News



The American flag, the Commonwealth of Massachusetts flag, and the City of Boston flag, from left, fly outside Boston City Hall May 2. (AP/Charles Krupa)

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A unanimous Supreme Court ruled Monday, May 2, that Boston violated the free speech rights of a conservative activist when the city refused his request to fly a Christian flag on a flagpole outside City Hall.

Justice Stephen Breyer wrote for the court that the city discriminated against the activist, Harold Shurtleff, because of his "religious viewpoint," even though it had routinely approved applications for the use of one of the three flagpoles outside City Hall that fly the U.S., Massachusetts and Boston flags.

Occasionally, the city takes down its own pennant and temporarily hoists another flag.

Shurtleff and his Camp Constitution wanted to fly a white banner with a red cross on a blue background in the upper left corner, called the Christian flag, to mark Constitution Day, Sept. 17, in 2017.

The city had approved 284 consecutive applications to fly flags, usually those of other nations, before it rejected Shurtleff's because it was a Christian flag. The city said he could fly a different banner, but Shurtleff refused, and lower courts upheld the city's decision.

But the high court said the lower courts and the city were wrong. The case hinged on whether the flag-flying is an act of the government, in which case Boston can do whatever it wants, or private parties like Shurtleff, Breyer wrote.

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"Finally, we look at the extent to which Boston actively controlled these flag raisings and shaped the messages the flags sent. The answer, it seems, is not at all. And that is the most salient feature of this case," Breyer wrote in an opinion that also riffed on the brutalist architectural style of Boston's City Hall and the Siena, Italy-inspired 7-acre plaza on which it sits.

Breyer wrote that "the city's lack of meaningful involvement in the selection of flags or the crafting of their messages leads us to classify the flag raisings as private, not government, speech — though nothing prevents Boston from changing its policies going forward."

The city has said that in the event of a loss at the Supreme Court it probably will change its policy to take more control of what flags can fly.

Shurtleff is a former organizer with the John Birch Society and has used his Camp Constitution website to question the Jan. 6 insurrection at the U.S. Capitol, the outcome of the 2020 election that put President Joe Biden in office, the efficacy of COVID-19 vaccines and even who was behind the Sept. 11 attacks.

None of that was at issue at the high court.

The case is *Shurtleff* v. *Boston*, 20-1800.