defense designates as a service flag.⁵

In addition, a housing entity may not prohibit a display *on a flagpole* of the U.S. flag, the state flag, or the POW/MIA flag so long as the display is of an appropriate size and consistent with the size and character of the surrounding structures. Furthermore, in the case of a UOA, the display must be on or within the limited common areas and facilities of a unit owner or on the immediately adjacent exterior of the building in which the unit is located.⁶

⁴ United States Congress Joint Committee on Printing, 2007, available on the U.S. Government Information website, govinfo.gov, by performing a keyword search for “our flag.” See also the 2021 LSC Members Brief, [“Flag Etiquette” \(PDF\)](#), available on LSC’s website, lsc.ohio.gov.

⁵ R.C. 4781.40(C), 5301.072, 5311.191, and 5321.131(A). Recommendations regarding the display and maintenance of the state flag may be found in [R.C. 5.012](#), which is available at codes.ohio.gov.

⁶ R.C. 4781.40(C), 5301.072(A)(1), 5311.191(A)(1), and 5321.131(B).