

RHODE ISLAND'S ATTEMPT TO LEGISLATE AROUND THE ESTABLISHMENT CLAUSE

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I. INTRODUCTION

The members of our military make many sacrifices for our freedom. They face many hardships during their time of service, including missing the births of their children and even sacrificing their lives. In return for their service they are honored in many different ways: some receive medals for their honor, some receive tuition assistance when they leave the armed service and some receive discounts in many forms. Perhaps the largest and most public way of honoring our veterans as well as our fallen troops is to create memorials in their honor. These memorials provide families who lost loved ones in war a safe haven to retreat to in their time of angst and longing to remember their fallen soldier.

These memorials can be found in many towns across the country. Woonsocket, Rhode Island is no different. The town of Woonsocket has erected a special memorial to honor fallen troops, featuring “a white cross displayed in front of the Woonsocket Fire Department Headquarters.”² Essentially, the memorial consists of a very prominent cross atop a block base.³

Perspective is one of the problems that plague certain memorials. Some look at the cross in front of the fire department and see only a cross in the sense that it represents Christianity and religion. From this perspective, by allowing this memorial to stand on government property the government is promoting or endorsing Christianity.

The Rhode Island government's position on this issue is that the memorial is not an endorsement of Christianity but a commemoration of the service of veterans.⁴ The cross represents those

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2. Billy Hallowell, *Atheists Threaten Lawsuit Over 'Unconstitutional' RI Firehouse Cross & WWI Monument*, THE BLAZE (Feb. 8, 2013), <http://www.theblaze.com/stories/atheists-threaten-lawsuit-over-unconstitutional-ri-firehouse-cross-wwi-monument/>.

3. *Id.*

4. This is also the viewpoint taken when analyzing particular objects under the notion of ceremonial deism.

who serve and have served their country. It has been in the community for such a substantial amount of time that it has achieved a secular meaning. It is meant to promote a sense of justice for the families who have lost loved ones to war.

These differing perspectives lie at the heart of any Establishment Clause struggle between the government attempting to preserve the memorial and those who oppose the supposed promotion of religion. It is this struggle that the Rhode Island Legislature sought to eviscerate. The purpose of the Rhode Island House Bill was to allow this memorial to stand because it has been a part of the community for such a long period of time that the cross that tops the monument has lost the religious meaning behind it. The heart of this question essentially becomes: is it possible for a cross to lose the religious meaning and become secular?

This note will explore the precedent from the Supreme Court that has left this area of law in shambles for state courts to interpret and how states have responded to the uncertainty through legislation. Next, this note will look at the purpose of the Rhode Island House Bill as well as the likelihood of its success in regard to the commission it creates and the analysis it requires the commission to undertake. Also, this note will discuss the implications of the House Bill concerning whether it is possible for a cross to lose religious meaning and become secular. Finally, the likely outcomes of a suit challenging the House Bill will be explored as well.

II. UNITED STATES SUPREME COURT PRECEDENT

The notion of separation of church and state lies within the Establishment Clause of the First Amendment. This Clause reads, "Congress shall make no law respecting an establishment of religion."⁵ Courts are divided as to whether religious symbols that are already present on public property should be allowed to stand or whether they violate the Establishment Clause.⁶ This divide centers on the idea that removing the religiously based monuments violates the free exercise of religion. Alternatively, in allowing the religious symbols to stand, the government appears to be effective-

5. U.S. CONST. amend. I.

6. See *Utah Highway Patrol Ass'n v. Am. Atheists*, 132 S. Ct. 12 (2011). In dissent, Justice Thomas writes, "The Tenth Circuit's opinion is one of the latest in a long line of religious display decisions that, because of this court's nebulous Establishment Clause analyses, turn on little more than judicial predilections." *Id.* at 13 (Thomas, J., dissenting).

ly condoning the religion. This would be a violation of the Establishment Clause because the government would be placing the religion that is being portrayed as a superior religion to others.

