

FLAG DAY GREETINGS

06.14.2024 by [William M. Borchard](#)

For Flag Day this year we are reporting about whether a township might constitutionally prohibit police organizations and their members from displaying the “Thin Blue Line American Flag” on township property when some community members find it offensive.



Casual observers seeing the Thin Blue Line American Flag (the “Flag”) may have wondered what it symbolizes. It has different significance to different groups.

To the police across the country, the Flag represents a show of support for and a solidarity with members of law enforcement, the preservation of the rule of law, the protection of peace and freedom, the sacrifice of fallen law enforcement officers, and the dedication of law enforcement officers.

However, many members of the public view the Flag as a symbol of police brutality and racial animosity.

In Springfield Township, 15 miles from Philadelphia, some police organizations and their members began to display the Flag in various ways, including as part of the Police Benevolent Association’s logo.



The Township objected and quickly adopted a resolution in prohibiting in part:

the publicly visible display or use of any image which depicts the Thin Blue Line American Flag symbol by any Township employee, agent, or consultant.

Two Township police organizations and three police officers, fearing punitive action against them, sued the Township and its officers in the U.S. District Court for the Eastern District of Pennsylvania. They asked the Court to have this resolution declared to be an unconstitutional restriction on employee speech under the First Amendment.

In a 36-page carefully reasoned opinion, the Court held that the Township's resolution was a viewpoint regulation. As such, in order to have the Township's resolution upheld, the Court placed the burden on the Township to show that (1) the necessary impact on the actual operation of the Government was a real, not conjectural, harm, and (2) the ban, as applied, addressed that harm in a direct and material way.

The Court held that the Township had not satisfied either prong. There was no evidence of workplace disruption caused by the display of the Flag, and no evidence of the disruption of community relations aside from a handful of complaints.

Although the Court found it undeniable that the Flag has racist undertones to certain members of the community, the Court stated that the First Amendment protects speech even when it is considered offensive.

Accordingly, the Court issued a summary judgment striking down the Township's resolution and barring the Township from enforcing it. So the Flag waves on.

[*Pennsylvania State Lodge Fraternal Order of Police v. Township of Springfield*](#), Civil Action No. 23-332-KSM (E.D.P.A. November 13, 2023).

We hope you have a happy Flag Day 2024.

For further information, contact [William M. Borchard](#) or your CLL attorney.

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Bill has handled domestic and international trademark and copyright matters at the highest level for over 60 years. He has counseled and represented clients on domestic and international trademark matters concerning clearance, registration, proper use, licensing, contested administrative proceedings and infringement claims. He became Senior Counsel in January 2024 and is now focusing on providing guidance and advice to other lawyers within our firm and writing informative and engaging articles on intellectual property law developments.