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Soc'y of Jesus of New England v. Boston Landmarks Comm'n, 409 Mass. 38, 564 N.E.2d 571 (1990)

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tion of the standard while the court questioned the reliability of the standard of the average American parent as a valid means of rating a film's content.

The court's critique was not the first analysis of the MPAA's rating system. A large number of movie makers and film critics had been strongly opposed to the "censorship quality" of the MPAA's rating system for years prior to the case. Specifically, movie makers opposed the MPAA's "X" rating because it stigmatized a film as pornographic, and it had serious negative economic impacts. However, the court's decision in *Miramax*, though legally favoring the MPAA, was the catalyst for a substantial change in the rating system. In September of 1990, just two months after *Miramax*, the MPAA announced that the "X" movie rating was to be abolished and replaced with a new category called "NC-17" in an effort to reform its rating system.¹⁹ Additionally, the MPAA has received a trademark for the new rating, thus allowing only films rated by the MPAA's system to receive it. Where the adult movie industry previously had been able to use the "X" rating to promote pornographic films, the new rating will be used solely by the MPAA.

In summary, the change by MPAA to its rating system addressed a fundamental issue that was being neglected up until the *Miramax* litigation; was the system employed by the Rating Board satisfying the real underlying intent of rating films? In a statement made to a writer of the *Washington Post*, the MPAA said, "We have concluded that over the years some people have come to endow the "X" film rating with meaning it does not have, never has had, and was not intended by founders of the rating program."²⁰ The significance of *Miramax* lies not in its conclusions of law, but in its demonstration of the court's influence, through judicial reasoning, in affecting institutional changes in important areas of public concern. Ω

E. Brooke Ward

1. N.Y. CIV. PRAC. L. & R. § 7803 (McKinney 1981).
2. *Miramax Films Corp. v. Motion Picture Ass'n of Am.*, 148 Misc. 2d 1, __, 560 N.Y.S.2d 730, 734-735 (1990).
3. Classification and Rating Administration (CARA).
4. 148 Misc. 2d at __, 560 N.Y.S.2d at 732.
5. 148 Misc. 2d at __, 560 N.Y.S.2d at 733.
6. 148 Misc. 2d at __, 560 N.Y.S.2d at 733.
7. 148 Misc. 2d at __, 560 N.Y.S.2d at 732.
8. 148 Misc. 2d at __, 560 N.Y.S.2d at 732.
9. 148 Misc. 2d at __, 560 N.Y.S.2d at 732.
10. 148 Misc. 2d at __, 560 N.Y.S.2d at 734.
11. N.Y. CIV. PRAC. L. & R. § 7803(3) (McKinney 1981).
12. 148 Misc. 2d at __, 560 N.Y.S.2d at 735.
13. 148 Misc. 2d at __, 560 N.Y.S.2d at 735.

14. 148 Misc. 2d at __, 560 N.Y.S.2d at 735.

15. 148 Misc. 2d at __, 560 N.Y.S.2d at 736.

16. 148 Misc. 2d at __, 560 N.Y.S.2d at 732.

17. 148 Misc. 2d at __, 560 N.Y.S.2d at 735.

18. 148 Misc. 2d at __, 560 N.Y.S.2d at 733.

19. The letters "NC" stand for "no children". The new rating forbids admission of anyone under the age of 17 into a movie theater.

20. Hinson, *Film Industry Revises Rating System; Controversial X Movie Category Abandoned to Avoid 'Stigma'*, *Wash. Post*, Sept. 27, 1990, § 1, at A1.

The Soc'y of Jesus of New England v. Boston Landmarks Comm'n,

409 Mass. 38, 564 N.E.2d 571 (1990).

Introduction

The Boston Landmarks Commission (the "Commission") designated elements of the interior of a church¹ as a landmark. This church belongs to The Society of Jesus of New England (the "Jesuits"), which challenged the designation and sought summary judgment.² The Supreme Judicial Court of Massachusetts upheld summary judgment for the Jesuits on the ground that the designation of the church interior violated Article 2 of the Declaration of Rights of the Massachusetts Constitution.³

Facts

The Church of the Immaculate Conception has a classic mid-nineteenth century church design. In 1986, the Jesuits established a plan to renovate the church because of sparse attendance, the immense structure of the building, and the age of the building. The renovation plan called for restructuring of the main church into office, counseling, and residential space. After construction began, ten Boston voters petitioned the Commission to designate the interior of the church as a landmark under "An Act Establishing the Boston Landmarks Commission."⁴

The Commission approved landmark designation for portions of the church's interior in May, 1987.⁵ Under the landmark statute, the Jesuits had to obtain approval by the Commission before renovating the portion of the church which was designated as a landmark.⁶ The Jesuits challenged this designation in the Superior Court and sought to have the designation set aside on constitutional grounds. The Superior Court ultimately held that the landmark designation did violate the free exercise clause of the First Amendment to the United States Constitution and granted summary judgment to the Jesuits.⁷

