



Government Speech Doctrine

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Government Speech Doctrine

- Viewpoint discrimination is permitted when the government speaks for itself.
- But the boundary between government speech and private expression can blur when a government invites the people to participate in a program.
- It can be difficult to determine when government-public engagement transmits the government's own message when it instead creates a forum for the expression of private speakers' views.

Shurtleff v. City of Boston

- The City of Boston has three flag poles outside of City Hall. It typically flies the United States flag, the Massachusetts flag, and the City of Boston flag.
- It had developed a practice to allow outside groups to request time to fly flags on the City of Boston flagpole.
- It had no written policy and it had never denied a group request before.
- It denied a religious group for fear of an Establishment Clause violation.
- Supreme Court unanimously held the denial was a First Amendment violation.

Government Speech

- (1) Has the medium historically been used to communicate messages from the state/city?
- (2) Is the medium closely identified in the public mind with the state, or can it reasonably be interpreted as conveying some message on the government's behalf?
- (3) Does the government maintain direct, editorial control over the message's content?

Practical Effects

- This is a holistic review which asks whether the government is purposefully communicating a message of its own choosing?
- A written policy of objective criteria that is reviewed by staff and Council and subject to community comment and input.
- The proposed resolution tonight does speak for City Council, but it is unclear if it would be considered government speech if challenged.