

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FORDHAM**

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LESLIE FOSTER, :
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 : **DECISION**
 : **and**
 Plaintiff, : **ORDER**
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 v. : **Civ. No. 04-8215**
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 :
 LINCOLN CENTER CITY :
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 Defendant. :
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REIF, District J.

FINDINGS OF FACT

Lincoln Center City (“Lincoln Center” or the “City”) is a medium-sized urban city in the state of Fordham. Approximately 75,000 people reside in Lincoln Center and the City prides itself on its diversity. Many people are attracted to Lincoln Center because of the City’s booming business environment, and the population is thus made up of various religions, cultures, and ethnicities. In the heart of Lincoln Center is Lincoln High School (“Lincoln High”). Like most public schools, Lincoln High is completely funded by the Lincoln Center government. All the teachers and administrators are government employees and all school buildings and property are maintained by the government. The high school includes grades nine through twelve; approximately 1,000 students are in each grade. Like Lincoln Center itself, the population of Lincoln High is extremely diverse. The students come from various cultures, speak different languages, and practice many religions. Some of the main religions represented at Lincoln High include Christianity, Judaism, and Islam.

In October 2003, Lincoln High celebrated the school's centennial. The school's faculty, administration, and students were very excited about the centennial and had been planning centennial activities since the school year began. The celebration lasted a week and included a variety of activities, speeches, and special events. Some of the centennial activities included a carnival, school dance, casino night, and kickoff football game. While everyone had been looking forward to the planned activities, the students and administrators were most excited about the creation of a new school seal, whose design was the most talked-about centennial activity. Lincoln High had been without a school seal for one hundred years; therefore, the school's administration and faculty decided that the centennial celebration was a perfect time to introduce a school seal. The school seal was scheduled to be presented on the final day of centennial activities. It would then be placed at the entrance to the school, in all school classrooms, and in the gymnasium.

All of the Lincoln High students were anxious to participate in creating the school seal. However, the school's administration decided that it would be most efficient to form a School Seal Committee comprised of four students, each from a different grade. Aaron Todman, captain of the math club and a junior varsity basketball player, was appointed to be the ninth grade representative of the School Seal Committee. Jennifer Weiss, president of the language club and captain of the softball team, was chosen as the tenth grade representative. Lauren Sommer, captain of the cheerleading team and president of the student honor society, was selected as the eleventh grade representative. Finally, Jordan Handlesman, student body president and editor of the school paper, was chosen as the twelfth grade representative. The members of the School Seal Committee were instructed to design and create a seal that represented Lincoln High and its

students. Additionally, the students were told to make a leaflet explaining the design and creation of the seal, to be presented with the seal..

The four students immediately began designing the school seal. As the oldest student on the committee, Jordan reminded the other students that the seal's theme was Lincoln High and that the seal needed to represent the school. After some debate the students agreed on a circular seal divided into three equal sections. (see Appendix II). In the top left section, the committee decided to place the school's name, "Lincoln High School," above a picture of the school. This section also included the school's mascot, the bald eagle. In the top right section, the students chose an outline of Fordham with Lincoln Center City marked by a star; the state flower, the Gerber Daisy; the state bird, the mockingbird; and tall buildings. The four students were happy with the two upper sections of the seal. However, Jennifer pointed out that while the seal represented the school, the city, and the state, nothing on the seal represented the school's population. The other students agreed that the bottom portion of the seal would need to characterize the students of Lincoln High.

However, designing the bottom portion caused many arguments and disputes. Aaron suggested that the bottom section contain symbols of the school's athletic and academic teams. He proposed that the section could have a football, tennis racket, music notes, and math formulas. The other committee members did not like this idea because only a small proportion of Lincoln High students participated in these activities. Lauren recommended that the bottom section include symbols of education, such as an apple, graduation hat, and diploma. Again the committee members rejected the idea, arguing that these symbols represented Lincoln High itself rather than its students.

Eventually, Jennifer remembered that one of the defining features of Lincoln High was the diversity of its students. Jordan, recalling an incident during his freshman year when the Lincoln High Muslim Society's office had been vandalized by Christian and Jewish students, suggested adding symbols of those three religions. By symbolizing three religions that had endured conflict both at Lincoln High and in the world at large, the students hoped to demonstrate the tolerance and respect they felt toward the views of all members of the Lincoln High community. The students agreed that including Christian, Jewish and Islamic symbols would be a great way of illustrating the school's diversity.

Unfortunately, none of the students on the committee knew the symbols representing Christianity, Judaism and Islam. Jennifer offered to call her father, a pastor at the local Presbyterian Church. Jennifer told her father the committee's idea for the seal and asked about the religious symbols. Her father instructed her that the Latin cross represents Christianity, the Star of David symbolizes Judaism and the crescent moon and star represent Islam. Jennifer thanked her father and immediately told the other students that the Latin cross, Star of David, and crescent moon and star would be the symbols on the bottom portion of the seal.

Once the students had agreed upon the design of the seal they began to create the accompanying leaflet. The leaflet stated:

The Lincoln High School seal is intended to represent the school, its population, Lincoln Center City, and the state of Fordham. By including the school name, mascot, and picture of the school, the seal reflects the ideals and symbols of Lincoln High. The outline of Fordham and the state flower and bird have been included to represent the state of Fordham. The star indicating Lincoln Center and the tall buildings are intended to represent Lincoln Center City, the business capital of the state. Finally, the Latin cross, Star of David, and crescent moon and star are intended to represent the school's diversity.

