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Recent Developments: Lee v. Weisman: Court Holds Non-Sectarian Prayer at Secondary School Graduation Ceremony Violates Establishment Clause of the First Amendment to the Constitution

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land General Assembly used this same principle in establishing the statutory right to a jury trial under section 4-302(e)(2)(i).

In addition, because one of the criminal violations was dismissed by the district court after a jury trial was demanded by the corporate defendants, the court of appeals clarified the effect of the dismissal on the right to a jury trial. *Id.* at 467 n. 6, 610 A.2d at 768 n. 6. The court noted that it considered the offenses charged at the time of the demand for a jury trial. *Id.* As long as the defendant was entitled to a jury trial at the time of the demand, a subsequent dismissal or nol pros of one of the charged offenses has no effect on the right to a jury trial. *Id.* (citing *State v. Huebner*, 305 Md. 601, 606-07, 505 A.2d 1331, 1334 (1986)).

In *3011 Corp. v. District Court*, the court of appeals established that a corporation has the same statutory right to a jury trial as an individual charged with the same criminal offense if the offense carries a prison sentence in excess of 90 days. In placing its focus on the statutory penalty, and not the penalty applicable to the particular defendant in a case, the court of appeals reaffirmed the fundamental nature of the right to jury trial and the principle that, although not subject to imprisonment, corporations are treated like individuals under the law.

- Kenneth A. Brown

Lee v. Weisman: COURT HOLDS NON-SECTARIAN PRAYER AT SECONDARY SCHOOL GRADUATION CEREMONY VIOLATES ESTABLISHMENT CLAUSE OF THE FIRST AMENDMENT TO THE CONSTITUTION.

In *Lee v. Weisman*, 112 S. Ct. 2649 (1992), the United States Supreme Court held that offering invocation and benediction prayers as part of the formal graduation ceremonies for secondary schools violated the Establishment Clause of the First Amendment to the United States Constitution. In so holding, the Court declined to reconsider the three-part Establishment Clause test set forth in *Lemon v. Kurtzman*, 403 U.S. 602 (1971).

In June 1989, Deborah Weisman graduated from Nathan Bishop Middle School, a public school in Providence, Rhode Island. The school principal invited a rabbi to deliver prayers in conjunction with the graduation exercises for the class. The principal provided the speaker with a pamphlet entitled "Guidelines for Civic Occasions," prepared by the National Conference of Christians and Jews. This pamphlet advised members of the clergy performing the prayers that the invocation and benediction should be non-sectarian. In this case, the invocation and benediction were non-sectarian, however, they did contained references to God.

Prior to Deborah's graduation ceremony, Deborah's father, Daniel Weisman, in his individual capacity as a taxpayer and as next friend of Deborah, sought a temporary restraining order in the United District Court for the District of Rhode Island. Weisman sought to prohibit the school officials from including the prayers in the graduation ceremony. The court denied the motion and her family eventually attended the graduation where the prayers were recited.

Thereafter, the case was submitted to the District Court on stipulated facts. The court held that the practice of utilizing prayers in the context of public school graduations violated the three-part Establishment Clause test enunciated in *Lemon v. Kurtzman*, 403 U.S. 602 (1971). Under the *Lemon* test, in order "to satisfy the Establishment Clause, a governmental practice must (1) reflect a clearly secular purpose; (2) have a primary effect that neither advances nor inhibits religion; and (3) avoid excessive government entanglement with religion." *Weisman*, 112 S. Ct. at 2654 (citing *Committee for Public Education & Religious Liberty v. Nyquist*, 413 U.S. 756, 773 (1973)). Applying this test, the district court enjoined the Providence School Committee from continuing to employ this practice. *Id.* Specifically, the school district violated the second prong of the *Lemon* test by creating an atmosphere in which the state identified with a religion. *Id.*

The school officials appealed to the United States Court of Appeals for the First Circuit which agreed with the holding and rationale of the district court. *Id.* The United States Supreme Court granted certiorari to address the issue of whether the use of invocations and benedictions at a public school graduation violated the Establishment Clause of the First Amendment to the Constitution.

The Court began its analysis by emphasizing that even though attendance at public school graduation is voluntary, "attendance and participation [which may include] state-sponsored religious activity are in a fair and real sense obligatory . . ." *Id.* at 2655. The Court explicitly refused the invitation to reconsider its decision in *Lemon*, because the government involvement with the invocation and benediction at the public school graduation was "pervasive, to the point of creating a state-sponsored and state directed religious exercise in a public school." *Id.* The Court noted that the school principal's involvement with the composition of the prayers and the choice of a rabbi to perform the prayers was akin to the State deciding by statute that an invocation and benediction should be given. *Id.* at 2655. Along similar lines, the court reasoned that by providing the rabbi with a copy of the Guidelines for Civic Occasions, the principal ostensibly "directed and controlled the content of the prayer." *Id.* at 2656. The Court asserted that it was inappropriate for government to compose or provide official prayers for recitation at an event in part sponsored by the government. *Id.* at 2656 (citing *Engel v. Vitale*, 370 U.S. 421, 425 (1962)).

