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**The ACLU believes the First Amendment requires that Boston allow the flag bearing the Christian cross.**



## Justices Debate Speech Rights in Fight About Boston City Hall Flags

*This case is important for defenders of religious liberty to take notice of because it helps to differentiate actual infractions to religious liberty from infractions to other areas of the Constitution.*

The Supreme Court heard oral arguments in January 2022 for a free speech case which was originally thought to be about the establishment clause. The debate originated from Boston's practice of allowing non-government groups to fly their flags on one of the three flagpoles in front of city hall. A group that wanted to fly a Christian flag was denied permission. That group argued that it would be dangerous to allow a lower court's ruling upholding the city's policy to stand. Conversely, the city said that its decision to allow other groups to use the flagpole was similar to speech by the city, and therefore it should be allowed to choose which flags it wants to fly.

The American Civil Liberties Union filed an amicus brief in

support of Camp Constitution, the group wishing to fly the Christian flag. David Cole, the national legal director of the ACLU, opines that, in this particular case, the U.S. Constitution actually requires the city to display a religious flag. In past cases the ACLU has held that the Constitution's establishment clause bars displays of a crèche or Ten Commandments in county courthouses, enforcing the separation of church and state. However, in this case they believe that the First Amendment requires that Boston allow the flag that includes a Latin cross on it.

"For more than a decade, Boston has made one of the flagpoles in front of City Hall available to the public for temporary displays, essentially on a first-come, first-served basis. It has flown political flags, national flags and the flags of private civic organizations — including the Chinese

*Continued on page 3...*

# Mississippi City Ordered to Quit Delay, Allow Building of Mosque

The city of Horn Lake, Mississippi, has been ordered to stop their delay of permits and allow two Muslim men to build a new mosque, per U.S. District Judge Michael P. Mills, following a discrimination lawsuit filed by the American Civil Liberties Union. The lawsuit claimed anti-Muslim prejudice.

Plaintiffs Maher Abuirshaid and Riyadh Elkhayyat were denied a zoning request to build a mosque for family, friends, and other Muslims — the first mosque in DeSoto County. Currently, the closest house of worship is a half-hour away in Memphis, Tenn.

The lawsuit said city officials "did not work very hard to hide the true reason they

denied approval for the project—anti-Muslim prejudice." A city planning meeting was held in early 2021, at which time several residents near the mosque site spoke against it. In fact, the lawsuit stated that then-Alderman John E. Jones Jr. told a local newspaper, "I don't care what they say; their religion says they can lie or do anything to the Jews or gentiles because we're not Muslims."

The Horn Lake planning commission recommended that the site plan for the mosque be denied, and, subsequently, the Board of Aldermen voted 5-1 in April to uphold that recommendation. The Aldermen said, however, that they had denied the application because of city concerns about

insufficient water supply for fire sprinklers and the possibility of traffic and noise.

Judge Mill's order mandates that the city must approve the site plan review application for the proposed mosque, Abraham House of God. Additionally it must act "without any unusual delay and free from any illegal discriminatory intent or effect" as far as any future construction and permit applications for the mosque. And, Horn Lake must pay Abuirshaid and Elkhayyat \$25,000 and reimburse attorneys' fees.

Heather Weaver, attorney for the ACLU Program on Freedom of Religion and Belief, said the consent decree is "an important victory for religious freedom."

## NEWS OF THE WORLD

# 41 Countries Banned Religion-related Groups by 2021 End

By the end of 2021, at least 41 countries around the world had banned religion-related groups, including entire faith groups, social movements, and political organizations which have ties to religion, according to the Pew Research Group. Jehovah's Witness and Baha'i are the most frequently banned.

The Middle East and North Africa region have the highest percentage of countries (11 of 20) in this group. Asia and the Pacific region have the greatest number of countries (17 of 50). Sub-Saharan Africa has eight of 48, and Europe has three of 45 countries. The Americas have two of 35 countries with bans.

**Detentions, raids, and seizures of property are common in many countries for membership in banned religious groups.**

- *An increase of crime has been pointed at Catholic churches in past months. A Virgin Mary statue in Washington, D.C., was defaced in December 2021. It is the 113th attack on Catholic property — including arson, statues beheaded or smashed or painted, gravestones defaced with swastikas or satanic graffiti, and more — in the United States in the past 20 months.*
- *A Jewish couple in Tennessee has sued the states Department of Child Services for discrimination. Americans United for Separation of Church and State filed on behalf of Elizabeth and Gabriel Rutan-Ram, who said they were denied services from a state-funded foster care agency because they are Jewish. They were adopting a boy from Florida, but were denied Tennessee mandated foster parent training by Holston United Methodist Home for Children.*
- *Updating a previous Waymarks story, the University of Iowa must pay almost \$2M in legal fees related to religious liberty. Two Christian student groups had sued the public university for removing their clubs from campus and denying student activity funding because of their biblical-based requirements for leadership.*

## Boston City Hall Flags, *Continued from page 1*

Progressive Association, the National Juneteenth Observance Foundation, Bunker Hill Association and Boston Pride....Over a 12-year period, the city displayed 284 such flags, and never denied a single request," according to Cole.

