2014 Religious Liberty Essay Scholarship Contest

‘Run-through’ banners & religious references:
Exploring the rights and responsibilities afforded in the First Amendment

BY DANIEL INGHAM
2014 RELIGIOUS LIBERTY ESSAY SCHOLARSHIP CONTEST WINNER

The topic for the 2014 essay contest asked high school juniors and seniors to discuss whether or not religious messages, such as Bible verses on “run-through” banners at football games, should be permitted at public school-sponsored events. Daniel Ingham of Ellicott City, Maryland, won the $2,000 scholarship from the 637 entries received. His essay is below.

In May of 2013, a Texas court judge ruled in favor of a group of high school cheerleaders displaying Bible verses on “run-through” banners during school football games. Deeming the banners “constitutionally permissible,” State District Judge Steve Thomas said that no law “prohibits cheerleaders from using religious-themed banners at school sporting events.” (Dolak, ABC News) Ultimately, the court’s decision came down to the fact that the banner was “student led,” “student initiated” and, therefore, constitutionally permissible private speech. (CBS Interactive Inc.) This seemingly local news story received national notoriety because of its resonance with an ongoing debate surrounding the Bill of Rights.

Scholars and policymakers constantly grapple with the combined meaning of the Establishment Clause and the Free Exercise Clause in the Bill of Rights; the “run-through” banner story quickly became a convenient vehicle to breathe new life into this debate. The Establishment Clause states that “Congress shall make no law respecting an establishment of religion” (U.S. Constitution). Public schools, run by the government, therefore cannot show religious preference. The other religion clause of the First Amendment, the Free Exercise Clause, holds that Congress must avoid “prohibiting the free exercise thereof” (U.S. Constitution). For publicly funded schools, that means the school must permit the private practice of any religion on school grounds without interfering with learning instruction. In order to more fully understand the proper course of action in the “run-through” banner case, we must first look to where public schools have come into conflict with the First Amendment in the past. Three cases in particular hash out the murky water that has set the stage for this review of the “run-through” banner case.

First, *Abington School District v. Schempp* in 1963 helped to clearly establish the separation of church and state in the school system when Edward Schempp of Abington Township, Pennsylvania, filed suit against the Abington School District because his children were required to hear and occasionally read from the Bible every morning (374 U.S. 203). The Court ruled with Schempp, finding that “the reading of the verses possesses a devotional and religious character and

Ingham, now a freshman at Providence College in Rhode Island, reads his winning essay at the BJC Board of Directors meeting.

constitutes in effect a religious observance” (374 U.S. 203). This case supports the Establishment Clause because it holds that the public school system cannot endorse any one religion or introduce a religious ceremony into school-sponsored activities. What *Abington* clarifies for the “run-through” banner case is that schools cannot conduct obligatory religious activities on school grounds because the school would be demonstrating a preference of religion (374 U.S. 203).

The second case is *Santa Fe Independent School District v. Doe* from 2000, in which students offered Christian prayers over the public address system at home football games (530 U.S. 290). Students voted for student-led Christian invocations during a school election. Arguably, this made the activity student-run and student-initiated, as opposed to the prayer in *Abington*, which was run by the schools (530 U.S. 290). However, the court sided against the district, ruling that “an objective Santa Fe High School student will unquestionably perceive the inevitable pregame prayer as stamped with her school’s seal of approval” (530 U.S. 290). This court case demonstrates that a speech is public when it occurs at a school-sponsored event, on school grounds, and is led by a school representative. The religious prayer effectively demonstrates the school’s approval on that religious prayer and, by extension, that religion. *Santa Fe* adds to the precedence set by *Abington* by clarifying that even if a religious activity occurs at a school-sponsored event, which is student-led and initiated, it is still impermissible because it can be perceived that the school has demonstrated some level of approval, inferring religious bias (530 U.S. 290).

The lines drawn in these cases are articulated clearly in the conclusion to *Board of Education v. Mergens* in 1990, which allowed a public school student to begin a Christian after-school Bible study group (496 U.S. 226). *Mergens* found that “there is a crucial difference between government speech endorsing religion, which the Establishment Clause forbids based on bias, and private speech endorsing religion, which the Free Speech and Free Exercise Clauses protect” (496 U.S. 226). Public government-sponsored speech must not prefer a religion, while private speech about religion is protected (496 U.S. 226). With this important context applied to the “run-through” banner case, it is clear that the deciding factor for the cheerleaders is whether their speech occurred in a private or public setting.

