The United States Constitution affords private citizens expansive protections from infringements on freedom of speech under the 1st Amendment. A member of the Klu Klux Klan has every right to burn a cross in their back yard, a member of the neo-nazi party can walk into a tattoo parlor and have a swastika brandished on their chest. Every private citizen that lives in the south can fly the confederate flag openly and proudly, and there is nothing that the United States Government can do to stop the controversial display.¹ United States Citizens can say or express any ideology they desire and remain protected by the 1st Amendment, but are the States themselves afforded the same level of protection from federal regulation?

Citizens and the States as entities are afforded different levels of protection under the Constitution. Private individuals are given largely unrestricted freedom of speech, as it allows for a free marketplace of ideas, however the States as public entities have significantly more influence over the people than an average citizen. When Jerry from South Carolina decides fly the Confederate flag on his front porch, the only people that will observe it are those that drive by. When the State of South Carolina, where African Americans make up just over 27% of the population², flies the Confederate Battle Flag on their Capitol building, the whole state will see it. Each resident can interpret the flag in any number of ways. Perhaps one person sees the flag as a representation of the history of the Confederate Union, while another views it as a symbol of southern pride. Or, perhaps a resident of South Carolina would see the flag as a symbol of racism, representing a culture known for their vehement opposition to abolition that made a hobby out of publicly lynching black people. The incredible influential power of the government
is what led to the formation of the Religious Establishment Clause; if the states take any action which appears to promote a religion, it is determined that they are constructively establishing a statewide religion, which is deemed an abuse of the power of the State Government.iii

This body of research argues that the States, unlike private citizens, should not have the same right to sponsor and display controversial symbols that have discriminatory or oppressive messages associated with them, as they infringe upon citizens' rights to equal protection of the law. My research and analysis of the 1st and 14th Amendments to the Constitution will show that, for reasons similar to motivations for the development of the Establishment Clause, the government should not have the right to constructively establish a discriminatory statewide viewpoint through displays of controversial symbols.

The State Governments have significant influence over their citizens, and if allowed to display and endorse symbols heavily associated with oppression or hatred of specific groups they send the message that the states condone or encourage these points of view in their citizens. The result is that some groups are afforded preferential treatment by the state while other groups are afforded less consideration and protection. Using the Confederate Flag as a case study, this body of research examines Constitutional precedent and the historical context of this symbolic flag, arguing that the state does not have the same degree of Constitutional protection as its citizens. Just as government speech is restricted by the Establishment clause of the First Amendment, the States' rights to freedom of speech should be limited by the 14th Amendment’s constraints on state actions which violate the equal protection clause. The result being that, the states should not have the right to sponsor messages which discriminate against their citizens.
"1st Amendment." *United States Constitution.*


iii "Establishment Clause." *United States Constitution.*