The Student Seal Committee was very excited about the design and description of the seal in the accompanying leaflet. The students proudly gave their work to Lincoln High's

principal, Beth Goldberg. Mrs. Goldberg was thrilled with the design of the seal and the leaflet description. She complimented the students on their creativity and hard work. Immediately, Mrs. Goldberg phoned the Lincoln Center Alliance, a local private organization that had previously promised to pay the fees associated with the design, manufacture, and installation of the school seal. Mrs. Goldberg faxed a copy of the seal and leaflet description to the organization. The Lincoln Center Alliance promptly informed Mrs. Goldberg that both the seal and leaflet would be printed and mounted at the school in time for the centennial.

By late October the centennial festivities had begun. Everyone enjoyed themselves while anxiously awaiting the unveiling of the new school seal. The creation of the seal had become big news not only within Lincoln High but within the entire Lincoln Center community. Therefore, many of the local television and radio stations were present on the last day of the centennial, along with a reporter from the local newspaper, the Lincoln Tribune.

The school seal presentation began with the distribution of the leaflets. Principal Goldberg introduced Ann Matthews, an elected official who was the superintendent of the Lincoln Center School Board. Mrs. Matthews brought a 40" x 40" version of the seal onto the stage and exclaimed, "I am so excited to be here to present the Lincoln High seal. The seal is a terrific way to commemorate Lincoln High's centennial and a great asset to our community. In addition, it demonstrates the important role that God plays in our community and our schools. It is only through our shared faith in God that we continue to grow and come together as a community." After Mrs. Matthews's speech, Mrs. Goldberg announced that "the leaflet explains the design and meaning of the seal and will be memorialized on a plaque to be placed below the seal in the school's gymnasium and at the school entrance." Everyone cheered, clapped and expressed their excitement over the creative new school seal.

The following day the Lincoln Tribune ran a story about Lincoln High's centennial events, focusing on the school seal. The article described the seal and contained an excerpt from the leaflet that explained the seal's significance. Leslie Foster, a twenty-year Lincoln Center resident and avowed atheist, saw the article and the religious symbols on the seal and immediately became upset. Along with the newspaper, Ms. Foster received a notification of the upcoming municipal election. The notification informed Ms. Foster that her designated voting zone was the Lincoln High gymnasium and that Lincoln Center residents would be able to submit an absentee ballot if unable to vote in their designated zone.

Upon seeing the article and the voting notification, Ms. Foster called the Lincoln Center City Mayor's Office. She explained that because she was an atheist, the religious symbols on the Lincoln High seal caused her deep distress and offense. In addition, Ms. Foster told the office that although she had never voted in the municipal election and was not registered to vote, she intended to register and vote in the 2003 municipal election. However, voting would require going to Lincoln High, where Ms. Foster claimed she would see the seal upon entering the school and while voting in the school's gymnasium. The representative from the Mayor's Office sympathized with Ms. Foster's dilemma but stated that there was nothing she could do. A month after making the phone call, Ms. Foster entered the Lincoln High gymnasium and voted in the 2003 municipal election.

Frustrated with the Mayor's Office inaction and upset by her voting experience, Ms. Foster filed this action against the City pursuant to 42 U.S.C. § 1983 (see Appendix III) to enjoin the school's display of the seal. Ms. Foster asserts that she has standing to challenge the seal as unconstitutional under the Establishment Clause of the First Amendment. The first part of the decision will deal with standing and the second part will address the constitutionality of the seal.

DISCUSSION

I. PLAINTIFF HAS STANDING TO CHALLENGE THE SEAL AS UNCONSTITUTIONAL UNDER THE ESTABLISHMENT CLAUSE.

This is an issue of first impression in the State of Fordham. Plaintiff, Leslie Foster, contends that Defendant, Lincoln Center City, has violated the Establishment Clause by adopting the Lincoln High School seal. Ms. Foster has filed this action pursuant to 42 U.S.C. § 1983 to enjoin the school's continued use of the seal. Ms. Foster asserts that she has standing to challenge the seal as unconstitutional under the Establishment Clause of the First Amendment. For the following reasons, we find that the Plaintiff has standing.

The Supreme Court, in Lujan v. Defenders of Wildlife, clearly identified three factors that a plaintiff must meet to have standing. 504 U.S. 555, 560 (1992). A plaintiff must establish that (1) she has personally suffered an injury in fact, (2) caused by the Defendant's conduct, (3) which is likely to be redressed by a favorable judicial decision. Id. Because Ms. Foster satisfies all three prongs of the Lujan test, she has standing to challenge the Lincoln High seal. The Court now considers each element in turn.

A. Injury in Fact

Plaintiff must demonstrate an injury in fact. In Lujan, the Supreme Court defined an injury in fact to be an invasion of a legally protected interest that is concrete and particularized, actual or imminent, and not conjectural or hypothetical. 504 U.S. at 560. The injury can be economic or noneconomic. See United States v. Students Challenging Regulatory Agency Procedures (SCRAP), 412 U.S. 669, 686 (1973) (holding that non-economic injury is sufficient to confer standing). In Establishment Clause cases, it is most common for plaintiffs to have suffered noneconomic harm. Here, the court finds that Ms. Foster has suffered both economic and noneconomic injury and therefore has standing to challenge the school seal.