Camp Constitution is a conservative Christian organization that celebrates the Judeo-Christian heritage of the United States. They asked to fly the flag for one hour during a group event in Boston. The group is somewhat controversial to the city government for their questioning of COVID-19 vaccines and other viewpoints, but the city did not refuse them based on their beliefs. They refused because the flag was religious, and they expressed concern that it would be in conflict with the establishment clause. In this case, however, it is the speech clause which actually needs to be addressed.

Religious expression is

not totally banned from government property. Public sidewalks are used by Seventh-day Adventists to sell literature, by Jehovah's Witnesses to hand out tracts, by Baptists and Mormons to proselytize. In these instances, are those individuals representing the government? Or are they representing themselves and their churches? It can be easily seen that they speak for themselves and not the United States government.

Applying this to Boston City Hall, when they permit flags representing the Chinese Progressive Association, the National Juneteenth Observance Foundation, or the other 282 groups they've allowed, are those flags "speaking" for the government? Or are they speaking for the groups?

A city which displays the 10 Commandments at all times could be thought to be promoting religion. How-

**The flag was refused for being religious, but actually it is freedom of speech that needs to be addressed.**

ever, it can be reasonably assumed that those flags — whether or not they display religious symbols — are not being promoted or endorsed by the city, but are instead representative of their groups.

However, the U.S. Court of Appeals for the 1st Circuit ruled in favor of the

city, saying that the flags *did* represent government speech, and, therefore, Camp Constitution's Christian flag flying for an hour could threaten the establishment clause.

According to Cole, "...that is a dangerous expansion of the 'government speech' doctrine. It would give cities an easy way out of the long-standing First Amendment obligation to treat all private speakers equally in public forums — by simply re-characterizing private speech on government property as the government's speech."

When SCOTUS heard the arguments, questions were raised about whether the city should allow any private flags at all if they were going to place bans on religious speech on what was previously a public speech platform.

The justices are expected to reach a decision by summer of 2022.

## Iowa Church Fights IRS Over "Religious" Hallucinogenic Drug

A church based in Des Moines, Iowa, that uses a hallucinogenic drug in religious ceremonies has been denied tax-exempt status and has challenged the Internal Revenue Service (IRS).

The Iowaska Church of Healing was formed in 2018, and is run by three men:

Admir Dado Kantarevic, Billy Benskin, and Merzuk Ramic. It meets in Kantarevic's home, and its teachings revolve around the use of the highly hallucinogenic ayahuasca, brewed from leaves of shrubs and vines in the Amazon, to awaken the "Third Eye" in followers.

The church applied for tax-exempt status in 2019, but was denied based on the illegal drug. The church claims this contradicts a past SCOTUS ruling for another church that had its ayahuasca shipment seized. However, final determination ruled against Iowaska Church.

**The Ayahuasca Manifesto details the drug's use in "the expansion of consciousness."**

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# Tampa Transit Ban on Religious Advertisement Deemed Unconstitutional

A federal court in Florida has said that it was unconstitutional for the Tampa-area transit authority to ban religious ads, and that it violates the First Amendment free speech guarantee. In 2020 the Hillsborough Area Regional Transit Authority (HART) rejected an ad for Young Israel of Tampa synagogue's "Chanukah on Ice" event; the ad featured a menorah, central to the Jewish holiday.

HART requested edits to the ad, removing images

and references to the menorah. They would have allowed ads for a secular holiday event with ice skating and food, but did not allow Young Israel's since it was in celebration of Chanukah. Because of that, the U.S. District Court for the Middle District of Florida decided the ban was actually targeting ideology, and, further, that HART did not have consistent standards for enforcing it.

In a related case in Washington, D.C., the U.S. Court of

Appeals upheld the Washington Metropolitan Area Transit ban because it regulated subject matter, not viewpoints. Conversely, in Scranton, Penn., religious message bans from the Lackawanna Transit System were deemed contrary to the First Amendment by the Third Circuit. The Florida court determined that the latter decision better conformed to U.S. Supreme Court law on religious viewpoint discrimination.

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