The lower courts have been left with little guidance as to how to approach this issue. This lack of guidance is best exemplified by two similar cases argued on the same day that produced two different analyses and results.⁷ The Court in *Van Orden v. Perry* upheld a display of the Ten Commandments on the Texas State Capitol building.⁸ The Court reasoned that the analysis as to whether the display of a religious symbol is a violation of the Establishment Clause “should be driven by both the monument’s nature and the Nation’s history.”⁹ The Court used this reasoning to state that there was such a strong tie between the Commandments and the history of the United States that it is not merely religious in nature but also historical.¹⁰ Therefore, the test from *Van Orden* appears to be that as long as there can be a historical tie to the religious symbol it would be acceptable for the monument to be on government property without violating the Establishment Clause.¹¹

However, this is not the analysis used in *McCreary County v. ACLU*.¹² Like *Van Orden*, *McCreary County* also involved the display of the Ten Commandments, yet the Court found that this display was unconstitutional.¹³ The reasoning involved the use of the *Lemon* test.¹⁴ This test consists of looking to whether the government’s use of religion “promot[es] secular legislative purposes, [and whether it] involves excessive entanglement of state with church.”¹⁵ The Court used this reasoning to show that the use of the Ten Commandments and other documents that the government attempted to display were not secular in nature and were

7. *Van Orden v. Perry*, 125 S. Ct. 2854 (2005); *Lemon v. Kurtzman*, 403 U.S. 602 (1971).

8. *Van Orden*, 125 S. Ct. at 2855.

9. *Id.* at 2855.

10. *Id.* at 2857.

11. *Id.*

12. *McCreary Cnty. v. ACLU*, 125 S. Ct. 2722, 2724 (2005).

13. *Id.*

14. *Id.* The *Lemon* test was not used by the Court in the *Van Orden* case because they held that this test, “was not to be used for a passive monument.” *Van Orden*, 125 U.S. at 2854.

15. *Lemon*, 403 U.S. at 602.

promoting excessive entanglement due to the religious nature of the documents.¹⁶

In comparison, both cases involve the display of the Ten Commandments in a public government building. The hair splitting difference between the two is that the Court used different analyses to determine one display to be constitutional but the other to be unconstitutional. Also, the fact that other documents were involved may have played a role in the Court's decision in *McCreary*.¹⁷ These two cases exhibit the differing standards: the *Lemon* test and determining whether the historical value of the monument supersedes the religious aspect.

Recently another Supreme Court case, *Salazar v. Buono*, approached the issue as to whether religious monuments on government property were in violation of the Establishment Clause.¹⁸ Instead of determining whether the cross was constitutional, the Supreme Court merely addressed the issue of whether it was in error for Congress to block the transfer of the monument to another location.¹⁹ This was an opportunity for the Court to set a unified standard regarding this issue. However, the Court failed to do so.

Buono involved the placement of a cross on federal lands in order to honor fallen soldiers.²⁰ Ultimately, the Supreme Court never took advantage of the opportunity to adjudicate the case on the merits as to whether the government is effectively condoning religion or not by allowing the display of the cross.²¹ Essentially no guidance came to the lower courts from this case as to what the appropriate standard is to be used when approaching Establishment Clause cases.²²

In determining cases of this nature, the judgment hinges on the court's view of the secular or religious nature of the monument. It is left to the courts to determine these matters on a case-by-case basis. Now, what Rhode Island seeks to do is to take this power out of the judiciary and put it into the hands of the legisla-

16. *Id.*

17. In *McCreary*, the Ten Commandments were integrated to become part of a larger display. *McCreary Cnty.*, 125 S. Ct. at 2724. This display included "framed copies of the Star Spangled Banner's lyrics and the Declaration of Independence, accompanied by statements about their historical and legal significance." *Id.*

18. *Salazar v. Buono*, 130 S. Ct. 1803, 1807 (2010).

19. *Id.* at 1825.

20. *Id.*

21. *Id.* at 1803.

22. *Id.*

ture to state that certain memorials and monuments cannot be considered to be religious in nature. The legislature has started the ball rolling in this aspect with House Bill 8143, hereafter referred to as the “Monuments Bill.”²³

III. RHODE ISLAND HOUSE BILL NO. 8143

A. Background

Bill 8143, the “Monuments Bill,” started as preventative action to keep in place a monument honoring members of our armed forces. The Monuments Bill came as a response to a letter from an organization called the Freedom from Religion Foundation.²⁴ This group works to “promote the constitutional principle of separation of state and church, and to educate the public on matters relating to nontheism.”²⁵

This group “wrote a letter asking the city to take the memorial down because of its religious symbolism.”²⁶ In response to this letter “thousands rallied in support of keeping the monument where it is because of its secular value.”²⁷ The notion of this secular value comes from the fact that the memorial in question here “stands as a dedication to the soldiers who died in World War I and World War II.”²⁸

Representative James McLaughlin provides the rationale for the Monuments Bill:

I’m pleased we were able to pass this legislation because as I’ve said many times before, I believe any memorial or icon that provides us with a sense of history and culture should go untouched. Many of these memorials on state or municipal property are tributes to war veterans and others whose lives have had a signifi-

23. *Id.*

24. Press Release, *General Assembly passes legislation creating monument designation commission*, STATE OF R.I. GEN. ASSEMBLY (Feb. 8, 2012), <http://webservice.rilin.state.ri.us/News/pr1.asp?prid=8479> [hereinafter *General Assembly Press Release*].