1. Noneconomic Injury in Fact

Plaintiff must prove that she has suffered noneconomic injury in fact. In Establishment Clause cases, noneconomic injury is recognized when plaintiffs are subjected to unwelcome contact with religious displays or forced to assume special burdens to avoid such displays. Valley Forge Christian Coll. v. Ams. United for Separation of Church and State, 454 U.S. 464, 486-87 (1982). Because Ms. Foster is an atheist, the Lincoln High School seal has caused harm to her spiritual and religious beliefs. Ms. Foster was forced to see the seal while voting in the municipal election.

This Court finds that the Plaintiff has been subjected to direct and unwelcome contact with the Lincoln High seal. As a citizen of Lincoln Center City, Ms. Foster is entitled to fully participate as a member of the community. One of her community rights is the right to vote. However, her civic rights are compromised because she is either forced to come into direct contact with the seal or forfeit her right to vote. This is especially troublesome because voting is one of the most important rights and is the type of behavior this Court wants to encourage. “Compelling plaintiffs to avoid public schools or buildings is to impose on them a burden that no citizen should have to shoulder.” Suhre v. Haywood County, 131 F.3d 1083, 1088 (4th Cir. 1997).

Additionally, the Court finds that Ms. Foster does not need to demonstrate special burdens in avoiding the seal. Moreover, the Supreme Court has never required plaintiffs alleging Establishment Clause violations to assume special burdens in avoiding a challenged display. See, e.g., Sch. Dist. of Abington Township v. Schempp, 374 U.S. 203, 224 n.9 (1963). In other words, avoiding the challenged display is sufficient but unnecessary to establish a noneconomic injury in fact. Here, avoiding the school seal would have required Ms. Foster to forfeit her right

to vote and would only have led to further harm. Therefore, because she has demonstrated direct and unwelcome contact with the seal, the Plaintiff has demonstrated a noneconomic injury in fact.

2. Economic Injury in Fact

Plaintiff has additionally demonstrated an economic injury in fact because she is a city taxpayer. Because Lincoln Center City is presumably spending tax money to preserve and upkeep the seal, Ms. Foster has standing based on her payment of taxes to the City. Frothingham v. Mellon, 262 U.S. 447, 486-87 (1923) (noting that a municipal taxpayer has a direct interest in how municipal revenue is used and that an injunction to prevent misuse of tax money is appropriate). While the amount of tax money used to preserve the school seal is not noted, the Supreme Court has never specified a minimum amount necessary to confer standing on a taxpayer. In fact, minimal, indirect expenditures have been held sufficient to confer standing. Harvey v. Cobb County, 811 F. Supp. 669, 675-76 (N.D. Ga. 1993) (finding taxpayer standing to challenge religious display in a courthouse when janitorial workers cleaned and dusted the courthouse). Therefore, this Court finds that because the City is spending tax money to upkeep the seal, Ms. Foster has suffered an economic injury sufficient to grant standing.

B. Injury Caused by Defendant's Conduct

In order to satisfy the second part of the Lujan test, the Plaintiff must show that the alleged injury was caused by the Defendant's conduct rather than the conduct of a third party not before the court. 504 U.S. at 560. Ms. Foster has demonstrated that her injury was caused by the Defendant's conduct. Lincoln High School, a public school, formed the School Seal Committee, adopted the seal, and displayed it throughout the school. Additionally, the Lincoln Center City

Mayor's Office ignored Ms. Foster's concerns and refused to remove the seal. As such, the Court finds that the Plaintiff's injury is directly attributable to the conduct of the Defendant.

C. Redressed by Favorable Judicial Decision

In order to determine redressability, this Court must consider whether a court or legislature is the best forum to address the grievance. Valley Forge Christian Coll., 454 U.S. at 475. This Court finds that Ms. Foster's injury can only be remedied through a judicial injunction. Because the Mayor's Office and Lincoln Center City created the Plaintiff's injury, it would be ineffective for Ms. Foster to seek redress through the executive or legislative branches. Moreover, because Ms. Foster's injury is not a generalized grievance shared among other members of the community, the judiciary is the most appropriate forum to address the complaint. It is only in the judiciary that an individual's rights can be protected against the views of the majority.

II. THE LINCOLN HIGH SCHOOL SEAL DOES NOT VIOLATE THE ESTABLISHMENT CLAUSE OF THE FIRST AMENDMENT.

Having found that the Plaintiff, Leslie Foster, has standing to challenge the Lincoln High seal, the Court must now consider the Plaintiff's claim that the seal violates the Establishment Clause of the First Amendment. The Establishment Clause, applied to the states through the Fourteenth Amendment, requires that the government "make no law respecting an establishment of religion." U.S. Const. amend. I. (see Appendix IV). In Lemon v. Kurtzman, the Supreme Court set forth a three-part test to determine whether a particular government action violates the Establishment Clause. 403 U.S. 602, 612-13 (1971). Specifically, government action is constitutional when (1) there is a secular purpose for the action, (2) the action's principal or primary effect neither advances nor inhibits religion, and (3) the action does not create excessive entanglement with religion. The Supreme Court subsequently refined the

Lemon test through the Endorsement test, which states (1) that the government must not have the actual purpose to endorse religion and (2) must not in effect convey a message of endorsement of religion. Lynch v. Donnelly, 465 U.S. 668, 690 (1984) (O'Connor, J., concurring). The Endorsement test replaces the first two prongs of the Lemon test. Therefore the correct analysis utilizes the two Endorsement test prongs and the Lemon test's excessive entanglement prong. This Court holds that Lincoln High's display of the school seal satisfies both the Lemon and Endorsement tests and is therefore constitutional under the Establishment Clause.

