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Recent Developments: 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

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"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-

lition had standing to pursue a judicial review action under the common law or MESA. The court first examined the circuit court's holding that there could be no judicial review of the permits under section 9-263. *Id.* at 606, 612 A.2d at 246. The trial judge reasoned that the issuance of permits did not qualify as an "order" under section 9-263. *Id.* at 603, 612 A.2d at 244. The court of appeals noted, however, that the refuse disposal permit was issued pursuant to a decision by the Department of the Environment. *Id.* at 607, 612 A.2d at 246. They determined that this decision was synonymous with an "order," and was subject to judicial review under section 9-263 of the Environment Article. *Id.*

The court next turned to the issue of whether the permits were "contested cases," and therefore also subject to judicial review under the APA. The State Government Article, section 10-201(c), Maryland Code Annotated, defines a contested case as "a proceeding . . . that is required by law to be determined only after an opportunity for an agency hearing." *Id.* The court found that the State requires a hearing prior to the approval of a construction permit. *Id.* at 609, 612 A.2d at 247 (citing *Sugarloaf v. Waste Disposal*, 323 Md. 641, 656-57, 594 A.2d 1115, 1122 (1991)). Thus, the court held that the hearings held prior to the issuance of the permits fell within the definition of a contested case under the APA. *Id.*

The court recognized that although the permits themselves were subject to judicial review under both section 9-263 and the APA, the Coalition had to meet standing requirements in order to challenge the issuance of the permits. *Id.* at 611, 612 A.2d at 248. The court stated that in order for an organization to have standing, it must have a "property interest of its own . . . separate and distinct from that of its individual members." *Id.* at 612-13, 612 A.2d at 249 (quoting *Citizens Planning and Housing Ass'n v. County Executive*, 273 Md. 333, 345, 329 A.2d 681, 687-88 (1974)). The Coalition failed to show

that it possessed a separate and distinct property interest. *Id.* at 614, 612 A.2d at 250. In addition, because it brought an action to remedy a "public wrong," the court found that the Coalition failed to show it had suffered "damage from such wrong differing in character and kind from that suffered by the general public." *Id.* at 612-13, 612 A.2d at 249 (citing *Rogers v. Maryland-National Capital Park and Planning Comm'n*, 253 Md. 687, 691, 253 A.2d 713, 715 (1969)). The court of appeals thus held that the Coalition lacked standing under Maryland common law to bring an action for judicial review. *Id.* at 614, 612 A.2d at 250.

The court of appeals next determined whether the Coalition had standing under MESA. *Id.* at 617, 612 A.2d at 252. MESA changed the Maryland common law requirements for standing in certain environmental proceedings. Section 1-503(a)(3) relaxed the standing requirements for an organization regardless of whether or not it had suffered a property damage which was independent of its individual members. In addition, the organization did not need to show that it suffered a harm which differed from that of the general public. *Id.* at 615, 612 A.2d at 250-51.

The court noted that the relaxed standing requirements of MESA applied specifically to actions for "mandamus or equitable relief . . . against any officer or agency of the State . . . for failure . . . to perform a nondiscretionary ministerial duty imposed upon them . . . or for failure to enforce an applicable environmental quality standard." *Id.* at 615-16 (quoting MESA, Md. Nat. Res. Code Ann. § 1-503(b) (1989)). The court also determined that MESA did not grant relief to a party if the aggrieved activity complied with a current, lawful permit "issued by an agency of the United States, [or] the State." *Id.* at 617, 612 A.2d at 251. Because this case involved judicial review of the issuance of two permits which did not fall within the express provisions of MESA, the Coalition was not granted stand-

ing. The court held that MESA did not broaden standing requirements generally, but only relaxed standing requirements for specific provisions. *Id.* at 618, 612 A.2d at 252. The court emphasized that MESA does not "grant organizations . . . standing to participate in judicial review of an administrative decision." *Id.* at 622, 612 A.2d at 254.

Medical Waste Associates is significant because the Court of Appeals of Maryland interpreted MESA strictly. The court reviewed the legislative history of MESA, and held that the intent of the General Assembly was to relax the standing requirements only for specific actions. In all other cases, an organization must invoke standing under either Maryland common law or another statute. This decision may have a serious impact on Maryland environmental issues. If an environmental organization does not meet the APA requirements for standing, and does not fall within the narrow limits of MESA, the group may not bring an action for judicial review of permits issued by the Department of the Environment.

- Bonnie S. Laakso

***Reddick v. State*: SENTENCING JUDGE'S OFFER TO SUSPEND FIVE YEARS IMPRISONMENT UPON PAYMENT OF RESTITUTION TO VICTIM'S FAMILY VIOLATED INDIGENT DEFENDANT'S EQUAL PROTECTION RIGHTS.**

In *Reddick v. State*, 327 Md. 270, 608 A.2d 1246 (1992), the Court of Appeals of Maryland held that a sentencing judge's offer to suspend part of an indigent defendant's sentence upon payment of the victim's medical and funeral expenses was illegal because it violated the defendant's rights to equal protection under the Fourteenth Amendment to the United States Constitution. The court's holding effectively limits the power of judges to encourage payment of restitution when imposing criminal sentences.