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Does the First Amendment Allow for a Christian Flag on Government Property?

On Thursday, the Supreme Court agreed to hear a case pitting various provisions of the First Amendment against one another.

The case, [Shurtleff v. City of Boston](#), involves an appeal by Camp Constitution (“Camp”), a Christian group that applied to fly a flag with a Christian cross on it over City Hall in Boston in 2017. Camp is a volunteer [association](#) that “seeks to enhance understanding of the country’s Judeo-Christian moral heritage.” Ultimately, the request was denied in accordance with the City’s [policy](#) to “refrain respectfully from flying non-secular third-party flags in accordance with the First Amendment’s prohibition of government establishment of religion.”

According to Camp, the City of Boston had granted hundreds of other requests to fly flags that were brought by other private groups, and the City’s refusal to allow Camp to do so violated Camp’s right to free speech. Camp argued that the flagpole constituted a public forum, thereby requiring strict scrutiny analysis relating to any content-based restrictions. Camp also argued that the City’s conduct constituted a prior restraint on speech, and that it violated the Establishment Clause and the Equal Protection Clause of the Constitution. In response, the city of Boston claimed that permitting Camp to fly a flag with a Christian cross on it would violate the First Amendment’s prohibition against government endorsement of religion.

The District Court for the District of Massachusetts ruled in favor the City and the First Circuit affirmed. As the [First Circuit](#) noted:

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In a twelve-year period (from June 2005 through June 2017), the City approved 284 flag-raising events that implicated its third flagpole. These events were in connection with ethnic and other cultural celebrations, the arrival of dignitaries from other countries, the commemoration of historic events in other countries, and the celebration of certain causes (such as “gay pride”). The City also has raised on its third flagpole the flags of other countries, including Albania, Brazil, Ethiopia, Italy, Panama, Peru, Portugal, Mexico, as well as China, Cuba, and Turkey. So, too, it has raised the flags of Puerto Rico and private organizations, such as the Chinese Progressive Association, National Juneteenth Observance Foundation, Bunker Hill Association, and Boston Pride. Broadly speaking, we group these approvals as approvals for “the flags of countries, civic organizations, or secular causes.”

Of course, some of the flags that the City had raised contained religious imagery. The Portuguese flag, for instance, contains “dots inside blue shields represent[ing] the five wounds of Christ when crucified” and “thirty dots that represents the coins Judas received for having betrayed Christ.” As another example, the Turkish flag situates the star and crescent of the Islamic Ottoman Empire in white against a red background. Indeed, the City’s own flag includes a Latin inscription, which translates as “God be with us as he was with our fathers.” None of the flags that the City had previously approved, however, came with a religious description.

In ruling in favor of the City, the [First Circuit](#) made two primary determinations. First, it determined that the placement of the flag at City Hall constituted government speech. As the [court](#) noted, “Even though the First Amendment restricts government regulation of private speech in government-designated public forums, such restrictions do not apply to government speech.” Stated differently, private speech in government-designated public forums is generally protected from government regulation by virtue of the First Amendment. However, such protections do not apply to government speech.

In determining whether certain monuments constitute government speech, the court applied the three-factor test set forth in [Pleasant Grove City v. Summum](#), which considered the history of the use of the medium by the government, how closely the public identified the medium with the government, and the degree of control the government maintained over the message conveyed. The First Circuit agreed that the speech at issue fell within these bounds and ruled in favor of the City of Boston. The [court](#) also rejected Camp’s remaining claims and noted:

The raising of the Christian Flag thus would threaten to communicate and endorse a purely religious message on behalf of the City. Where that endorsement is as widely visible and accessible as it is here, and where the City could run the risk of repeatedly coordinating the use of government property with hierarchs of all religions, the City’s establishment concerns are legitimate.

The Supreme Court has now agreed to hear the case, which could impact the extent to which individuals/groups may utilize public facilities (i.e., flagpoles, etc.) to advance certain types of beliefs, including religious ones.

Arguments will likely begin early next year.