A. Purpose

This Court finds that the government did not have the purpose of endorsing religion by creating and displaying the school seal. The stated secular purpose of the seal is to represent the diversity of Lincoln High. This purpose is further supported by the accompanying leaflet that was distributed at the dedication and explains the school's rationale for creating the seal.

1. Stated Purpose

The Defendant's stated purpose, to represent Lincoln High and its population, is a legitimate secular purpose and fulfills the first prong of the Endorsement test. The facts of this case demonstrate that Lincoln High's avowed secular purpose reflects the actual purpose behind the creation of the seal. Not every use of religious symbols is intended to have a religious effect. See Friedman v. Bd. of County Comm'rs of Bernalillo, 781 F.2d 777, 788 (10th Cir. 1985) (noting that the Establishment Clause does not prohibit all references to religious objects). In the present case, Lincoln High's use of the religious symbols on the school seal was intended to represent the diversity of Lincoln High. By displaying symbols of three religions that had been involved in conflict, the school intended to promote tolerance and respect among all of its students. Courts have never required that displays with religious elements contain a symbol of

every religion in order to be constitutional. See, e.g., County of Allegheny v. ACLU, 492 U.S. 573 (1989). Moreover, the school's instructions to the Student Seal Committee specifically asked the students to create a seal that represented Lincoln High and its population.

Plaintiff argues that the school has an improper religious purpose and that the purported secular purpose is a sham. See Edwards v. Aguillard, 482 U.S. 578, 585 (1987) (noting that a court will defer to a government's stated purpose as long as it is sincere and not a sham). While this Court acknowledges that Mrs. Matthews made arguably religious statements about the seal, these statements do not turn a proper secular purpose into a religious one. Although Mrs. Matthews is superintendent of the School Board, her statements cannot be said to represent the school's purpose in creating the seal. Mrs. Matthews was not involved in the planning or design of the seal, so her statements carry little weight. Moreover, as an elected official, Mrs. Matthews was perhaps more interested in appealing to her constituency than in expressing the school's true purpose. Based on the totality of the circumstances, it is evident that the religious symbols were placed on the seal to represent the diversity of Lincoln High. See Books v. City of Elkhart, 235 F.3d 292, 302 (7th Cir. 2000) (noting that courts look to the totality of the circumstances to determine the actual purpose of a challenged display). Therefore, the government's stated purpose is sincere.

2. Accompanying Leaflet

This Court finds that the accompanying leaflet serves as an overall disclaimer and further evidences the school's secular purpose. By specifically stating that the religious symbols are intended to represent Lincoln High's diverse population, the leaflet makes it clear that the school did not have a religious purpose. Therefore, the leaflet serves as an effective disclaimer and supports Defendant's claim that the seal had a secular purpose. See Adland v. Russ, 307 F.3d

471, 488-89 (6th Cir. 2002) (finding that an effective disclaimer can further strengthen the secular purpose of a public display).

B. Effect

To determine the overall effect of a seal, this Court must consider its religious symbols and surrounding symbols, as well as the duration and pervasiveness of the seal. The Court finds that the Lincoln High School seal does not have the actual effect of endorsing religion and therefore satisfies the second prong of the Endorsement test.

1. Religious Symbols

Because all the sections of the Lincoln High seal are equivalent in size, the Court finds that the religious symbols are not emphasized and contribute to an overall secular effect. The Supreme Court has held that the overall effect of a display can be secular despite the inclusion of religious symbols. Lynch, 465 U.S. at 685. For example, in Lynch v. Donnelly, the Court pointed out that our money says “In God We Trust;” we celebrate Thanksgiving, a religious holiday; and the Supreme Court begins every session by stating “God Save This Honorable Court.” 465 U.S. at 676. All of these activities are an accepted part of our daily lives and are not regarded as endorsing religion. Additionally, because the religious symbols in the Lincoln High seal are accompanied by secular symbols representing the state of Fordham, Lincoln Center City, and Lincoln High, any religious effect is minimized. See County of Allegheny, 492 U.S. at 602 (holding that an isolated religious symbol had the effect of endorsing religion and therefore violated the Establishment Clause). Thus, the religious symbols in the Lincoln High seal are neutralized when accompanied by secular symbols, making the overall effect secular. Lynch, 465 U.S. at 685 (finding that a holiday display including a crèche and secular holiday symbols did not have a religious effect).