25. *About the Foundation FAQ*, FREEDOM FROM RELIGION FOUND., <http://ffrf.org/faq/item/14999-what-is-the-foundations-purpose> (last visited May 6, 2013).

26. *Id.*

27. *Id.*

28. *Id.*

cant impact on our cities, towns and our state. We need to protect their legacy.²⁹

This statement shows the general rationale behind the desire to keep memorials in place on government property although they involve some sort of religious aspect to them.

B. The Commission

1. The Creation of the Monuments Bill

The Monuments Bill was carefully crafted to allow for an unbiased view in deciding whether a particular memorial can be considered to be secular or not. This aspect of the Monuments Bill takes the form of a five-person commission.³⁰ This commission determines whether a monument or a memorial can be designated as a category one memorial item.³¹ The commission will consist of two people who must be “appointed by the speaker from a list of nominations provided by the chairperson of the Rhode Island historical society, one of whom shall be an elected official.”³² The next two members will “be appointed by the senate president from a list of nominations provided by the adjutant general of the Rhode Island national guard, one to be a member of the Rhode Island veterans of foreign wars, and one to be a member of the American legion.”³³ Finally, the last member is to be either the spouse or a child of a deceased veteran who is also to be appointed by the speaker.³⁴

2. Flaws in the Monuments Bill

The Monument Bill contains many potential flaws. First, the legislative appointment of members allows for significant personal bias. In sum, there will be one elected official, one nomination from a historical society, one member who is a veteran of a foreign war, one member who is a member of the American legion and one

29. *Id.*

30. H.R. 8143, 2011-12 Leg. Sess. (R.I. 2012) (codified at R.I. Gen. Laws §§ 42-4.2-1, -2 (2012)).

31. *Id.* A category one memorial item is the designation for a classification system in which the board will classify monuments to determine whether the monument is to stay on public property or whether it will have to be moved. *Id.*

32. *Id.*

33. *Id.*

34. *Id.*

member whose loved one has been in the military. Essentially, there is a majority of members on the commission who have very strong ties to the military and may not offer an unbiased opinion.

Also, the voting process of the commission encourages members to vote subjectively, allowing room for bias. The process works by having someone in the general public request to have a memorial reviewed as to whether it passes the muster of the memorial one category required for the memorial to stand.³⁵ “Upon deliberation, the commission may communicate their majority decision to designate an item as such in written form to the city or town clerk of the municipality wherein the item is located, for recording in the land records, and to the chief executive of the municipality.”³⁶ The key to this deliberation process is that only a majority opinion is required.³⁷

Since only a majority opinion is required, the system could be viewed as merely a façade of deliberation. The chances are slim that three people with strong ties to the military are going to strike down a memorial that honors both their service and their fallen loved ones as having a non-secular meaning. The purpose of this commission will most likely be lost in the shuffle among those on the commission who would not see religion as the first aspect of the memorial when it is topped with a cross.

3. Remedies to the Monuments Bill’s Flaws

Instead of establishing a commission comprised mostly of former members of the military as well as members who have incredibly strong ties to the military, the commission should be comprised of elected members of the public. After all, the issue as to whether something has obtained a secular meaning is one that is decided not by one person but by the masses who comprise a secular society. Pursuant to this solution, both sides of the argument would be represented and have an opportunity to decide the fate of the controverted memorials.

This would be a more equitable remedy because as the commission stands now those members of the Freedom from Religious Foundation, who brought this issue first to light, will have a fair

35. *General Assembly Press Release*, *supra* note 24.

36. *Id.*

37. “Three (3) members of the commission shall constitute a quorum...” H.R. 8143, 2011-12 Leg. Sess. (R.I. 2012).

opportunity to effectuate a change. Not having these memorials presented in front of an unbiased commission leaves room for challengers to find a foothold and engage the government commission in yet more litigation.

Overall, there is a problem with having a five-person commission comprised of people who will undoubtedly be biased towards one particular finding. It makes more sense to leave it in the hands of the people to elect those who they feel are best equipped to decide. After all, they are the ones who have to pass the memorials everyday and should have a say on the issue. Essentially, the commission should be comprised of elected representatives.

