

District Court Seals 9-0 Victory for Christian Flag Case

The U.S. District Court of Massachusetts entered the consent final order against the City of Boston, issuing permanent relief so the city can never censor religious viewpoints as it did when it prohibited the Christian flag on its public forum flagpole.

In *Shurtleff v. City of Boston*, Liberty Counsel represents Boston resident Hal Shurtleff and his Christian civic organization, Camp Constitution. The U.S. Supreme Court ruled 9-0 on May 2, 2022, that the City of Boston violated the Constitution by censoring a private flag in a public forum open to “all applicants” merely because the application referred to it as a “Christian flag.”

The High Court stated that it is not government speech, and because the government admitted it censored the flag because it was referred to as a Christian flag on the application, the censorship was viewpoint discrimination, and there is no Establishment Clause defense.

There are three flagpoles outside City Hall that fly the U.S., Massachusetts and Boston flags, plus a fourth flag on Congress Street, which runs parallel to City Hall. For 12 years from 2005-2017, Boston approved 284 flag-raising by private organizations with no denials on the flagpoles that it designated as a “public forum.”

Had the flag been referred to as anything but Christian, the city would have approved it. The flag itself was not the problem; it was the word “Christian” describing it in the application that was the issue. The year before Camp Constitution’s application (2016-2017), Boston approved 39

private flag-raising events, which averaged three per month.

In 2018, Boston approved 50 private flag raising events, averaging nearly one per week. One included the flag of a private credit union.

In this historic unanimous decision, the High Court wrote that “Boston did not make the raising and flying of private groups’ flags a form of government speech. That means, in turn, that Boston’s refusal to let Shurtleff and Camp Constitution raise their flag based on its religious viewpoint ‘abridged’ their ‘freedom of speech.’”

In addition, the Court wrote, “Here, Boston concedes that it denied Shurtleff ‘s request solely because the Christian flag he asked to raise ‘promoted a specific religion.’ App. to Pet. for Cert. 155a (quoting Rooney deposition). Under our precedents, and in view of our government-speech holding here, that refusal discriminated based on religious viewpoint and violated the Free Speech Clause’”

The Justices commented on the longstanding test known as the “Lemon Test” which has been used to determine if a law violates the First Amendment. Its name comes from *Lemon v. Kurtzman*, in which the Court ruled that a Rhode Island law that paid some of the salary of some parochial schoolteachers was unconstitutional. This test has proven to be unworkable and has led to inconsistent and contradictory decisions on the constitutionality of 10 Commandment monuments and cross monuments like the “Peace Cross.”

Justice Gorsuch, who joined in a concurrence with Justice Thomas, stated, “It’s time to let *Lemon* lie in its grave.”

Last month, the Supreme Court referred to *Shurtleff v. City of Boston* when it ruled 6-3 in favor of a high school football coach who was fired for silently praying on the field after games. In *Kennedy v. Bremerton School District*, the High Court also stated that the government wrongly argued that what

otherwise appears to be private speech is government speech. The Justices stated: "In fact, just this Term the Court unanimously rejected a city's attempt to censor religious speech based on *Lemon* and the endorsement test (See *Shurtleff*, U.S. 596)."

Liberty Counsel's Founder and Chairman Mat Staver said, "Today's court order seals the 9-0 Supreme Court victory for private speech in a public forum. This victory is so much more significant than a flag. Boston openly discriminated against viewpoints it disfavored when it opened the flagpoles to all applicants and then excluded Christian viewpoints. Government cannot censor religious viewpoints under the guise of government speech."

For more information on the case, visit