

City's Refusal to Fly Religious Flag Violates the First Amendment

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ATTORNEYS

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The City of Boston violated the First Amendment by refusing to fly a "Christian flag" at city hall after allowing dozens of other groups to raise a variety of non-religious flags.

In *Shurtleff v. City of Boston*, the U.S. Supreme Court considered a challenge to a flag-raising program that generally allowed groups to fly a flag for their organization on a city's flagpole while holding an event outside city hall. The city approved approximately 50 unique flags - without denying a single flag-raising request - during the period between 2005 and 2017.

The challenge was brought by a group that applied to hold a flag-raising event involving a "Christian flag" to "commemorate the civic and social contributions of the Christian community." Concerned that flying a religious flag at city hall could violate the separation of church and state, the city refused to allow the proposed flag. The group then filed suit alleging that the rejection of this "Christian flag" violated the group's free speech rights under the First Amendment.

When the government speaks for itself, the First Amendment allows it to advocate a specific point of view and exclude other viewpoints. When the government does not speak for itself, and rather permits non-government speech at government facilities, it may not exclude speech based on the views of the speaker.

The Court concluded that the city did not speak for itself when it implemented the flag-raising program due to the city's "lack of meaningful involvement in the selection of flags or the crafting of their messages." Because the city's flag-raising program did not express government speech, the Court ruled that the city's refusal to allow the group to raise the "Christian flag" based on its religious viewpoint violated the group's First Amendment rights.

For further information regarding this case, please contact **Marian Slocum**, **Brendan Kearns**, or any other attorney in our **Municipal and Public Agency Law Department**.