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Mass. Supreme Court to hear challenge to Pledge of Allegiance

Kimberly Winston Religion News Service | Sep. 3, 2013

Massachusetts' highest court on Wednesday will consider whether the daily recitation of the Pledge of Allegiance is a violation of students' rights.

Since the addition of the phrase "under God" in 1954, the pledge has been challenged repeatedly as a violation of the separation of church and state. In 2004, one case reached the Supreme Court, but ultimately failed, as have all previous challenges.

But the current case before the state's Supreme Judicial Court, *Doe* v. *Acton-Boxborough Regional School District*, is different because lawyers for the plaintiffs, an anonymous atheist couple, won't be arguing about federal law but rather that the compulsory recitation of the pledge violates the state's equal rights laws. They argue that the daily recitation of the pledge is a violation of their guarantee of equal protection under those laws.

This change of tack in pledge challenges is modeled on a successful precedent laid down in the same court on gay marriage. In 2003, Massachusetts' Supreme Judicial Court ruled 4-3 in favor of a same-sex couple seeking the right to marry under the state's equal rights laws. Their win led to similar successful challenges in other state courts, something that could happen here if judges rule for the plaintiffs.

"You would then see a rash of state court lawsuits challenging the pledge all over the country," said Eric Rassbach, deputy general counsel for the Becket Fund for Religious Liberty, which is arguing for the defendants. "A win for us would completely avoid that unnecessary harm. And it would affirm that it is not discriminatory to have the words 'under God' in the pledge."

"There is disagreement, but there is not discrimination," Rassbach said. "That is what is at the heart of this -- disagreement about what the government should do."

The plaintiffs are represented by the American Humanist Association, a national advocacy group for humanists and other secularists. David Niose, the plaintiffs' attorney and president of the AHA, could not be reached for comment.

The defendants won the first round in June 2012 when a lower court judge ruled that daily recitation of the pledge did not violate the Massachusetts Constitution, the school district's anti-discrimination policy or state law. The upcoming oral arguments address an appeal of that decision.

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