You Make the Call. . .

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SUPREME COURT HOLDS THAT SCHOOL PRAYER POLICY VIOLATES FIRST AMENDMENT

***Santa Fe Indep. Sch. Dist. v. Jane Doe*, 120 S.Ct. 2266 (June 19, 2000)**

On June 19, 2000, the Supreme Court of the United States held that a Santa Fe Independent School District's (District) policy permitting "student-led, student-initiated" prayer before high school football games violated the Establishment Clause of the First Amendment.

Before 1995, District policy required the Santa Fe High School student council chaplain to deliver a prayer over the public address system before each varsity football game. This policy was challenged as a violation of the First Amendment by several students. While legal action was pending, the District amended its policy to permit, but not require, a student-led prayer before each home game. The amended policy authorized student elections "to determine whether 'invocations' should be delivered," Id. at 13, and purported to "'solemnize the [football game], to promote good sportsmanship and student safety, and to establish the appropriate environment for the competition.'" Id. at 15.

To comply with federal constitutional law constraints, the district court modified the District's amended policy to permit "nonsectarian, nonproselytizing prayer." Id. at 9. On appeal, the Fifth Circuit held that the modified policy still violated the First Amendment.

The Supreme Court focused on the issue of "'whether petitioner's policy permitting student-led, student-initiated prayer at football games violates the Establishment Clause.'" Id. at 20. The Court's holding was guided by the principles endorsed in *Lee v. Weisman*, 505 U.S. 577 (1992), which prohibit the government from coercing anyone to participate in or support the exercise of religion, or act in a way that would establish a state religion or religious faith.

The District argued that these principles were inapplicable because the message delivered by the chosen student was private speech. In addition, the students chose whether the pregame messages were delivered, thereby eliminating the possibility of government coercion.

The Court, however, concluded that the messages were public in character because they were delivered at government- sponsored events on government property, and members of the audience would perceive the given message as a reflection of the student body as a whole. Moreover, in the past, such invocations customarily had a religious focus, and the District never held a new election in accordance with the revised policy, indicating an intent to preserve prayer before football games. In addition, through its process permitting selection of students to give an invocation, the District "failed to divorce itself from the religious content in the invocation." Id. at 26. The Court held that this election mechanism "encourage[d] divisiveness along religious lines in a public school setting" because, although the choice of the speaker was ultimately up to the students, the decision to hold the election itself was that of the District, or the state.

For these reasons, the Supreme Court affirmed the Fifth Circuit's judgment.

SEVENTH CIRCUIT UPHOLDS SUSPICIONLESS DRUG TESTING FOR STUDENTS PARTICIPATING IN EXTRACURRICULAR ACTIVITIES AND STUDENT DRIVERS

***Joy v. Penn-Harris-Madison School Corporation*, 212 F.3d 1052 (7th Cir. May 12, 2000).**

On May 12, 2000, the United States Court of Appeals for the Seventh Circuit affirmed an Indiana district court's ruling that students participating in extracurricular activities or driving to school may be subject to random suspicionless testing for drugs and alcohol.

Tianna Joy and four other plaintiffs brought suit against the Penn-Harris-Madison School Corporation (PHM) alleging that the drug testing policy passed by the school board in 1998 violated their Fourth Amendment rights against unreasonable seizures and searches.

As the legal justification for implementing its drug testing policy, PHM relied on *Todd v. Rush County Schools*, 133 F.3d 984 (7th Cir. 1997). In Todd, the school presented evidence that drug use was a problem that was increasing within the school district, and instituted a random suspicionless drug testing policy that included testing students involved in any school extracurricular activity. The Todd court noted that there are many serious health risks associated with drug abuse, and that students in any extracurricular activity act as role models for the general student body. Relying on *Vernonia School District 47J v. Acton*, 515 U.S. 646 (1995), Todd held that these concerns established a "special need" that justifies the intrusiveness of the drug testing policy. Observing that student participation in extracurricular activities is merely a privilege, and is voluntary, the court upheld the challenged drug testing program.

Relying on Todd, PHM noted that any test results would be kept confidential, and only be shared with the student, a parent or guardian, and school staff that have a "need to know." However, PHM presented no evidence of a pervasive drug problem at the school, and did not prove that any correlation existed between drug use and students involvement in extracurricular activities. In fact, PHM admitted that its ultimate goal was to prevent drug use by testing all students on a random, suspicionless basis.

Applying *Todd*, the Seventh Circuit noted that PHM had failed to adequately show a "special need" justifying the testing of students. In fact, PHM did not attempt to prove any correlation between drug use and engaging in extracurricular activities. Nonetheless, the court determined that it was bound by principles of stare decisis to follow its ruling in *Todd*, which upheld a similar policy, and so it ruled that PHM's policy also is constitutional.

EDITOR'S NOTE: The court's decision in this case is odd considering that the facts in *Todd*were distinguishable from the facts in Joy, as PHM did not demonstrate a similar special need which was so important in *Todd*. However, the court did not explain its reliance on principles of stare decisis it merely followed its ruling in Todd and did not acknowledge the factual differences between the cases.

FIFTH CIRCUIT AFFIRMS FINDING OF TITLE IX LIABILITY

***Pederson v. LSU*, 213 F.3d 858 (5th Cir. June 1, 2000).**

On June 1, 2000, the United States Court of Appeals for the Fifth Circuit revisited Beth Pederson's claim that Louisiana State University (LSU) violated Title IX. The Fifth Circuit's original opinion was reported in Volume 2, Issue 4.