2. Surrounding Symbols

The symbols used to represent the state of Fordham, Lincoln Center City, and Lincoln High are purely secular symbols and contribute to an overall secular effect. We believe this case is analogous to Murray v. City of Austin, where the city seal contained a Latin cross amidst a lamp of knowledge, a pair of wings, and a silhouette of the State Capitol building. 947 F.2d 147, 155 (5th Cir. 1991). The Murray court held that because all of the symbols except the cross were undisputed secular symbols, the overall effect was secular. Likewise, in this case the accompanying symbols on the seal do not have dual secular and religious meanings. See Harris v. City of Zion, 927 F.2d 1401, 1414 (7th Cir. 1991) (finding that a seal had an overall religious effect when a dove, sword, crown, and shield, which all have dual secular and religious meanings, were accompanied by a Latin cross).

3. Duration

This Court finds that the permanence of the seal is not dispositive in deciding whether the seal violates the Establishment Clause. While the facts of the case do not address the duration of time the school intends to use the seal, it is likely a significant amount of time. However, we agree with the Fifth Circuit's opinion in Murray that the question of permanence is irrelevant when the seal has a permissible secular effect. 947 F.2d at 155 (finding that even though the city seal was permanent, the issue was immaterial because the seal had a secular effect). We have already found that the Lincoln High seal has a secular effect. Thus, the seal's duration does not affect the analysis.

4. Pervasiveness

Similarly, because the seal has a secular effect, the question of pervasiveness is immaterial. Murray, 947 F.2d at 150. Nevertheless, the Lincoln High seal is not pervasive. The

Tenth Circuit has held that pervasive seals invade the daily lives of county residents, appearing on county letterhead, county vehicles, and the uniforms of police and firefighters. Robinson v. City of Edmond, 68 F.3d 1226, 1231 (10th Cir. 1995). In contrast, the Lincoln High seal is only displayed at the school in specified locations. Therefore, we find that the seal is not pervasive and cannot contribute to an overall religious effect.

C. Entanglement With Religion

This Court finds that the creation and design of the Lincoln High seal does not constitute an excessive entanglement of government with religion. The Supreme Court has noted that the Constitution does not require complete separation of church and state. Lynch, 465 U.S. at 673. Reflecting this notion, the Lemon test simply requires that any entanglement not be “excessive.” Although the Seal Committee contacted a local pastor, he was the father of a committee member and was therefore contacted in a personal rather than religious capacity. Moreover, the City will expend only a minimal amount of money in maintaining the seal. Lynch, 465 U.S. at 684. Thus, there is no excessive entanglement of government with religion in the case at bar.

CONCLUSION

For the above reasons, we hold that Plaintiff has standing to challenge the seal. However, we hold that the seal does not violate the Establishment Clause and is therefore constitutional.

IT IS SO ORDERED.

Dated: September 5, 2004

REIF, J.
District Court for the Southern District of Fordham

**UNITED STATES COURT OF APPEALS
FOR THE FOURTEENTH CIRCUIT**

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LESLIE FOSTER, :
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 Appellee. :
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Before BAREND, Chief Judge, VALDES, STATSKY and ECHEVARRIA, Circuit Judges.

BAREND, C.J.

This is an appeal from an order by the United States District Court for the Southern District of Fordham, Reif, J., upholding the constitutionality of the Lincoln High seal under the Establishment Clause of the First Amendment. For the reasons set forth below, we now REVERSE the holding of the district court.

DISCUSSION

I. PLAINTIFF DOES NOT HAVE STANDING TO CHALLENGE THE SEAL.

The district court held that Plaintiff, Leslie Foster, had standing to challenge the Lincoln High School seal as unconstitutional under the Establishment Clause of the First Amendment. We disagree. This Court holds that the Plaintiff fails the three-part Lujan test and therefore does not have standing. We believe that Ms. Foster did not suffer an injury in fact that was caused by the Defendant’s conduct and is likely to be redressed by a favorable judicial decision. The three elements of the Lujan test are discussed in turn.

A. Injury in Fact

The district court erred in finding that Ms. Foster suffered an injury in fact. The district court found that Ms. Foster had suffered both a noneconomic injury, through direct and unwanted contact with the seal, and economic injury as a city taxpayer. We disagree for the following reasons.

1. Noneconomic Injury in Fact

While this Court acknowledges that an injury may be noneconomic in nature, the Plaintiff has not suffered any of the noneconomic harms recognized by the Supreme Court to confer standing. Ms. Foster asserts that she has experienced direct and unwelcome contact with the Lincoln High seal. However, the Plaintiff is merely offended by a display that she does not agree with. In Valley Forge Christian Coll. v. Ams. United for Separation of Church and State, the Supreme Court stated that “psychological consequences produced by observation of conduct with which one disagrees,” as Ms. Foster has demonstrated here, are not sufficient to confer standing. 454 U.S. 464, 485 (1982). Therefore, Ms. Foster’s injury is essentially a generalized grievance that is not distinct enough to confer standing.

This Court also finds that the Plaintiff was not subject to direct and unwelcome contact with the Lincoln High seal. The district court erroneously assumed that Ms. Foster saw the seal simply because she was in the gymnasium. However, Ms. Foster could have easily averted her eyes and no contact would have occurred. Therefore, we hold that the Plaintiff is unable to establish a noneconomic injury because she failed to establish direct and unwelcome contact with the seal.

