

BILL MONTROSS,

Appellant

v.

MONTGOMERY COUNTY
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 02-47

OPINION

This is an appeal of the decision of the Superintendent of the Montgomery County Public School System (“MCPS”) to broadcast a live telecast of the Interfaith Community Prayer Vigil sponsored by the Montgomery County Government and the Community of Ministries of Montgomery County in the wake of the September 11, 2001 terrorist attacks on the United States. Appellant maintains that the broadcast violated the Establishment Clause of the U.S. Constitution as well as the local board’s own policies. The local board has submitted a Motion to Dismiss, or, in the Alternative, Motion for Summary Affirmance maintaining that Appellant lacks standing; alternatively that the broadcast did not violate the Constitution. Appellant has filed a Reply in opposition to the Motion and requests that the MCPS superintendent issue a statement expressing regret for his actions in this matter.

FACTUAL BACKGROUND

Appellant is a parent of a Westland Middle School student in Montgomery County Public Schools. In the aftermath of September 11th, President Bush declared a National Day of Prayer and Remembrance for September 14, 2001. In response, Governor Glendening declared that the State would observe a National Period of Silence for five minutes which would be followed by ringing of bells throughout the State for one minute beginning at 12:00 Noon on September 14, 2001.

On September 13, 2001, the MCPS Director of Communications sent a message to all principals within MCPS, stating that: “the school system will be participating in a national and statewide event beginning just before 12:00 Noon on Friday, September 14.” According to the message, all schools and offices were requested to view a live telecast of a message to all students and staff from Dr. Jerry D. Weast, Superintendent of Schools, followed by the Interfaith Community Prayer Vigil. Principals were asked to “explain the importance of this event to their students and staff and to encourage the viewing of the live telecast as a classroom or office activity, especially the superintendent’s opening remarks to the school system.” (Message from Brian Porter, 9/13/01). On September 14, MCPS observed the period of silence and the ringing of bells. In addition, MCPS broadcast to the schools a live telecast of the Interfaith Community Prayer Vigil. The program lasted one hour. The first half consisted of speeches by the County Executive and other elected and appointed officials who spoke of the nation’s loss and thanked rescuers. The second half consisted of speeches and prayers of thanksgiving and hope by various community religious leaders. (Videotape, 9/14/01).

On September 20, 2001, Appellant wrote a letter of complaint to Dr. Jerry Weast, MCPS Superintendent, alleging that the viewing of the community event violated the Establishment Clause of the U.S. Constitution and asking that the Superintendent issue a statement, an example of which was offered by Appellant, to school administrators stating that the school system did not take into account constitutional concerns and that it would not again suggest viewing such an event. (Letter of Complaint, 9/20/01). The superintendent responded with an explanation of the decision to participate in the community event, including the fact that “at least 113 students and staff [had] reported parents, spouses, siblings, cousins, and other relatives who were declared dead or missing as a result of the terrorist attacks.” (Letter of Response, 10/22/01).

Appellant again wrote the superintendent on November 16, 2001, asking the superintendent to issue a formal decision under §4-205(c) of the Education Article. The superintendent did not respond. On February 1, 2002, Appellant wrote the County Board President, appealing the Superintendent’s lack of decision. The Superintendent filed a Reply to the appeal on February 15, 2002. Appellant responded to the Superintendent’s Reply on February 27, 2002. The local board issued its decision and order on April 22, 2002, finding no constitutional violation. (County Board’s Decision and Order, 4/22/02).¹ This appeal to the State Board followed.

ANALYSIS

The standard of review that the State Board applies in reviewing a local board decision is that the State Board will not substitute its judgment for that of the local board unless that decision is shown to be arbitrary, unreasonable or illegal. *See, e.g., Breads v. Board of Education of Montgomery County*, 7 Op. MSBE 507 (1997).

1. Standing

The local board contends that the Appellant failed to make any factual showing that supports his standing to bring this suit, citing *Adams, et al. v. Montgomery County Board of Education*, 3 MSBE 143 (1983). However, it is clear from the documents in the record that Appellant is the parent of a middle school child in MCPS and thus has standing.

2. Constitutional Issues

The local board concluded that under the test set forth by the Supreme Court in *Lemon v. Kurtzman*, 403 U.S. 602 (1971), the broadcast of the Interfaith Prayer Service did not violate the Establishment Clause of the U.S. Constitution. (Local board opinion, p. 2). Under the *Lemon* test, a governmental practice or action is constitutional if it (1) has a secular purpose; (2) has the principal or primary effect of neither advancing nor inhibiting religion; and (3) does not foster an

¹Seven members of the board signed the opinion. The board president issued a separate concurring opinion indicating that in hindsight the broadcasting of the event could have been presented in a more appropriate manner.

extensive entanglement with religion. *Id.* at 612-13. The local board found that:

[I]n examining the issues related to the viewing of the broadcast of the community event that took place on September 14, 2001, it is essential to examine fully and understand the context in which it took place. On September 11, 2001, this nation was the victim of what is likely the worst assault it has experienced in many decades. This tragedy touched the lives of almost every person in the United States, including the students attending Montgomery County Public Schools. It was in this context that the request was made for the students to view the broadcast of the community event. As the superintendent has relayed to Mr. Montross, the purpose of the request was to allow students to participate in the community event and to allow them to express sorrow for the loss that everyone endured.

Keeping in mind the context in which the viewing of the community event took place, it is plainly evident that the purpose of the viewing was not to promote or endorse religion.