C. Guide for the Commission's Interpretation

The Monuments Bill was passed with specific criteria that the commission must use when interpreting and deciding whether a particular memorial should be able to stand as having a secular meaning or whether it should be removed from government property.³⁸ This criterion requires that the commission decide whether a memorial falls within what they have dubbed “a category one memorial item.”³⁹ Interestingly, the Monuments Bill makes no mention of other categories of memorials although the first category is identified numerically. Thus, the test is essentially whether or not the memorial has gained a sense of secularism and has become traditional within the community or whether it has become part of the culture of the community.⁴⁰

The criteria that the commission is to look to is as follows:

A category one memorial item:

(a) ... shall include a structure, sculpture, inscription, or icon, or similar item, which meets the following criteria:

- (1) Has attained a secular, traditional, cultural, or community recognition and/or value;
- (2) Is located on property that is owned by either the state, a city or town, or any instrumentality thereof;

38. *Id.*

39. *Id.*

40. *Id.*

(3) Was in existence prior to January 1, 2012; and

(4) Is designated as a category one memorial pursuant to section 42-4.2-2.

(b) A memorial may, but does not need to be, related to military affairs in order to be designated as a category one memorial.

(c) The potential identification of an item or the item having recognizable identification with a known or established religion shall not exclude the item from being designated as a category one memorial item, so long as the provisions of subsection (a) are met.⁴¹

The first section requires that all of the criteria (1) – (4) be met. Some of these are much easier to satisfy than others. For instance, it will be much easier to decide whether a particular monument has been in place before the specified date or not. Perhaps the most difficult aspect for the courts when faced with how to interpret the Monuments Bill will be interpreting and applying section (a)(1).

Section (a)(1) requires a category one monument to attain “a secular traditional, cultural, or community recognition and/or value.”⁴² The key question is how the language “secular tradition, cultural, or community recognition or value” should be interpreted.⁴³ Case law provides guidance on the ceremonial deism referenced by the statute. Essentially, ceremonial deism is when an object, or motto, has nothing to do with the establishment of religion.⁴⁴ “The constitutional value of ceremonial deism turns on a shared understanding of its legitimate nonreligious purposes.”⁴⁵ The notion behind ceremonial deism is that one looks to the patriotic or ceremonial character of the object.⁴⁶ In *Aronow v. United States*, the notion of ceremonial deism was presented when the court first interpreted whether “In God We Trust” violated the Establishment Clause.⁴⁷ Here, the court reasoned that the motto has “‘spiritual and psychological value’ and ‘inspirational quality.’”⁴⁸

41. *Id.*

42. H.R. 8143, 2011-12 Leg. Sess. (R.I. 2012).

43. *Id.*

44. *Aronow v. United States*, 432 F.2d 242, 243 (9th Cir. 1970).

45. *Elk Grove Unified Sch. Dist. v. Newdow*, 542 U.S. 1, 37 (2004).

46. *Id.*

47. *Id.*

48. *Id.*

Aronow lends some guidance as to how to interpret this prong. If the memorial can be found to have some sort of historical impact on the community outside of its religious impact then it can be found to have inspirational quality.⁴⁹ Ultimately, this is left in the hands of those commission members who may not be the best equipped to interpret these issues as discussed previously.

Section (a)(2) is relatively straightforward. If the memorial is on private property then an individual will not be able to bring it forth to the commission.

Section (a)(3) looks at the date that the memorial was created for guidance. The Monuments Bill provides that a category one memorial must be in existence prior to January 1, 2012.⁵⁰ This date is problematic because it fails to comport with the underlying rationale. The rationale behind the Monuments Bill, according to Representative McLaughlin, is to provide people with a sense of history as well as preserving the history.⁵¹ Having such a recent date fails to further this rationale. If the legislature was seeking to preserve a sense of history then any date chosen should be further in the past.

The memorial in question is dedicated to fallen troops in World War I as well as World War II.⁵² Although there are memorials that honor present day troops, those memorials can be erected without a cross on them. The memorial in question is arguably a piece of history because it has been in place for such a long period of time and has represented fallen troops for a long time as well. As such, the recent date of January 1, 2012 does not seem to comport with the purpose of the Monuments Bill. There is a large difference between a memorial that has been in place since World War I and a recently created memorial. The same sense of history, arguably, is not present for the hypothetical recent memorial because it has not become an established part of the community, and it has not had the opportunity to attain spiritual meaning for those in the community that honor it. The legislature should have adopted a date later in history that more reasonably captures the sense of history that they are purporting to be preserving.