Additionally, this Court disagrees with the district court and holds that the Plaintiff must assume special burdens to prove noneconomic injury in fact. See Freedom from Religious

Found., Inc. v. Zielke, 845 F.2d 1463, 1467-68 (7th Cir. 1988) (finding that altering one's behavior is required to establish standing). In the present case there is no evidence that Ms. Foster altered her behavior. While she alleged that the seal's presence in the gymnasium impeded her right to vote, Ms. Foster nevertheless entered the gymnasium and voted in the municipal election. Had she forfeited her right to vote or submitted an absentee ballot, Ms. Foster would be able to show special burdens and could establish a noneconomic injury. However, because Ms. Foster did not alter her behavior, this Court finds that there was not a noneconomic injury sufficient to confer standing.

2. Economic Injury in Fact

Likewise, the fact that Ms. Foster is a city taxpayer does not rise to the level of an economic injury in fact sufficient to confer standing. While the Supreme Court has never stated the minimum amount necessary to have standing, the Court has acknowledged that the government must spend some amount of money on the challenged display. See Doremus v. Bd. of Education, 342 U.S. 429, 435 (1952) (noting that the plaintiff must have a financial interest in the challenged action). Here, there is no indication that Lincoln Center City is spending any money on the maintenance or preservation of the school seal. While government money is spent on the maintenance of school buildings and property in general, it was never suggested that this specifically included the school seal. Thus, because it is uncertain whether Ms. Foster's tax money is being used to maintain the Lincoln High School seal, there is no economic injury sufficient to grant standing.

B. Injury Caused by Defendant's Conduct

The district court erred in finding that the Plaintiff's injury was caused by the Defendant's conduct. The City did not partake in the design, manufacture or installation of the

seal. The seal was designed and created by the Lincoln High Student Seal Committee, which was composed of four students who are not a party to this lawsuit. Additionally, the Lincoln Center Alliance, a private organization, paid for the manufacture and installation of the seal. Plaintiff has failed to show that Defendant is the source of her injury. Thus, Plaintiff has failed the second element of the Lujan test .

C. Redressed by Favorable Judicial Decision

Because Ms. Foster's alleged injury is essentially a generalized grievance, a court is not the most appropriate forum to hear the complaint. Lujan, 504 U.S. at 574 (noting that generalized grievances are not cases or controversies under Article III and therefore cannot be resolved in the courts). Even if the Defendant represents part of the City's executive and legislative branches, this hardly means that the legislature would be ineffective in resolving the complaint. Therefore, Ms. Foster's alleged injury cannot be remedied by means of a judicial injunction.

CONCLUSION

Because we find that the Plaintiff does not have standing to challenge the seal under the Establishment Clause, this Court does not reach the issue of constitutionality. For the foregoing reasons, the decision of the district court is reversed.

IT IS SO ORDERED

Dated: September 25, 2004

BAREND, C.J.
Fourteenth Circuit Court of Appeals

DISSENT: STATSKY, J.

I disagree with the majority and would find that the Plaintiff has standing to challenge the Lincoln High School seal. Moreover, I believe that the Lincoln High seal violates the

Establishment Clause. The seal has the purpose of endorsing religion, has the effect of endorsing religion, and excessively entangles government with religion. Therefore, the Lincoln High School seal fails both the Endorsement and the Lemon tests and should be struck down as unconstitutional under the Establishment Clause.

A. Purpose

The Defendant's actual purpose in creating and designing the school seal was to endorse religion. The school's stated secular purpose is a sham and the accompanying leaflet does not detract from the school's obvious religious purpose.

1. Stated Purpose

The facts of this case demonstrate that the school's stated purpose is a sham. While this Court acknowledges that we should generally defer to a government's stated purpose, the Supreme Court has also identified the need to "distinguish a sham secular purpose from a sincere one." Wallace v. Jaffree, 472 U.S. 38, 75 (1985). Here, religious comments were made by the chief executive of the City's School Board. Further, the student committee could have accomplished its stated purpose without the use of religious symbols. Thus, the school and students' avowed secular purpose of attempting to illustrate religious tolerance is a sham.

First, the district court erred in ignoring the religious statements made by the superintendent of the School Board. The district court found that these religious statements do not reflect a religious purpose. I disagree. Mrs. Matthews's statements were unabashedly religious. Additionally, as the chief executive of the School Board, her statements at the dedication ceremony carry significant weight in determining the school's religious purpose in creating the seal. Therefore, Mrs. Matthews's statements that describe religious reasons for including the symbols evidence a religious purpose.

Second, the school could have accomplished its stated goal without the use of religious symbols. The Supreme Court has noted that the availability of more secular means to accomplish a school's stated purpose is evidence that that purpose is a sham. See Larkin v. Grendel's Den, Inc., 459 U.S. 116, 123-24 (1982). The facts of this case demonstrate that more secular means were available. Two students on the Seal Committee proposed alternative secular methods to represent the population of Lincoln High. Furthermore, the population of Lincoln High School includes students of various cultures who speak many different languages. However, instead of depicting the various cultures or many languages spoken at the school, the students and school decided to employ religious symbols that only represented three of the many religions at the school. Thus, the statements made and the lack of any effort to convey the same message by secular means demonstrate that the stated purpose is a sham.

