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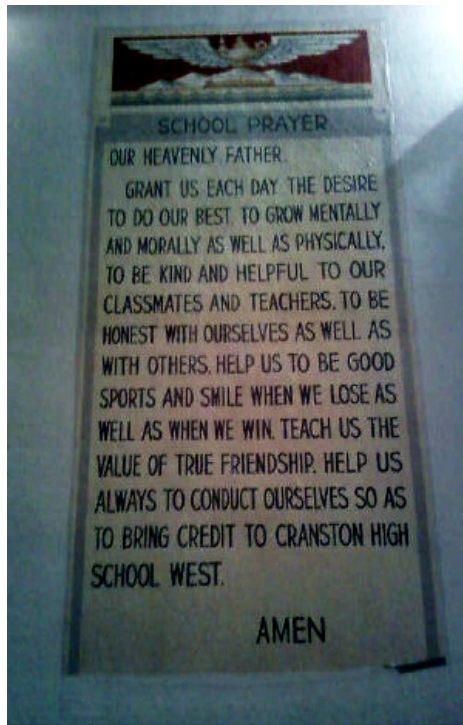
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Newsroom

Eberle on Cranston Prayer Banner Case

Professor Edward Eberle provides legal perspective on the divisive case of the "school prayer banner" at Cranston West High School in Cranston, R.I.

From **GOLOCALPROV**: "[Cranston Prayer Controversy: What will it Cost?](#)" by Patricia Resende



CRANSTON, R.I., January 21, 2012 - The debate over whether to remove a prayer banner from the auditorium at Cranston West High School has sparked controversy, and one factor in that debate is just how much time and money taxpayers and officials are willing to spend to prove their point.

The lawsuit was brought by the Rhode Island Local Affiliate of American Civil Liberties Union against the Cranston School District on behalf of Jessica Ahlquist, a sophomore at Cranston High School West, who in the past year has spoken out against her school's prayer display.

Appealing U.S. Court Judge Ronald Lageux's decision to have the banner removed could cost as little as \$60,000 or as much as \$200,000, depending how far the School Committee is willing to take it, according to Steven Brown, president of the Affiliation of Civil Liberties Union.

Leaving the already cash-strapped city with a legal bill is far what Brown and the student who launched the crusade to remove the banner wanted to do. In fact, Brown said the ACLU tried to avoid it.

"We decided to wait before filing suit because we were hopeful that it could and would be resolved without the need for litigation, and without the costs to the taxpayers of the City that a lawsuit would likely lead to," he said. "When we were proven wrong, we filed suit shortly thereafter.

The cost to the ACLU is fairly minimal since all of its legal work is performed on a volunteer basis, according to Brown. The City, however, is obligated to pay the attorneys fees to prevailing plaintiffs in civil rights cases like Ahlquist's case against Cranston.

Long Legal Process

The Cranston School Committee has not yet made a decision on whether to move forward with an appeal or remove the banner, but if it decides to appeal the Court's decision, it could be a long legal process.

"The federal appeals courts act more quickly than the lower courts," Brown said. "Although one can never predict, I think it would be very likely that an appeal would be decided in less than a year if one were filed."

There have been 16 lawsuits, including the Ahlquist case, on the issue of separation of church and state in Rhode Island in which the ACLU has stepped in. Twelve of those cases resulted in the ACLU's favor, one did not and three are still pending.

"Certainly, in just about all of them we attempted to resolve the matter informally before we filed suit," Brown said. "Obviously some were successful and in others they decide to forge ahead and having to pay attorney fees — that certainly happened in the Providence school graduation case."

That case, *Lee v. Weisman*, dealt with a prayer given by a Rabbi after the Nathan Bishop Middle School's graduation.

The lawsuit was brought after Merith Weisman's graduation ceremony when a Baptist minister asked the attendees to bow their heads and "thank Jesus Christ."

Weisman's case against the principal was argued in late 1991 and decided in June 1992.

“The benediction was over God of the Free, Hope of the Brave etc.,” **said Roger Williams University Law Professor Edward Eberle.** “The principal directed and controlled the content of the prayer.