49. This is by no means the only way to interpret this prong of the statute, but is merely offered as one means of doing so for illustration purposes.

50. H.R. 8143, 2011-12 Leg. Sess. (R.I. 2012).

51. *Id.*

52. *Id.*

These interpretation issues may give great power to the judiciary if the Monuments Bill is challenged because there are so many holes in the legislation.

IV. LIKELY OUTCOMES OF A LAWSUIT

A. *The Issue of Standing*

An interesting issue presented by Establishment Clause cases is whether the plaintiff has standing to bring suit.⁵³ Standing is essentially “whether the litigant is entitled to have the court decide the merits of the dispute or of particular issues.”⁵⁴ Generally, citizens cannot sue based on their unhappiness with certain government actions based on their taxpayer status.⁵⁵ However, an exception has been carved out for the Establishment Clause because “it is difficult to imagine circumstances in which potential abuses of the Establishment Clause could be enforced without this exception.”⁵⁶ Therefore, if a person brings a case under the Establishment Clause, they will have to face the barrier of establishing standing first. Then, once they establish standing, they are left to the uncertainty in the law laid down by the Supreme Court.

Fortunately, the Monuments Bill eliminates the issue of standing. The litigant would not be bringing forth a claim against the government but would still be able to voice their concern over a memorial that they think may be questionable.⁵⁷

B. *The Potential Suit*

Religious censorship is by no means a new and novel area; however, state legislation on the matter to preserve a memorial is an undeveloped area. Will the Monuments Bill withstand a challenge if the Woonsocket War Memorial is contested in court? The answer is most likely no. There are many holes within the reasoning of this legislation, and the legislation as a whole can be seen to violate the Establishment Clause of the Constitution.

The Establishment Clause “prohibits the government from unduly preferring religion over non-religion, or non-religion over reli-

53. See e.g., *Salazar*, 130 S. Ct. at 1807.

54. *Warth v. Seldin*, 422 U.S. 490, 497 (1975).

55. See *id.* at 498-99.

56. *Flast v. Cohen*, 392 U.S. 83, 103-04 (1968).

57. H.R. 8143, 2011-12 Leg. Sess. (R.I. 2012).

gion.”⁵⁸ This legislation allows memorials to stand that are clearly favoring Christianity over any other religion. Also, the fact that the memorial is on government property allows for the argument that the government can be seen as supporting religion.

The Freedom from Religious Foundation will most likely sue regardless of the legislation that Rhode Island passed in order to preemptively strike against the Rhode Island government. However, this organization has the funds to bring a suit and to litigate it. It is the responsibility of the Rhode Island government to make the best decision to use or not use the taxpayer’s money in regards to litigating this matter.

A recent Supreme Court decision will have a very large role in helping the government of Woonsocket, Rhode Island in making this decision. The Supreme Court recently decided to not grant *certiorari* in a case involving a large cross atop a mountain in California. In *Trunk v. City of San Diego*, “the Supreme Court refused to take two cases in a longstanding church-state dispute over the 43-foot Mt. Soledad cross on federal lands in La Jolla, Calif. The court expects that lower courts may yet resolve the issue.”⁵⁹ As a result, the lower court’s decision that the cross atop the mountain was unconstitutional stands.⁶⁰ The Supreme Court did not grant *certiorari* because they thought that the lower court would be able to remedy the situation in a way that may allow the cross to stand.⁶¹

In helping to analyze the potential success of a lawsuit, the opinion of *Trunk v. City of San Diego* offers some analysis that the court could look to for guidance.

Simply because there is a cross or a religious symbol on public land does not mean that there is a constitutional violation. Following the Supreme Court’s directive, we must consider the purpose of the legislation transferring the Cross, as well as the primary effect of the Memorial as reflected in context, history, use, physical setting, and other background.⁶²

58. U.S. CONST. amend. I.

59. Warren Richey, *Giant Cross on Government Land: Supreme Court Declines Cases, For Now*, CHRISTIAN SCIENCE MONITOR (Feb. 8, 2010), <http://www.csmonitor.com/USA/Justice/2012/0625/Giant-cross-on-government-land-Supreme-Court-declines-cases-for-now>.

60. *Id.*

61. *Id.*

62. *Trunk v. City of San Diego*, 629 F.3d 1099, 1102 (9th Cir. 2011).

The legislation passed by Rhode Island can be said to encompass this rationale of the court.

