

EDUCATION

High-powered lawyers defending Indianapolis archdiocese in LGBT suits have winning record

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Published 5:34 a.m. ET May 19, 2021 | Updated 7:14 a.m. ET May 19, 2021

They've been called "God's Rottweilers."

They've argued before the Supreme Court — and won — seven times.

So, what was the Becket Fund for Religious Liberty, one of the nation's most prominent public interest law groups, doing in a Marion County Superior Court case?

Defending the Archdiocese of Indianapolis against the gay schoolteacher it had fired.

The Washington, DC-based Becket is representing the archdiocese in all three of the lawsuits filed by former employees of area Catholic schools who say they were fired because of their same-sex marriages.

That the educators — one teacher and two guidance counselors — were fired is not at issue. It's whether or not they should have been: Is being gay — or being gay and married, as is the case here — a fireable offense?

The archdiocese says it is and has gone to court to defend its right to only hire individuals who "respect and promote" its teachings.

It's an argument Becket has made — and won — before. In a 9-0 ruling reached in 2012, the U.S. Supreme Court agreed with Becket that the Hosanna-Tabor Evangelical Lutheran Church has the right to choose its own religious leaders — a concept known as "ministerial exception."

More: What to know about dismissed same-sex marriage lawsuit against Indianapolis archdiocese

Now, the group is claiming victory again and this time on behalf of the Indianapolis archdiocese.

Earlier this month, an Indiana trial court judge dismissed the case against the archdiocese brought by Joshua Payne-Elliott. Payne-Elliott had worked as a world language and social studies teacher at Cathedral High School since 2006, until he was fired in June 2019.

He is married to Layton Payne-Elliott, a teacher at Brebeuf Jesuit Preparatory School. They married in 2017. The couple have been at the center of a fight between their schools and the archdiocese, which directed the schools to fire both men.

Brebeuf refused to fire Layton Payne-Elliott, so the archdiocese attempted to strip the school of its Catholic status, though the school appealed that decision and is still awaiting a final ruling. Cathedral fired Joshua Payne-Elliott to avoid the same fate.

Joshua Payne-Elliott sued the archdiocese in Marion Superior Court, alleging that the archdiocese illegally interfered with his contractual and employment relationship with Cathedral High School, causing Cathedral to terminate him.

The case was dismissed earlier this month. Payne-Elliott's lawyer, Kathleen DeLaney, said her client has not decided whether to appeal the decision.

Becket team is 'mission-driven'

It has been a long two years, DeLaney said. While litigation is usually a difficult process for the clients, she said that going up against Becket adds another element to that challenge.

“They’re not going to wear us down,” she said. “But it really does feel like we’re litigating an individual employment-related case and they’re litigating a cause, or a mission.

“They’re mission-driven,” she said. “We’re case-outcome driven.”

Mission-driven is exactly what Becket is.

Founded by Kevin “Seamus” Hasson in 1994, the fund has a motto: “Becket exists to defend the free exercise of all faiths, from Anglican to Zoroastrian.”

They’ve done this both in and out of courtrooms from the very beginning, said Richard Garnett, a professor with the Notre Dame School of Law.

“The mission at the time it started, and it’s mission really ever since, has been to advocate — both in the public square and in the courts — this understanding of religious freedom as being a human right that belongs to everyone, regardless of which religion they profess,” he said.

Garnett knows the Becket Fund’s work well. He’s friends with its founder, Hasson, and said the Becket fund will be a formidable opponent.

“They take cases that present important questions and they have a really smart litigation team,” Garnett said. “They’ve done well. They had some 9-0 wins in the Supreme Court on issues important to religious liberty.”

More: Lawsuit from fired Cathedral High teacher over same-sex marriage is dismissed

This mission — and the fact that they’re a well-funded nonprofit that doesn’t charge their clients fees for their services — means that Becket’s approach to a case is completely different, DeLaney said. In a normal case, there would be business considerations, an assessment of how much money to invest in litigation. Those things aren’t present on the Becket side of a case, she said.

“At every step of the way, they put more and more time, effort and energy into it,” DeLaney said. “They don’t take 'no' for an answer.”

The court docket bears this out. Motions, memorandums, briefs, additional motions to reconsider when a decision doesn't go for the archdiocese.

When the original trial court judge denied the archdiocese’s motion to dismiss the Payne-Elliott case and ruled it could go forward, Becket filed a motion to reconsider the denial of the original motion to dismiss.

That failed. Then, Becket sought to have the judge in the case removed, accusing him of wrongdoing.

The judge, Stephen Heimann, voluntarily stepped down. He issued a five-page order, explaining the personal challenges — health challenges for himself and family members — for doing so.

“Normally, I would not list these personal matters in a public pleading such as this,” he wrote.

But because he'd been accused of violating judicial rules, Heimann said his leaving the case voluntarily "could be inferred that he is actually doing so because of the claims made" in the archdiocese's request to have him removed.

Eventually, another judge was assigned to the case. Judge Lance Hamner dismissed the case earlier this month.

DeLaney said she's never seen this kind of conduct from opposing counsel.