“The court ruled that the giving of the prayer for a public middle school after graduation was unconstitutional in that it was coercive pressure and that it is not the business of government to compose official prayers,” **Eberle added.**

Will be Costly

Eberle went on to say that it is not the job of government to infringe on religion, that a public school should not display religious symbols. He also said it is likely that controversial debate over the banner will likely be costly.

The 1996 case of *Jack Barese v. Town of Barrington* was a lengthy one that cost the town and resulted in the ACLU's favor. In the Barese case, the Town's practice of providing snowplowing to churches, but to no other private institutions was challenged.

“In the Barrington snow plow case there was a lot of discussion and people wanted to stick to their guns and there were attorneys' fees,” Brown said.

How high those attorney fees are in cases like the one against the Town of Barrington and Cranston depends on several factors, according to Brown.

"It really varies and depends on how fact intensive the case was and whether there is need for deposition," Brown said. "In this case there was a significant amount of discovery. The defendant raised the question that Jessica didn't have standing to bring the lawsuit.

The School Committee has not yet made a decision and whether to file an appeal has not yet been decided, according to Brown.

"It is in the school district's hand."

List of [Rhode Island] ACLU Church/State Cases (provided by the ACLU):

1973: *Earley v. DiCenso*

Favorable decision from U.S. Supreme Court in precedent-setting case establishing limits on public aid to parochial schools.

1975: *In re: Hodgson*

Successful defense before an Immigration and Naturalization Service board of a woman initially denied naturalization due to her religious convictions against bearing arms for the country.

1980: *R.I. Federation of Teachers v. Norberg*

Favorable U.S. Court of Appeals decision striking down state law allowing parents to claim income tax deduction for money spent on tuition in parochial schools.

1984: *Donnelly v. Lynch*

Challenge in U.S. Supreme Court to a city-sponsored nativity scene display in Pawtucket. While the Court ruled in favor of the City, the decision had the positive effect of setting the outer limits on the types of displays with religious content that could be sponsored by the government.

1984: *In re: Manuel Roderick*

Successful representation of a man who had been refused permission to change his name to an Islamic name because of a past criminal record.

1986: *Exeter-West Greenwich School District v. Pontarelli*

Successful court challenge to state Department of Education ruling requiring a public school district to pay tuition for students attending parochial schools.

1990: *Yang v. Sturner*

Favorably settled federal lawsuit on behalf of a family whose son was autopsied against their religious beliefs; this case was cited by Congress in passing the Religious Freedom Restoration Act.

1991: *Tucker v. Gloucester Police Department*

Favorably settled complaint challenging the use on police applicants of a standardized psychological test which asked questions relating to religious beliefs.

1992: *Weisman v. Lee*

Favorable ruling from U.S. Supreme Court in lawsuit challenging a public school's practice of having an invocation and benediction delivered at a graduation ceremony. *[NOTE: the 1992 case was actually Lee v. Weisman as the school appealed, thus changing it from Weisman v. Lee. - Ed.]*

1995: *Ogram v. Town of Johnston*

Favorably settled federal lawsuit challenging a school district policy which gave preferential rental treatment to religious groups.

1996: *Barense v. Town of Barrington*

Successful federal lawsuit challenging a Town's practice of providing free snow-plowing to churches, but to no other private institutions.

1998: *Cottone v. Bristol-Warren Regional School Committee*

Favorably settled federal lawsuit challenging the "private" display of a nativity scene each December on the front lawn of a public elementary school.

2003: *Osediacz v. City of Cranston*

Federal lawsuit challenging the display of a nativity scene and menorah on the front lawn of Cranston City Hall.

2007: *Spratt v. Wall*

Successful federal court challenge of a warden's decision to bar an inmate from supervised preaching at religious services even though he had done so for seven years without incident.

2009: *Rogers v. Mulholland*

Federal lawsuit challenging a city's preferential treatment of parochial schools over public schools in granting permits for the use of city athletics fields.

2010: *Ahlquist v. City of Cranston*

Federal lawsuit challenging the display of a "School Prayer" mural in a public high school auditorium.

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