2. Accompanying Leaflet and Plaque

Moreover, the accompanying leaflet and plaque are not effective disclaimers because they do not clearly state the school's purported secular purpose. In Adland v. Russ, the Supreme Court noted that an effective disclaimer needs to unmistakably renounce any religious purpose while identifying the government's secular intent. 307 F.3d 471, 488-89 (6th Cir. 2002). Because the accompanying leaflet and plaque simply use vague language about Lincoln High's "diversity," they fail to meet this burden.

B. Effect

The seal's religious symbols, surrounding symbols, duration and pervasiveness all contribute to an overall religious effect. Therefore, the seal fails the second prong of the Endorsement test and should be found to violate the Establishment Clause.

1. Religious Symbols

The district court found that because the sections of the Lincoln High seal are equal in size, and only 1/3 of the seal is arguably religious, the overall effect was secular. I disagree with this analysis. In Harris v. City of Zion, the Seventh Circuit held unconstitutional a seal in which only one of four equally-sized sections contained religious symbols. 927 F.2d 1401, 1403, 1412-13 (7th Cir. 1991). Therefore, the presence of religious symbols on even a portion of Lincoln High's seal serves to advance religion – an impermissible effect under the Establishment Clause.

Moreover, the surrounding symbols on the Lincoln High seal do not neutralize the religious symbols. The district court relied on Lynch v. Donnelly to find that a religious symbol's effect is minimized when accompanied by secular symbols. 465 U.S. 668, 685 (1984). However, Lynch is inapposite. The Lynch Court found a secular effect because the display was surrounded by secular symbols and was in the context of the holiday season. 465 U.S. at 680. The Lincoln High seal does not have a similar holiday context. Therefore, the surrounding symbols do not minimize the effect of the religious symbols and an overall religious effect is produced.

2. Surrounding Symbols

The district court found that the accompanying symbols on the Lincoln High seal had contributed to an overall secular effect. I disagree and find that the accompanying symbols are “charged with endorsement.” See Harris, 927 F.2d at 1412. Like the seal in Harris, the Lincoln High School seal depicts the aspects of its community that the government proudly seeks to promote – its flora, its fauna, its schools, its industries, and its dominant religious beliefs. See id. As such, the accompanying symbols enhance rather than neutralize the seal's effect of endorsing religion. See id.

3. Duration

Because the Lincoln High seal has an impermissible religious effect, I find that its permanence further demonstrates the unconstitutionality of the seal. Although the facts do not state how long the school intends to display the seal, it is likely a significant or indefinite amount of time. The permanence of the seal illustrates the fervency with which the school and the City seek to promote religious ideals. Thus, the seal's permanence amplifies the religious effect.

4. Pervasiveness

I disagree with the district court and find that the seal is pervasive even though it is only displayed within Lincoln High. The local news and radio stations covered the centennial and the seal was discussed in the Lincoln Tribune. Additionally, the seal was pictured in the leaflet that all centennial guests received. Therefore, the pervasiveness of the seal contributes to an overall religious effect.

C. Excessive Entanglement

The Lincoln High seal excessively entangles the government with religion. By displaying religious symbols alongside purportedly secular symbols, the seal unmistakably links the government and religion. Further, the Student Seal Committee consulted with the local Presbyterian Church in designing the seal. See Lynch, 465 U.S. at 684 (considering contact with church authorities as a factor in the entanglement analysis). This communication with church authorities lends an additional religious overtone to the school seal.

For the foregoing reasons, I would reverse the decision of the district court and hold the seal unconstitutional under the Establishment Clause.

STATSKY, J.
Fourteenth Circuit Court of Appeals

SUPREME COURT OF THE UNITED STATES OF AMERICA

-----X		
LESLIE FOSTER,	:	
	:	
	:	DECISION
Petitioner,	:	and
	:	ORDER
	:	
v.	:	Civ. No. 04-8215
	:	
LINCOLN CENTER CITY	:	
	:	
	:	
Respondent.	:	
-----X		

ON PETITION FOR A WRIT OF CERTIORARI to the Supreme Court of the United States of America, No. 04-8215.

ON CONSIDERATION of the Petition for a Writ of Certiorari herein to the Supreme Court of the United States of America.

IT IS SO ORDERED by this Court that the said Petition be, and the same is hereby granted in order that this Court may consider the following questions raised by the parties:

1. Whether Plaintiff has standing to challenge a school seal under the Establishment Clause of the First Amendment; and
2. Whether the school seal violates the Establishment Clause of the First Amendment.

Dated: October 6, 2004

/s/ _____
David Stoner, Clerk

APPENDIX I
Table of Authorities

CASES

ISSUE I:

Doremus v. Bd. of Education, 342 U.S. 429 (1952)

Freedom from Religious Found. v. Zielke, 845 F.2d 1463 (7th Cir. 1988)

Frothingham v. Mellon, 262 U.S. 447 (1923)

Harvey v. Cobb County, 811 F. Supp. 669 (N.D. Ga. 1993)

Lujan v. Defenders of Wildlife, 504 U.S. 555 (1992)

Sch. Dist. of Abington Township v. Schempp, 374 U.S. 203 (1963)

Suhre v. Haywood County, 131 F.3d 1083 (4th Cir. 1997)

United States v. Students Challenging Regulatory Agency Procedures (SCRAP), 412 U.S. 669 (1973)

Valley Forge Christian Coll. v. Ams. United for Separation of Church and State, 454 U.S. 464 (1982)

