

House-passed bill would discourage church-state suits: Legal fees for successful plaintiffs at issue

News in the [October 31, 2006](#) issue

A bill passed by the House and a companion bill awaiting action in the Senate would remove money—at least the awarding of attorneys' fees to successful plaintiffs—from cases related to public displays of religion.

The Public Expression of Religion Act, introduced by Indiana Republican John Hostettler, passed the House by a 244-173 vote September 26 after four failed attempts. A similar Senate bill has been introduced by Republican Sam Brownback of Kansas.

Supporters of the bills argue that the legislation would prevent the American Civil Liberties Union and other organizations from using an existing section of civil rights law to earn large sums of money from lawyers' fees.

Opponents counter that eliminating the awarding of attorneys' fees would prevent some people from being able to bring challenges when they believe there has been government sponsorship of religion. They say it would mark the first time a freedom protected by the Bill of Rights was not fully enforced.

"It's garbage, and people are being seriously misled by people with some other agenda," said Sarah Wunsch, staff lawyer for the ACLU of Massachusetts.

Uproar over the ACLU's being awarded attorneys' fees in cases challenging religious symbols, such as the attempt to place the Ten Commandments in an Alabama courthouse, has fueled the passions of many who support the bills. Paul Morin, national commander of the American Legion, fears that the ACLU and similar organizations will one day challenge the presence of religious symbols such as a cross or Star of David that adorn headstones in veterans' cemeteries. "There's nothing that's going to be sacred anymore," Morin said.

The ACLU terms that supposed threat to religious markers on headstones a “red herring.” In addition, the ACLU said it would vigorously defend the right of a veteran to have a religious symbol placed on a headstone.

The ACLU also contends that the awarding of attorneys’ fees is reasonable in any case in which the government violates a citizen’s civil or constitutional rights.

“Quite intentionally, the bill penalizes plaintiffs who can prove that the government has engaged in unconstitutional conduct,” the ACLU said in a letter protesting the Senate bill. “Therefore, the legislation has the predominant purpose of promoting government-sponsored religion, and the effect of discouraging plaintiffs from bringing meritorious . . . cases.”

Joining in the push to eliminate attorneys’ fees is the American Center for Law and Justice. Colby M. May, senior counsel for the group’s Washington, D.C., office, said the existing law “is being used as a political football by all kinds of interests” whose backers feel they can make money off the statute.

Opponents argued that the bill would have a chilling effect on the ability of religious minorities to defend their freedoms.

“Mr. Speaker, let’s be clear—there’s nothing benign about this bill,” said Representative Chet Edwards (D., Tex.). “This bill makes it more difficult to enforce the First Amendment to the Constitution and the very words thereof designed to protect the religious freedom of every American. Without such reimbursements, many church-state separationist groups and other civil rights groups could not afford to file such lawsuits in the first place.”

Conversely, Representative Hostettler said some groups file lawsuits and use the threat of hundreds of thousands of dollars in legal fees to pressure municipalities and states into settling before cases reach court. *—Religion News Service, Associated Baptist Press*