The Court next turned its analysis to the issue of coercive pressure among students in elementary and secondary public schools and the need to protect

"their freedom of conscience." *Id.* at 2658 (citing *Abington School District v. Schempp*, 374 U.S. 203, 307 (1963) (Goldberg, J., concurring)). Apparently, the Court feared that non-believers could construe the graduation prayers to signify the school's, and consequently the State's, endorsement of "a religious orthodoxy." *Id.* The Court noted that prayer exercised in public schools carried the risk of indirect coercion. *Id.*

Finally, the Court distinguished its decision in *Marsh v. Chambers*, 463 U.S. 783 (1983), where it upheld the constitutionality of the Nebraska legislature's practice of opening each of its legislative sessions with a prayer offered by a chaplain who was paid with public funds. The Court noted that inherent differences exist between the public schools and state legislatures. *Id.* Namely, the legislative session pertained to adults who were free to enter and leave, whereas a high school graduation involves young students who may feel pressure to conform. *Id.* at 2660-61.

In dissent, Justice Scalia emphasized that "the Establishment Clause must be construed in light of the 'governmental policies of accommodation, acknowledgement, and support for religion [that] are an accepted part of our political and cultural heritage.'" *Id.* at 2678 (Scalia, J., dissenting). Scalia believed the majority's opinion ignored the long standing traditions of benedictions and invocations at public school graduations. *Id.* at 2679. He opined that the Court had created a psychological coercion test capable of being manipulated. *Id.* at 2679. In essence, Scalia chided the majority for replacing the *Lemon* test with a psycho-coercion test which has no roots or traditions in the American system. *Id.* at 2685

In *Weisman*, the Court declared the practice of clergy performing invocations and benedictions at public school graduations unconstitutional within the meaning of the Establishment Clause of the First Amendment. The Court's opinion reinforced its commitment to protect public school children from the possibility of religious coercion by the State. Moreover, the decision sends the message that the Court will not tolerate even the slightest government endorsement of any religion where young adults or children are involved.

- David E. Canter

***Medical Waste Assoc. v. Maryland Waste Coalition*: MARYLAND ENVIRONMENTAL STANDING ACT DOES NOT APPLY TO AN ORGANIZATION THAT SEEKS JUDICIAL REVIEW OF AN ADMINISTRATIVE PROCEDURE.**

In *Medical Waste Assoc. v. Maryland Waste Coalition*, 327 Md. 596, 612 A.2d 241 (1992), the Court of Appeals of Maryland had its first opportunity to interpret the Maryland Environmental Standing Act ("MESA"). The court held that MESA does not grant environmental groups standing to participate in judicial review of administrative decisions. The court, however, did hold that the decision to issue a permit for a medical waste incinerator was subject to judicial review.

Maryland Waste Coalition ("Coalition") is an incorporated volunteer organization whose purpose is to protect Maryland's environment. The Coalition objected to a refuse disposal permit and an air quality control permit authorizing construction of a medical waste incinerator which were issued to Medical Waste Associates by the Maryland Department of the Environment. Public hearings were held regarding the permits, at which the Coalition testified.

After the permits were issued, the Coalition filed a complaint in the Circuit Court for Baltimore City against Medical Waste Associates and the Department of the Environment seeking an injunction under section 9-263 of the Environment Article. Section 9-263 states that an action may be commenced by "any county, municipality . . . institution, or person" for judicial review of any "order, rule or regulation" issued by the Secretary of the Department of the Environment. *Medical Waste Assoc.*, 327 Md. at 599 n.1, 612 A.2d at 243 n.1 (citing Md. Envir. Code Ann § 9-263 (1991 Cum.Supp.)). Medical Waste Associates and the Department of the Environment both filed motions to dismiss. They contended that the Coalition lacked subject matter jurisdiction because there was no "order" for section 9-263 review, and lacked standing because the Coalition had no interest separate and distinct from its members. The Coalition filed another complaint against the Department of the Environment, under the Administrative Procedure Act in the State Government Article, section 10-215, Maryland Code Annotated. ("APA"). Under the APA, a "party who is aggrieved by a final decision in a contested case is entitled to judicial review of the decision." *Medical Waste Assoc.*, 327 Md. at 608, 612 A.2d at 247. Medical Waste Associates filed a motion to intervene and, along with the Department of the Environment, filed a motion to dismiss. The defendants contended that the administrative proceedings prior to the issuance of the two permits were legislative, and thus were not contested cases under the APA.

The circuit court granted the motions to dismiss and the Coalition appealed both decisions to the Court of Special Appeals of Maryland. In addition to its previous arguments, the Coalition invoked MESA as an indication of the General Assembly's intent to give standing to groups raising environmental issues. The case was remanded to the Circuit Court for Baltimore City for further proceedings on the action for judicial review under MESA.

The Court of Appeals of Maryland granted the petitions and cross petitions for certiorari, to review whether the issuance of permits was subject to judicial review under either section 9-263 or the APA, and whether the Coa-