



Written by [Bob Adelman](#) on September 11, 2014

## Display of Gadsden Flag Quashed by Ocala, Florida, Authorities

When Keith Greenberg, the owner of a sporting goods store named the Gear Barrel, [moved to Florida](#) from Chicago in May, he said it was because he felt his rights were being “stomped on” in Illinois and preferred living and working in “freedom-loving Florida.” One of the first freedoms he decided to exercise was his First Amendment right to advertise his patriotism by hanging the Gadsden flag — a yellow banner with a picture of a rattlesnake and the words “Don’t Tread on Me” — in front of his store. In August, he received a letter from the city claiming that the flag violated the city code and that he had to remove it or be faced with fines of up to \$500 a day.



He couldn’t believe it:

This is a shock. Honestly, I feel like this is Russia. I’ve been around the world.... This is what you expect in really closed countries where there is no freedom of expression. Not here — so it’s shocking.

The first thing he did was put up a YouTube video of his flag hanging in front of his store and explaining his predicament. He felt his rights were being violated but said he couldn’t afford the potential fines as a brand-new business owner. So the second thing he did was take down the flag and call John Whitehead, president of the Rutherford Institute, for help. Greenberg explained: “This issue for me is a First Amendment issue. It’s freedom of speech, freedom of expression.”

Whitehead agreed: “What we’re seeing is the criminalization of free speech, manifested in incidents where the government attempts to censor speech that is controversial, politically incorrect or unpopular. Under the First Amendment, the government has no authority to pick and choose what type of speech it approves.”

Whitehead wrote a letter on institute stationery to Jason Kilcrease, the city’s code enforcement officer, explaining that Greenberg had contacted him and asked for his help. He said that Greenberg was told that he would be permitted to fly a flag in front of his business establishment only if it was the flag of the United States. He added:

The demand that the Greenbergs remove the flag and the ordinances upon which the demand is based are patently in violation of the First Amendment to the United States Constitution and must be withdrawn forthwith.... These provisions constitute a content-based restriction on speech and are unconstitutional....

Because the notice and threat to prosecute infringe on the Greenberg’s First Amendment rights, it



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is imperative that these actions be renounced immediately and assurances provided that they will not be cited again for displaying their flag.

Almost immediately the Ocala city council began backpedaling. Following a meeting on Tuesday night, the council directed the city attorney, Patrick Gilligan, to review the ordinance and bring back a revision that would protect Greenberg's rights. When informed of the council's decision to rewrite the ordinance, Greenberg rejoiced: "That's outstanding. I'm glad to hear that."

Part of the council's backpedaling was reflected in a statement it released in response to increasing negative public pressure as Greenberg's YouTube video went viral, claiming that the city's code had nothing to do with "content" but rather had to do with setting guidelines for business related advertising:

City code provides for equal and equitable opportunities for business related advertising. As relates to signage at a commercial property, the code regulates the number, size, type, location, and composition of signage, regardless of content. Regulating content of signage is a gray area that the code does not specifically address.

[That code] allows the display of the official flag of the United States and the official flag of the state of Florida on commercial property, as many as desired and for as long as desired, without a permit.

This, according to Greenberg, was doubletalk. He was told initially by the city that the content of the flag was the issue. Mark Mondale, the assistant city manager of Community Development Services, told the council on Tuesday night that his code officers were attempting to enforce the city's assigned ordinance consistently, that they were not looking at the content of the flag but rather whether it violated the city code which was initially designed to "help control clutter."

City attorney Patrick Gilligan would be well advised to look at the ruling in *Dimmitt III v. City of Clearwater*, decided by the 11th Circuit Court of Appeals in March 1993. In that nearly identical case, the court ruled that "the city's interests in aesthetics and traffic safety cannot justify limiting the permit exemption to government flags. The deleterious effect of graphic communication upon visual aesthetics and traffic safety ... is not a compelling state interest of the sort required to justify content-based regulation of noncommercial speech." The court added:

We must invalidate the Clearwater sign ordinance as facially unconstitutional. By exempting only government flags from the permit requirement, the city has unconstitutionally restricted expressive conduct based on content.

As Ocala's city council and its attorney wrestle with the offending code to bring it into compliance with the court's ruling in *Dimmitt*, Greenberg no doubt is enjoying both the irony and the satisfaction of knowing that it was the Gadsden flag, prominently displayed out in front of his business, that precipitated the confrontation and ultimately its likely favorable resolution. The Gadsden flag is considered one of the first flags of the United States (which was later replaced by the current Stars & Stripes — Old Glory) which has served since the beginning of the American Revolution as a symbol not only of American patriotism but also as a symbol of disagreement with government overreach and a symbol in support of rights guaranteed under the Constitution.

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