Pederson petitioned for an en banc rehearing that was denied in part, and granted in part to the extent that the court vacated its original opinion and issued a new opinion that is virtually identical. In its revised opinion, the court again applied the proportionality test in determining whether LSU had violated Title IX. Using this test, the Fifth Circuit held that LSU was in violation of Title IX because the student population at LSU was 49% female, while athletic participation was only 29% female. The court again found that LSU's differential treatment of women was sufficient to establish an intentional violation of Title IX.

STUDENT-ATHLETE NOT EMPLOYEE OF UNIVERSITY FOR WORKERS COMPENSATION PURPOSES

***Waldrep v. Texas Employers Insurance Assoc*, 21 S.W.3d 692 (C*t.App.Tex. June 15, 2000*).**

On June 15, 2000, the Third District Court of Appeals of Texas affirmed a state district court's ruling that Texas Christian University (TCU) was not student-athlete Kent Waldrep's employer and was not required to pay him workers compensation benefits for injuries suffered during a football game.

Because of an injury suffered in an October 1974 football game between TCU and the University of Alabama, Kent Waldrep was paralyzed below the neck. Waldrep alleged that by signing a letter of intent and receiving a football scholarship, he was an employee of TCU entitled to receive workers compensation benefits for his injury. In response, TCU argued there was no

contract of employment and it lacked the ability to control the "means or details of [Waldrep's] work;" therefore, TCU was not his employer. The district court agreed, holding that the school did not employ Waldrep and so was not liable for workers compensation payments.

On review, the Texas appellate court analyzed the factors establishing an employment relationship: "(1) the right to hire and discharge the worker, (2) the carrying of the worker on social security and income tax withholding records, (3) the providing of equipment, (4) the responsibility to pay wages, and (5) the right to control the specifics of a worker's performance." Id. at 20. The court noted that Waldrep could have quit the team without losing his financial aid package, did not pay any taxes based on his financial aid, and was not placed on TCU's payroll. Since none of the factors evidencing an employment relationship were met, the appellate court affirmed the district court's ruling that Waldrep was not an employee of TCU.

COURT ACCEPTS MAJOR LEAGUE SOCCER'S SINGLE ENTITY DEFENSE IN PLAYERS' ANTITRUST SUIT

***Fraser v. Major League Soccer*, 97 F.Supp.2d 130 (D. Mass. April 19, 2000).**

On April 19, 2000, the United States District Court for the District of Massachusetts held that Major League Soccer's (MLS) structure and policies on player movement do not violate United States antitrust laws.

MLS was purposely designed to be a single entity to prevent its player labor relations policies from being challenged under Section One of the Sherman Act.. Representatives of the league's clubs serve on a management committee that oversees the business and affairs of MLS. These team operator-investors do not directly hire players for their teams, instead, players sign contracts with the league and are then allocated to the various teams. Therefore, players do not benefit from any competition among teams for their services which might increase their salaries.

Iain Fraser and seven other soccer players sued MLS and alleged that the league's player allocation policy restrained trade and eliminated competition for players' services among teams. They also claimed that MLS restrained competition for players' services worldwide by charging "anticompetitive 'transfer fees[.]'" Id. at 131. Transfer fees are the dollar amounts paid by a team for the right to sign a player.

MLS argued that its previously structured operation did not violate the federal antitrust laws because it is a single entity. It also contended that, since there had been no first-division professional soccer league in the United States, the creation of MLS actually increased competition from "zero to one."

The court initially noted that the structure of MLS reduced competition for players' services when compared to the "traditional form" of sports leagues, in which clubs individually select their players. However, MLS and its clubs could not conspire to restrain trade because there are no divergent economic interests within the MLS structure. The court also held that competition

could be decreased since there was no existing market for first-division soccer players. Thus, the court found that MLS did not violate U.S. antitrust laws and granted its motion for summary judgment.

COURT RULES ARIZONA CARDINALS DID NOT VIOLATE NFL COLLECTIVE BARGAINING AGREEMENT DURING PLAYER CONTRACT NEGOTIATIONS

***White v. National Football League*, 88 F.Supp. 993 (D. Minn. March 31, 2000).**

On March 31, 2000, the United States District Court for the District of Minnesota held that the Arizona Cardinals did not violate the National Football League's (NFL) Collective Bargaining Agreement (CBA) when the club assured player Rob Moore of its intent to negotiate in good faith regarding a possible multi-year contract.

In February 1999, the Cardinals classified Moore as its "franchise player" for the 1999 season. The team offered him the required terms for a one-year contract - the greater of either the five largest salaries for players at Moore's position or a 120% raise over his previous salary. After making the offer, the team continued to negotiate with Moore's agent, Gary Wichard, for a multi-year contract. Moore signed a one-year contract after the team assured him that the two parties would continue to work towards a multi-year deal. Two weeks later, he signed a four-year contract with the team. The NFL Player's Association (NFLPA) alleged that the team and Wichard had entered an undisclosed agreement for a multi-year contract at the time Moore signed the one-year contract. This would be a violation of the CBA, and cause the Cardinals to lose its ability to designate another player as its franchise player for the length of Moore's contract.

The Cardinals argued that, while they were close to a multi-year contract, it had not been agreed upon when Moore signed the one-year contract. The team continued to negotiate a possible multi-year contract with Moore, but made no assurances that it would ultimately offer one to him. The club only assured him of its intent to negotiate in good faith.

The Minnesota federal court heard the case after the NFLPA appealed the decision of a special master who agreed with the Cardinals. The court held that no other agreement had been reached when Moore signed the one-year contract. The court found that the Cardinals had only assured Moore that it would continue to negotiate a multi-year contract, which is not a violation of the CBA. As a result, the Cardinals were allowed to use its franchise player designation for another player during the 2000 football season.

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