(Local board opinion, p. 2). Quoting from *Lynch v. Donnelley*, 465 U.S. 668, 673 (1984)², the local board noted that “[n]o significant segment of our society and no institution within it can exist in a vacuum or in total isolation from all other parts, much less from government . . . [n]or does the Constitution require complete separation of church and state[.]” (Local board decision p. 2). Based upon the principles in *Lemon* and *Lynch*, the local board found that the purpose of the event was secular in nature, *i.e.*, to heal the community, that it was not to endorse religion, and that the one time event did not foster excessive entanglement with religion.

Appellant contends that the local board misconstrues the event as secular. He notes that the event was repeatedly referred to as either a “prayer service” or “prayer vigil”. (Reply to Motion for Summary Affirmance, p. 2). He has attached transcripts of various speeches given by the various community religious leaders and contends that “[T]hese were not statements of hope and thanksgiving. They were prayers and no verbal alchemy can magically transform them into anything else.” (Reply, p. 5). Appellant cites to *Lee v. Weisman*, 505 U.S. 577 (1992), where the Supreme Court held that clergy-led invocations and benedictions at middle and high school graduation ceremonies violated the Establishment Clause. The Court found that “at a minimum, the Constitution guarantees that government may not coerce anyone to support or participate in religion or its exercise, or otherwise act in any way which establishes a state religion or religious faith or tends to do so”. *Id.* at 587. Because the school was the sponsor of the graduation, “the graduation prayers bore the imprint of the State and thus put school-age children who objected in an untenable position.” *Id.* at 590. Noting that school-age children could be subtly coerced into participating or at least into showing respect during the prayer, the Court concluded that these

²The Supreme Court ruled in *Lynch* by a 5-4 margin that a forty-year practice of having a nativity scene in a park owned by a nonprofit organization did not impermissibly advance religion and did not create excessive entanglement with religion.

children should not be placed in a position of either participating in a religious ceremony or protesting it. *Id.* at 593.

Even under the *Lemon* test, Appellant contends that the broadcast is unconstitutional. In determining whether the event had a secular purpose, the local board examined the range of activities -- the five minutes of silence, the ringing of bells, and all of the speeches and prayers -- and concluded that prayers were just a part of the event and that the event overall had a secular purpose. (Local board opinion, p. 2). Appellant counters that the alleged religious activity must be examined and must have a secular purpose. In support of this contention Appellant cites *Santa Fe Ind. Sch. Dist. v. Doe*, 530 U.S. 290 (2000) in which the Supreme Court struck down a school's policy of permitting student-led "invocations" before high school football games. Citing *Lee*, the Court in *Santa Fe* found that "the delivery of a pregame prayer has the improper effect of coercing those present to participate in an act of religious worship". *Id.* at 312. Appellant notes that although in *Santa Fe*, the football game had a secular purpose, the Supreme Court ruled that the prayer before the game did not. Using that reasoning, Appellant argues that even if the community event had a secular purpose, *i.e.*, healing, the prayers did not and thus, the first prong of the *Lemon* test was not fulfilled.

The second prong of the *Lemon* test requires that the activity neither advance nor inhibit religion. As previously noted, the board found that the principal purpose of the event was not prayer but healing and therefore did not advance religion. Appellant argues that the purpose of the event pertains to the first prong of the test. He contends that the second prong asks whether "the challenged governmental action is sufficiently likely to be perceived by adherents of the controlling dominations as an endorsement, and by nonadherents as disapproval, of their individual religious choices." *Allegheny v. American Civil Liberties Union*, 492 U.S. 573, 623 (1989). Appellant contends that thirty minutes of prayer broadcast into the schools at the direction of the superintendent in a service that was introduced by the superintendent and in which active participation in prayers was solicited from the audience, is highly likely to be perceived as an endorsement by adherents and as advancing religious activity by nonadherents.

The third prong requires that the activity "not foster an excessive entanglement with religion". In *Lemon*, the Supreme Court explained that "in order to determine whether the government entanglement with religion is excessive, we must examine the character and purposes of the institutions that are benefitted, the nature of the aid that the State provides, and the resulting relationship between the government and the religious authority." *Lemon* at 615. The board argues that no religious institutions were benefitted, the school system did not provide any aid to any religion, and the schools did not enter into any "relationship" with any religion. Appellant argues that "the Superintendent introduced a prayer service, participated in the prayer service, had the prayer service broadcast (and rebroadcast) over the system's cable channel, "requested" that all schools and offices show the broadcast to all students and staff, "encouraged" its viewing, and called it a prayer service on numerous occasions. . ." (Reply, p. 13). Those actions taken together represent excessive entanglement.

CONCLUSION

This is a very difficult matter. In hindsight, we believe the MCPS memorial service could have been presented in a totally nonsectarian manner. However, the broadcast took place a mere three days after one of the most horrific events in recent memory. The broadcast was a one time occurrence that we hope will never again be necessary. We concur with the perspective of the board president that the event has already occurred and cannot be erased:

The decision of the superintendent of schools to request that students view a broadcast of the community event has already been carried out. Even if the Board had concluded that such a request was improper, the superintendent's decision could not now effectively be reversed and there is no remedy that the Board could now afford to Mr. Montross. (*See* local board decision).

Nonetheless, we remind the local board that Constitutional principles regarding the establishment and free exercise of religion must be strictly followed. *See Lee v. Weisman* and *Santa Fe Ind. Sch. Dist. v. Doe* cited above.

For the reasons described above, we dismiss the appeal as moot.

Marilyn D. Maultsby
President

Reginald L. Dunn
Vice President

JoAnn T. Bell

Philip S. Benzil

Walter S. Levin, Esquire

Karabelle Pizzigati

Walter Sondheim, Jr.

John L. Wisthoff

DISSENT

Because we do not find that Constitutional principles regarding the establishment and free exercise of religion were violated, we would affirm the decision of the Board of Education of Montgomery County.

Dunbar Brooks

Clarence A. Hawkins

Edward L. Root

September 25, 2002