

Majority of Justices Lean Toward Favorable Opinion for Christians in Crucial Supreme Court Case

On Tuesday, I delivered oral argument before the Supreme Court in our case *Shurtleff v. City of Boston*. For 12 years, from 2005 to 2017, Boston encouraged “all applicants” to make use of the city’s “public forums,” which include certain flagpoles. Boston never censored any application until Camp Constitution’s application that contained the word “Christian.”

Boston Commissioner Rooney told Hal Shurtleff, the director and co-founder of Camp Constitution, that if he would have called the flag *anything but Christian*, the same flag would have been approved.

Boston’s argument implies that government can open a forum for a wide variety of speech but then exclude Christian viewpoints. After approving 284 applications, Boston told Hal his Christian viewpoint was unwelcomed.

Boston’s treatment of Camp Constitution is one of the clearest examples of religious viewpoint censorship I have seen, and many of the Justices appeared to agree.

Justice Thomas noted early on that viewpoint discrimination is impermissible. Justice Thomas also noted that though Boston claims to celebrate “diversity,” it appeared to be a “limited diversity” by excluding Christians.

Justice Alito questioned Boston’s ability to exercise censorship, asking Boston’s attorneys if “it is consistent with the principles of the Free Speech Clause if you say

anybody can speak, except we are going to monitor what is said and we're not going to allow religious speech?"

Justice Gorsuch asked Boston's attorneys to explain just exactly how their actions were not "viewpoint discrimination under our case law?"

Justice Kavanaugh said that Boston's denial of the Camp Constitution flag "is actually a mistaken view about the Establishment Clause." Kavanaugh went on to note that the Court has repeatedly ruled that allowing a religious group to use public property on equal terms is not government endorsement of religion, as Boston tried to claim.

Justice Kagan demanded Boston answer why the Court "should recognize as government speech a program that basically now says, and – and – and previously, we welcome all comers except for the most reprehensible discriminatory speech and religious speech. That is what this program is. And why should we understand that to be government speech, to say everything's good, except religion?"

But that is not all! Justice Kagan also went on to characterize the city's refusal to grant Camp Constitution's permit and flag-flying as "a mistake" before asking Boston's counsel, "Why is it that people have not been able to correct this mistake?" She later pointedly asked why Boston had not settled this case, implying Camp Constitution's application was wrongfully denied.

But Justice Kagan's final statement, combined with the other Justices' comments, was the decisive factor that gives me great hope for a positive result.

"In the context of a system where flags go up, flags go down, different people have different kinds of flags, then it is a – a – a – a violation of the free speech part of the First Amendment and not an Establishment Clause violation. The end."

The Justices will meet tomorrow and vote on the case. A Justice will be assigned to write the opinion that will be released before the end of June. While the arguments went well in our favor, there could be many months before the final ruling will be released. Please keep this case in prayer.

And an unexpected encounter on the Supreme Court steps after the hearing illustrates just how important this case is and why prayer is so important between now and when the Court's ruling is delivered.

After the argument, as I stood in front of the Supreme Court speaking to members of the media, a person who immigrated from Sudan came up to thank me. He compared this case to what Christians face in Sudan. If they confess Christ, they are beheaded. If they deny Christ, they live. Boston, he said, attempted to force Hal Shurtleff to hide his Christian viewpoint.

In other words, whether the flag could fly was dependent solely on what Hal Shurtleff believed and spoke. If he would deny the flag is a Christian flag, he could fly it. If he refused to deny the Christian flag, he was punished and banned.

America was founded upon religious freedom. If we allow government entities to censor Christian viewpoints, we will have embarked on a dangerous and slippery slope that will suppress Christian viewpoints and America's religious faithful will be silenced. {eoa}

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