UNC SCHOOL OF GOVERNMENT

Coates' Canons Blog: Monuments in Parks: Government Speech, Not Forum Analysis

By Frayda Bluestein

Article: https://canons.sog.unc.edu/monuments-in-parks-government-speech-not-forum-analysis/

This entry was posted on October 07, 2009 and is filed under General Local Government (Miscellaneous), Miscellaneous

A recurring subject of First Amendment case law has to do with monuments in public parks. The latest opinion from the United States Supreme Court on this subject holds (unanimously) that the placement of a permanent monument in a public park is a form of government speech and is therefore not subject to scrutiny under the Free Speech Clause. Is this a major departure from prior holdings or a natural and obvious interpretation of the relevant constitutional provisions?

In *Pleasant Grove City, Utah, et al. v. Summum,*a religious organization challenged the city's rejection of its request to erect a stone monument containing "the Seven Aphorisms of Summum," in a local park, which already contained several monuments, including one displaying the Ten Commandments. The Court of Appeals had invalidated the city's decision, analyzing the issue as one involving a restriction on private speech in a traditional public forum. The Supreme Court reversed this decision, holding that the case involved not private, but government speech, and concluding that the forum analysis is not applicable.

An important aspect of the case involves the characterization of the monuments as property owned by the city. The Court describes the case as its first to address "the application of the Free Speech Clause to a government entity's acceptance of a privately donated, permanent monument for installation in a public park." So this is not a situation where the government is providing a forum for private speech. Indeed, the Court notes that the park itself (which we typically think of as being the quintessential traditional public forum) has never been "opened up for the placement of whatever permanent monuments might be offered by private donors."

The opinion relies for its analysis on cases involving government restrictions on publicly funded programs and other government-sponsored activities, such as publicly funded arts programs and libraries, noting that a government entity has "the right to speak for itself," even when it receives assistance from private sources to deliver a government-controlled message. This line of reasoning certainly makes sense – when the government creates a forum for its own expression, it has wide latitude in choosing its message. This may suggest that concerns sometimes expressed about things like public art installations and government websites or social networking pages may be analyzed as government speech, rather than as limited or non-public forums.

On the other hand, the prior case law involving monuments in parks, decided based on the limitations the First Amendment's Establishment Clause places on government, (including on government speech) were not overruled, or even addressed in the *Pleasant Grove* case. And several of the concurring opinions express some hesitancy about the scope of the emerging concept of government speech. Justice Souter, for example noted, "Because the government speech doctrine… is 'recently minted,' it would do well for us to go slow in setting its bounds, which will affect existing doctrine in ways not yet explored." The possible blurring of lines between a government's restriction on private speech and a government's adoption of private speech as its own will likely provide fodder for future litigation in this area.

Links

- www.supremecourtus.gov/opinions/08pdf/07-665.pdf

This blog post is published and posted online by the School of Government to address issues of interest to government officials. This blog post is for educational and informational use and may be used for those purposes without permission by providing acknowledgment of its source. Use of this blog post for commercial purposes is prohibited.

To browse a complete catalog of School of Government publications, please visit the School's website at www.sog.unc.edu or contact the Bookstore, School of Government, CB# 3330 Knapp-Sanders Building, UNC Chapel Hill, Chapel Hill, NC 27599-3330; e-mail sales@sog.unc.edu; telephone 919.966.4119; or fax 919.962.2707.