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Recent Developments: Newark Morning Ledger Co. v. United States: An Intangible Asset with an Ascertainable Value and Limited Useful Life Is Depreciable

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Lamb's Chapel v. Center Moriches Union Free School District

PROHIBITING RELIGIOUS GROUPS ACCESS TO A NONPUBLIC FORUM TO DISCUSS TOPICS WHICH ARE OTHERWISE PERMISSIBLE IN THE FORUM CONSTITUTES VIEWPOINT DISCRIMINATION AND VIOLATES THE FIRST AMENDMENT FREE SPEECH CLAUSE.

Denying religious groups access to public school facilities which are open to other social and civic groups to discuss topics which are not otherwise prohibited in the forum, constitutes viewpoint discrimination and is therefore violative of the First Amendment Free Speech Clause. *Lamb's Chapel v. Center Moriches Union Free School District*, 113 S. Ct. 2141 (1993). The Court, applying the three-pronged test established in *Lemon v. Kurtzman*, 403 U.S. 603 (1971), also rejected the contention that the use of school premises by an evangelical church would violate the Establishment Clause.

N.Y. Educ. Law § 414 (McKinney 1988 & Supp. 1993) authorizes local school districts to enact rules permitting the after-hours use of school property for ten specific purposes. Pursuant to this statute, the Center Moriches School District ("District") promulgated regulations which allow the use of the District's school facilities by social, civic, and recreational groups as well as political organizations. The District additionally passed a rule which prohibits the use of school premises by any group for religious purposes.

The Lamb's Chapel, an evangelical church, sought permission to use the District's facilities after school hours to show a film depicting family values from a Christian perspective. The District denied Lamb's Chapel's request because the activity was "church related." *Lamb's Chapel*, 113 S.Ct. at 2145.

The Lamb's Chapel brought suit in the United States District Court for the Eastern District of New York arguing that the District's denial of permission to use the facility violated the Freedom of Speech Clause of the United States Constitution. The district court granted the District's motion for summary judgment. Characterizing the District's facilities as a "limited public forum," the court explained that the denial of access to the school facilities was not a violation of the Free Speech Clause because the District's facilities were unavailable to religious groups in general. *Id.* Consequently, the trial court found that, being viewpoint neutral, the restriction was constitutionally permissible. The

district court also rejected Lamb's Chapel's argument that the District had opened its property to such a wide variety of communicative purposes that the school had been transformed into a traditional public forum, thereby requiring any limitations on speech to be narrowly tailored and justified by a compelling state interest. *Id.* The United States Court of Appeals for the Second Circuit affirmed the decision of the district court and the United States Supreme Court granted certiorari.

The primary issue before the Court was whether "it violates the Free Speech Clause . . . to deny a church access to school premises to exhibit for public viewing and for assertedly religious purposes, a film dealing with family and child-rearing issues faced by parents today." *Id.* at 2144. Although it questioned the School's status for First Amendment analysis, the Court proceeded on the assumption that the school's premises was a limited public forum. *Id.* at 2147. The Court declined to address the issue of whether the District had opened its property to such a wide variety of communicative purposes that the property had been, in effect, converted into a traditional public forum. Although the Court found some merit to this argument because of the "close question" as to whether the District had in fact already opened its property for religious purposes, the Court reversed on other grounds. *Id.*

As a nonpublic forum, "[c]ontrol over access [could] be based on subject matter and speaker identity so long as the distinctions drawn are reasonable in light of the purposes served by the forum and are viewpoint neutral." *Id.* (quoting *Cornelius v. NAACP Legal Defense and Educ. Fund, Inc.*, 473 U.S. 788, 806 (1985)). Since the subject matter of the film (family values) was a permissible subject in the forum under the established rules, the sole reason that the Lamb's Chapel was excluded from the premises was that the film depicted family values from a religious perspective. *Id.* The Court determined that this constituted viewpoint discrimination, thus violat-

ing the Free Speech Clause of the First Amendment.

The Court next sought to determine whether allowing the Lamb's Chapel access to school premises would violate the Establishment Clause of the First Amendment. Applying the three-pronged test set forth in *Lemon v. Kurtzman*, 403 U.S. 603 (1971), the Court determined that allowing Lamb's Chapel to use the school premises to exhibit their film would not be an Establishment Clause violation because "the challenged governmental action [had] a secular purpose, [did] not have the . . . primary effect of advancing religion, and [did] not foster an excessive entanglement with religion." *Lamb's Chapel*, 113 S. Ct. at 2148. The Court emphasized that "[t]he showing of the film would not have been during school hours, would not have been sponsored by the school, and would have been open to the public, not just church members." *Id.* Based on these factors, the Court felt that there would be

little danger that the District would be perceived as "endorsing religion" and that any benefit to religion "would have been no more than incidental." *Id.*

Although two separate concurring opinions were written, there was unanimous agreement on the majority's analysis of the Free Speech issue. As for the majority's analysis of the Establishment Clause issue, Justice Scalia, joined by Justice Thomas, found the use of the *Lemon* test unnecessary. According to Justice Scalia, giving the Lamb's Chapel access to the District's facilities did not violate the Establishment Clause because it did not "signify state or local embrace of a particular religious sect." *Lamb's Chapel*, 113 S. Ct. at 2151. Justice Scalia criticized *Lemon* for its inconsistent application and also disagreed with the majority's "endorsing religion" language arguing that the "Constitution . . . itself gives 'religion in general' preferential treatment . . ." and "indifference to [reli-

gion] is not what [the case law] demand[s]." *Id.* at 2150. Justice Kennedy agreed with Justice Scalia's criticism of *Lemon* and disagreed with the majority's "endorsing religion" language as being unsupported by precedent. *Id.* at 2149.

With its decision in *Lamb's Chapel*, the Supreme Court blurred the line separating church and state by providing a loophole for religious groups seeking to use state subsidized facilities. The Court focused on the type of forum and the topic which is being presented rather than the type of group seeking access to the forum. In the wake of *Lamb's Chapel*, once public school facilities are open to social or civic groups to speak on certain subjects, religious groups must also be given an opportunity to present their viewpoint. Because virtually any topic can be presented from a religious perspective, religious groups will now have much greater access to public facilities.

-Nicholas C. DeMatteis Jr.

