

EXAMINERS' ANALYSIS OF QUESTION NO. 12

Resolution of this case depends upon whether the City was engaging in its own expressive conduct when it displayed the "Warriors of Honor" monument, or whether the City was providing a forum for the private speech of the Pleasantville Veteran's Association. The First Amendment provides that "congress shall make no law ... abridging the freedom of speech...." The First Amendment is applicable to the states through the Due Process Clause of the Fourteenth Amendment.

If the City was engaging in its own expressive conduct, then the Free Speech Clause is simply not applicable. The Free Speech Clause restricts government regulation of *private* speech; it does not regulate *government* speech. The government is entitled to say what it wishes, and select the views that it wants to express. This is true even when the delivery of the government speech is assisted by private sources. The only constitutional limitation on government speech is that it must comport with the Establishment Clause.

If the City is providing a forum for private speech, then the City is strictly limited in its ability to regulate private speech on public property. Persons have strong free speech rights when they venture into public streets and parks, which are considered "traditional public fora." The government is permitted to place reasonable time, place, and manner restrictions on private speech so long as the regulation is (1) content neutral (2) narrowly tailored to serve a significant government interest and (3) leaves alternate channels of communication open. If the regulation is not content neutral, any restriction must satisfy strict scrutiny - it must be necessary to achieve a compelling governmental interest and be narrowly tailored. Viewpoint restrictions on private speech are prohibited.

Permanent monuments displayed on public property typically represent government speech, even if the monuments are privately financed and donated. Governments have long used monuments to speak to the public. Because parks play an important role in defining a City's identity, cities may be selective in accepting

donated monuments and may choose those that portray what the government decisionmakers view as appropriate.

Public forum principles do not apply in the context of donated monuments. The forum doctrine applies where a government property or program is capable of accommodating a large number of public speakers *without defeating* the essential function of the forum. However, public parks cannot accommodate unlimited numbers of monuments. If the government had to maintain viewpoint neutrality in selecting donated monuments, it would either result in cluttered parks or the removal of all monuments. Because a forum analysis "would lead almost inexorably to closing of the forum," it is inappropriate.

The "Warriors of Honor" monument clearly represents government speech. It was selected consistently with the City's selection criteria, the City controlled the message of the monument by exercising "final approval authority" over its selection, and the City had complete ownership of the monument. Because the monument represents government speech, the Free Speech Clause is not implicated. Therefore, Greg Gonnga is unlikely to prevail in his suit against the City.

The question and analysis is based on *Pleasant Grove City, Utah v Sumnum*, 555 US 460 (2009).