"The Becket lawyers are all from out of town," DeLaney said. "They're pursuing their mission on a national and international basis. The likelihood that any one of those lawyers would have another case with either of these judges... The rules of engagement seem to be a little bit different.

"They don't have that Hoosier civility."

Obligated to provide the best defense

Luke Goodrich, vice president and senior counsel for Becket, takes issue with the idea that any of their strategies or actions in court are outside standard practice. Its lawyers have an obligation, he said, to provide the best defense possible for their clients.

"I would say that, really, the only unusual thing about this case was the plaintiff's effort to enlist the power of the government," Goodrich said, "to tell the Catholic Church that it can't ask Catholic schools to follow Catholic teaching."

Civil or not, Becket has been successful. The group's win rate is 85% over the last 25 years, though Goodrich said it's closer to 90% these days.

"They've been pretty successful in court in their lawsuits, but I think they've also been successful in the court of public opinion," Notre Dame's Garnett said, "because they've always been good about choosing cases and choosing a message that reminds people that religious freedom isn't just for people in the majority religion or religions we're familiar with."

To understand their approach, it may help to understand their name.

The fund is named for Thomas Becket, the 12th century Archbishop of Canterbury who was killed after refusing to allow King Henry II to interfere in the affairs of the Church. He was,

as the group's website puts it: "martyred by the King's knights for defending the principles of religious liberty."

Nearly a millennia later, the Becket Fund — and the private donors that bankroll its work — sees itself as some of the prominent defenders of those same principles.

Being donor funded, Goodrich argued, allows Becket to defend every client to the best of their ability, regardless of a client's ability to pay. But that also comes with added pressure, he said.

"Even more than when you're just representing a big for-profit corporation, we bear a huge weight of responsibility to litigate cases both vigorously and efficiently," he said.

So, what is the real secret to Becket's success? Goodrich says it's the law.

"It's a consistent commitment to religious freedom for all, strong legal protections for religious freedom, and seeking excellent attorneys who can litigate those issues, consistently, at the best of their ability," he said.

Federal cases still in progress

There are two more cases against the Indianapolis archdiocese still working their way through federal court.

Lynn Starkey and Shelly Fitzgerald were both guidance counselors at Roncalli High School. Both women were fired over their same-sex marriages. They each filed discrimination complaints with the Equal Employment Opportunity Commission and proceeded with federal lawsuits against archdiocese and Roncalli.

Becket will represent the archdiocese in those, too.

"The purpose of Catholic schools is to communicate the faith to the next generation," said Luke Goodrich, vice president and senior counsel for Becket. "Many religious schools all across the country expect their teachers, guidance counselors and administrators, their key personnel to uphold their religious teachings.

"Just like an environmental group wouldn't want to hire climate change deniers, they want people who are fully supportive of the mission and the organization. If these lawsuits are allowed to go forward and result in adverse rulings... (it would) undermine the ability of religious organizations to transmit the faith to the next generation."

The right for religious schools to set rules for their employees was at the heart of Becket's first Supreme Court victory — the Hosanna-Tabor case.

Since then, the group only gained in prestige with wins like *Burwell v. Hobby Lobby*, the landmark case in which the group defended the craft-store from having to comply with a provision of the Affordable Care Act that requires employers to provide insurance coverage of certain contraceptives that the founders of Hobby Lobby said violated their deeply-held religious beliefs.

It's not just Catholic schools or even Christian groups that Becket defends, though. They've represented Islamic prisoners denied the right to grow a beard in accordance with the faith, a native American religious leader fighting to continue using sacred eagle feathers in ceremonies and a Santeria priest whose religious practices included sacrificing small animals.

"If you look through their cases, a whole lot of the folks with whom they've worked are members of minority religions... Amish, Sikhs, orthodox Jews, Muslims," said Garnett, the Notre Dame professor. "In so far as there is sometimes this stereotype... that religious freedom is just kind of a partisan issue... I think Becket has consistently shown that to be inaccurate."

Becket recently sided with a foul-mouthed high school cheerleader, filing a friend-of-the-court brief to defend minors' free speech rights after her school suspended her from the cheerleading team for posting a profanity-laden message on the social media outlet Snapchat.

"Allowing a public school to silence any speech it deems 'divisive,' 'offensive' or 'disruptive' is an extremely dangerous proposition," said Nick Reaves, counsel at Becket, in a news release. "It would permit schools to punish students for expressing their deeply-held religious beliefs—even if expressed in the privacy of their home or at a religious service or ceremony."

That case has been argued before the Supreme Court but not yet decided.

DeLaney, who also represents Starkey in her federal lawsuit, said she's seeing some of the same Becket tactics at work in that case.

"There's a definite pattern to their playbook," she said.

But, DeLaney said, she and her clients remain undeterred.

“No matter what tactics are employed on the other side of the case, our law firm is going to stand with our clients,” she said. “We’re not going to be bullied or intimidated out of pursuing justice.”

'Our house is officially a home': Home for homeless LGBTQ youth opens in Indianapolis

The Starkey and Fitzgerald cases are pending before federal court in the Southern District of Indiana.

In a statement to IndyStar, the archdiocese said it "looks forward to defending its right to provide its students and families with an authentic Catholic education.”

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