20-1800 SHURTLEFF V. BOSTON, MA

DECISION BELOW: 986 F.3d 78

LOWER COURT CASE NUMBER: 20-1158

QUESTION PRESENTED:

"**Where possible, the [City] seeks to accommodate *all applicants* seeking to take advantage of the City of Boston's *public forums***."1

The City of Boston designated its City Hall Flag Poles as one of several "public forums" for "all applicants," and encourages private groups to hold flag raising events at and on the Flag Poles "to foster diversity and build and strengthen connections among Boston's many communities." Over the course of twelve years, the City approved 284 such flag raisings by private organizations, with zero denials, allowing them to temporarily raise their flags on the City Hall Flag Poles for the limited duration of their events. But when Petitioners' Christian civic organization, Camp Constitution, applied to raise its flag during a flag raising event to celebrate the civic contributions of Boston's Christian community**, the City denied the request expressly because Camp Constitution's proposed flag was called "Christian" *on the application form* but, other than a common Latin cross on the flag itself, there is nothing to identify the flag as a "Christian" flag.**

The questions presented are:

1. Whether the First Circuit's failure to apply this Court's forum doctrine to the First Amendment challenge of a private religious organization that was denied access to briefly display its flag on a city flagpole, pursuant to a city policy expressly designating the flagpole a public forum open to all applicants, with hundreds of approvals and no denials, conflicts with this Court's precedents holding that speech restrictions based on religious viewpoint or content violate the First Amendment or are otherwise subject to strict scrutiny and that the Establishment Clause is not a defense to censorship of private speech in a public forum open to all comers.

2. Whether the First Circuit's classifying as government speech the brief display of a private religious organization's flag on a city flagpole, pursuant to a city policy expressly designating the flagpole a public forum open to all applicants, with hundreds of approvals and no denials, unconstitutionally expands the government speech doctrine, in direct conflict with this Court's decisions in *Matal v. Tam*, 137 S. Ct. 1744 (2017), *Walker v. Texas Div., Sons of Confederate Veterans, Inc.*, 576 U.S. 200 (2015), and *Pleasant Grove City v. Summum*, 555 U.S. 460 (2009).

3. Whether the First Circuit's finding that the requirement for perfunctory city approval of a proposed brief display of a private religious organization's flag on a city flagpole, pursuant to a city policy expressly designating the flagpole a public forum open to all applicants with hundreds of approvals and no denials, transforms the religious organization's private speech into government speech, conflicts with this Court's precedent in *Matal v. Tam*, 137 S. Ct. 1744

(2017), and Circuit Court precedents in *New Hope Family Servs., Inc. v. Poole*, 966 F.3d 145 (2d Cir. 2020), *Wandering Dago, Inc. v. Destito*, 879 F.3d 20 (2d Cir. 2018), *Eagle Point Educ. Ass'n/SOBC/OEA v. Jackson Cnty. Sch. Dist. No. 9*, 880 F.3d 1097 (9th Cir. 2018), and *Robb v. Hungerbeeler*, 370 F.3d 735 (8th Cir. 2004).

1 Guidelines for any Person or Group Requesting the Use of Faneuil Hall, Sam Adams Park, City Hall Plaza, City Hall Lobby, North Stage or the **City Hall Flag Poles**, infra pp. 7–8 (emphasis added).

CERT. GRANTED 9/30/2021