

Boston to Pay \$2.125 Million for Religious Discrimination in Christian Flag Case

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After five years of litigation and a unanimous 9-0 U.S. Supreme Court ruling, the City of Boston has agreed to pay Liberty Counsel \$2.125 million for attorney's fees and costs for the unconstitutional religious viewpoint discrimination of the Christian flag.

In *Shurtleff v. City of Boston*, Liberty Counsel represents Boston resident Hal Shurtleff and his Christian civic organization, Camp Constitution. Shurtleff and Camp Constitution first asked the city in 2017 for a permit to raise the Christian flag on the "public forum" Boston City Hall flagpole to commemorate Constitution Day and Citizenship Day (Sept. 17) and the civic and cultural contributions of the Christian community to the city of Boston, the Commonwealth of Massachusetts, religious tolerance, the Rule of Law and the U.S. Constitution. For 12 years, from 2005 to 2017, Boston approved 284 flag raisings by private organizations with no denials on the flagpoles that it designated a "public forum." However, the city official denied Camp Constitution's application in 2017 to fly the Christian flag on Constitution Day.

The policy stated that the flagpole was open to all applicants, but the City of Boston denied Hal Shurtleff's application for the sole reason that the application form referred to the flag as a "Christian" flag. Had the application used any other non-religious word, Boston would have granted the request.

After four lower court losses, the U.S. Supreme Court ruled

9-0 on May 2, 2022, that Boston's denial of the flag was unconstitutional viewpoint discrimination under the First Amendment Free Speech Clause.

The Justices in *Shurtleff* unanimously rejected Boston's argument that religious viewpoints must be censored under the 1971 Supreme Court case, *Lemon v. Kurtzman*. On June 27, in the *Coach Kennedy* case, Justice Gorsuch pointed to *Shurtleff* as the basis for overturning *Lemon*. The so-called "Lemon Test" did considerable damage to the First Amendment Free Speech, Free Exercise and Establishment Clauses.

The Christian flag finally flew on the Boston City Hall Plaza public forum flagpole on Aug. 3 as an enthusiastic crowd cheered to celebrate the first day free of unconstitutional viewpoint discrimination.

Liberty Counsel Founder and Chairman Mat Staver said, "We are pleased that after five years of litigation and a unanimous victory at the U.S. Supreme Court, we joined with Hal Shurtleff to finally let freedom fly in Boston, the 'Cradle of Liberty.' The Christian flag case has established significant precedent, including the overturning of the 1971 'Lemon Test,' which Justice Scalia once described as a 'ghoul in a late night horror movie.' The case of *Shurtleff v. City of Boston* finally buried this ghoul that haunted the First Amendment for 51 years." {eo}

For more information on the case, visit

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