

IN THE SUPREME COURT OF THE UNITED STATES

No. 20-1800

HAROLD SHURTLEFF, ET AL., PETITIONERS,

v.

CITY OF BOSTON, MASSACHUSETTS, ET AL.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

MOTION OF THE UNITED STATES
FOR LEAVE TO PARTICIPATE IN ORAL ARGUMENT AS AMICUS CURIAE,
FOR ENLARGEMENT OF THE TIME FOR ORAL ARGUMENT,
AND FOR DIVIDED ARGUMENT

Pursuant to Rules 28.3, 28.4, and 28.7 of the Rules of this Court, the Solicitor General, on behalf of the United States, respectfully moves for leave to participate in the oral argument in this case as amicus curiae, for an enlargement of the argument time, and for divided argument, and respectfully requests that the argument time be enlarged by ten minutes and that the United States be allowed fifteen minutes of argument time. The United States has filed a brief as amicus curiae supporting reversal. Petitioners have consented to this motion and agreed to cede ten minutes of their argument time to the United States. Respondents also have consented to this motion. Accordingly, if this motion were granted, the argument time would be enlarged to 70 minutes

and divided as follows: 20 minutes for petitioners, 15 minutes for the United States, and 35 minutes for respondents.

This case arises from the denial of petitioners' application to hold a flag-raising event using a flagpole outside Boston City Hall. The constitutionality of that denial depends in part on whether the flags raised in the City's flag-raising program are government speech or instead private speech in a government-created forum. The United States has a substantial interest in that question because federal governmental entities manage a variety of programs in which private speakers participate. For example, the National Park Service manages hundreds of park units in which demonstrations, special events, and government-sponsored events may occur. And the United States Postal Service manages a program in which members of the public may design custom postmarks. The extent to which those and other programs constitute government speech has important consequences for the management and regulation of those programs. The United States thus has a substantial interest in the proper interpretation and application of the relevant First Amendment principles.

The federal government often is a party to cases involving allegations that governmental action has abridged constitutional free-speech rights, including in the context of government

programs that fund or otherwise facilitate speech. E.g., Agency for International Development v. Alliance for Open Society International, Inc., 140 S. Ct. 2082 (2020); Johanns v. Livestock Marketing Association, 544 U.S. 550 (2005); Legal Services Corp. v. Velazquez, 531 U.S. 533 (2001). The United States also has participated in oral argument as amicus curiae in cases involving similar allegations against state and local governmental action. E.g., Pleasant Grove City v. Summum, 555 U.S. 460 (2009); Arkansas Educational Television Commission v. Forbes, 523 U.S. 666 (1998). The participation of the United States in oral argument is therefore likely to be of material assistance to the Court.

Respectfully submitted.

ELIZABETH B. PRELOGAR
Solicitor General
Counsel of Record

DECEMBER 2021