

The Christian Flag Goes to US Supreme Court

Liberty Counsel has filed a petition to the U.S. Supreme Court on behalf of Boston resident Hal Shurtleff and his Christian civic organization, Camp Constitution, arguing that the city of Boston violated the First Amendment by censoring a private flag in a public forum merely because the application form referred to the flag as a “Christian flag.”

Despite the clear evidence presented at trial, the First Circuit Court of Appeals sided with the city of Boston’s censorship of the Christian viewpoint on the public forum, a place designated as a “public forum” by Boston’s written policy and confirmed by its unbroken practice during which it never censored private speech—until Camp Constitution’s application. The Court of Appeals expanded the government speech cases far beyond Supreme Court precedent.

Never has Boston censored any flag until the Camp Constitution’s flag, which is white with a blue square in the upper corner and a red cross. The flag contains no writing. Under oath, the city official testified the flag would have been approved if the application did not refer to it as a “Christian flag.” The word “Christian” on the application alone triggered the censorship. The official said he had never heard of a “Christian flag” until Camp Constitution’s application. This testimony showed that if Camp Constitution had not referred to the flag on the application with the word “Christian,” it would not have been censored.

The city refers to its flagpole as a “public forum” and allows private organizations to temporarily raise their own flags on the flagpoles. The city of Boston’s website even states the goals for flag-raising events include a commemoration of “flags from many countries and communities at Boston City Hall

Plaza. We want to create an environment in the city where everyone feels included.”

However, the city censored the religious viewpoint of Camp Constitution’s flag, which was to be raised for about an hour on Sept. 17 in observance of Constitution Day, while supporters gathered around the flagpole. The flag was part of the ceremony to honor the Constitution and recognize the Christian founders.

Shurtleff and Camp Constitution first asked the city in 2017 for a permit to raise the Christian flag on Boston City Hall flagpoles to commemorate Constitution 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.

Over the course of 12 years, the city approved 284 flag raisings by private organizations on the city hall flagpoles without denial except for the Christian flag. Other flags raised include the Turkish flag (which depicts the Islamic star and crescent) and the Portuguese flag (which uses religious imagery). City officials have also never denied the “messages” communicated by the “Chinese Progressive Association,” the rainbow flag of Boston Pride and a “transgender” pink and blue flag. The flags of private community groups include Albania, Brazil, Ethiopia, Italy, Panama, Peru, Portugal, Puerto Rico and Mexico, as well as of Communist China and Cuba. No flag was ever denied until the city denied the flag of Camp Constitution.

The First Circuit Court of Appeals sided with the city of Boston, finding that the flags were government speech. The court wrongly accepted the city’s argument that the Establishment Clause justified its censorship. However, No. 1, the application form designates the flag pole as a “public forum” open for private speech; No. 2, the city never censored

a flag in the 12 years prior to Camp Constitution's application; No. 3, the city approved 39 flags (averaging over three per month) in the year prior to Camp Constitution's application; and No. 4, the flags of the foreign countries could not be government speech because under state law it is a crime to raise the flag of a foreign country on city property.

Liberty Counsel's founder and Chairman Mat Staver said, "We look forward to the U.S. Supreme Court acknowledging the city's obvious and unconstitutional discrimination against Camp Constitution's Christian viewpoint. There is a crucial difference between government endorsement of religion and private speech, which government is bound to respect. Censoring religious viewpoints in a public forum where secular viewpoints are permitted is unconstitutional and this must stop." {eo}

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