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ELLEN M. BANNER / THE SEATTLE TIMES

Kathryn Nurre, now 21, sued Everett School District after it refused to let her and others in the Jackson High wind ensemble play "Ave Maria" at the 2006 graduation.

Top court rejects appeal of 'Ave Maria' ruling

EVERETT SCHOOLS | The Supreme Court let stand a ruling that the district acted properly in refusing to let a group perform "Ave Maria" at graduation.

BY LYNN THOMPSON
Times Snohomish County reporter

Kathryn Nurre was a senior at Henry M. Jackson High School in 2006 and a member of the school's wind ensemble when the Everett School District refused to allow the group to perform an instrumental version of "Ave Maria" at graduation.

Nurre, now 21, challenged the decision in federal court, arguing that the district violated her freedom of speech.

Monday, the U.S. Supreme Court refused to hear the case and let stand a 9th U.S. Circuit Court of Appeals ruling that the school district was within its authority to bar a work with an explicitly religious theme.

"Obviously, I'm disappointed," Nurre said Monday from her family's home in Bothell. "I was hoping that if we went to the Supreme Court, we had a chance of winning."

The Jackson High wind ensemble chose a 1964 arrangement of "Ave Maria" written by Franz Biebl to perform at graduation and not the more familiar Franz Schubert version of the hymn. The group offered to leave the title off the program.

The Everett School District argued that the graduation ceremony was too short to include secular selections to balance a religious one. The district had received complaints in 2005 when a choir sang a Negro spiritual at another graduation.

The superintendent named in the lawsuit, Carol Whitehead, has since retired. The district said Monday only that it was happy to have the case resolved.

Legal experts said the court's decision not to accept the case could have a chilling effect on students' right to express religious views at schools. Charles Haynes, a senior scholar at the First Amendment Center in Washington, D.C., said the Supreme Court has consistently ruled that government, including schools, cannot promote religion but that students have a right to express their own religious beliefs.

"What many school officials will read into the court's refusal to take the case is that schools have carte blanche to censor students' religious expression at school events, and they don't," Haynes said.

John Whitehead, president of the Rutherford Institution, the legal foundation that represented Nurre, said the refusal to accept the case could mean that a wide range of music and art dating back to the Renaissance could be banned from schools.

"Free speech in the public schools is on life support," Whitehead said.

Nurre noted the ensemble had played "Ave Maria" at a previous concert without controversy. "We liked the way it sounded," she said. "It wasn't about religion."

The court case inspired Nurre to study to be a paralegal at Edmonds Community College, but she said the work wasn't what she expected. Now, she said, she hopes to pursue a degree in forensics.

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