The main defense of the cheerleaders’ position was that the banner effort was “student-led” and “student-initiated;” the students argued that the administration was not involved in the process (CBS Interactive Inc.). This argument leans heavily on the Free Exercise Clause, positing that the cheerleaders should not be barred from their Constitutional right to freely exercise their religion (U.S. Constitution).

The first major problem with the cheerleaders’ stance is that cheerleading is a school-sponsored sport; tryouts, practices, performances, and school uniforms sporting the school logo are all funded by the school. There is no question that the cheerleaders are meant to represent both the student body and the administration. This means that the banner effort is in fact not “student-initiated;” therefore a student-initiated activity in a school-sponsored sport at a school-sponsored event is no longer private speech. The cheerleaders are leaders of the school; in this case, “student-led” is the equivalent of “school-led.” This contradicts the precedence set in *Abington* and *Santa Fe* because it amounts to the school showing public preference of religion.

The second major problem is the nature of the free exercise of religion in the “run-through” banner case. As ruled in *Santa Fe,* pregame prayers cannot be permitted because the school is essentially sealing that prayer with its approval (530 U.S. 290). The same goes for overtly Christian “run through” banners because the cheerleaders and football players are elected to represent the school on the field. Any message the cheerleaders deliver at the school-sponsored event is directly tied to the school. This means that the audience is captive and obligated to listen to the religious message of the school via the cheerleaders; the cheerleaders’ free exercise is no longer private and therefore impeding the free exercise of the audience. In the “run-through” banner case, the administration’s responsibilities to avoid religious preference overrule the student’s ill-conceived “constitutional” rights to display biblical quotes.

While the cheerleaders cannot make Christian “run-through” banners, they have many other options when it comes to demonstrating and practicing their religion. During school and during school-sponsored events, students are allowed to pray individually or in groups, discuss religion, and read Scripture as long as it does not interfere with instruction (ACLU). The cheerleaders can also initiate a school prayer group or theology club (ACLU). These are all private speech activities that are protected by the Free Exercise Clause without interfering with the Establishment Clause (U.S. Constitution). However, once that private religious speech enters the sphere of a public forum, it is in conflict with the Establishment Clause and no longer permissible (U.S. Constitution). Cheerleaders should not be able to display overtly Christian “run through” banners at football games because that is public speech being made by the school that is in direct conflict with the Establishment Clause.

For more on this year’s winners and information on the 2015 contest, visit www.BJConline.org/contest.

Endnotes

Dolak, Kevin, and Maria Nikias. “Judge Rules in Favor of Cheerleaders’ Religious Banners.” ABC News. ABC News Network, 08 May 2013. Web. 04 Mar. 2014.

CBS Interactive Inc. “Texas Cheerleaders Win in Court Again over Bible Banners.” CBSNews. CBS Interactive, 8 May 2013. Web. 06 Mar. 2014.

“The Constitution of the United States,” Amendment 1.

Santa Fe Independent School District v. Doe, 530 U.S. 290 (Texas 2000).

Westside School District v. Mergens, 496 U.S. 226 (Nebraska 1990).

Abington School District v. Schempp, 374 U.S. 203 (Pennsylvania 1963).

Organizational Signers. “American Civil Liberties Union.” American Civil Liberties Union. ACLU, n.d. Web. 06 Mar. 2014.

2014 BJC Board of Directors meeting

Representatives of the Baptist Joint Committee’s 15 supporting bodies met in Washington, D.C., October 6-7 for the annual meeting of the BJC Board of Directors. The board heard updates on the BJC’s work, approved the operating budget and attended a special presentation in the U.S. Capitol from 2014 Shurden Lecturer Michael Meyerson. During his presentation, Meyerson reviewed religious liberty during the founding of the United States and the important role Baptists played in protecting the freedom for all people. On day two of the meeting, BJC General Counsel Holly Hollman briefed the board on that morning’s oral arguments in *Holt v. Hobbs*. For more photos from the meeting, visit Facebook.com/ReligiousLiberty.