

Via email

May 5, 2021

City Council
City of Rye
1051 Boston Post Road
Rye, New York 10580

Re: Resolution to Fly the Rainbow Flag, Council Meeting of May 5, 2021



Lower Hudson Valley

297 Knollwood Road, Suite 217
White Plains, NY 10607
nyclu.org

Shannon Wong
Lower Hudson Valley
Chapter Director

Lucia Hermo
Lower Hudson Valley
Deputy Director

Donna Lieberman
Executive Director

Robin Willner
President

Members of the Council:

We understand from news and other reports that some members of the Council are concerned that about the consequences of adopting a proposed resolution on LGBT Pride Month. The specific concern, we understand, is that if the City of Rye flies the rainbow flag in honor of LGBT Pride month, the First Amendment to the United States Constitution will compel the City to fly the flags of other groups or social movements. This is not correct.

As long as the City decides whether it wishes to fly a particular flag and does not simply open its flagpole(s) to anyone who wishes to fly a flag, it can maintain complete control over what flags are flown. As long as the City keeps and has kept control of what flags it wishes to fly, what is flown on the flagpole is the “speech” of the City of Rye. It may fly whatever flags it wishes and decline to fly those it does not wish to fly.¹

The law is clear on this point, as the unanimous federal Court of Appeals in Boston ruled in January. In *Shurtleff v. City of Boston*, a Christian organization sued the City of Boston for refusing to fly what they described as their Christian flag at Boston City Hall. *See* 986 F.3d 78 (1st Cir. 2021). In the prior 15 years, the City had approved over 250 “flag raising events,” which included flying the rainbow flag at City Hall. As long as the City has effectively controlled which flags are flown, the Court ruled, the flags are government speech, and the City may fly only those flags that convey the messages it wishes to convey. The City, the Court ruled, was well within its rights to fly the rainbow flag and decline to fly a religious flag.

The issue on this resolution is simple: Does the City of Rye wish to fly the rainbow flag in support of LGBT rights or not? Deciding to do so will not obligate it to fly any other flag. The NYCLU urges the Council to adopt the resolution.

¹ New York State law mandates that an official National League of Families POW/MIA flag, as designated by 36 U.S.C. 902, be flown on all days that the United States flag is displayed and on certain designated patriotic holidays. *See* N.Y. Executive Law §403-A. Rye has not ceded control over its flagpole to anyone who wishes to fly a flag in Rye simply because state law mandates it to display a POW/MIA flag on the City of Rye flagpole.

Sincerely,

Lucia Hermo

Lucia Hermo
Deputy Director
Hudson Valley Chapter Director

Beth Haroules

Beth Haroules
Senior Staff Attorney