Legal Analysis

On appeal, the Supreme Judicial Court of Massachusetts addressed whether the designation violated Article 2 of the Massachusetts Constitution. In finding that it did, the Court quoted the Section of Article 2 that provides: "[N]o subject shall be hurt, molested, or restrained, in his person, liberty, or estate, for worshipping GOD in the manner and season most agreeable to the dictates of his own conscience; or for his religious profession or sentiments; provided he doth not disturb the public peace, or obstruct others in their religious worship."⁸

The Court stated that, according to the Massachusetts Constitution, there are two exclusive exceptions to freedom of religious belief and practice. First, the government may interfere when the public peace is disturbed. Second, the government can intervene in the event the religious worship of others is obstructed. In the case at hand, the Court asserted that neither of the two exceptions were met.

The Court disagreed with the Commission's argument that the design and placement of the altar is merely a secular question of interior decoration and pointed out the great significance of the location and positioning of the altar to the Jesuits' religious practices. The Court also stated that the configuration of the church interior is filled with religious meaning. Therefore, it must be considered part of the Jesuits' religious worship.

Conclusion

The significant debate over the constitutionality of applying historic preservation laws to churches continues.⁹ The courts seem to have difficulty in formulating broad rules that could apply in every case involving church-owned property.¹⁰ Perusal of case law suggests that this difficulty arises from the difference between decisions based on state versus federal constitutions. There is a need for courts to declare general principles for the application of historic preservation regulations to church property.

The opinion in *The Society of Jesus of New England v. Boston Landmarks Comm'n* is limited because it pertains solely to the interior of the church. Any governmental interference with the interior is much more intrusive than is interference with the exterior, since the former is the actual worship space. The Court emphasized that it did not reach the issue regarding the designation of a church's exterior or of a church as a whole. On the contrary, the Opinion of the Justices to the Senate¹¹ stated

that a statute which required government approval before renovating certain building exteriors¹² was constitutional even as applied to religious buildings.¹³

In summary, since historical preservation law is still in formative stages, it is somewhat understandable that courts have difficulty in determining which test to apply to resolve the constitutional issues. *The Society of Jesus* court applied a strict scrutiny test.¹⁴ However, some courts use analyses less demanding than strict scrutiny, such as the rational basis test. The problem with a rational basis test is that it requires no proof that the rule actually furthers the state's interest. Therefore, future problems may continue to arise because the rational basis test fails to provide the high degree of protection from governmental interference which an individual's constitutional right to the free exercise of religion deserves. Ω

Jane M. Lawinger

1. The Church of the Immaculate Conception.

2. Summary judgment was granted to the Jesuits by the Superior Court.

3. *Soc'y of Jesus v. Boston Landmarks*, 409 Mass. 38, 39, 564 N.E.2d 571, 571 (1990).

4. 1975 Mass. Acts 772. This act states in pertinent part, "The mayor, any ten registered voters of the city or any commission member may petition the commission to designate a landmark . . ." *Id.* at § 4.

5. The designation restricted permanent alteration of the "nave, chancel, vestibule and organ loft on the main floor—the volume, window glazing, architectural detail, finishes, painting, the organ, and organ case."

6. *See* 1975 Mass. Acts 772 §§ 5(a), 6, 7.

7. 409 Mass. at 39, 564 N.E.2d at 572.

8. Mass. Const. art. II, *quoted in* *Society of Jesus v. Boston Landmarks*, 409 Mass. 38, 40, 564 N.E.2d 571, 572 (1990).

9. *See, e.g.,* *Society for Ethical Culture, etc. v. Spatt*, 51 N.Y.2d 449, 415 N.E.2d 922, 434 N.Y.S.2d 932 (1980); *Lutheran Church in America v. City of New York*, 35 N.Y.2d 121, 316 N.E.2d 305, 359 N.Y.S.2d 7 (1974); *First Presby. Church of York v. City Council of York*, 25 Pa. Commw. 154, 360 A.2d 257 (1976).

10. *Note, Applying Historical Preservation Ordinances to Church Property: Protecting the Past and Preserving the Constitution*, 63 N.C.L. REV. 404 (1985).

11. *Opinion of Justices to the Senate*, 333 Mass. 783, 128 N.E.2d 563 (1955).

12. This was for the purpose of preserving the architecture of the Historic Beacon Hill District.

13. 333 Mass. at 790, 128 N.E.2d at 568.

14. *See* *Cupit v. Baton Rouge Police Dep't*, 277 So. 2d 454 (La. App. 1973) (held that prohibition against wearing beards by police officers bore a rational relationship to the efficient operation of police department, and dismissal of officers who would not comply with the regulation because wearing beards was required by their religion did not result in deprivation of constitutional right to free exercise of religion).