ISSUE II:

Adland v. Russ, 307 F.3d 471 (6th Cir. 2002)

County of Allegheny v. ACLU, 492 U.S. 573 (1989)

Books v. City of Elkhart, 235 F.3d 292 (7th Cir. 2000)

Edwards v. Aguillard, 482 U.S. 578 (1987)

Friedman v. Bd. of County Comm'rs of Bernalillo, 781 F.2d 777 (10th Cir. 1985)

Harris v. City of Zion, 927 F.2d 1401 (7th Cir. 1991)

Larkin v. Grendel's Den, Inc., 459 U.S. 116 (1982)

Lemon v. Kurtzman, 403 U.S. 602 (1971)

Lynch v. Donnelly, 465 U.S. 668 (1984)

Murray v. City of Austin, 947 F.2d 147 (5th Cir. 1991)

Robinson v. City of Edmond, 68 F.3d 1226 (10th Cir. 1995)

Wallace v. Jaffree, 472 U.S. 38 (1985)

STATUTES

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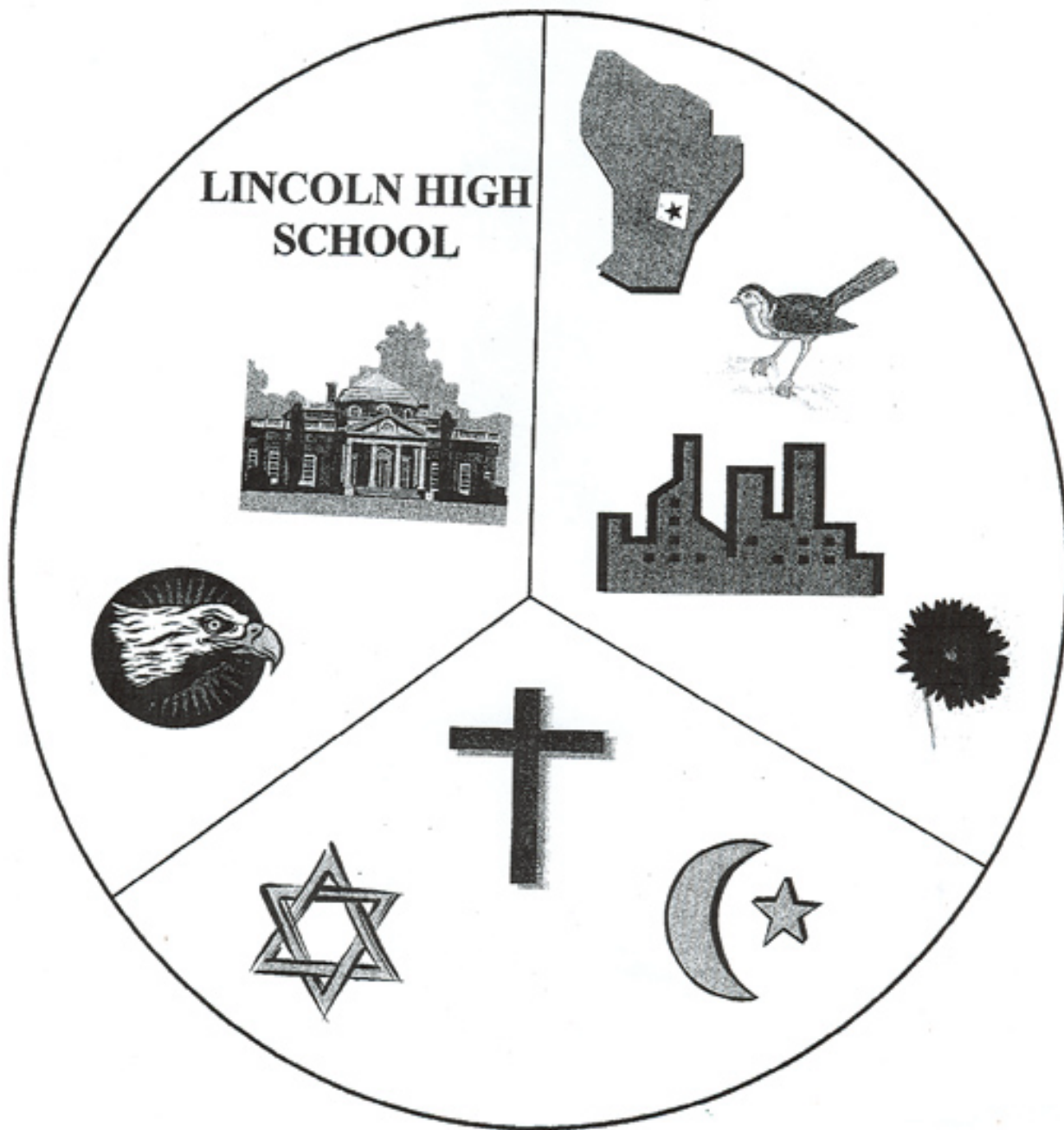
42 U.S.C. § 1983

ISSUE II:

42 U.S.C. § 1983

United States Constitution, amendment I, XIV

APPENDIX II



APPENDIX III

42 U.S.C. § 1983. Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

APPENDIX IV

U.S. Const. amend. I. Religious and political freedom.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.