The heart of this controversy is the primary effect of the Memorial. The question is, under the effects prong of *Lemon*, whether "it would be objectively reasonable for the government action to be construed as sending primarily a message of either endorsement or disapproval of religion."⁶³ The court in this case faced essentially the same issue that the Woonsocket government will be faced once a lawsuit is filed. Importantly, the case of *Trunk v. City of San Diego* has yet to determine the location of the cross.⁶⁴ This leaves some hope for those residents of Woonsocket that rose to the occasion to advocate for the cross to stay.

The *dicta* within the holding of *Trunk v. City of San Diego* goes through some famous war memorials that contain crosses.⁶⁵ However, the court distinguishes memorials such as Arlington National Cemetery from the cross at the memorial in Mount Soledad.⁶⁶ The court reasoned, "[S]everal of the crosses the government references are parts of much larger secular or multi-faith complexes."⁶⁷ Essentially, the court distinguishes these cases by reasoning "that the cross has never been used as a default grave marker for veterans buried in the United States, that very few war memorials include crosses or other religious imagery, and that even those memorials containing crosses tend to subordinate the cross to patriotic or other secular symbols."⁶⁸ This presented problems for the Mount Soledad cross and will present a problem for the government of Rhode Island.

It is important to remember that the case of *Trunk v. City of San Diego* is not a Supreme Court case. As such, this case is not binding on the courts of Rhode Island. However, this case does present persuasive precedent for the courts of Rhode Island to help them decide this case.

There are many who are skeptics as to whether the town will be able to even afford part of the predicted litigation.⁶⁹ Some members of the community are advocating for the government to concede to save the taxpayers money. The citizens of Woonsocket cre-

63. *Id.* at 1111 (quoting *Vernon v. City of Los Angeles*, 27 F.3d 1385, 1398 (9th Cir. 1994)).

64. *Id.* at 1123.

65. *Id.* at 1124.

66. *Id.* at 1114-15.

67. *Trunk*, 629 F.3d at 1124.

68. *Id.* at 1116..

69. Hallowell, *supra* note 1.

ated a fund to allow for donations to help support the litigation costs of the government in the potential suit over the memorial.

Overall, the largest battle that the government of Rhode Island will face is overcoming *Trunk v. City of San Diego*. As mentioned, this is only persuasive and not binding on the courts but does pull a fair amount of favor away from finding for the government on this issue. Fortunately for the government, the court in *Trunk v. City of San Diego* has not said that the cross has to be taken down. As such, there is still some hope for the members of the community to come to a compromise regarding the litigation and the placement of the cross.

V. SUGGESTIONS TO AMEND LEGISLATION TO AVOID SUIT

As mentioned previously, the make-up of the commission presents problems for the legislature. There is too much room for bias. The legislature would do better to create a commission that opens room for a more neutral board to control the outcomes. The statute should allow the public to vote for those who will make up the commission and reserve spots for people of both viewpoints to this issue, as well as a position for someone with a neutral viewpoint. Rather than having all the positions related to the military, the legislature should at least allow for the appearance of a neutral board. As it stands there is too much room for bias to present problems.

The Legislators could also change the date restriction in the statute. The date of January 1, 2012 does not encompass the goal of the legislation. The goal of the legislation is to allow a community to keep memorials that have a religious aspect to them. However, this hinges upon the memorials having been a part of the community for many years. These memorials would be allowed to stand under the premise that they are secular in a traditional sense. A current date does not reflect this premise. The monument in question was created to honor soldiers of World War I. This is by no means a current monument that the legislature is trying to protect. Making the date in which a monument was created a date further back in history may not protect this legislation from suit. However, it does allow for the legislation to get to the heart of why it was enacted, which is to protect a monument that has become so engrained in the community that it has lost its religious overtones.

In general, the legislation was well drafted. It creates a commission to investigate as to whether the monument is religious or not. There is a defined set of criteria to help the commission make

a decision. However, regardless of whether the legislation is amended, a suit is likely unavoidable. Those bringing suit have a principle they are trying to protect and will want to have this legislation declared a violation of the Establishment Clause.

VI. CONCLUSION

Overall, this legislation was created to protect a monument in Woonsocket, Rhode Island that has stood in place for over fifty years. The aims of the legislation are clear, however, their validity is yet to be challenged as well as established. Only time will tell on the issue, but it is likely that local governments will be unable to defend against the costly lawsuits that the legislation sought to prevent. Compromises on the locations of the memorials will hopefully be met before litigation costs become too great.